

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA)

**State-Level Complaint 2024:551
Pueblo School District 60**

DECISION

INTRODUCTION

On April 30, 2024, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Pueblo School District 60 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged noncompliance that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from April 30, 2023 to the present for the purpose of determining if noncompliance occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to develop, review, and revise an IEP that was tailored to meet Student’s individualized needs from November 9, 2023 to present by not considering Student’s communication needs—specifically by removing the requirement for a certified educational translator—in violation of 34 C.F.R. § 300.320(a)(4) and 34 C.F.R. § 300.324(a)(2)(iv).

¹ The IDEA is codified at 20 U.S.C. § 1400, et seq. The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, et seq. The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

2. Failing to properly implement Student’s IEP from November 9, 2023 to present, specifically by:
 - a. Failing to make Student’s IEP accessible to teachers and service providers responsible for its implementation;
 - b. Failing to provide 1,280 minutes per week of “direct specialized support in core academic classes from a certified educational interpreter;” and
 - c. Failing to provide a word bank accommodation required by Student’s IEP.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student is fourteen years old and attended a District middle school (“School”) during the 2023-2024 academic year. *Complaint*, p. 1. She qualifies for special education and related services under the disability category of Hearing Impairment, including Deafness. *Exhibit A*, p. 40.
2. Student is sweet-tempered, makes friends easily, and loves to socialize with peers. *Interviews with Parent, Student’s Teacher of the Deaf and Hard of Hearing (“DHH Teacher”), Student’s signing paraprofessional (“Paraprofessional”), and District Special Education Coordinator (“Coordinator”)*. She has strong math skills and can ask for help when needed. *Id.*
3. Student was diagnosed with a profound hearing loss in both ears. *Exhibit B*, pp. 5-6. Since 2013, she has used cochlear implants to receive auditory input. *Id.*
4. This investigation involves the development, review, revision and implementation of an IEP dated November 9, 2023 (the “IEP”), which was amended at Parents’ request in March 2024 (“Amended IEP”). *Exhibit A*, pp. 20, 39. It also involves the implementation of an IEP dated November 10, 2022 (“Prior IEP”), which was in effect at the beginning of the 2023-2024 academic year. *Id.* at p. 1.

B. Student’s November 2023 IEP

5. The IEP documents Student’s academic and functional strengths, noting that she socializes well with her peers and that she performs very well in math. *Id.* at p. 22.

² The appendix, attached and incorporated by reference, details the entire Record.

6. The IEP's present levels of performance section documents Student's academic performance, as well as her performance on reading and mathematics assessments. *Id.* at p. 23. This section also notes that Student made progress on the IEP goals outlined in the Prior IEP. *Id.*
7. The impact of Student's hearing impairment is described as follows:

"Her hearing loss impacts her access to auditory stimuli. This causes language deficits that impact her acquisition and use of age appropriate, grade level vocabulary. It also causes deficits in reading fluency and comprehension. She needs visual presentation of concepts and the use of sign language to increase her vocabulary and reading comprehension."

Id. at p. 25.
8. The IEP's consideration of special factors section notes that Student is deaf or hard of hearing, and that she requires a communication plan. *Id.* at pp. 26-27.
9. That communication plan is included within the IEP. *Id.* at p. 28. It identifies that Student's primary mode of receptive communication is auditory, that Student uses speech reading when there is a need for clarity, and that Student reads sign language when visual representation is needed. *Id.* The communication plan states that "[a] signing para will be provided during academic instruction, school services and extracurricular activities." *Id.* at p. 29.
10. The IEP was amended in March 2024 on the basis of Parent's request that Student's communication plan reflect her need for an educational sign language interpreter. *Id.* at p. 39. Amended IEP's communication plan states that Student's primary expressive and receptive language is spoken English, but she uses "an educational sign language interpreter receptively to provide visual presentation of language, clarify concepts, and [to act as] a language model." *Id.* at p. 49. It further states that "[a] certified educational interpreter will be provided during academic instruction, school services and activities." *Id.* at p. 51.
11. The IEP contains two annual goals, one in written expression and one in reading comprehension. *Id.* at pp. 30-32.
12. The IEP lists 17 accommodations. *Id.* at p. 33. One reads "Word bank provided." *Id.* This accommodation was not included among the 15 listed in Prior IEP. *Id.* at p. 14.
13. The IEP's service delivery statement identifies that Student will receive 640 minutes per month of direct specialized instruction from a teacher of the deaf. *Id.* at p. 35. It further identifies that Student will receive 1,280 minutes per week of direct specialized support from a certified educational interpreter. *Id.* Relevant to this investigation, Prior IEP identified that Student would receive 1,240 minutes per week of direct specialized support from a certified educational interpreter. *Id.* at p. 16.

14. The IEP states that Student will be placed in the general education setting at least 80 percent of the time. *Id.* at p. 36.

15. The IEP includes a Prior Written Notice (“PWN”) section which states, in relevant part:

The team also discussed that [Student]’s IEP indicated that she needed a certified sign language interpreter. Since the beginning of the 2023-2024 school year, the district has not been able to find/hire a certified sign language interpreter, but has been using a signing para. The IEP team discussed the difference between a signing para and a certified sign language interpreter. [...] The team determined that there was not enough evidence to show that [Student] no longer needs a certified interpreter.”

Id. at p. 37.

16. Except for the communication plan and language referencing it, Amended IEP is identical to the IEP. See *Id.* at pp. 39-59.

C. District’s Policies, Procedures, and Practices

17. With respect to IEP development, District’s assistant director of special education (“Assistant Director”) stated that the District encourages its IEP teams to consider a large body of evidence and to use data to determine the specialized instruction and related services best suited for an individual student. *Interview with Assistant Director.*

18. Assistant Director stated that an IEP should identify and describe the services that a student should be receiving, even if the student is not receiving those services at the time of the meeting. *Id.*

19. Assistant Director described her understanding that district-level staffing issues do not relieve the district from its obligation with respect to the implementation of IEPs. *Id.*

20. Assistant Director and Coordinator both described a thorough training and professional development program by which building-level staff learn their responsibilities under IDEA as well as how to develop an IEP. *Interviews with Assistant Director and Coordinator.*

D. Student’s Performance during the 2023-2024 Academic Year

21. Parent stated that Student was successful during the 2023-2024 academic year, crediting Student’s own hard work as well as the work done by DHH Teacher. *Interview with Parent.*

22. Of Student’s 24 quarterly grades from the 2023-2024 academic year, Student received 16 As, 5 Bs, and 3 Cs. *Exhibit G*, p. 1. Of Student’s 12 semester grades, she received 9 As, 1 B, and two Cs. *Id.*

23. In progress reports dated November 13, 2023, December 18, 2023 and April 15, 2024, Student made progress on each of her IEP goals at each check-in. *Id.* at pp. 2-4.
24. Student was administered the Measures of Academic Progress assessment three times over the 2023-2024 academic year. *Id.* at pp. 51-52. Her raw score in Reading improved from 187 to 203, representing more growth than 84 percent of Student's peers. *Id.* Her raw score in Language Usage improved from 183 to 205, representing more growth than 98 percent of her peers. *Id.*

E. Student's Educational Interpreter

25. In 1997 Colorado enacted a law creating statewide qualification standards for professionals interpreting for deaf and hard of hearing students in Colorado schools. C.R.S. § 22-20-116; *CDE Exhibit 1*, pp. 6-7. Starting in 2006, new educational interpreters were required to hold an associate's degree or better, but previously authorized interpreters could continue to practice without that degree so long as their CDE authorization had not lapsed. *CDE Exhibit 1*, p. 10.
26. Typically, an educational interpreter helps a student who is deaf or hard of hearing to access their education by translating auditory input from the school environment into visual input the student can follow, most frequently sign language. *Consultation with CDE Specialist*.
27. In fourth, fifth, and sixth grade Student's educational sign language interpretation services outlined in her IEPs were provided by the same educational interpreter ("Former Educational Interpreter"). *Interviews with Parent and DHH Teacher*.
28. During the summer prior to the 2023-2024 academic year, Former Educational Interpreter informed Parent and District that she would be taking a position with another school district and would no longer be able to work with Student. *Id.*
29. Prior to the start of the 2023-2024 academic year, District identified a qualified candidate to fill this vacancy and made an offer of employment, which the candidate accepted. *Interview with Coordinator*. That candidate did not appear for her first day of work at District as she decided to remain in her prior position. *Id.*
30. Upon learning that this candidate would not be available, District identified Paraprofessional, who was working at another District school and was familiar with sign language due to being born to deaf parents, to work with Student. *Interviews with Coordinator, DHH Teacher, and Paraprofessional*.
31. Paraprofessional previously worked as an educational interpreter for ten years before allowing her authorization to lapse. *Interview with Paraprofessional*. Because her authorization had lapsed, she needed to obtain an associate's degree, which she does not hold, to be re-authorized as an educational interpreter. *Interview with Paraprofessional; CDE*

Exhibit 1, p. 10. Due to this requirement, Paraprofessional has declined to seek re-authorization. *Interview with Paraprofessional*.

32. On August 29, 2023, Coordinator informed Parent that although District had not yet hired a certified educational interpreter, it would be able to assign Paraprofessional to sign for Student during her classes. *Interview with Coordinator; Exhibit L*, p. 10.
33. Paraprofessional started at School on September 5, 2023, and began providing sign language to Student during her classes. *Interview with Paraprofessional*. Paraprofessional worked with Student from that date to the end of the 2023-2024 academic year. *Id.*
34. Over the course of the 2023-2024 academic year, District made attempts to hire a contract educational interpreter, reaching out to the Colorado School of the Deaf and Blind and five private interpretation services. *Response*, pp. 5-6; *Interview with Assistant Director*. Each of these parties declined to provide contract interpretation services. *Id.*
35. District's website includes job postings for an educational sign language interpreter for the 2023-2024 academic year as well as the same position for the 2024-2025 academic year. *CDE Exhibit 2*.

F. Changes to Student's IEP Over the 2023-2024 Academic Year

36. Student's IEP was reviewed at an annual IEP meeting on November 9, 2023. *Exhibit A*, p. 20.
37. Parent stated that prior to this meeting, she believed Student's IEP was appropriate to her needs. *Interview with Parent*.
38. At this meeting, the IEP Team discussed whether Student would continue to need the services of an educational interpreter. *Exhibit A*, p. 37. The IEP's PWN notes that because District had been unable to hire an educational translator, she was receiving services from Paraprofessional instead. *Id.* After discussion of the differences between a signing paraprofessional and an educational interpreter, the IEP Team determined that Student still needed the services of an educational interpreter. *Id.*
39. The IEP's service delivery statement also indicates that Student should receive services from an educational interpreter. *Id.* at p. 35.
40. Despite this, the IEP's "Communication Plan for Student who is Deaf/Hard of Hearing" section states, in describing the communication-accessible academic instruction, school services and extracurricular activities Student would receive, that "a signing para will be provided." *Id.* at p. 29.
41. DHH Teacher, who was inputting the IEP Team's determinations into the District's IEP management system, stated that the text referring to a signing paraprofessional in the

communication plan was put into the IEP in error, and that she had meant to input that an educational paraprofessional should be provided. *Interview with DHH Teacher.*

42. In January or February 2024, Parent, after speaking with an advocate, realized that the IEP's communication plan incorrectly stated that Student should receive services from a signing paraprofessional. *Interview with Parent.*
43. On February 13, 2024, Parent sent an email to District requesting an IEP meeting to address the error in the communication plan. *Exhibit L, p. 14; Interview with Parent.*
44. On February 26, 2024, District issued a proposed amendment to the IEP, to ensure that the communication plan reflects the need for an educational interpreter. *Exhibit A, p. 39.* In March, a properly constituted IEP Team met and adopted the amendment. *Interviews with Parent and DHH Teacher.*
45. Parent stated that the IEP, as amended in March 2024, was appropriate to meet Student's needs. *Interview with Parent.*

G. IEP Implementation: Accessibility

46. DHH Teacher described that she frequently consults with other teachers at School to ensure that they are aware of Student's IEP and their responsibilities with respect to that IEP. *Interview with DHH Teacher.*
47. She also provides a packet to each of Student's teachers discussing Student's needs and containing information they need to know to support Student. *Id.* In addition, she works one-on-one with teachers to familiarize them with Student's FM transmitter, a device which conveys auditory input to Student's cochlear implants. *Id.*

H. IEP Implementation: Provision of Interpreter

48. Parent is concerned that the educational interpretation services required by Student's IEP have not been provided during the 2023-2024 academic year. *Interview with Parent.* District concedes that it has not provided the educational interpretation services required by Student's IEP during the 2023-2024 academic year. *Response, p. 9.*
49. Prior IEP, in effect from the start of the 2023-2024 academic year through November 9, 2023, required 1,240 minutes of educational interpreter services per week. *Exhibit A, p. 16.* IEP and Amended IEP, in effect from November 9, 2023 through the end of the academic year, require 1,280 minutes of educational interpreter services per week. *Id.* at pp. 35, 57.
50. District has been in session for 38 instructional weeks during the 2023-2024 academic year – including 13 weeks prior to November 9, 2023 and 25 weeks after November 9, 2023. *Exhibit J.*

51. Accordingly, the SCO finds that District failed to provide educational interpretation services throughout the 2023-2024 academic year.

I. IEP Implementation: Accommodations

52. The IEP contains an accommodation which reads, “Word bank provided.” *Exhibit A*, p. 33.
53. Parent explained her understanding of this accommodation as Student being presented with a board upon which many “nonsense” words are inscribed. *Interview with Parent*. Parent described “nonsense” words as those used in spoken and written English to create a syntactically correct sentence, but which are not used in American Sign Language due to its different syntax. *Id.* Where, for example, a sentence in English might read “The boy goes to the store,” an equivalent ASL sentence would omit words like “the” or “to.” *Id.* Parent’s understanding is that Student would choose these transition words from the board when writing or speaking a sentence, to construct a syntactically correct English sentence more easily. *Id.*
54. DHH Teacher described a similar understanding of the accommodation being used to help address Student’s difficulty with these transition words. *Interview with DHH Teacher*. She, however, understood the word bank accommodation to require that Student be provided with choices of words to use in reading and writing assignments on a per-sentence basis. *Id.*
55. DHH Teacher provided examples of assignments in which she implemented the word bank accommodation. See *Exhibit H*. For example, Student would be provided a sentence with a missing transition word, like “That (would/is/going) why he was so excited [...]” and be prompted to choose one of the three words to complete the sentence. *Id.* at p. 1.
56. The SCO finds that both interpretations of the word bank accommodation are reasonable considering the text of the accommodations. The SCO further finds that this accommodation was made available to Student consistent with the IEP.
57. On May 20, 2024, Parent met with District and discussed her understanding of this accommodation in further detail. *Interview with Parent*. District indicated that they would be building a list of verbs more like Parent’s understanding of the accommodation and providing it to Student during the 2024-2025 academic year. *Id.*

CONCLUSIONS OF LAW

Based on the Findings of Fact above, the SCO enters the following CONCLUSIONS OF LAW:

Conclusion to Allegation No. 1: District did not develop an IEP in November 2023 that accurately described Student’s communication-accessible services, as required by 34 C.F.R. § 300.320(a)(4), 34 C.F.R. § 300.324(a)(2)(iv), and ECEA Rule 4.03(6)(a). This did not result in a denial of FAPE.

Parent's concern is that the IEP, prior to its amendment in March 2024, did not appropriately consider Student's communication needs, and particularly her need for an educational sign language interpreter. (FF # 42-43.) Parent concedes that Prior IEP and Amended IEP appropriately consider Student's needs. (FF #s 37, 45.) Accordingly, only the IEP is considered here.

A. Legal Requirements for IEP Development

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a)(1). An IEP must include a statement explaining how the child's disability impacts the student's involvement in and progress in the general education curriculum. *Id.* § 300.320(a)(1)(i). An IEP must also contain measurable annual goals designed to: (1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student's other educational needs that result from his or her disability. *Id.* § 300.320(a)(2). Also, an IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* § 300.320(a)(4).

The IEP Team must consider the communication needs of the child. 34 C.F.R. § 300.324(a)(2)(iv). For DHH students, the IEP must specifically "consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode." *Id.*

In Colorado, the IEP for every DHH student must contain a communication plan. ECEA Rule 4.03(6)(a). The communication plan must identify the student's primary communication mode, as well as the communication-accessible academic instruction, school services and extracurricular activities the student will receive. *Id.*

B. IEP Development Process

Here, the IEP was developed at a properly constituted IEP team meeting on November 9, 2023. (FF #s 36-44.) It contains annual goals to address Student's academic needs, a statement of services to be provided, a description of Student's academic and functional performance, and the impact of her disability on her ability to access the general education classroom. (FF #s 5-16). It also considers Student's language and communication mode and contains a communication plan as required by ECEA Rule 4.03(6)(a). (FF # 9.) However, that communication plan does not accurately describe Student's services. (FF #s 38-40.) It inaccurately states that Student will receive services from a signing paraprofessional, rather than the educational interpreter she required (and as identified in the same IEP's service delivery statement and PWN). (FF #s 9, 13, 15, 38-40.)

Accordingly, the SCO finds and concludes that the IEP did not comply with the requirements of the IDEA at 34 C.F.R. § 300.320(a)(4) and 34 C.F.R. § 300.324(a)(2)(iv) or the ECEA Rules at 4.03(6)(a). *Rowley*, 458 U.S. at 206. The SCO next turns to the second question of whether the IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

C. Substantive Adequacy of the IEP

Here, despite the above-described error in the IEP, the IEP was substantively appropriate. The communication plan contained incorrect information about the services Student should receive, but the IEP's service delivery statement and PWN accurately described those services. (FF #s 13, 15, 38-39.) Accordingly, the SCO finds and concludes that the IEP was reasonably calculated to address Student's needs, consistent with the IDEA and ECEA Rules.

D. Procedural Noncompliance

The SCO found that the IEP was not consistent with procedural requirements. Procedural noncompliance is only actionable to the extent that it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, the SCO finds and concludes that this procedural irregularity did not impede Student's right to a FAPE. The erroneous statement in the communication plan was counterweighted by the correct statements in the service delivery statement and PWN. To the extent Student did not receive the educational interpreter services the IEP determined that she needed, it was because District did not implement them and not because the IEP incorrectly described them. Moreover, District has amended the IEP so the communication plan aligns with the remainder of the IEP. (FF # 44.) Parent has expressed this Amended IEP is appropriate to Student's needs. (FF # 45.)

Conclusion to Allegation No. 2: District did not implement Student’s IEP with respect to the provision of educational interpreter services throughout the 2023-2024 academic year, as required by 34 C.F.R. § 300.323. No denial of FAPE occurred.

Parent’s concern is that District did not provide the educational sign language interpretation services required by Prior IEP, IEP, and Amended IEP. (FF # 48.) Additionally, Parent is concerned that District did not implement an accommodation requiring the provision of a word bank to Student. (FF # 53.)

A. IEP Implementation: Legal Requirements

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

The IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also CDE Decisions 2023:570* (January 2024); *2023:613* (March 2024); *2024:510* (May 2024).

A district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

B. IEP Accessibility and Responsibilities

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, DHH Teacher credibly described her work in ensuring that teachers and service providers working with Student were made aware of their responsibilities under her IEP. (FF #s 46-47.) School staff are periodically trained regarding their responsibilities with respect to implementation of IEPs. (FF # 20.) To the extent there were failures to implement the IEP in this case, they stemmed from a staffing issue rather than any staff member misunderstanding their responsibilities. (FF #s 27-35.) For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the 2023-2024 academic year were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

C. Implementation of Educational Interpretation Services

Here, throughout the 2023-2024 academic year, District lacked an educational interpreter to provide the services outlined in Student's IEP. (FF #s 28-30, 34-35.) In place of an educational interpreter, District provided Paraprofessional, a signing paraprofessional, to assist Student in the school environment. (FF #s 30-33.) Although Paraprofessional previously worked as an authorized educational interpreter for ten years, she is no longer an authorized educational interpreter due to her lack of an associate's degree, and cannot provide educational interpretation services. (FF #s 31, 13.) As a result, District failed to provide 48,120 minutes of educational interpretation services during the 2023-2024 academic year. (FF # 51.)

Accordingly, the SCO finds and concludes that District did not implement Student's educational interpretation services, consistent with 34 C.F.R. § 300.323(c)(2).

D. Implementation of Word Bank Accommodation

Here, the IEP introduced a new accommodation which reads "Word bank provided." (FF #s 12, 52.) Parent and District disagree in their interpretation of this accommodation. (FF # 53-54.) Parent interprets this accommodation as requiring that Student persistently have on hand a large list of transition words from which Student may choose an appropriate word when writing a sentence. (FF # 53.) District interprets the accommodation as requiring that in writing exercise, Student be provided with a multiple-choice set of transition words specific to the sentence to address Student's unfamiliarity with those words. (FF # 54.) The SCO finds and concludes that both interpretations are reasonable and responsive to the text of the accommodation. (FF # 56.)

District provided examples of work assigned to Student that accorded with District's interpretation of the accommodation. (FF # 55.) Accordingly, the SCO finds and concludes that this accommodation was implemented with fidelity consistent with the IEP.

The SCO notes that District, recognizing through the state complaint process that its interpretation is not fully in harmony with Parent's, has begun the process to revise the text of the accommodation to better and more specifically describe a mutual understanding. (FF # 57.) While differences of interpretation may occur during the implementation of an IEP, District's actions to resolve that misunderstanding are in line with its ongoing implementation obligations.

E. Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a

“clear failure” of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services).

Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App’x 202, 205 (2d Cir. 2010).

The omission of a “material,” “essential,” or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE).

“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, District failed to provide the educational interpretation services required by the IEP due to a staffing shortage but provided a signing paraprofessional to mitigate the shortfall. (FF #s 27-35.) District concedes that the services provided by Paraprofessional do not satisfy the requirements of the IEP. (FF # 48.) Accordingly, Student did not receive interpretation minutes offered by her IEP during the 2023-2024 academic year. (FF # 50.) On its face, such a large discrepancy between services committed to and services delivered might indicate that Student was denied a FAPE.

However, Student’s performance in the school setting also informs the analysis of whether the failure to implement an aspect of the IEP is material. Here, Student’s grades indicate that she is passing all of her classes and achieving As in most of them. (FF # 22.) Her progress reports indicate that she has made substantial progress on her IEP goals. (FF # 23.) She demonstrated substantial improvement on standardized assessments in reading and language usage during the 2023-2024 academic year. (FF # 24.) Parent acknowledges that Student is succeeding at School despite the lack of an interpreter. (FF # 21.) Additionally, Parent and all interviewed District staff agree that Student is engaging successfully with peers despite the absence of an interpreter. (FF # 2.)

District’s failure to implement the interpretation services in the IEP was significant and concerning. But despite this failure, Student has been able to not only access her FAPE, but also

do so with a remarkable level of success. Accordingly, the SCO finds and concludes that the failure to implement Student's IEP was not material, and thus did not result in a denial of FAPE.

Systemic IDEA Noncompliance: This investigation does not demonstrate systemic IDEA noncompliance that will likely impact the future provision of services for children with disabilities in the District if not corrected.

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to the States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

IEP Development, Review and Revision

Here, the Record does not indicate that District's noncompliance is systemic in nature. Although DHH Teacher erred in completing the communication plan, the IEP correctly described the necessary services in the service delivery statement, and District issued a PWN clarifying that Student required those services notwithstanding the staff shortage. (FF #s 41, 38-39.) Parent raised her concerns with the communication plan on February 13, 2024, and within two weeks, District issued a proposed amendment addressing those concerns. (FF #s 43-44.) Accordingly, the SCO finds and concludes that District's error with respect to the development, review and revision of the IEP is not systemic in nature.

IEP Implementation

Here, the Record does not indicate that District's error is systemic in nature. District did not implement the IEP due to a staffing gap created when Former Educational Interpreter left her position on short notice. (FF #s 28-30.) Upon learning of this impending vacancy, District secured a commitment from a candidate to fill the vacancy and provide the required services. (FF # 29.) Unfortunately, that candidate did not follow through on that commitment, leaving District with a vacancy during the school year. (*Id.*) District has sought out contract interpreters from six potential sources to attempt to fill that vacancy but has to date been unable to do so. (FF # 34.)

Upon learning in August that their chosen candidate would not be joining School, District provided a signing paraprofessional to help approximate the services required by Student's IEP. (FF #s 30-31.) Although those services are not equivalent to the services promised in the IEP, they did benefit Student, and Student's school performance reflects that benefit. (FF #s 21-24.) Finally, District conceded this failure to implement, demonstrating its commitment to remedying the staffing shortfall as soon as it can. (FF # 48.) Accordingly, the SCO finds and concludes the failure to implement Student's IEP is not systemic in nature.

REMEDIES

The SCO concludes that District did not comply with the following IDEA requirements:

- a. Developing an IEP, as required by 34 C.F.R. § 300.320(a)(4), 34 C.F.R. § 300.324(a)(2)(iv), and ECEA Rule 4.03(6)(a).
- b. Implementing an IEP, as required by 34 C.F.R. § 300.323.

To demonstrate compliance, District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Thursday, August 1, 2024**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. District's Special Education Director, Assistant Special Education Director, Special Education Coordinators, and DHH Teacher shall review this Decision no later than **Thursday, August 1, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Thursday, August 8, 2024**.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: If District does not meet any of the timelines set forth above, it may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, 13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 1st day of July, 2024.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-11

- Exhibit 1: Various documents related to Complaint

Response, pages 1-12

- Exhibit A: IEPs and Meeting Notes
- Exhibit B: Evaluations and Assessments
- Exhibit C: PWNs
- Exhibit D: IEP Documentation
- Exhibit E: Service Logs
- Exhibit F: Attendance Records
- Exhibit G: Report Cards, Progress Monitoring
- Exhibit H: Word Banks
- Exhibit I: Translators and Certifications
- Exhibit J: District Calendar
- Exhibit K: Policies and Procedures
- Exhibit L: Correspondence
- Exhibit M: District Staff with Knowledge of Complaint
- Exhibit N: Verification of Delivery

CDE Exhibits

- CDE Exhibit 1: Colorado Educational Interpreter Handbook
- CDE Exhibit 2: Job Postings for Educational Interpreters

Telephone Interviews

- Parent: May 17, 2024 and May 20, 2024
- DHH Teacher: May 23, 2024
- Paraprofessional: May 23, 2024
- Special Education Coordinator: May 23, 2024
- Assistant Special Education Director: May 23, 2024