

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (“IDEA”)¹

State-Level Complaint 2016:521
Denver Public Schools

DECISION

INTRODUCTION

Complainants are the parents (“Parents”) of a child (“Student”) who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). Parents brought this Complaint against the Denver Public Schools (“School District”) on behalf of Student, who attends Charter School in the School District. The complaint was properly filed on August 31, 2016, requiring that the decision be issued by October 28, 2016. The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.²

COMPLAINT ALLEGATIONS

The SCO accepted for investigation the following issues:

1. Whether, from the start of summer school to the present, DPS failed to appropriately implement Student’s May 10, 2016 IEP by:
 - a. Failing to provide adult support during social studies;
 - b. Failing to comply with the IEP’s requirements relating to 1:1 support for Student in English, reading, and writing, and for Student to receive extra time to complete assignments in those classes;
 - c. Failing to provide appropriate support during science;
 - d. Failing to appropriately train “advisory” staff.
2. Whether at the IEP meetings on May 10, 2016 and subsequent IEP meetings during the summer of 2016, DPS failed to include:
 - a. an individual with sufficient knowledge about DPS’s resources or qualified to supervise the provision of special education and related services; or
 - b. an individual who could interpret the instructional implications of evaluation results.
3. Whether the May 10 IEP fails to comply with the IDEA’s requirements by failing to list or specify in the service delivery grid that Student would receive paraprofessional support as part of his special education and related services.

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.*

² Hereafter, only the IDEA regulation and any corresponding Exceptional Children’s Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

FINDINGS OF FACT

Based upon a careful and thorough review of the record, the SCO finds as follows:

1. Student is [age] boy who resides with his parents within the boundaries of the School District. Student is identified and served as an eligible child with a disability under the Autism Spectrum Disorder (“ASD”) category. Student is in 6th grade and attends Charter School, a charter school within the School District. During the 2015-2016 school year, Student attended Elementary School, also within the School District. Student is currently being educated pursuant to an IEP developed in May 2016.³
2. Student is described by the School District’s teachers and staff who have worked with him as a bright, engaging, highly intelligent boy.⁴ Educationally, Special Education Teacher, who currently teaches Student for a significant portion of his day and who consults with his advisors, stated that Student is one of the most “high functioning” students with ASD she has ever encountered. Socially, School District staff reported that Student is sometimes awkward with social cues, but that he does well with other students and likes to be around them.⁵ Academically, Student’s strengths are social studies, science, and math.⁶ Conceptually, Student reads “at grade level and demonstrates an ability to comprehend and synthesize classroom text.”⁷
3. Student struggles with attention and staying on task, as well as with executive function.⁸ He “requires frequent prompting to remain on task, and benefits from having graphic organizers, timelines, and other supports to organize his thinking. When left alone [Student] often times loses focus and needs to be re-directed.”⁹ Writing is also a struggle for Student. Both Parents and School District teachers and staff described Student as being an extremely slow writer who benefits from the use of a scribe or a computer to do written assignments.¹⁰ Student’s organizational/attentional struggles also impact his writing, particularly with respect to staying on topic, structuring and organizing, and focusing on his ideas.¹¹
4. Student’s IEP includes goals for social communication, writing, and mathematics.¹² The IEP also includes accommodations such as, in relevant part: adult prompting to stay on task; shortened/modified assignments and homework, and support with homework during reading

³ Ex. B. The IEP was developed over the course of two meetings, one held on May 10, 2016, and the second on June 2, 2016. *Id.*; Interviews with Elementary School Teacher and Special Education Designee; Ex. E, p. 34.

⁴ Interviews with Special Education Teacher, Charter School Principal, Elementary School Principal, Elementary School Teacher; *see also* Ex. B, p. 3.

⁵ Interview with Special Education Teacher.

⁶ *Id.*; Interview with Parents; *see also* Ex. B, p. 3.

⁷ Ex. B, p. 3; Interviews with Special Education Teacher and Elementary School Teacher.

⁸ Executive function refers to the mental processes that enable people to plan, organize, and complete tasks. Aspects of executive function include self-awareness of strengths and limitations, goal setting, planning and organizing, self-monitoring, strategic thinking, and mental flexibility. *See, At a Glance; 8 Key Executive Functions*, www.understood.org.

⁹ Ex. B, p. 3; Interviews with Parents, Special Education Teacher, and Elementary School Teacher.

¹⁰ Interviews with Parents and Special Education Teacher; Ex. B, p. 3.

¹¹ *Id.*

¹² Ex. B, pp. 5-8.

and writing time; the use of a computer for writing assignments, grades on a modified grading scale, and support from special education staff in “advisory group.”¹³

5. In relevant part, the IEP provides that it is to be implemented as follows:

The team felt that [Student] would be able to join science, social studies, and electives in general education. He will need extra support from an adult for prompting and redirection during instruction/independent work time, though not 1:1 support.

For math, [Student] will have direct 1:1 support during instructional and independent work time. This support will be provided for scribing and prompting him through the steps of the problems during independent work time as well as for prompting and support to pay attention to lessons. He will also need access to a calculator.

For writing, [Student] will receive instruction outside general education. He has shown a high need for adult support to initiate, maintain attention to, and complete writing assignments. Reading will also be outside general education, as the team felt that the expectations of the middle school will be difficult for [Student] to achieve. The team also felt it would be more beneficial for [Student] to have time to work with an adult on the text from science and social studies during his allotted reading and writing instruction time, rather than the grade-level curriculum. He will need support to tune into key details and ideas. (Literacy time is listed on the service grid in two different areas to indicate writing for 50 minutes and reading for 75 minutes).

Consultation time from the special education teacher will occur with adults working with [Student] in general education in order to provide support with strategies around modifications and independent work strategies for [Student]. Additionally, this person will need to work with the adult running [Student’s] advisory group in order to help him understand expectations. This person, or another special education staff member may also need to support [Student] in advisory group at times, particularly in the beginning of the year.¹⁴

6. The service delivery grid specifies that Student will receive direct special education instruction outside of the general education classroom for 125 minutes per day for reading and writing, and for 120 minutes per month in speech/language (which is not in issue in this case). The consultation by the special education teacher with Student’s general education providers accounts for another 120 minutes per month.¹⁵ Based upon this time receiving direct special education services outside of the general education classroom, which amounts to 31% of his time outside the general education classroom and 69% of his time inside the general education classroom, Student’s least restrictive environment (“LRE”) setting is designated as LRE 2 (inside the general education classroom between 40% to 79% of the school day).¹⁶

¹³ Ex. B, p. 8.

¹⁴ Ex. B, p. 11.

¹⁵ *Id.*

¹⁶ Ex. B, pp. 12 and 19.

Issue 1: Implementation of the IEP

a. Adult support during social studies

7. Student's IEP provides that he will "be able to join science, social studies, and electives in general education. He will need extra support from an adult for prompting and redirection during instruction/independent work time, though not 1:1 support."¹⁷ Parents' Complaint alleges that contrary to the IEP's requirements, "no adult support [was] provided" in social studies.¹⁸
8. In planning Student's schedule prior to the beginning of the 2016-2017 school year, the school staff at Charter School assigned Student to a social studies class that they believed would contain 12 students, which is a much smaller than the average class at Charter School (the average class size is 32-34 students).¹⁹ Based upon that assumption, the school staff felt that because of Student's relative strengths in social studies, Student would be able to function successful in the class by receiving the extra adult support called for in his IEP from the social studies teacher, such that a second adult's presence in the social studies class would not be required to implement the IEP.²⁰
9. That initial assumption about the size of the social studies class quickly proved to be incorrect - by the first day of school on August 18, the class size had increased to 20 students, and is now at 21 students.²¹ Between August 18 and September 6 (12 school days), Special Education Teacher supported Student by providing consultation with the social studies teacher. Special Education Teacher reports that during that time, Student demonstrated to her that he understood the material presented, but he was having a difficult time completing work and was not keeping up with writing assignments.²² Accordingly, Special Education Teacher worked with Student on social studies assignments and content during her pull-out time with him.²³ On September 6, 2016, a second adult was added to the class to provide dedicated 1:1 support to Student.²⁴
10. The IEP's service delivery statement states that during social studies, Student is to receive "extra support from an adult ... though not 1:1 support." The question is whether that extra adult support must come from a second adult in the room (*i.e.*, in addition to the teacher) or whether that extra adult support may be provided by the teacher himself.

¹⁷ Ex. B, p. 11.

¹⁸ Complaint, p. 1; Interview with Parents.

¹⁹ Interviews with Special Education Teacher and Assistant Principal.

²⁰ *Id.*

²¹ Ex. A; Interviews with Special Education Teacher and Assistant Principal.

²² *Id.*

²³ Interview with Special Education Teacher.

²⁴ After Parents filed their Complaint, the School District decided to implement the IEP as the Parents interpreted it, pending the SCO's decision in this case. The implementation of the Parents' interpretation of the IEP, including the provision of full time 1:1 support in all classes and not exposing Student to any general education content in English/Language Arts, began on September 6.

11. The SCO notes that in interviewing the individuals who participated in developing the IEP, including the Parents, the School District representatives, and the staff who had worked with Student in Elementary School, a consistent thread was that the IEP team believed that based upon Student's success in Elementary School, the new IEP should incorporate the types of supports that had been in place and that were working, but that the intensity of some of the supports could be reduced to help Student foster independence.²⁵ There is no dispute, however, that Student requires support for prompting and redirection:

Student requires a high level of prompting and re-direction in order to stay on task and complete assignments. He fiddles with his hair or other objects, or looks around the room, and needs to be prompted back on task. A major focus of the past school year has been to reduce the number of prompts needed during class, however Student remains easily distracted and will frequently drift off topic.²⁶

12. According to Student's evaluation reports, Student needs prompting and redirection ranging from as frequently as every 30 seconds to every 90 seconds, and on average, "40 to 50 redirections per working hour to complete the assigned task."²⁷ Special Education Teacher confirmed that Student's need for redirection varied, but was generally in that range.²⁸
13. In Elementary School, "[Student] had a para with him in both science and social studies."²⁹ In light of that fact, the undisputed need Student has for regular prompting and redirection, and the IEP team's desire to help Student achieve greater independence in his work habits, the SCO finds that a reasonable interpretation of the IEP's service delivery statement is that the "extra support from an adult ... though not 1:1 support" means that the social studies class should have an additional adult who can provide Student with the regular prompting and redirection he needs, but who would not be a dedicated 1:1 paraprofessional who was "attached" only to Student; rather, the additional adult could support the teacher and other students and the class as well, similar to the arrangement that has been in place in Student's science class, as described below.
14. Thus, for the first 12 school days of the year, Student did not have the level of extra adult support required by the IEP; since then, the School District has provided Student with dedicated 1:1 support, which is more than the IEP requires.
15. Nonetheless, as noted above, Special Education Teacher, who works with Student for over 3 ½ hours per day (2 hours in reading and writing pull-out, plus an additional 80 minutes of 1:1 support in math), credibly reported that during the first 12 school days, Student was able to understand the material presented, and though he struggled with some assignments, he received support on those assignments during his pull-out time, and there is no evidence in the record that in those first 12 school days, the absence of an extra adult in the social studies classroom deprived Student of educational opportunity or access to his educational curriculum.

²⁵ Interviews with Parents, Elementary School Teacher, Elementary School Principal, Special Education Designee, and Special Education Support Partner.

²⁶ Ex. B, p. 4; *see also* Ex. B, p. 17; Interviews with Elementary School Teacher, Special Education Teacher, and Parents.

²⁷ Ex. D, pp. 5, 8-9.

²⁸ Interview with Special Education Teacher.

²⁹ Interview with Elementary School Teacher.

b. Adult support during science

16. Parents also allege that in science, the co-teacher was “not instructed on [Student’s] IEP needs and not providing support.”³⁰ The SCO disagrees. Since the beginning of the school year there has been an apprentice teacher in the classroom who provides support to Student.³¹ Parents allege that Student did not get 1:1 from the apprentice teacher,³² but the IEP does not require 1:1 support in science. Indeed, the IEP specifically states that while Student will need extra support from an adult during science for prompting and redirection, the level of support is “not 1:1 support.”³³ Accordingly, the SCO finds that with an assistant teacher in the science class, the support Student receives in science is consistent with the IEP.

c. English/reading/writing services

17. Parents allege that the School District failed to provide sufficient services for Student in English, reading and writing. The Complaint asserts that Student should receive:

1 on 1 targeted specifically to [Student] to provide him with guidance and support in writing specifically for the classes of Science and Social Studies. [Student’s] IEP calls for additional time to be allotted for all assignments. The writing pull out is the opportunity for [Student] to get that extra time to complete the class assignments for those classes. To date the handouts are mostly coming home blank.³⁴

18. As noted above, Student’s IEP calls for him to receive reading and writing instruction outside of the general education classroom.³⁵ At issue is the appropriate interpretation of the following statement in the IEP’s Service Delivery Statement: “The team also felt that it would be more beneficial for [Student] to have time to work with an adult on the text from science and social studies during his allotted reading and writing instruction time, rather than the grade-level curriculum.”³⁶ According to Parents, that statement represents the intention of the IEP team to entirely exempt Student from any general education curriculum content or standards in English/Language Arts (“ELA”).³⁷ Parents assert that Student’s disability renders him incapable of comprehending or getting any benefit from ELA content (such as novels or other fiction), that the content is “well beyond him,” and that there is no point in having him attempt to do it.³⁸ Parents further assert that this exemption from the ELA curriculum was consistent with and a continuation of what Student was doing in Elementary School.³⁹

19. Based upon the credible evidence in the record, the SCO disagrees and finds that the School District has been appropriately implementing Student’s IEP with respect to his pull-out services

³⁰ Complaint, p. 1.

³¹ Interview with Special Education Teacher; *see also* Ex. A.

³² Complaint, p. 1; *see also, e.g.*, Ex. E, p. 104 (“[Student] says [the co-teacher] has not worked with [him] one on one at all.”)

³³ Ex. B, p. 11.

³⁴ Complaint, p. 1.

³⁵ Ex. B, p. 11.

³⁶ *Id.*

³⁷ Interview with Parents.

³⁸ *Id.*

³⁹ *Id.*

for reading and writing. The SCO does not interpret the IEP to entirely exclude or exempt Student from accessing the ELA curriculum in its entirety.

20. First, from the standpoint of interpreting the plain language of the IEP, nowhere does the IEP provide that Student is to be working toward a modified curriculum, *i.e.*, that Student should not be working toward the general education content and standards, including in ELA.⁴⁰ Rather, the IEP provides that Student shall have shortened or fewer assignments, including modified homework, and that “Student will have a modified grading scale to reflect when he is able to show mastery.”⁴¹ As explained by Elementary School Teacher, who taught Student in elementary school and who participated in the development of the IEP, modifying grades or assignments means that Student will still be working toward the same curricular standards and content as other students, but will be able to show mastery of that content in different ways. For example, if an assignment in social studies was to write a paper about a particular topic, a modification of that assignment and grading scale might be to allow Student to give an oral report rather than a written one; Student would still be accessing the general curriculum content, but would be demonstrating mastery in a different way.⁴²
21. Second, the statement that it would be “beneficial” for Student to use reading and writing pull-out time to work on social studies and science is suggestive and reflects that working on social studies and science would be a priority during the pull-out time, but not to the complete exclusion of ELA curricular content.⁴³ And given that the focus of the IDEA is “on ensuring that children with disabilities achieve to high academic standards and have access to the same curriculum as other children,” the SCO cannot interpret the IEP to entirely exclude and exempt Student from accessing an essential part of the general education curriculum, absent a specific statement in the IEP to do so.⁴⁴
22. Finally, School District staff who participated in the development of the IEP, including Elementary School Teacher, Elementary School Principal, Special Education Designee, and Special Education Support Partner, all stated that it was not the intention of the IEP to remove Student from the general ELA curriculum in its entirety.⁴⁵ Elementary School Teacher noted that Student had participated in the ELA curriculum while in Elementary School, and that his disability did not prevent him from being able to access that content with appropriate supports and modifications.⁴⁶
23. With respect to implementation, Special Education Teacher works with Student in the pull-out setting (outside of the general education classroom) every day for reading and writing, providing individualized instruction consistent with his IEP.⁴⁷ Accordingly, the SCO finds that

⁴⁰ Ex. B, p. 8-11.

⁴¹ *Id.*, p. 8.

⁴² Interview with Elementary School Teacher.

⁴³ Ex. B, p. 11; Interview with Elementary School Teacher.

⁴⁴ 71 Fed. Reg. 46556 (2006). Ensuring that a child with a disability has access to the general curriculum is also a major focus of that child's IEP development and implementation process. *See generally* 34 C.F.R. §300.320.

⁴⁵ Interviews with Elementary School Teacher, Elementary School Principal, Special Education Coordinator and Special Education Support Partner.

⁴⁶ Interview with Elementary School Teacher.

⁴⁷ Interview with Special Education Teacher.

the School District has complied with the IEP with respect to Student's pull-out services for reading and writing.

d. Training of advisory staff

24. The Complaint alleges that the School District has failed to train "advisory" staff.⁴⁸ "Advisory" refers to the advisory group that each student at Charter School is part of. Each group consists of approximately 12-15 students led by a faculty advisor who meets with the group daily, helps the students with problems or issues that might arise, acts as a point of contact for parents, and generally serves a function akin to a case manager.⁴⁹
25. During summer school, Special Education Teacher served as Student's advisor. She was familiar with Student's needs and able to support him in that role. After the start of the school year, Special Education Teacher trained Student's new advisor and explained Student's needs and some of the strategies she used with him. Since then, she has continued to check in with the advisory group staff. Special Education Teacher credibly reports that Student is "thriving" in his advisory groups and is doing well.⁵⁰
26. Accordingly, the SCO finds that the School District provided appropriate training to Student's advisory staff.

Issue 2: Development of the IEP

27. With respect to the development of the May 2016 IEP, the Parents allege two procedural violations of the IDEA's requirements related to IEP development. First, the Parents allege that the School District failed to include in the May and June meetings an individual with sufficient knowledge about the School District's resources or qualified to supervise the provision of special education and related services. Second, the parents allege that the School District failed to include an individual who could interpret the instructional implications of evaluation results. The SCO will address each allegation in turn.
28. With respect to the presence of an individual qualified to serve as a district representative, the individual who served that role at Student's IEP meetings was Special Education Designee. Special Education Designee works for the School District as a special education program manager and coordinator. She supports special education programming by, *inter alia*, allocating resources to serve special education students, assisting IEP teams with IEP development and serving as a district representative at IEP meetings.⁵¹ Special Education Designee is qualified and authorized to supervise the provision of special education services in the district, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of school district resources.⁵² These qualifications are consistent with those required by the IDEA.⁵³

⁴⁸ Complaint, p. 1.

⁴⁹ Interview with Special Education Teacher.

⁵⁰ *Id.*

⁵¹ Interview with Special Education Designee.

⁵² *Id.*

⁵³ 34 C.F.R. §300.321(a)(5).

29. Parents contend that Special Education Designee was unqualified to serve as representative because she did not direct the team's IEP development or placement discussion to whether Student should be placed in a particular center-based program ("Special Program") that serves students with intensive needs in pragmatic language and executive functioning. Special Program is designed for students who to be require special education and related services to be provided outside of the general education classroom at least 60% of the time or more.
30. The SCO disagrees. First, as noted above, Special Education Designee met the law's requirements with respect to the qualifications and authority of the district representative, which essentially ends the analysis of this issue. The regulation setting out the required qualifications of the district representative do not mandate that the representative guide the discussion toward whether the IEP should be implemented in a particular program within the school district.
31. Second, IEP teams do not make the determination of the specific program within a school district in which a student should be placed. Rather, IEPs describe the student's individual special education needs, annual goals, special education services required to meet those goals, and the extent to which the student will be educated in the general education classroom or in other more restrictive settings. Once the IEP is developed, then it is up to the school district to determine which specific program the student should be placed in so that the IEP may be appropriately implemented.⁵⁴ As such, a district representative would not be required to steer an IEP's team's consideration to a particular program or location in which the IEP would be implemented.
32. It also bears noting that in this case, Special Program is a restrictive, center-based program that educates students outside of the general education classroom for more than 60% of the day. According to Student's IEP, however, Student is to be educated in the general education classroom 69% of the time. Placing Student in a more restrictive placement than that called for in his IEP would violate the IDEA.⁵⁵
33. With respect to the presence of an individual qualified to interpret the instructional implications of evaluation results, the SCO finds that the IEP meeting included licensed individuals who could fulfill that role, including Special Education Designee, who is a licensed school psychologist.⁵⁶ Student's prior special education teacher from Elementary School was also qualified to interpret the instructional implications of evaluation results.⁵⁷ Furthermore, the Parents' Complaint does not include any specific facts or allegations supporting their assertion that there was no qualified evaluation interpreter at the IEP meeting, or point to an aspect of the IEP that is deficient or improper as a result, nor did the Parents provide additional facts or explanation in their interview with the SCO.

⁵⁴ 34 C.F.R. §300.320; ECEA Rule 4.03(8)(a).

⁵⁵ 34 C.F.R. §300.114 *et seq.*

⁵⁶ Interview with Special Education Designee.

⁵⁷ *Id.*

34. Accordingly, the SCO finds that the School District included in Student's IEP meeting an individual qualified to interpret the instructional implications of evaluation results.

Issue 3: Listing paraprofessional support in the service delivery grid

35. The Parents allege that Student's IEP violates the IDEA by failing to list or specify in the IEP's service delivery grid that Student would receive paraprofessional support as part of his special education services.⁵⁸ The SCO disagrees that the IEP's description of Student's special education services is insufficiently specific in identifying personnel who will implement its requirements.
36. The IEP's Service Delivery Statement contains two components: 1) a narrative statement describing the special education services Student will receive in each subject, including where the services will be provided, the type and nature of the services, supports and accommodations, and in some cases, who will be providing the services; and 2) a grid detailing the amount of special education services student will receive (by the number of minutes per day or per month), whether those services will be inside or outside of the general education classroom, and the type of service provider who will be providing the service (e.g., "speech language pathologist," "special education teacher").⁵⁹ The primary function of the service delivery grid is to set out the amount of time Student spends inside and outside of the general classroom, for purposes of determining Student's LRE setting.
37. With respect to paraprofessional support, the Service Delivery Statement states that in social studies, science and electives in general education, Student will receive "extra support from an adult for prompting and redirection..."⁶⁰ That extra adult support could come from a paraprofessional, a co-teacher, a student teacher, a substitute teacher, or another adult deemed sufficiently qualified by the School District. The SCO does not find that the IEP requires greater specificity on this point, nor is there any need to specifically list "paraprofessional" support on the service delivery grid, given that the paraprofessional support is not relevant to Student's LRE determination.

CONCLUSIONS OF LAW

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

The School District did not violate the IDEA in implementing Student's IEP.

1. Under the IDEA, local education agencies such as the School District are required to provide eligible students with disabilities with a free appropriate public education ("FAPE") by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. FAPE is defined as special education and related services that are provided free of charge, meet State standards, include an appropriate preschool, elementary school, or secondary

⁵⁸ Complaint, p. 2 ("failure to document paraprofessional support in IEP documents").

⁵⁹ Ex. B, p. 11-12.

⁶⁰ Ex. B, p. 11.

school education, and are provided in conformity with a properly developed IEP. 20 USC § 1401(a)(9); 34 C.F.R. § 300.17.

2. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a material failure to implement an IEP can result in a denial of FAPE. *Id.*; see also *K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir 2007), *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003). Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g.*, *K.C. v. Utah State Bd. of Educ. et al.*, *supra* (minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker, supra* (failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho, supra* (failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE); *Lewis Palmer Sch. Dist. 38*, Colorado State Complaint 2015:505.
3. This means that a finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry. Rather, the SCO must also determine whether the failure was material.
4. In this case, Student's IEP requires that Student be provided with extra adult support for prompting and redirection in science and social studies, but not 1:1 support. The SCO interprets this requirement as having an extra adult in the room in addition to the teacher, but not a dedicated 1:1 support person or paraprofessional. (Finding #13.)
5. In science, Student's classroom is staffed by the teacher and a co-teacher. The co-teacher provides Student with the extra adult support required by the IEP. (Finding #16.) Accordingly, as to science, the SCO concludes that the IEP has been implemented appropriately and there is no violation of the IDEA.
6. In social studies, the SCO found that the School District failed to provide Student with extra adult support for the first 12 school days of the 2016-2017 school year. (Finding #14.) Thus, for those 12 days, the School District violated the technical requirements of the IEP. The SCO has also found, however, that notwithstanding this violation for a brief period of time, the School District subsequently remedied the violation by providing Student with 1:1 dedicated support (which actually goes beyond what the IEP requires). (*Id.*) Further, that 12 day lapse in extra adult support did not result in a loss of educational benefit or opportunity to Student. (Finding #15.) Accordingly, the technical violation of the IEP for a brief period of time did not result in a material failure to implement the IEP or a denial of FAPE.
7. Regarding the question of whether the School District's implementation of the IEP requires Student to access content from the general education ELA curriculum, the SCO has found that a reasonable interpretation of the IEP is that it does. (See, Finding #19-22.) Indeed, absent clear language that Student's curriculum should be modified to exclude all access and exposure to the general ELA curriculum, reading such a requirement into the IEP would be inconsistent with one of the overarching principles of IDEA, namely "ensuring that children

with disabilities achieve to high academic standards and have access to the same curriculum as other children," and is a major focus of the IEP development and implementation process. See, Comments to IDEA Regulations, 71 Fed. Reg. 46556 (2006); 34 C.F.R. §300.320-324.

8. Accordingly, the SCO concludes that there has been no violation of the IEP with respect to Student's access to the general education ELA curriculum.
9. The SCO has also found that, contrary to Parents' allegations, Student's advisory staff were appropriately trained to understand Student's needs and support him accordingly. (Finding #24-26.) Thus, there is no violation of IDEA on this point.

The School District did not violate the IDEA's procedural requirements in developing Student's IEP.

10. In developing an IEP, the IDEA requires that the IEP team include:

a representative of the public agency [*i.e.*, the school district] who -

- i) is qualified to provide or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
- ii) is knowledgeable about the general curriculum; and
- iii) is knowledgeable about the availability of resources of the public agency.⁶¹

11. In this case, the role of the public agency representative was filled by Special Education Designee. The SCO has found that she possessed the requisite knowledge and authorization to serve as the district representative. (Finding #28.)
12. The IDEA also requires an IEP team to include an "individual who can interpret the instructional implications of evaluation results..."⁶² At Student's IEP meeting, this role was filled by the special education teacher who served Student in Elementary School. (Finding #33.) In addition, that role could also have been filled by Special Education Designee, who is a licensed school psychologist qualified to interpret the instructional implications of evaluation results. (*Id.*)
13. Accordingly, the SCO concludes that the School District complied with the law's requirement with respect to IEP meeting participants.

The School District did not violate the IDEA by failing to list paraprofessional support on the IEP's service delivery grid.

14. The IDEA requires an IEP to include "a statement of the special education and related services and supplementary aids and services ... to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided..."⁶³ The law also requires "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the [provision of the

⁶¹ 34 C.F.R. §300.321(a)(4).

⁶² 34 C.F.R. §300.321(a)(5)

⁶³ 34 C.F.R. §300.320(a)(4).

child's special education and related services]." ⁶⁴ Importantly, the law does not describe any particular format that must be used in presenting this information. There is no mention of service delivery grids or other specific layouts in which the information must be presented. So long as the information appears somewhere within the IEP document, the law is satisfied.

15. In this case, the IEP's Service Delivery Statement includes a detailed statement describing the special education and related services to be provided to Student, including the personnel to provide those services, and a grid setting out the extent to which Student will be educated both inside and outside the general education classroom with nondisabled peers. (See Findings #35-37.) The IEP is clear that Student shall receive "extra adult support" in some of his classes, which support could be provided by a paraprofessional or by some other qualified adult. (*Id.*) There is no requirement, therefore, that paraprofessionals be specifically listed or identified in the IEP's service delivery statement, whether on the service delivery grid or elsewhere.
16. The SCO concludes that the IEP's Service Delivery Statement complies with the legal requirements relating to the contents of the IEP document.

REMEDIES

The SCO has found no material violations of IDEA warranting a remedy. Accordingly, no remedy is ordered.

CONCLUSION

The Decision of the SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Signed this 27th day of October, 2016.



Wendy Jacobs, Esq.
State Complaints Officer

⁶⁴ 34 C.F.R. §300.320(a)(5).

APPENDIX

Complaint (pp. 1-44)

Response (pp. 1-8)

Ex. A (pp. 1-48) - Class schedule, support checklists, service logs

Ex. B (pp. 1-25) - 2016 IEP

Ex. C (pp. 1-2) - Prior Written Notice

Ex. D (pp. 1-24) - evaluation report, meeting notes

Ex. E (pp. 1-253) - email correspondence

Ex. F (p. 1) - list of individuals with knowledge of complaint.

Ex. G (p. 1-12) - meeting notices and PWN

Reply (pp. 1-13)

Ex. 1 (pp. 1-6) - email correspondence

Ex. 2 (pp. 1-3) - job description

Ex. 3 (pp. 1-7) - student grades

Ex. 4 (pp. 1-9) - email correspondence

Ex. 5 (pp. 1-6) - email correspondence

Ex. 6 (pp. 1-5) - description of Special Program