

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

State Complaint SC2025-529
Larimer R2J, Thompson School District

DECISION

INTRODUCTION

On March 17, 2025, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Thompson School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after March 17, 2024. Information prior to March 17, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

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 The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. District did not fully implement Student’s Individualized Education Program (“IEP”) from March³ 2024 to present, because it:
 - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d);
 - b. Did not provide Student with the supplementary aids and services, specifically assistive technology and accessible classroom materials, including braille assignments, listed in his IEP, as required by 34 C.F.R. § 300.323(c).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁴ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 14 years old, and, during the 2024-2025 school year, attends ninth grade at a District school (“School”). *Response*, p. 1.
2. Student is eligible for special education services as a child with a visual impairment. *Exhibit A*, p. 1. As a result of a congenital condition, Student has been diagnosed with bilateral blindness. *Id.* at p. 5. His disability impacts his communication, thinking and learning skills. *Id.*; *Interviews with Parent, a contract provider of vision services (“Contract Provider”) and District paraprofessional responsible for braille (“Braillist”).*
3. Student is a good listener with a great sense of humor. *Interviews with Parent, Contract Provider, Braillist, and District teacher of the visually impaired (“TVI”).* He loves music and is good with technology. *Exhibit A*, p. 3; *Interviews with Parent and Contract Provider.*

B. IEP

4. On May 8, 2024, the parties entered into a settlement agreement related to IDEA concerns. *Response*, p. 3. The parties agreed, in part, to complete a triennial evaluation of Student in spring 2025 and to continue implementing Student’s IEP from October 2023 (“IEP”) until after the evaluation. *Id.*
5. The IEP included a learning media plan, which noted that Student’s primary learning and literacy mode was auditory and his secondary mode was braille. *Exhibit A*, p. 11. Student was still working on his braille proficiency and could “take in both more and higher level content

³ The parties resolved all IDEA-related concerns that occurred prior to May 8, 2024 via a settlement agreement. On March 26, 2025, Parent clarified that she intended for her Complaint to be limited to the 2024-2025 school year. As such, the CDE notified the parties in writing on March 26, 2025 that the scope of the investigation would be adjusted to the period from August 2024 to present.

⁴ The appendix, attached and incorporated by reference, details the entire Record.

when presented in auditory format.” *Id.* Outside of the classroom, with his TVI, Student would learn the Unified English Braille (“UEB”) Code and how to use a braille note taker. *Id.*

6. In class, Student would have opportunities to practice braille as well as engage his auditory learning channel. *Id.* Student would access math through “verbal modeling, oral instructions, and verbally presenting math problems as well as use of tactile tools such as the abacus and manipulatives.” *Id.* Brailled worksheets and auditory instruction, including “verbal modeling, oral instructions, verbal prompts, guidance and descriptions, class discussions, peer interaction, audio books and auditory computer programs” would be implemented in his general education classroom and specials. *Id.*
7. The IEP included 40 accommodations. *Id.* at p. 24. Those relevant to this investigation were intended to make instruction accessible, either through tactile or auditory means. *Id.*

C. IEP Implementation: District’s Policies, Procedures, and Practices

8. In District, case managers are responsible for ensuring that everyone working with an IDEA-eligible student is aware of their responsibilities under the student’s IEP. *Interviews with District’s Director of Special Education (“Director”) and Student’s special education teacher and case manager (“Case Manager”).*
9. At the start of each year, Case Manager puts together a short paragraph about each of her students, which she then shares with their general education teachers. *Interview with Case Manager.* Along with the paragraph, she provides teachers with access to the students’ IEPs. *Id.* She also sits down with all the paraprofessionals in her classroom to review IEPs and answer questions. *Id.*

D. Providers’ Knowledge of IEP

10. Case Manager, TVI and Braillist have worked together to understand Student’s needs and implement his IEP. *Interviews with TVI and Case Manager.* Before the school year started, TVI went into the building to make sure Student would have access to devices like his brailier. *Interview with TVI.* TVI also emailed all his teachers to let them know she was available to help with any braille accommodations. *Id.*
11. When Student started in fall 2024, Case Manager reviewed his IEP with her paraprofessionals. *Id.* They went over everything in the classroom and talked about each student and what they would need to do to assist them. *Interview with a paraprofessional from Student’s class (“Paraprofessional”).* They reviewed copies of students’ IEPs, including Student’s, and went over questions. *Id.*
12. In addition, Case Manager provided his general education teachers with information about Student and access to his IEP. *Interview with Case Manager.* During the first few weeks of school, she periodically went to general education classrooms to observe and talk about how to support Student. *Id.* She continues to check in with his teachers periodically. *Id.*

E. Student Schedule

13. School has a block schedule. *Interview with Case Manager*. Every class meets for 45 minutes on Mondays. *Id*. Odd periods meet on Tuesday and Thursday and even periods meet on Wednesday and Friday. *Id*.
14. Student's class schedule is as follows: first period is math in the special education classroom with Case Manager, second period is English with Case Manager, third period is a general education world history class, fourth period is band, fifth period is a general education science class, seventh period is robotics, and eight period is independent living skills with Case Manager. *Exhibit J*, p. 52; *Interview with Case Manager*.
15. Several students from Case Manager's class attend world history, sculpture and science with a couple of paraprofessionals. *Interview with Case Manager*. Student has a dedicated paraprofessional for band. *Interviews with Case Manager and Paraprofessional*.
16. TVI works with Student one-on-one on Monday and Friday mornings. *Interview with TVI; Exhibit C*, pp. 1-9. Brailist works with Student on Tuesday and Thursday mornings. *Interview with Brailist; Exhibit C*, pp. 1-9. They keep notes from these sessions in a shared log, which they try to update daily. *Interviews with TVI and Brailist; Exhibit C*, pp. 1-9.
17. During that time, they work on braille skills, including typing on his braille and computer, reading, and independently navigating his computer. *Id*. They also work on math and reading assignments from his special education classroom and outstanding assignments from general education. *Id*.
18. At the beginning of the year, Contract Provider was working with Student in school every day, pursuant to the parties' settlement agreement. *Interviews with Parent and Contract Provider*. Parent wanted District staff to observe how Contract Provider worked with Student and start supporting him in a similar manner. *Id*. When Contract Provider was present, District staff stopped providing paraprofessional support and allowed her to support Student. *Interviews with Contract Provider and Paraprofessional*.
19. After a disagreement over where and how Contract Provider's services would be provided, District proposed that Student's robotics class be replaced with an off period, so the services could be provided off campus. *Reply*, p. 2. In response, Parent decided Student would leave school at 2:00 p.m. every day to receive services from Contract Provider. *Exhibit J*, p. 17. School ends at 3:50. *Exhibit J*, p. 40. As a result, Student misses robotics and independent living skills every week. *Interview with Case Manager*.

F. Implementation of Student's Tactile Accommodations

Manipulatives

20. Student's IEP requires "[m]anipulatives-abacus, Braille clock, ruler and number line (for example)." *Exhibit A*, p. 24.
21. For math, Student has a talking calculator with braille on the buttons that vocalizes each button as he pushes it. *Interviews with TVI and Brailist; Exhibit C*, pp. 6, 22. He also has braille math charts with multiplication and addition tables. *Id.*
22. He has a magnetic math board that has numbers and signs in braille that he can rearrange to create tactile math problems. *Interviews with TVI and Brailist; Exhibit C*, pp. 1, 20. The pieces all have both braille and print on them, so that staff who cannot read braille can also help Student use the board. *Interview with Brailist*. For geometry lessons he has a bucket of shapes. *Interviews with TVI and Case Manager*.
23. He also has a braille ruler and a braille clock, as well as an abacus for math. *Id.*; *Exhibit C*, pp. 5, 6, 7, 22-23. He knows how to use the abacus to complete problems. *Exhibit J*, p. 43.
24. Based on these findings, the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Braille Books

25. Student's IEP requires "[a]ccess to books with braille and tactile pictures." *Exhibit A*, p. 24.
26. Throughout the first semester, TVI and Brailist would braille out the passages or stories his special education class was working on. *Interview with Brailist; Exhibit C*, pp. 2, 4, 6, 9, 14, 15, 28; *Exhibit J*, p. 43. Student would read the story in braille, then staff would read the story aloud to him. *Id.*
27. Brailist also brought in several braille books to keep in the classroom for free time. *Interviews with Brailist and Case Manager*. These books have both braille and text so he can read them with staff who do not read braille. *Id.*
28. Student's classes do not have textbooks, and thus there would be nothing to provide him in braille. *Interview with Case Manager*.
29. Based on these findings, the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Braille Writer

30. Student's IEP requires "[a]ccess to braille writer for writing activities." *Exhibit A*, p. 24.

31. Student has a Chromebook with braille stickers on each of the keys. *Interview with TVI; Exhibit C*, p. 2. District initially had trouble finding Student's Chromebook with the assistive technology programs he needed. *Exhibit J*, p. 9. However, a Chromebook was fully set up for him by September 4, 2024, the 13th day of school. *Exhibit C*, p. 2; *Exhibit H*, p. 2.
32. Student uses the Chromebook to type writing assignments with TVI and Braillist. *Interviews with TVI and Braillist; Exhibit C*, pp. 1-9. Student also has the Chromebook with him throughout the day. *Interviews with Case Manager and Paraprofessional*. Most of his general education assignments are available on his computer. *Interview with Paraprofessional*. For electronic assignments, the computer reads the assignment aloud to him, and he types out his answers. *Id.*
33. Based on these findings, the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Braille

34. Student's IEP requires a "Braille/braile note taker." *Exhibit A*, p. 24.
35. Student has a Perkins Braille ("Braille"), which is a mechanical braille writer with keys corresponding to each of the six dots of the braille code. *Interviews with TVI and Braillist; Exhibit C*, p. 18. The Braille is always available to him, and he practices writing sentences on it with Braillist. *Interviews with Braillist; Exhibit C*, pp. 4, 5.
36. The Braille is available to him all the time, but he is slow to spell things out and it is hard to correct mistakes. *Interview with TVI*. He usually writes on the Chromebook instead, and staff can print his notes out in braille as needed. *Id.* If he needs the Braille in general education, staff will go and get it for him. *Interview with Case Manager*.
37. Based on these findings, the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

G. Implementation of Student's Auditory Accommodations

Clear, Detailed Verbal Directions

38. Student's IEP requires "provid[ing] clear, detailed verbal directions." *Exhibit A*, p. 24.
39. Teachers present lessons and assignments to the class verbally. *Interview with Case Manager*. Paraprofessionals then provide more detailed instructions. *Id.* Paraprofessional tries to keep instructions short and simple to minimize confusion. *Interview with Paraprofessional*. For instance, she might say right now we are "working on a slideshow. Your part is this battle. We are starting to research this battle. Go and search ____ in Google." *Id.*

40. Staff also verbally provide any directions from written materials. *Id.* This includes putting the instructions in simple language as much as possible. *Id.*
41. Based on these findings—to include the credible descriptions of the providers as to how this accommodation was delivered—the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Verbally Describe Objects, Situations, and Processes

42. Student's IEP requires staff to "verbally describe objects, situations and processes whenever possible." *Exhibit A*, p. 24.
43. Case Manager regularly verbally describes what is happening in her classroom. *Interview with Case Manager*. She makes sure Student's classmates speak when they are writing on the board or interacting, so Student can follow along. *Id.*
44. In general education, paraprofessionals sit by Student and regularly narrate what is happening in the classroom, including what is on the screen. *Interviews with Case Manager, TVI and Paraprofessional*. If they watch a video, a paraprofessional will sit next to him and explain what is happening on screen and try to keep him engaged. *Interviews with Case Manager and Paraprofessional*.
45. Staff also describe classroom materials to Student. *Interview with Paraprofessional*. For instance, Paraprofessional might describe the tactile map he is using and talk about what is on it. *Interview with Paraprofessional*. Other times, she might describe items; for instance when they used locust seeds in a recent science class she said: "By your left hand we have locust tree seeds. Go ahead and feel what those seeds are like. They are a little bigger and brown." *Id.*
46. Based on these findings—to include the credible descriptions of the providers as to how this accommodation was delivered—the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Use of Scribe for Written Assignments and Math

47. Student's IEP requires "[u]se of [a] scribe for written assignments and math." *Exhibit A*, p. 24.
48. For assignments on his computer, Student can type answers on his Chromebook. *Interview with Case Manager and Paraprofessional*. For paper assignments, a teacher or paraprofessional will record his answers. *Id.*
49. Parent's concern is that staff write answers for Student without engaging him, because he tells her he does not know when she asks him about the assignment later. *Interview with Parent*. However, due to Student's disability, it takes extensive repetition for him to learn

new things. *Interview with Contract Provider*. Student also tends to say “no” or “I don’t know” before he even finishes processing a question. *Id.*; *Exhibit A*, p. 24.

50. The IEP requires that staff scribe Student’s written assignments—and because that occurred here—the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Text to Speech for Testing, Reading and Math

51. Student’s IEP requires “[t]ext to speech for testing, reading and math.” *Exhibit A*, p. 24.
52. Through a special program, Student’s Chromebook can vocalize material to him. *Interview with TVI, Case Manager and Paraprofessional*. Sometimes this program sounds “funny,” particularly in certain testing programs, so staff will reread material. *Interview with TVI; Exhibit C*, p. 4. Student always has his Chromebook in class, but staff often must get it out for him. *Id.* All District Chromebooks also have a text-to-speech option that all students can use to have assignments read to them. *Interview with Case Manager*.
53. Based on these facts—to include the credible descriptions of the providers as to how this accommodation was delivered—the CDE finds that District made this accommodation available to Student consistent with the IEP from August 2024 to present.

Non-Visual Voice Access for Digital Devices

54. Student’s IEP requires “Non visual voice access for digital devices, such as VoiceOver for Ipad, ChromeVox for Chromebook, NVDA for PC Laptop.” *Exhibit A*, p. 24.
55. Student works with TVI and Brailist on navigating his computer and using his Brailier. *Interviews with TVI and Brailist; Exhibit J*, p. 43; *Exhibit C.1*. His Chromebook has a program installed for non-visual access that vocalizes websites and documents so he can navigate the computer. *Interview with TVI; Exhibit C.1; Exhibit C*, p. 5. During class, Paraprofessional prompts Student to access his work on his computer, which he is generally able to do. *Interview with Paraprofessional*.
56. Student’s computer also has a special program to teach typing to students with visual impairments. *Interview with Brailist; Exhibit C.2; Exhibit C*, p. 6. Student mentioned that he previously liked working on typing with that program, so District purchased it for him to practice. *Interview with Brailist*.
57. Based on these facts—to include the credible descriptions of the providers as to how this accommodation was delivered—the CDE finds that District made this accommodation to Student consistent with the IEP from August 2024 to present.

H. Implementation of Braille, Tactual and Auditory Presentation of Materials

58. Student's IEP requires "Braille, Tactual (real objects or tactile images) and auditory presentation of materials." Exhibit A, p. 24.
59. Brailist creates several assignments in braille for Case Manager each week. *Interviews with Brailist, TVI and Case Manager*. This includes braille worksheets for both math and English, which he works on with TVI and Brailist. *Id.*; *Exhibit C*, pp. 2, 4, 9.
60. Student has a braille calendar he uses each morning while the special education class reviews the schedule for the day. *Interview with Case Manager*. Brailist also added braille to the kitchen in the special education classroom on August 21, 2024, to help Student navigate. *Exhibit C*, p. 1.
61. For English, he has flashcards to practice high frequency words. *Interview with Brailist; Exhibit C*, pp. 5, 13. He also has a binder of braille practice sentences. *Interview with Brailist; Exhibit C*, pp. 6, 8, 16, 17; *Exhibit J*, p. 6. He has a binder of uncontracted braille words that has print text as well, so he can work on it with paraprofessionals. *Interview with Brailist; Exhibit C*, p. 30.
62. Student tends to need prompting to continue reading the next word. *Interview with Brailist; Exhibit C*, p. 2. Brailist usually encourages him to spell out the word so they can sound it out together. *Interview with Brailist*. Student is usually responsive to prompting. *Id.* However, one day he stopped responding, even with prompting, and she had to end the session early. *Id.*; *Exhibit C*, p. 3. She thinks he may have called Parent to pick him up after that. *Id.* Parent says he was upset that Brailist was telling him to read faster, and that he shut down and she had to pick him up. *Interview with Parent*.
63. On September 4, 2024, Brailist dropped off a tactile health book and a book of tactile maps for Student's world history class. *Exhibit C*, p. 2. The tactile map book remains in the history classroom, and paraprofessionals help him find the maps relevant to the part of the world they are studying. *Interviews with TVI, Case Manager and Paraprofessional*. When Contract Provider was working with Student, she was not aware of the tactile map book, so she provided him with a tactile map. *Interview with Contract Provider*.
64. Student's science class often involves tactile experiences like planting seeds. *Interview with Case Manager*. Staff try to create tactile experiences whenever possible. *Interviews with Case Manager and Paraprofessional*. For instance, in math they brailled out geometric shapes and placed different objects in Student's hand to help illustrate a lesson about weight. *Id.* For science they might find him a rock to feel. *Id.*
65. Since Student's primary learning mode is auditory, not all his materials are brailled. *Interview with TVI*. In his general education classes, he primarily relies on either his computer or staff

to present materials verbally. *Id.* Because of his limited braille knowledge, he would not be able to keep up with the class if he was relying on braille materials. *Id.*

66. Many of the general education assignments are available online. *Interview with Case Manager and Paraprofessional.* His computer reads those assignments to him. *Id.* If assignments are printed on paper, paraprofessionals read things to Student and ask him questions. *Interview with Paraprofessional.* Sometimes he types his answers on the computer, other times he answers verbally or has a discussion with the teacher to demonstrate his understanding. *Id.*

67. Based on these findings, the CDE finds that District made this accommodation available to Student in most of his classes consistent with the IEP from August 2024 to present.

Braille, Tactual and Auditory Presentation of Materials in Band

68. In middle school, Student did not read music for band class. *Exhibit J*, p. 14. Instead, a paraprofessional would sing the note for him or the band teacher would help Student learn the notes and then Student would memorize them. *Id.*

69. At School, staff started brailleing Student's music. *Id.* at pp. 24, 30. However, it was challenging because the band teacher would not respond to TVI's emails. *Id.* at p. 24. TVI does not read music, but a paraprofessional would help her. *Interview with TVI.*

70. Braille code for music is completely different than the braille code (UEB) Student is learning. *Interview with Braillist.* As such, Braillist is not currently creating braille music for Student. *Id.* Instead, she creates sheets with the braille letters corresponding to the notes. *Id.*; *Exhibit J*, p. 22. This music does not show Student pitch or measure or the length of notes. *Interview with Contract Provider.*

71. Paraprofessional and one other classroom paraprofessional read music. *Interview with Paraprofessional.* First semester, the two paraprofessionals who read music traded off supporting Student in band. *Id.*

72. When she is present, Paraprofessional encourages Student to read the brailled music and then hums the melody or taps the rhythm on his shoulder to help him know what his part should sound like. *Id.* She verbally prompts him when he should rest or when he needs to come into the song. *Id.*

73. Student is always in the classroom with the full ensemble or with a smaller group for chamber music. *Id.* He is never alone with a paraprofessional for class. *Id.* During time with the smaller group, Paraprofessional has more time to break the melody down for Student and help him memorize individual measures. *Id.* She shows him the rhythm and the tune and has him repeat measures over and over until he memorizes them and is ready to put full phrases together. *Id.*

74. This semester, the four paraprofessionals trade off supporting Student for a week at a time. *Id.* This means that for two out of every four weeks, the staff supporting Student in band cannot read music. *Id.* The CDE finds that staff who cannot read music cannot provide Student with auditory presentation of materials in band.
75. When Student showed up for a band concert in October, he did not have any support from District. *Exhibit J*, p. 24. Contract Provider was there to watch him perform but agreed to help him when she and Parent saw he had no other support. *Interview with Contract Provider*. She asked the band teacher to let her know when Student needed to go on stage, but they did not realize it was his band class until Student recognized the song. *Id.* The band teacher later stopped the group to call Student up midperformance. *Id.* Student had no idea when he was supposed to play and just sat there holding the instrument instead of playing. *Id.*
76. TVI arranged for staff to support Student at his concerts in December and March. *Exhibit J*, pp. 32, 43, 58. However, Student did not attend either concert. *Id.* at pp. 43, 59. Around February 2025, Student stopped bringing his instrument to school. *Interviews with Parent and Case Manager*. Without an instrument, he just sits in class and listens to the music. *Interview with TVI; Exhibit C*, p. 6.
77. With the combination of brailled music and paraprofessional support, the CDE finds that District made this accommodation available to Student in band from August through December 2024 consistent with the IEP. However, the CDE finds that District did not make this accommodation available to Student at the concert in October 2024 and did not consistently make this accommodation available to Student from January 2025 to present, because Student did not consistently have someone to present material auditorily, his primary mode of learning.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District made Student's IEP accessible to the providers responsible for its implementation from August 2024 to present, as required by 34 C.F.R. § 300.323(d). District did not properly implement one of Student's accommodations from October 2024 to present, as required by 34 C.F.R. § 300.323(c). This did not result in a denial of FAPE for Student.

A. Accessibility of and Responsibilities for Student's IEP

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." *Endrew 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).

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.* 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).

Here, Case Manager, TVI and Brailist have worked together to understand and implement Student's IEP. (FF # 10.) At the start of the year, Case Manager reviewed Student's IEP with all of the paraprofessionals in her classroom and discussed how to support him. (FF # 11.) She also gave Student's general education teachers access to his IEP and provided information about how to support Student. (FF # 12.) Case Manager reinforced this by periodically observing Student in class and checking in with his teachers. (*Id.*) Thus, the CDE finds and concludes that District ensured Student's providers had access to and were informed of their responsibilities under his IEP, consistent with 34 C.F.R. § 300.323(d).

B. Implementation of the Accommodations in Student's IEP

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2) with respect to accommodations. Here, implementation of ten accommodations are disputed: (1) "Manipulatives-abacus, Braille clock, ruler and number line (for example);" (2) "Access to books with braille and tactile pictures;" (3) "Access to braille writer for writing activities;" (4) "Brailler/braille note taker;" (5) "provide clear, detailed verbal directions;" (6) "verbally describe objects, situations and processes whenever possible;" (7) "Use of scribe for written assignments and math;" (8) "Text to speech for testing, reading and math;" (9) "Non visual voice access for digital devices, such as VoiceOver for Ipad, ChromeVox for Chromebook, NVDA for PC Laptop;" and (10) "Braille, Tactual (real objects or tactile images) and auditory presentation of materials;" (FF #s 20, 25, 30, 34, 38, 42, 47, 51, 54, 58.)

From August 2024 to present, District provided accommodations one through nine from the list above, consistent with the IEP. (FF #s 20-57.) In addition, District provided the last accommodation—Baille, Tactual and auditory presentation of materials—in most of Student's classes, from August 2024 to present. (FF #s 58-67.) Student's IEP requires the presentation of materials via braille, tactual and auditory means, with Student's primary learning mode being auditory. (FF #s 5, 6, 58.) With the combination of the brailled music and support of a paraprofessional who reads music, the CDE finds and concludes that District provided this accommodation to Student in band class from August through December 2024.

However, starting in January 2025, Student was supported by staff who do not read music 50% of the time. (FF # 74.) Student also did not have any support at a concert in October 2024. (FF #

75.) Without staff who reads music, the CDE finds that information like when to play or how long to hold a note is not being presented to Student via braille, tactual or auditory means. As such, the CDE finds and concludes that District did not consistently implement this accommodation from Student's IEP in band.

Accordingly, the CDE finds and concludes that District did not implement one accommodation in Student's IEP in one class, from October 2024 to present, as required by 34 C.F.R. § 300.323(c)(2).

C. Materiality of Noncompliance

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, not implementing an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not implementing 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 not implementing 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 not implementing 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*, 502 F.3d at 822. 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.*

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 CDE "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).

Here, District did not consistently provide access to one accommodation in one class. (FF #s 60-67.) However, it still continued to provide access to that accommodation about 50% of the time in that class. (FF # 74.) In addition, for most of that time, Student did not bring his instrument to school, so he could not play music. (FF # 76.) The other nine accommodations at issue in this case

were provided with fidelity from August 2024 to present. (FF #s 20-57.) For these reasons, the CDE finds and concludes that this noncompliance was not material and thus did not result in a denial of FAPE.

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

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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 States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

As a result of Student’s unique disability, he is not able to read braille music and requires auditory presentation of materials in band. (FF # 62.) Nothing in the record suggests that other students require this accommodation and might have been impacted by a lack of auditory presentation of materials in band. Thus, the CDE finds and concludes that the noncompliance is not systemic.

REMEDIES

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

1. Implementing the 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 **Tuesday, June 17, 2025**, 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. Director, Case Manager and TVI must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.323 by **Friday, June 27, 2025**. If

these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Monday, July 7, 2025**.

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
201 E. Colfax Avenue
Denver, CO 80203

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

CONCLUSION

The Decision of the CDE 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 State Complaints Officer ("SCO").

Dated this 16th day of May, 2025.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-7

- Exhibit 1: Notes

Response, pages 1-12

- Exhibit A: IEP
- Exhibit B: Evaluations
- Exhibit C: Vision Log
- Exhibit C.1: Video
- Exhibit C.2: Video
- Exhibit D: None
- Exhibit E: None
- Exhibit F: Attendance Data
- Exhibit G: Progress Monitoring
- Exhibit H: Calendar
- Exhibit I: Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: Relevant Staff
- Exhibit L: Verification of Delivery to Parent
- Exhibit M: Progress Monitoring

Reply, pages 1-27

- Exhibit 2: Concerns

Telephone Interviews

- Parent: April 9, 2025
- Contract Provider: April 10, 2025
- TVI: April 11, 2025
- Case Manager: April 11, 2025
- Director: April 11, 2025
- Brailist: April 21, 2025
- Paraprofessional: April 22, 2025