

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

State Complaint SC2025-605
School District 49

DECISION

INTRODUCTION

On September 4, 2025, 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 complaint (“Complaint”) against School District 49 (“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.

On September 12, 2025, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in impasse and the CDE resumed the investigation on October 9, 2025.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A final written 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 properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after September 4, 2024. Information prior to September 4, 2024 may be considered to fully investigate all allegations.

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.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. District did not fully implement Student’s Individualized Education Program (“IEP”) because it:
 - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation from September 4, 2024 to present, as required by 34 C.F.R. § 300.323(d);
 - b. Did not provide an accommodation listed in the IEP—specifically, limiting spelling tests to 5-7 words—on November 11, 2024, as required by 34 C.F.R. § 300.323(c);
 - c. Did not provide the accommodations listed in the IEP—specifically, access to fidgets and a partner during work time—on December 18, 2024, as required by 34 C.F.R. § 300.323(c); and
 - d. Did not provide the accommodations listed in the IEP—specifically, access to fidgets, adult support for reading tests, and opportunities to stand in the back of the room—from August 13, 2025 to present, as required by 34 C.F.R. § 300.323(c).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 10 years old and attended a District school (“School”) for fourth grade from September 26, 2024 to May 2025 and for fifth grade from August 13 to August 26, 2025. *Response*, p. 1; *Exhibit B*, p. 1. He qualifies for special education and related services under the disability category of Specific Learning Disability (“SLD”). *Exhibit A*, p. 1; *Response*, p. 1.
2. Student is empathetic, inclusive, and happy, and he loves drawing, video games, and making friends. *Interview with Parents*. In school, he struggles with reading, writing, and math and needs support to understand and complete assignments. *Id.*

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.

³ The appendix, attached and incorporated by reference, details the entire Record.

3. This investigation involves the implementation of accommodations from two IEPs: an IEP dated February 6, 2024 (“February 2024 IEP”), in effect during Student’s fourth grade year from September 26, 2024 to January 25, 2025, and an IEP dated April 25, 2025 (“April 2025 IEP”), in effect when Student attended fifth grade from August 13 to August 26, 2025. See *Exhibit A*, pp. 1-21, 39-54; *Exhibit B*.

B. District Policies, Procedures, and Practices

4. District maintains a Reference Guide of special education policies, procedures, and practices that all staff can access online. *Interview with District Director of Special Education (“Director”)*. The Reference Guide contains procedures related to IEP implementation, including a guide for case managers. See *Exhibit G*, pp. 1-6, 11.
5. District trains all staff on special education policies, procedures, and practices at a full-day training before school starts, and it holds additional trainings throughout the year on topical special education issues. *Interview with Director*.
6. All District staff, including general and special education teachers, have direct access to IEPs through an online database called Enrich. *Interview with Director; see Exhibit G*, pp. 2-6.
7. In District, special education case managers must “ensure the systemic implementation of special education and related services,” by notifying staff members of their responsibilities under a student’s IEP, tracking the use of accommodations, and monitoring to ensure that all staff are implementing IEP accommodations with fidelity. *Exhibit G*, pp. 1-3.
8. At School, case managers are expected to provide IEP snapshots to general education teachers and other staff members at the beginning of the year, after IEP updates, and upon staffing changes. *Id.* at pp. 1, 4; see *Exhibit C*, p. 1. IEP snapshots contain information that a staff member needs to work with a student, such as goals and accommodations, without providing extraneous detail. *Interview with School special education teacher (“Case Manager 1”)*.
9. During the 2024-2025 school year, Case Manager 1 and four paraprofessionals hand-delivered IEP snapshots to general education teachers and discussed implementation of IEP accommodations with each teacher before students arrived. *Id.*
10. Starting in the 2025-2026 school year, School requires general education teachers to attend three special education trainings and meet with School special education staff to discuss their responsibilities for IEP implementation before students arrive. *Id.* Teachers must attest that they attended the special education trainings, read and understood all IEP snapshots provided, will implement IEP accommodations with fidelity, and will ask any questions to the special education team. *Id.; Response*, p. 3; see *Exhibit E*.
11. Regarding substitute teachers, School maintains printed copies of IEP snapshots in a folder and cabinet in each classroom to which substitute teachers, paraprofessionals, and teaching

assistants (“TAs”) have access. *Interview with Case Manager 1*. In addition to providing physical access to IEP snapshots, School requires general education teachers to highlight information from student IEP snapshots—including accommodations—in written substitute plans provided to substitute teachers. *Id.* School special education staff informs general education teachers, TAs, and paraprofessionals that printed copies of IEP snapshots are available, and, per School protocol, substitute plans should also indicate that printed copies of IEP snapshots are available in the classroom. *Id.*

12. School employs one TA per grade level, and TAs work with students in a similar capacity as paraprofessionals. *Id.* TAs often substitute or assist in a classroom with a substitute. *Id.* Since TAs are familiar with IEP snapshots, TAs are a “safety net” in ensuring that substitute teachers are aware of and implement IEP accommodations. *Id.*

C. Student’s IEPs

February 2024 IEP

13. The February 2024 IEP documents Student’s present levels of educational performance, providing input from his teachers, documenting his progress on IEP goals, describing the impact of his disability on his academics and speech, and recording Parent and Student input. *Exhibit A*, pp. 1-12.

14. This IEP identifies seven annual goals for Student: two reading fluency skills goals, one reading comprehension goal, one math calculations goal, one written expression goal, and two speech and language goals. *Id.* at pp. 12-17.

15. This IEP identifies 14 accommodations, including three relevant to this investigation:

- “Shortened assignments as appropriate”
- “Access to wiggle seat and/or fidgets”
- “Preferential seating in close proximity to the teacher and seated next to a positive peer model”

Id.

16. Student was to receive 240 minutes per week of direct special education instruction outside the general education classroom and 100 minutes per month of direct speech language therapy outside the general education classroom. *Id.* at p. 19.

17. The IEP determined that it was appropriate for Student to participate in the general education classroom at least 80% of the time. *Id.* at p. 20.

April 2025 IEP

18. The April 2025 IEP documents Student’s present levels of educational performance, needs and impacts of disability, input from Parents and Student, and annual goals. *Id.* at pp. 39-50.

19. This IEP identifies 18 accommodations, including two relevant to this investigation:

- “Access to wiggle seat and/or fidgets, stand in the back of the room”
- “Text to speech/Human reader when not assessing reading”

Id. at p. 50.

20. Student was to receive 120 minutes per week of direct special education instruction inside the general education classroom, 240 minutes per week of direct special education instruction outside the general education classroom, and 30 minutes per month of indirect speech language therapy outside the general education classroom. *Id.* at p. 53.

21. Finally, the IEP maintained that it was appropriate for Student to be in the general education classroom at least 80% of the time. *Id.*

D. Accessibility of Student’s IEPs to Teachers and Others

22. Student had two special education case managers during the period relevant to this Complaint: (1) Case Manager 1, who supported Student in fourth grade from September 23, 2024 to December 2024 and in fifth grade; and (2) a special education teacher (“Case Manager 2”), who supported Student in fourth grade from December 2024 to May 2025. *Interview with Case Manager 1.*

23. Student had two fourth grade teachers: (1) a general education teacher (“Fourth Grade Teacher 1”) who taught Student from September 23, 2024 to January 27, 2025, and (2) a general education teacher (“Fourth Grade Teacher 2”) who taught Student from February 25, 2025 to May 2025 after Fourth Grade Teacher 1 resigned. *Interviews with Fourth Grade Teacher 2, Case Manager 1, and Director.*

24. On September 23, 2024, prior to Student starting in fourth grade, School requested and Parents shared a copy of the February 2024 IEP. *Exhibit H*, pp. 6-7, 9-11. Case Manager 1 received the IEP, familiarized himself with it before Student’s first day at School, and asked Parents questions. *Id.* at p. 9; *Exhibit B; Interview with Case Manager 1.*

25. Case Manager 1 provided a hard copy of the February 2024 IEP snapshot to Fourth Grade Teacher 1 and all staff members who worked with Student, including paraprofessionals,

before Student started. *Response*, p. 3; *Interview with Case Manager 1*. This IEP snapshot described Student's accommodations, including that Student requires shortened assignments as appropriate, access to fidgets, and seating next to a positive peer. *Interview with Case Manager 1*. Case Manager 1 discussed the IEP snapshot with Fourth Grade Teacher 1 and highlighted Student's accommodations, interests, and strengths so that she was prepared for Student before he arrived. *Id.*

26. During the 2024-2025 school year, School's K-12 building substitute ("School Substitute") filled in for absent teachers and TAs on a regular basis. *Interview with School Substitute*. In this role, she substituted for Fourth Grade Teacher 1 four times, including on December 18, 2024. *Interviews with School Substitute and Director*.
27. Typically, per School protocol, School Substitute received substitute plans that contained descriptions of IEP snapshots and therefore understood her responsibilities for implementing IEPs. *Id.*
28. However, when School Substitute filled in for Fourth Grade Teacher 1 on December 18, 2024, she did not have a substitute plan, did not access the folder or cabinet containing IEP snapshots inside the classroom, and did not otherwise have access to Student's IEP. *Id.* There was also no paraprofessional or TA in the room. *Id.* Therefore, Substitute Teacher did not have access to and did not understand her responsibilities for implementing Student's IEP. *Id.*
29. This day was an anomaly because Fourth Grade Teacher 1's absence was unplanned and, since School Substitute had been filling in as the Fourth Grade TA, there was no TA "safety net" for support in implementing IEPs. *Id.*
30. Fourth Grade Teacher 1 and Case Manager 2 were involved in the development of another IEP in January ("January 2025 IEP"). *Exhibit A*, p. 23; *Exhibit C*, p. 2. Case Manager 2 provided Fourth Grade Teacher 1 and Student's other providers with an updated IEP snapshot. *Exhibit C*, p. 1; *Interview with Case Manager 1*.
31. When Fourth Grade Teacher 2 was hired in February 2025, he had access to that same snapshot from a classroom binder, familiarized himself with it, and asked questions to Case Manager 1 about IEP implementation. *Interview with Fourth Grade Teacher 2*.
32. Fourth Grade Teacher 2 and Case Manager 2 were involved in the development of the April 2025 IEP. *Exhibit A*, p. 40; *Exhibit C*, pp. 7-8, 12; *Interview with Fourth Grade Teacher 2*. As with the January 2025 IEP, Case Manager 2 provided an updated IEP snapshot to Fourth Grade Teacher 2 and Student's other providers. *Exhibit C*, p. 3. This IEP snapshot described Student's accommodations, including that Student requires access to fidgets, opportunities to stand, and adult support for tests. *Interviews with Case Manager 1 and Fourth Grade Teacher 2*.

33. Before the 2025-2026 school year, Student's fifth grade general education teacher ("Fifth Grade Teacher") acknowledged that she received special education training, read and understood Student's IEP snapshot after discussing it with Case Manager 1, and would follow all accommodations outlined in Student's April 2025 IEP. *Exhibit E*, p. 1; *Interviews with Fifth Grade Teacher and Case Manager 1*.

E. Provision of Accommodations: February 2024 IEP

34. Parents' concern is that District did not provide three accommodations required by the February 2024 IEP: a 5-7-word spelling test on November 11, 2024 and access to fidgets and a partner during work time on December 18, 2024. *Complaint*, pp. 3-4.

5-7 Word Spelling Test on November 11, 2024

35. Student's February 2024 IEP contains an accommodation which reads: "[s]hortened assignments as appropriate." *Exhibit A*, p. 17. The IEP does not contain a specific accommodation providing for 5-7-word spelling tests. *See id.*; *Interview with Parents; Response*, p. 3.

36. Parents interpreted "shortened assignments as appropriate" to require 5-7-word spelling tests. *Interview with Parents*. Parents also assumed that "5-7-word spelling tests" was an official accommodation listed on Student's IEP because Fourth Grade Teacher 1 assured them that she provided shorter spelling tests to Student and "always talked about it as if it was an accommodation." *Id.*

37. Parents assert that Student was given a full-length spelling test of around 17 words, rather than 5-7 words, on November 11, 2024. *Interview with Parents; Complaint*, p. 4. Neither Parents nor District retain a copy of the test. *Interviews with Parents and Case Manager 1*.

38. School did not understand "shortened assignments as appropriate" to require limiting spelling tests to 5-7 words, and it would have documented "5-7-word spelling tests" as a separate accommodation if required. *Interviews with Case Manager 1 and Director*. Such a specific accommodation would have been inappropriate because it would not have allowed flexibility to adjust Student's spelling tests on a case-by-case basis. *Id.* For instance, requiring Student to complete a longer list of easier words or a shorter list of difficult words—rather than prescribing a list of 5-7 words—could have better promoted his demonstration of mastery. *Id.*

39. Fourth Grade Teacher 2 often limited Student's spelling tests, and those of other similarly situated students, to around 5-7 words as a matter of differentiation but not because this was required by Student's IEP. *Interview with Fourth Grade Teacher 2*.

40. Based on these facts, and the plain text of the accommodation which does not require limiting spelling tests to 5-7 words, the CDE finds that District was under no obligation to provide a 5-7-word spelling test pursuant to the February 2024 IEP on November 11, 2024.

Access to Fidgets on December 18, 2024

41. The February 2024 IEP includes an accommodation which reads: “[a]ccess to wiggle seat and/or fidgets.” *Exhibit A*, p. 17.

42. Parents and School understood this accommodation to require that School allow Student to use a fidget device, such as a soft Rubik’s cube or fidget spinner, at any time so long as the fidget did not distract other students. *Interviews with Parents, Case Manager 1, and Fourth Grade Teacher 2*.

43. Parents reported that this accommodation was not implemented on December 18, 2024, when School Substitute filled in for Student’s class. *Interview with Parents; Complaint*, p. 3. Student came home upset and told Parents that School Substitute made him put his fidget device away. *Interview with Parents*.

44. Case Manager 1 and Fourth Grade Teacher 2 reported that Student always had access to his fidgets because he brought a case of multiple fidgets with him to School every day. *Interviews with Case Manager 1 and Fourth Grade Teacher 2*. Case Manager 1 also often discussed the parameters of this accommodation with Student, including coaching Student on using the devices as “tools” rather than “toys” and not distracting others. *Interview with Case Manager 1*. However, neither of these adults was present in Student’s class on December 18, 2024. *Id.*

45. School Substitute did not recall whether Student used a fidget device on this day or whether she would have asked him to put it away. *Interview with School Substitute*. Given that she was substituting for an unplanned absence and without a substitute plan or access to Student’s IEP, she was “just trying to maintain order that day and give students something to do.” *Id.*

46. Based on these facts, the CDE finds that District did not provide this accommodation consistent with the February 2024 IEP on December 18, 2024.

Partner on December 18, 2024

47. Finally, the February 2024 IEP contains the following accommodation: “[p]referential seating in close proximity to the teacher and seated next to a positive peer model.” *Exhibit A*, p. 17. The IEP does not include a specific accommodation requiring that a peer read assignments or tests to Student. *See id.; Interviews with Parents, Case Manager 1, and Director*.

48. Per Parents, seating “next to a positive peer model” required that Student sit next to a peer who could read assignments to him. *Interview with Parents*. Since Student struggles with

reading, he cannot access or complete assignments without someone, like a teacher or peer, available to read assignment directions and questions. *Id.* Parents wish that they had asked to specify the accommodation, but they thought it fell under the umbrella of a being seated next to a “positive peer model” based on conversations with School staff. *Id.*

49. Parents contend that this accommodation was not provided on December 18, 2024 because Student reported to them that School Substitute thought he was cheating on an individual assignment when he asked another student to read it for him. *Interview with Parents.*
50. School staff understood this accommodation to require that Student sit next to a peer who is on-task, follows directions and rules, and exemplifies School’s virtues. *Interviews with Case Manager 1 and Fourth Grade Teacher 2.*
51. School would not have agreed to an accommodation requiring another student to read assignments to Student because this would not be fair to the other student and would essentially make the other fourth grader responsible for Student’s FAPE. *Interviews with Director and Case Manager 1.*
52. Based on these facts, and the plain text of the accommodation which does not require access to a peer to assist Student with assignments, the CDE finds that District was under no obligation to provide such accommodation pursuant to the February 2024 IEP on December 18, 2024.

F. Provision of Accommodations: April 2025 IEP

53. Parents’ concern is that District did not provide two accommodations required by the April 2025 IEP from August 13 to August 26, 2025: access to fidgets and opportunities to stand in the back of the room and adult support for reading tests. *Complaint*, p. 2.

Access to Fidgets/Standing Opportunities

54. Student’s April 2025 IEP contains an accommodation which reads: “[a]ccess to wiggle seat and/or fidgets, stand at the back of the room.” *Exhibit A*, p. 50.
55. Parents and School understood the “access to fidgets” component of this accommodation to be the same as provided for in Student’s February 2024 IEP: Student was able to use a fidget device at any time so long as not a distraction. *Interviews with Parents, Case Manager 1, and Fifth Grade Teacher.*
56. Student’s IEP Team added that he could stand at the back of the room to this accommodation because teachers noticed that he focused better if he was able to stand and pace. *Interview with Parents.* Parents and School understood this accommodation to require that Student was allowed to stand up at any point, either at the back or side of the room or at his desk, during class. *Interviews with Parents, Case Manager 1, Fourth Grade Teacher 2, and Fifth*

Grade Teacher. Student did not need to ask for permission to stand, but he often did. *Interviews with Case Manager 1, Fourth Grade Teacher 2, and Fifth Grade Teacher*.

57. Parents allege that Student was denied access to fidgets and opportunities to stand nearly every day of the eight days he attended School in fifth grade. *Interview with Parents; Complaint*, p. 2. Student was upset when he came home from School and indicated that he was able to use his fidgets once or twice but that Fifth Grade Teacher had taken away a fidget that he wanted to use and disallowed him from standing in the back of the room. *Interview with Parents*.
58. Fifth Grade Teacher understood that Student was required to have access to fidgets and opportunities to stand in the back of the classroom, and she implemented this accommodation with fidelity. *Interview with Fifth Grade Teacher*. Every day in class, Student used different types of fidgets—such as soft Rubik’s cubes and fidget spinners—which he stored in a case, and he was allowed to stand without asking. *Id.*
59. During one occasion, Fifth Grade Teacher observed Student passing around his fidget devices to other classmates: she took the fidget device away from another student and reminded Student that his fidget devices could not become a distraction to others. *Id.* Similarly, Fifth Grade Teacher once told Student to sit down when he was socializing with a group while standing in the back of the classroom. *Id.* In these scenarios, Fifth Grade Teacher was enforcing classroom norms rather than denying access to Student’s accommodations. *Id.*
60. Based on these facts, the CDE finds that District provided this accommodation consistent with the April 2025 IEP between August 13 and August 26, 2025.

Adult Support for Reading Tests

61. Finally, the April 2025 IEP includes the following accommodation: “[t]ext to speech/[h]uman reader when not assessing reading.” *Exhibit A*, p. 50.
62. Parents and School understood this accommodation to require access to an adult, such as a teacher, paraprofessional, or TA, to read assessments to Student. *Interviews with Parents, Case Manager 1, and Fifth Grade Teacher*.
63. Student accessed this accommodation by either going to the special education classroom and having a paraprofessional read the assessment to him or by remaining inside the classroom and having a teacher, TA, or paraprofessional read to him. *Interviews with Case Manager 1 and Fifth Grade Teacher*.
64. Parents allege that School did not read one World History assessment to Student during this timeframe because Student was upset with his failing grade and indicated that nobody helped him to read the test. *Interview with Parents*.

65. School staff, including Case Manager 1 and Fifth Grade Teacher, credibly assert that Student accessed this accommodation on his World History test: Case Manager 1 witnessed a paraprofessional reading the test aloud to Student in the special education classroom and Fifth Grade Teacher confirmed that she sent Student to the special education classroom for this assessment. *Interviews with Case Manager 1 and Fifth Grade Teacher*.

66. Based on these facts, including the credible corroboration between educators, the CDE finds that District provided this accommodation consistent with the April 2025 IEP between August 13 and August 26, 2025.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District did not ensure that staff had access to and an understanding of responsibilities for implementing Student’s February 2024 IEP, as required by 34 C.F.R. § 300.323(d). This procedural noncompliance did not result in a denial of FAPE. District provided the accommodations in conformity with Student’s IEPs, as required by 34 C.F.R. § 300.323(c).

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 2.21. 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 Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 392 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). As soon as possible after an IEP is developed, school districts must implement the IEP by ensuring that: (1) teachers and related service providers responsible for implementation have access to and an understanding of their obligations under the IEP, and (2) special education and related services, including accommodations, are made available to the child in accordance with the IEP. 34 C.F.R. §§ 300.324(d), 300.324(c)(2).

B. IEP Accessibility to Teachers and Others

A school district must ensure that each regular education teacher, special education teacher, related services provider, and any other service provider responsible for implementing an IEP 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.” 34 C.F.R. § 300.323(d). This obligation includes the duty to inform substitute teachers of their responsibilities for the implementation of an IEP. *See, e.g., Douglas Cnty. Sch. Dist.*, 70 IDELR 111 (SEA NV 2017) (finding that a district did not comply with the IDEA in part because there was no evidence showing that the district informed a substitute of her

responsibilities for implementing a student's IEP, and ordering district to develop written procedures on how substitutes will be made aware of responsibilities for IEP implementation).

February 2024 IEP

Here, Case Manager 1 familiarized himself with the February 2024 IEP before Student started at School in Fall 2024. (FF # 24). He provided an IEP snapshot to Fourth Grade Teacher 1 and discussed Student's accommodations with her. (FF # 25). Accordingly, Case Manager 1 and Fourth Grade Teacher 1 were aware of the IEP and its requirements. (FF #s 24-25). However, School Substitute did not understand her responsibilities for implementing the February 2024 IEP when she substituted for Fourth Grade Teacher 1 on December 18, 2024. (FF #s 26-29). While School policy requires teachers to include IEP snapshot information in substitute plans, Fourth Grade Teacher 1 was absent without a substitute plan. (FF #s 26-28). School Substitute thus did not have access to Student's IEP snapshot through a substitute plan, as required by School policy, and she also did not have TA support because she had been filling in as the Fourth Grade TA. (FF #s 28-29). School Substitute did not know she could access IEP snapshots in a classroom cabinet and folder, and she did not reach out to School special education staff for support. (FF #s 26-29). Accordingly, School did not ensure that School Substitute was informed of her responsibilities for implementing Student's February 2024 IEP on December 18, 2024. (*Id.*)

For these reasons, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.323(d) because it did not ensure that School Substitute had access to and an understanding of Student's February 2024 IEP on December 18, 2024.

January 2025 and April 2025 IEPs

Fourth Grade Teacher 1 and Case Manager 2 were involved in the development of Student's January 2025 IEP, and, as a result, were aware of its requirements. (FF # 30). Fourth Grade Teacher 2 was hired in February 2025, and he familiarized himself with Student's IEP snapshot before his first day teaching. (FF # 31). Fourth Grade Teacher 2 and Case Manager 2 were involved in the development of Student's April 2025 IEP, and, as a result, were aware of its requirements. (FF #s 32). For both IEP updates, in January 2025 and April 2025, Case Manager 2 provided updated IEP snapshots to all staff members who worked with Student, including Fourth Grade Teachers 1 and 2 and paraprofessionals. (FF #s 30, 32). Fifth Grade Teacher familiarized herself with Student's April 2025 IEP before the 2025-2026 school year, discussed Student's IEP snapshot with Case Manager 1, and acknowledged that she would follow all IEP accommodations. (FF # 33). Therefore, Student's case managers and general education teachers had access to and

understood their specific requirements for implementing Student’s January 2025 and April 2025 IEPs. (FF #s 30-33).

For these reasons, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d) regarding Student’s January 2025 and April 2025 IEPs.

1. Procedural Noncompliance

When a school district does not satisfy its obligation of ensuring that teachers and others are informed of their responsibilities for implementing an IEP, like here, there is procedural noncompliance. *See* 34 C.F.R. §§ 300.323(d), 300.513(a). The United States Supreme Court has stressed the importance of complying with IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-206 (1982). However, procedural noncompliance is only actionable to the extent that the procedural inadequacies: (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the child, or (3) caused deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Acad. Sch. Dist. No. 20*, F.3d 1306, 1313 (10th Cir. 2008).

Here, School Substitute’s lack of awareness of her responsibilities for implementing Student’s IEPs did not impede Student’s right to a FAPE. First, her lack of understanding of Student’s IEP contributed only to a minor implementation discrepancy on a single day rather than material noncompliance resulting in the denial of FAPE. *See* Section D (Below). There is also no concern or indication that her lack of understanding affected Parents’ ability to participate in the decision-making process, nor that Student was deprived of an educational benefit. *Id.* For these reasons, School’s procedural noncompliance under 34 C.F.R. § 300.323(d) did not result in substantive noncompliance and is therefore not actionable.

Because School already has robust procedures in place to ensure that substitutes are informed of their responsibilities for IEP implementation—which were not followed here on one day due to anomalous circumstances—remedies such as a rewrite of procedures or a decision review are not necessary to promote future compliance with 34 C.F.R. § 300.323(d). Therefore, the CDE will not order remedies on this procedural noncompliance. *Cf. Douglas Cnty. Sch. Dist.*, 70 IDELR 111 (SEA NV 2017) (ordering district to develop procedures specific to informing substitutes of IEP implementation responsibilities where district did not have such procedures in place).

C. Provision of Accommodations

In implementing an IEP, a school district must provide “special education and related services “in conformity with” the IEP. 34 C.F.R. §§ 300.17, 300.324(c)(2); *see Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 821 (9th Cir. 2007). Not providing special education and related services in conformity with an IEP can result in the denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.21(4). However, “there is no statutory requirement of perfect adherence to the IEP.” *Van Duyn*, 502 F.3d at 821. In other words, not every shortfall in services between those required by an IEP and those provided will result in a denial of FAPE. *Id.* To result in a denial of FAPE, there must be

“more than a minor or technical gap between the [IEP] and reality; *de minimis* shortfalls [that do not themselves deprive a student of the education promise of the IDEA] are not enough.” *L.J. by N.N.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1211 (11th Cir. 2019); see, e.g., *L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 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. District 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.*

Material failures to implement an IEP constitute a denial of FAPE and substantive noncompliance with the IDEA. *Van Duyn*, 502 F.3d 811 at 822. “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.” *Id.* Courts will consider a case’s individual circumstances to determine if there is a “material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010). Material failures include shortfalls in implementing “substantial,” “significant,” or “necessary” IEP provisions. *Id.* at 818. The materiality standard has qualitative and quantitative components: the CDE should “determine *how much* [of a service] was withheld and *how important* the withheld services were in view of the IEP as a whole.” *L.J. v. N.J.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1214 (11th Cir. 2019). 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.” *Van Duyn*, 502 F.3d 811 at 822.

Therefore, to assess implementation concerns, the CDE engages in a two-pronged inquiry: (1) was there a shortfall in the provision of services required by the IEP, and (2), if so, did the shortfall amount to a material failure to implement the IEP and thus a denial of FAPE?

1. *Prong 1: Was there a Shortfall in Accommodations?*

The CDE must first determine whether there was a shortfall between the accommodations required by the IEP versus those made available to Student. 34 C.F.R § 300.323(c)(2).

February 2024 IEP

Here, three accommodations are at issue for Student’s February 2024 IEP: limiting spelling tests to 5-7 words on November 11, 2024 and access to fidgets and a partner during work time on December 18, 2024. (FF # 34). Parents did not allege that Student never received these accommodations; instead, Parents assert that these accommodations were not provided during isolated incidents on those days. (*Id.*)

As detailed in the Findings of Fact, Student's February 2024 IEP did not require limiting spelling tests to 5-7 words. (FF #s 35-40). As such, District was under no obligation to provide this accommodation on November 11, 2024. (FF # 40). Student's IEP also did not require access to a partner during work time; instead, it called for Student to sit next to a positive peer model. (FF #s 47-52). Therefore, District was under no obligation to provide this accommodation. (FF # 52). The February 2024 IEP requires access to fidgets. (FF # 41). On December 18, 2024, School Substitute filled in for Fourth Grade Teacher 1 and admitted that she was not aware of Student's IEP snapshot and accommodations and she did not recall whether Student used a fidget or if she would have asked him to put it away. (FF # 45). No other staff members, such as a paraprofessional or TA, were in the classroom at the time. (FF # 44). While it is clear from School staff who supported Student during this time, such as Case Manager 1, that Student brought a case of multiple fidgets with him to School every day, there is no indication that Student had access to fidgets during class on December 18, 2024. (FF #s 44-45). Indeed, Student reported that School Substitute had asked him to put his fidget device away during class. (FF # 43). For these reasons, the CDE finds and concludes that District did not provide this accommodation on December 18, 2024.

April 2025 IEP

Two accommodations are at issue for Student's April 2025 IEP: access to fidgets and opportunities to stand in the back of the classroom and adult support for reading tests. (FF # 53). Parents alleged that Student did not receive these accommodations for the eight days that he was enrolled at School in August 2025. (*Id.*)

As detailed in the Findings of Fact, Student's Fifth Grade Teacher and Case Manager 1 credibly reported that Student always had access to fidgets, so long as they were not a distraction, and was able to stand in the back of the classroom or at his desk during class. (FF #s 44, 58). Fifth Grade Teacher noted one incident where she asked Student to not share his fidget devices with other students because it was a distraction, and one similar incident where she asked a group of students, including Student, to stop socializing in the back of the classroom. (FF # 59). In those isolated instances, Fifth Grade Teacher was enforcing the parameters of Student's accommodations and classroom policies rather than denying access to Student's accommodations. (*Id.*) Finally, Student had access to and used adult support for the one non-reading test he took between August 13 to August 26. (FF #s 61-66). Case Manager 1 witnessed Student receiving support from a paraprofessional on the test, and Fifth Grade Teacher reported sending Student to the special education support room during the test. (FF # 65). For these reasons, the CDE finds and concludes that District provided the accommodations in conformity with Student's April 2025 IEP.

2. Prong 2: Was the Shortfall Material?

Because there was one shortfall in accommodations provided versus those required by Student's IEP regarding access to fidgets on December 18, 2024, the CDE must next determine whether this shortfall represents a material failure to implement the IEP such that Student was denied FAPE.

Here, although School Substitute did not have access to and an understanding of Student's February 2024 IEP and therefore did not provide Student access to fidgets on December 18, 2024, School otherwise implemented Student's IEP accommodations, including access to fidgets, with fidelity. (See Section C above). Other than on December 18, 2024, the Record indicates that School staff understood their responsibilities for implementing Student's IEPs and consistently provided the required accommodations. (FF #s 54-66). Student brought a case of multiple fidgets with him to School every day, and he was ordinarily always allowed to use a fidget so long as it was not a distraction. (FF #s 41-44, 55-58). Student was denied one accommodation on one day, representing only a minor gap between Student's IEP and the provision of services. (FF # 46).

For these reasons, the CDE finds and concludes that the shortfall was not material, and thus District implemented Student's IEP, as required by 34 C.F.R. § 300.323(c)(2); see *Van Duyn*, 502 F.3d at 821 ("There is no statutory requirement of perfect adherence to the IEP.")

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 CDE'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).

Here, School Substitute was not aware of Student's February 2024 IEP and her implementation responsibilities for one day when she substituted for Fourth Grade Teacher 1. (FF #s 26-28, 46). As a result, School did not implement one of Student's accommodations, access to fidgets, on a single day. (FF # 46). School Substitute's lack of understanding of Student's IEP was an anomaly that reflects the unplanned nature of Fourth Grade Teacher 1's absence rather than any issues with District and School policies, practices, and procedures. (FF #s 4-12, 29). School already has robust procedures in place to ensure that substitutes are informed of their responsibilities for implementing IEPs. (FF #s 10-12). School Substitute ordinarily would have had access to an IEP snapshot with information on Student's access-to-fidgets accommodation through a substitute plan, as required by School policy, but she did not because Fourth Grade Teacher 1 was out on unplanned leave without a substitute plan. (FF #s 11, 28-29). Even without a substitute plan, per School protocol, School Substitute could have accessed the IEP snapshot in a classroom folder or

cabinet but was unaware of this option. (FF #s 11, 28). As another safety net, ordinarily there would have been a grade-level TA helping to support IEP implementation, but there was not because School Substitute had been filling in as the fourth-grade TA. (FF #s 12, 28). Aside from this anomaly, School special education staff ensures that staff has access to and an understanding of their responsibilities for IEP implementation through mandatory special education trainings, deliberate conversations with general education teachers regarding implementation, and an established protocol with built-in contingencies to ensure that substitute teachers have access to and an understanding of Student's IEPs. (FF #s 4-12). For these reasons, 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. Ensuring that IEPs are accessible to staff responsible for their implementation and that staff understand their specific implementation responsibilities, as required by 34 C.F.R. § 300.323(d).

For the reasons outlined in the legal conclusions, the CDE has not ordered any remedies to correct this noncompliance.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; *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.

Dated this 26th day of November, 2025.



Elizabeth "EP" Stonehill
State Complaints Officer

APPENDIX

Complaint, pages 1-7

Response, pages 1-6

- Exhibit A: IEPs
- Exhibit B: Prior Written Notice
- Exhibit C: Documentation from IEP Meetings
- Exhibit D: Schedule, Grade Reports, and Attendance Records
- Exhibit E: Staff Acknowledgement
- Exhibit F: District and School Calendar
- Exhibit G: District Policies
- Exhibit H: Communications
- Exhibit I: Contact Information
- Exhibit J: Delivery Verification

Telephone Interviews

- Parents: October 22, 2025
- Case Manager 1: October 27, 2025
- Fifth Grade Teacher: October 27, 2025
- School Substitute: October 27, 2025
- Fourth Grade Teacher 2: October 27, 2025
- District Director: October 27, 2025