

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

**State Complaint SC2025-619
Cherry Creek School District**

DECISION

INTRODUCTION

On October 22, 2025, the parent (“Parent”) of a student (“Student A”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Cherry Creek 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.

On December 19, 2025, and January 16, 2026, the CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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 October 22, 2024. Information prior to that date 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 implement Student A’s Individual Education Program (“IEP”) from the start of the 2025-2026 school year to present because it:
 - a. Did not make the IEP accessible to teacher or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and
 - b. Did not provide the sign language interpreting services required by the IEP, as required by 34 C.F.R. §§ 300.34(c)(4), 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 A is ten years old and attends a District elementary school (“School”) in fourth grade, where she participates in District’s center-based program for students who are deaf and/or hard of hearing (“DHH”). *Exhibit A*, p. 1. She qualifies for special education and related services under the disability category of Hearing Impairment, Including Deafness. *Id.*
2. Student A is friendly, hardworking, and always wants to make others happy, but sometimes struggles to advocate for herself when she has trouble understanding class material. *Interviews with Parent, Student’s DHH Teacher (“DHH Teacher”), and Student’s general education teacher (“General Education Teacher”).* She has strong reading, writing, and artistic skills, and loves to play games like dodgeball and four-square with her friends. *Id.*
3. Student was born with significant hearing loss in both ears. *Interview with Parent; Exhibit B*, p. 61.
4. In his Complaint, Parent expressed concerns regarding whether District provided Student A with the educational sign language interpretation services required by her IEP during the 2025-2026 school year. *Complaint*, p. 4.
5. Interviews conducted and documents produced during this investigation raised questions about whether the concerns extended beyond Student A to all students at School whose IEPs required educational sign language interpretation services (collectively, “Students”). *Interviews with Parent, DHH Teacher, District’s Director of Special Education (“Director”), and District’s speech-language liaison (“Coordinator”); Exhibits M and N.* The CDE requested additional documents as part of this investigation to consider and ensure the appropriate

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

future provision of services for all IDEA-eligible students in the District pursuant to the CDE's general supervisory authority. 34 C.F.R. § 300.151(b)(2).

B. Student A's IEP

6. This investigation involves the implementation of Student A's IEP ("IEP A"), which was in effect throughout the 2025-2026 school year, and which was reviewed and revised following a triennial reevaluation in September 2025. *Exhibits A, B, and C.*
7. IEP A documents Student A's present levels of academic achievement and functional performance, including a description of Student A's strengths and interests, a review of her educational performance and progress toward previous annual IEP goals, a description of the impact of Student A's disability, and input from Parent. *Exhibit A, pp. 5-8.*
8. IEP A's Consideration of Special Factors section notes that Student A is deaf or hard of hearing and has unique communications needs, and references the attached Communication Plan. *Id.* at p. 9. It also states that Student A requires the use of assistive technology and is eligible for specialized transportation. *Id.*
9. IEP A contains four annual goals, one each in the areas of reading, writing, and mathematics, and one directed toward improving Student A's ability to self-advocate related to her hearing loss. *Id.* at pp. 9-11.
10. IEP A identifies 18 accommodations as necessary for Student A to access general education, including the provision of an authorized sign language interpreter. *Id.* at pp. 11-12.
11. IEP A's service delivery statement describes the services to be provided to Student A in the school environment, including instruction from a teacher of the deaf and hard of hearing, mental health services, audiology services, and speech-language services. *Id.* at p. 14. In addition, the service delivery statement describes that Student A will "have access to an authorized educational sign language interpreter within the general education classroom." *Id.*
12. The IEP team determined that it was appropriate that Student A be in the general education class at least 80% of the time. *Id.* at p. 15.
13. IEP A includes a "Communication Plan for Student Who is Deaf/Hard of Hearing," a document that describes Student A's modes of language and communication and District's plan for providing Student A with effective instruction and access to peer groups, adult role models, and extracurricular activities. *Id.* at pp. 17-19.
14. Student A's communication plan describes that she uses a combination of spoken English and sign language to both express and receive communication. *Id.* at p. 17. It states that although Student A can hear some spoken language through the use of her cochlear implants, "she struggles to comprehend and follow the message without sign language being provided." *Id.*

The communication plan states that Student A will receive her instruction through “sim-com,” or simultaneous communication of sign language and spoken English. *Id.* Student A’s DHH teacher will deliver instruction in both modes, and Student A will be provided an authorized sign language interpreter in order to receive signed communication in other settings. *Id.* at pp. 17-19.

C. Other Students at School

15. School serves students from kindergarten through fifth grade. *Interviews with DHH Teacher and Coordinator.* [It allows for students who are DHH] to learn alongside peers who communicate similarly. *Id.*
16. In total, thirteen students at School are identified as DHH in their IEPs. *Exhibit M.* Of those students, eleven—including Student A—are identified in their IEPs as requiring the use of an educational sign language interpreter during the 2025-2026 school year. *Exhibits M and N.*
17. Student B is a kindergartener whose IEPs, dated January 2025 and August 2025, identify that she requires the provision of a sign language interpreter. *Exhibit N-1*, pp. 30, 34.
18. Student C is a first grader whose IEP, dated January 2025, identifies that she requires a sign language interpreter. *Exhibit N-2*, pp. 17-19.
19. Student D is a first grader whose most recent IEP dated September 26, 2025, identifies that he requires a sign language interpreter. *Exhibit N-3*, p. 19. Prior to this date, Student D’s October 2024 IEP describes that he required, in lieu of an interpreter, a signing paraprofessional to assist in communicating with others in the classroom. *Id.* at p. 16.
20. Student E is a third grader whose IEPs, dated May 2025 and September 2025, identify that he requires a sign language interpreter. *Exhibit N-4*, p. 18-25.
21. Student F is a third grader whose IEP, dated February 2025, identifies that he requires a sign language interpreter. *Exhibit N-5*, pp. 16-21.
22. Student G is a fourth grader whose IEP, dated April 2025, identifies that he requires a sign language interpreter. *Exhibit N-6*, pp. 13, 16, 20-22.
23. Student H is a fifth grader whose IEP, dated March 2025, identifies that she requires a sign language interpreter. *Exhibit N-7*, pp. 11, 14, 18-20.
24. Student I is a fifth grader whose IEP, dated December 2024, identifies that she requires a sign language interpreter. *Exhibit N-8*, pp. 9, 12, 17-29.
25. Student J is a fifth grader whose IEP, dated December 2024, identifies that he requires a sign language interpreter. *Exhibit N-9*, pp. 10, 12, 16-18.

26. Student K is a fifth grader whose IEPs, dated October 2024 and October 2025, identify that he requires a sign language interpreter. *Exhibit N-10*, pp. 11, 17-19, 39, 45-49.

D. District's Practices, Policies and Procedures

27. Director described District's expectations for staff members with respect to compliance with IDEA and ECEA, stating that staff members are expected to be knowledgeable regarding their obligations under the law. *Interview with Director*.

28. District offers extensive professional development programming to staff members to ensure that they understand their duties. *Id.* In addition, District employs several coordinators who meet regularly with building-level staff to review new and ongoing issues in special education and answer any questions related to the building's students. *Id.*

29. Director stated that each student's case manager is responsible for ensuring that all building-level staff responsible for implementing components of a student's IEP are familiar with, and have access to, the IEP document. *Id.*

30. Director stated that District expects its staff members to implement student IEPs with fidelity to the language of the document. *Id.*

E. Accessibility of IEPs to Teachers and Others

31. DHH Teacher was the case manager assigned to each of Students A through K during the 2025-2026 school year. *Interview with DHH Teacher; Exhibits A and N*.

32. At the start of each school year, DHH Teacher described that she and other special education teachers at School would meet with each general education teacher on a rotation during the week before the start of the school year to review and discuss the IEPs of the students in their respective classrooms. *Interviews with DHH Teacher and General Education Teacher*.

33. During that meeting, DHH Teacher ensured that the staff members were familiar with any assistive technology required by the Students' IEPs, such as the FM transmitters used alongside students' cochlear implants. *Id.*

34. DHH Teacher also provided teachers with a copy of each Student's IEP snapshot, a document which describes the student's services, accommodations, and other information necessary to implement the Student's IEP. *Id.*

35. Finally, DHH Teacher would ensure that each teacher responsible for a Student's IEP knew how to access the IEP through District's online student information management system. *Interview with DHH Teacher*. General Education Teacher described that she understood how to access the IEPs for Students A and G, the students on her caseload involved in this investigation. *Interview with General Education Teacher*.

F. Sign Language Interpretation

36. Educational sign language interpreters assist students who are DHH in accessing their education by translating auditory input from the school environment into visual input—usually American Sign Language (“ASL”)—that the student can understand. *Consultation with CDE Specialist; Interview with DHH Teacher*. Colorado law requires that sign language interpreters meet a set of qualification standards and receive CDE authorization to interpret for students in Colorado schools. C.R.S. § 22-20-116.
37. Educational sign language interpreters can be beneficial for a student even when that student is able to receive some auditory input using a cochlear implant. *Id.* The added visual input of the interpreter’s signing helps a student to be able to understand those portions of spoken language that they are unable to understand through auditory input alone. *Id.*
38. Due to this, instruction for many students who are DHH is provided through simultaneous communication (or sim-com)—delivery of instructional material through both spoken English and ASL. *Id.*
39. The act of accessing information through sim-com is a skill in its own right—without practice and training many students have significant difficulty attending to both the spoken language of the instructor and the sign language of the interpreter at the same time. *Id.* Often, students will regress in this skill over school breaks or during other interruptions in the student’s practice of sim-com. *Id.* Because many students will use sign language interpretation to receive information during their adult lives, the development and maintenance of this skill is important even outside of the classroom. *Id.*
40. Many parents of students who are DHH do not use sign language at home. *Id.* Because of this, the use of sim-com is an important contributor to many students’ development of language and vocabulary in ASL. *Id.*
41. Although a primary function of sign language interpretation is to convey instructional material, the impact of sign language interpretation extends beyond academics. *Id.* Interpreters may also facilitate students’ interaction with peers and others in the school environment. *Id.* In these interactions, the student may rely more heavily on the signed input, because the individuals often are not wearing an FM transmitter designed to broadcast auditory input to the student’s cochlear implant. *Id.*
42. Additionally, students often receive and communicate information regarding their needs and the school environment through the facilitation of an interpreter. *Id.*

G. The Sign Language Interpreter Vacancy at School

43. Prior to the 2025-2026 school year, School maintained a team of educational sign language interpreters to provide services to students whose IEPs identified a need for that service. *Interviews with DHH Teacher and Coordinator*. School employed one full-time interpreter on

staff and contracted with staffing agencies to fill the remainder of its interpreter positions. *Id.*

44. School assigns one interpreter to cover each grade level with a student whose IEP requires sign language interpretation. *Id.* Because there were no second-grade students at School who required sign language interpretation during the 2025-2026 school year, five total interpreters were needed to implement Students' IEPs. *Exhibit M.*
45. During the summer before the 2025-2026 school year, Coordinator requested quotes from the staffing agencies for four contract interpreters. *Interview with Coordinator.*
46. On August 6, 2025, the week before students were set to return to School, Director and Coordinator were informed that District would be suspending its interpreter staffing contracts. *Interviews with Director and Coordinator.*
47. That day, Coordinator called DHH Teacher to inform her that the four contract interpreters expected to work at School during the 2025-2026 school year would no longer be available. *Interviews with Coordinator and DHH Teacher.*

H. District's Response to the Vacancy

48. Upon learning that there would be a staffing vacancy impacting interpretation services, DHH Teacher met with School's other DHH teacher and School's on-staff sign language interpreter to develop a triage plan to meet Students' needs until the vacancy could be resolved. *Interview with DHH Teacher.* School's DHH teachers, though proficient in sign language, are not authorized sign language interpreters. *Exhibit G.*
49. On August 10, 2025, the day before students were scheduled to return to School, Coordinator sent an email to the parents of all affected Students, informing them that Students would not have access to contract interpreters to start the school year. *Exhibit J*, pp. 262-263.
50. During the time that School was understaffed, School's three signing-proficient staff members attempted to push into Students' classrooms as needed to provide communication support. *Interview with DHH Teacher.* In providing this support, the staff members prioritized those students with the most limited auditory access. *Id.*
51. In addition, when available, District's itinerant DHH teachers and the on-staff interpreters assigned to District's middle and high school center-based programs would fill in at School during their planning periods. *Interview with Coordinator.*
52. To maximize the benefit of this communication support to Students, DHH Teacher attempted to organize a schedule wherein one of the DHH teachers or the sign language interpreter would be in the general education classroom for a fifteen-minute block during each class period, during which they would interpret the teacher's instruction. *Interview with General Education Teacher.* Typically, communication support would not be provided during the

remainder of the period, while Students worked on exercises or engaged in class activities.
Id.

53. DHH Teacher and General Education Teacher described that the communication support provided to Students by these staff members was not a substitute for the interpretation services required by Students IEPs—a sign language interpreter typically works with the general education teacher before the class to identify key vocabulary that might need to be signed during the lesson. *Interviews with DHH Teacher and General Education Teacher.* Due to the time constraints on School’s signing-proficient staff—two of whom had instructional duties to attend to in addition to this communication support—this was often not possible.
Id.

I. Impact to Students During Vacancy

54. DHH Teacher acknowledged that despite the efforts of School staff to mitigate the impact of the vacancy, all Students were adversely affected by the lack of interpretation services.
Interview with DHH Teacher.

55. General Education Teacher described that during the vacancy, Students A and G were substantially limited in their ability to participate in classwork. *Interview with General Education Teacher.* During work periods, they were often unable to understand the instructions given and could not begin work until General Education Teacher approached them individually to deliver instructions. *Id.* Additionally, she stated that Students A and G were unable to participate in class discussions without the assistance of an interpreter. *Id.*

56. On September 23, 2025, Coordinator performed a classroom observation of Student A as part of her triennial re-evaluation. *Exhibit B*, p. 53. This observation report described that while Student A comprehended the broad contours of the instructional material, she did not employ any of the vocabulary taught during the lesson and struggled to understand classroom instructions such as the page number the teacher asked the students to turn to. *Id.* When Coordinator sat down at a table with Student A and provided her with some simultaneous communication, “she smiled and lit up, signing and speaking back to [Coordinator].” *Id.*

57. The social and emotional assessment included in her re-evaluation noted that “[d]uring table time, it is evident that [Student A] has a difficult time hearing her peers and being able to keep up with the conversations with the lack of an interpreter.” *Id.* at p. 60. This assessment also described that Student A “wasn’t able to finish a test because she didn’t understand it, and didn’t have the support of an interpreter.” *Id.*

58. DHH Teacher described that Student F, a third grader with autism, began to express significant behavioral concerns during the interpreter vacancy due to frustration at being unable to receive or express communication regarding his needs in the school environment.
Interview with DHH Teacher.

59. Student E, another third grader, demonstrated significant attendance issues during the vacancy. *Id.*
60. Student K, a fifth grader, described that without an interpreter, he frequently misses information in class and relies on peers for support. *Exhibit N-10*, p. 3. On one occasion when one of his DHH peers was struggling to understand what was happening in the classroom, Student K helped to resolve the issue by communicating to the peer in sign language. *Id.*

J. Resolution of the Vacancy

61. During the interpreter vacancy, Director and Coordinator worked to identify new leads for potential sign language interpreters but were unable to find appropriate candidates willing to join District mid-year. *Interviews with Director and Coordinator.*
62. Meanwhile, District worked with two of the staffing agencies with whom their contract had been suspended to reach an agreement to resume contracting of agency staff. *Response*, p. 5. Signed agreements to this effect were secured in October 2025, and Director and Coordinator worked to approve the new contract interpreters at School. *Id.*; *Interviews with Director and Coordinator.*
63. On October 30, 2025, the first contract interpreters began work at School, primarily in the fourth-grade classroom with Students A and G. *Interview with DHH Teacher; Exhibit O.*
64. On November 5, 2025, a second interpreter from the same agency began work at School, providing interpretation services to Students. *Id.*
65. Two more interpreters from that agency began working at School several days per week starting the week of November 11, 2025 – as of November 12, 2025, School’s interpretation team was fully staffed, with one on-staff interpreter and four contract interpreters. *Id.*
66. On November 13, 2025, a second staffing agency was approved, and began sending interpreters to School as well. *Id.*
67. As each new contract interpreter was brought into School, DHH Teacher described that she and the other signing-proficient staff were able to provide more focused support to the remaining gaps in service, until sufficient staffing allowed for a return to typical scheduling. *Id.*
68. In light of this vacancy, District has taken steps to address the long-term availability of sign language interpreters in District, reaching out to universities to build connections with aspiring interpreters and developing a program to provide internship opportunities to those students. *Interview with Director.* District also conducted a market study to ensure that it would be competitive in the labor market for sign language interpreters moving forward. *Id.*

69. Following the restoration of Student A’s interpretation services, Parent described that Student A is enjoying her time at School substantially more, and that she can participate in class activities with her peers. *Interview with Parent*. Similarly, General Education Teacher described a marked improvement in Student A’s academic performance, particularly in math, following the restoration of interpretation services. *Interview with General Education Teacher*.
70. DHH Teacher reported similar outcomes for other students on her caseload but cautioned that many of her students were still working to re-develop skills in working with an interpreter. *Interview with DHH Teacher*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District ensured that staff had access to and an understanding of responsibilities for implementing Students’ IEPs, as required by 34 C.F.R. § 300.323(d). District did not implement Students’ IEPs during the vacancy—from August 11, 2025 through November 12, 2025—as required by 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE.

Parent’s concern is that District did not implement the sign language interpretation services required by Student A’s IEP due to a vacancy. (FF # 4.) Due to the nature of the vacancy, the CDE also investigated implementation of sign language interpretation services for ten additional Students at School whose IEPs also required sign language interpretation. 34 C.F.R. § 300.151(b)(2); (FF # 5.)

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.*, 580 U.S. at 392 (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 are made available to the child in accordance with the IEP. 34 C.F.R. §§ 300.324(d), 300.324(c)(2).

The IDEA does not excuse noncompliance with IEP implementation due to staff shortages. *E.g.*, *El Paso Cty. Sch. Dist. 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also Denver Public Sch.*, 124 LRP 15404

(SEA CO 5/2/2024); *Denver Public Sch.*, 124 LRP 34377 (SEA CO 1/19/2024); *Academy Sch. Dist. 20*, 124 LRP 34397 (SEA CO 3/22/2024).

B. IEP Implementation: 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).

Here, the Record demonstrates that the providers at School had access to and were aware of their responsibilities under Students’ IEPs. DHH Teacher described the process by which she ensures that each staff member responsible for the implementation of a student’s IEP learns about their responsibilities under that IEP. (FF #s 31-35.) At the start of the 2025-2026 school year, she met with the general education teachers and other responsible staff members for students on her caseload to review the IEP and that staff member’s implementation obligations. (FF # 32.) Because her students typically use assistive technology to access auditory information, DHH Teacher ensured that staff members understood how to use that technology. (FF # 33.) She provided each staff member with a copy of an IEP snapshot, summarizing the information needed to implement the IEP, and ensured that the staff members knew how to access information about the IEP on District’s case management system. (FF #s 34-35.) Accordingly, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

C. IEP Implementation: Sign Language Interpreting Services

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.* at 1214). 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 Services?*

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

Each of the eleven Students involved in this matter had an IEP which required sign language interpretation services during time spent in the general education classroom. (FF #s 10-11, 14, 17-26.) For ten of the eleven Students, that service was required throughout the 2025-2026 school year, and for Student D, that service was required from September 26, 2025 forward. (*Id.*)

Less than a week before the start of the 2025-2026 school year, School staff learned that the four contract sign language interpreters they anticipated would not be working at School, leaving School with one sign language interpreter out of the five necessary to implement Students’ IEPs. (FF #s 43-46.) From the start of the 2025-2026 school year on August 11, 2025 through October 30, 2025, that single interpreter, along with School’s two DHH teachers, attempted to provide communication support to five classrooms of Students. (FF # 48-52.) This would typically consist of 15-minute blocks of sign language support during instructional periods, but would leave Students without access to sign language during the remainder of their school day. (FF # 52.) DHH Teacher acknowledged that although this communication support was helpful to Students, it was not a substitute for the interpretation services required by the IEPs, which directly complement the instruction and teach Students valuable skills for adult life. (FF #s 41, 53.)

Beginning on October 30, 2025, School began to receive contract interpreters from its staffing agency partners, and the signing-proficient School staff were able to provide more focused support to the remaining gaps in service. (FF #s 62-63, 67.) As of November 12, 2025, School had four contract interpreters working in the building and was able to assign one interpreter to each classroom as originally intended. (FF # 65.)

The CDE recognizes the value of the work School staff performed on short notice to address unexpected vacancies. Specifically, these three signing-proficient staff members performed work far beyond their job descriptions to support Students during an exceptionally difficult school year.

Nevertheless, the CDE finds and concludes that there was a shortfall in sign language interpretation services for each of the Students. For each of the Students except Student D, that shortfall lasted from the start of the school year on August 11, 2025, through November 12, 2025. For Student D, that shortfall lasted from September 26, 2025, the date on which Student D's IEP began to require interpretation services, through November 12, 2025.

2. Prong 2: Was the Shortfall Material?

Because there was a shortfall in the provision of services required by the IEP, the CDE must next determine whether this shortfall represents a material failure to implement the IEPs such that Students were denied FAPE.

Here, the sign language interpretation services required by Students' IEPs was an essential component of ensuring that Students had access to their educational environment. (FF #s 36-42.) For these Students, all of whom had limited auditory access, interpretation allows them to understand what is happening in the classroom, express their needs, and interact with peers. (FF #s 41-42.) In addition, the use of an interpreter is itself a skill that many Students will take with them into their adult lives, and it is one of their key modes of learning sign language. (FF # 39.)

The importance of this service is reflected in Students' experiences during the shortfall in services. (FF #s 54-60.) Students were often unable to understand class directions and could not start work until a teacher approached them individually to assist them. (FF #s 55-56.) They were also unable to participate in class discussions without the help of an interpreter. (FF #s 55, 57.) Some Students began to demonstrate behavioral concerns due to an inability to communicate with others, and others experienced attendance issues. (FF #s 58-59.) In the fifth-grade classroom, Students would rely on one another to understand the classroom environment. (FF # 60.) Upon the restoration of services, Students showed marked improvements. (FF # 69.)

For these reasons, the CDE finds and concludes that the shortfall in interpretation services was material, and thus District did not implement Students' IEPs, as required by 34 C.F.R. § 300.323(c)(2); *see Van Duyn*, 502 F.3d 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.")

D. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been in if not for noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, Students’ IEP teams determined that they would benefit from the sign language interpretation services outlined in their IEPs. (FF #s 10-11, 14, 17-26.) During the staff shortage, some School staff provided communication support but did not provide interpretation services. (FF #s 58-53.) This impacted Students’ academics, behavior, attendance, social and emotional development, and ability to interact with disabled and non-disabled peers. (FF # 54-60.) Accordingly, the CDE finds and concludes that compensatory services are necessary to restore Students to the position they would be in had the noncompliance not occurred.

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature and likely to impact the future provision of services for all children with disabilities in District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authorities, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the BOCES. 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 State Enforcement Agency’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, the Record indicates that District’s noncompliance is not systemic with respect to IEP implementation. This noncompliance was the result of an unusual interruption in the relationship between District and the staffing agencies it contracts with, leading to a staff shortage less than a week before the start of the school year. (FF #s 45-47.) That interruption has been resolved, and School is once more receiving contract interpreters from those agencies. (FF # 61-67.)

Unfortunately, challenges with special education staffing extend beyond individual school buildings—they are widespread issues affecting districts and states across the country. District, recognizing these challenges, has taken steps to attempt to address the potential for staffing issues in the future by seeking to reassess its competitiveness in the labor market, and building connections that may improve its ability to hire in the future. (FF # 68.)

Accordingly, the CDE finds and concludes that District’s noncompliance is not likely to impact the future provision of services for all children with disabilities in District.

REMEDIES

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

1. Implementation of Students' IEPs, as required by 34 C.F.R. § 300.323.

To demonstrate compliance, District is ORDERED to submit a corrective action plan ("CAP") by **Tuesday, March 17, 2026**, that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

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

1. Final Decision Review

- a. Director and Coordinator must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.323 by **Monday, March 30, 2026**. 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 **Friday, April 3, 2026**.

2. Compensatory Services

- a. District shall provide each of Students A through K with the opportunity to attend compensatory programming. This program shall:
 - i. Be provided to Students at District's expense;
 - ii. Include no less than 50 hours of Student engagement time;
 - iii. Be taught using ASL, or include the provision of an authorized sign language interpreter; and
 - iv. Provide the opportunity for Students to engage with peers.
- b. The program may be operated by a school or educational agency other than District. If District selects a program operated by another school or educational agency, District shall pay Students' enrollment costs directly to the program operator. District may also select a current program operated by District, or develop a new program, so long as the program complies with the requirements outlined in this Remedy. District will determine the schedule for the program.
- c. Participation in the selected program must occur prior to **August 31, 2026**.
- d. District shall provide all necessary transportation to allow Students to participate in the selected program.

- e. By **Monday, March 30, 2026**, District shall identify a program, or programs, meeting the criteria outlined in this Remedy, and submit its selection, as well as information about the program such as a syllabus or schedule, to the CDE for approval.
- f. By **Friday, April 10, 2026**, the CDE will approve or reject District's identified program(s).
- g. By **Friday, April 3, 2026**, District shall submit to the CDE for review a draft letter to be sent to the parents of each Student. This letter shall notify parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student who requires compensatory services as a result of District's noncompliance as identified in the decision.
 - i. This may be a form letter, but it must include an individualized section indicating the services the Student did not receive during the Vacancy.
 - ii. The letter must include a section requesting parents of each Student to sign, acknowledging their receipt of the letter and understanding of its contents.
- h. The letter must describe that District will provide each Student with the opportunity to attend a summer program, and state the minimum requirements of that program outlined in this Remedy. It must also state that District will provide Students with transportation to and from the program.
 - i. The letter must include a section requiring parents of each Student to consent or opt out of the compensatory education services.
 - ii. The CDE will approve the draft letter, approve it with modifications, or reject it by **Friday, April 3, 2026**.
- i. By **Friday, April 10, 2026**, District shall send the approved letter to the parents of Students.
 - i. The District must translate the approved letter as necessary to provide it to any parents with limited English proficiency in their native language.
 - ii. The District must send the letter via both email (if the parent has an email address) and postal mail.
 - iii. The District must simultaneously submit a signed assurance to the CDE that the approved letters were sent to Students' parents, along with a list of Students' parents' names, Students' names, contact information, and the date that the letter was sent to each.

- iv. If a Student no longer attends any District school or program, the District must make reasonable efforts to contact parents using any last known numbers or email addresses to verify the parents' current contact information.
 - v. If District is unable to reach parents, the District will be excused from delivering compensatory services for that student, provided that District diligently attempts to reach parents and documents such efforts consistent with 34 C.F.R. § 300.322(d). A determination that District diligently attempted to contact parents whose student no longer attends a District school, and should thus be excused from providing compensatory services, rests solely with the CDE.
- j. By **Friday, April 24, 2026**, Parents of Impacted Students shall provide written consent for the provision of compensatory services to District. If Parents do not provide written consent for services by this date, District will be excused from providing compensatory services.
- i. By **Friday, May 1, 2026**, District shall provide the written consent forms to the CDE Special Education Monitoring and Technical Assistance Consultant.
- k. If District has selected an outside provider to provide this compensatory programming, by **Friday, May 1, 2026**, District shall take all necessary steps, including paying enrollment costs, to ensure that Students are enrolled in the program.
- i. Parents may at any time opt out of some or all of the remaining programming. In such case, the District shall submit evidence of parents' written request to opt out of the compensatory services. Parent may withdraw consent for compensatory services based upon District's schedule for delivery of these services, but District will be excused from delivering any services from which Parents opt out.
- l. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. The compensatory services must be provided to Students at such a time to ensure that Students are not deprived of the instruction they are entitled to, including Extended School Year ("ESY") services. If a Student's participation in an outside provider's summer program(s) conflicts with ESY services offered by District, District may facilitate participation in the outside program(s), provided that it offers the Student the opportunity to receive makeup ESY services at another time, subject to CDE approval.

- m. To verify that Student has participated in the programs required by this Decision, District must submit to CDE either proof of enrollment or proof of Parents' choice not to participate in any programs by **September 1, 2026**. If District has selected a program operated by an outside school or agency, District shall submit proof of payment of applicable enrollment fees. For those Students whose parents have consented to participate in the program(s), District shall also submit service logs or other documentation demonstrating the Student's attendance at the program(s), and the provision of sign language services.
- n. If for any reason, including illness, Students are not available to attend the program(s), the District will be excused from providing the service scheduled for that session.

NOTE: CDE Special Education Monitoring and Technical Assistance Consultant will contact District with specific instructions for securely submitting the documentation detailed above. The CDE will approve or request revisions that support compliance with the CAP. After approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance. 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'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 ("SCO").

Dated this 17th day of February, 2026.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Exhibit 1: Various documents in support of Complaint

Response, pages 1-9

- Exhibit A: IEP for Student A
- Exhibit B: Evaluations for Student A
- Exhibit C: PWNs for Student A
- Exhibit D: Schedule, Grades, and Attendance for Student A
- Exhibit E: Progress Monitoring for Student A
- Exhibit F: Service Logs
- Exhibit G: Licensures and Certifications
- Exhibit H: District Calendar
- Exhibit I: District Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: List of District and School Staff with Knowledge
- Exhibit L: n/a
- Exhibit M: List of Students at School with Interpretation Services
- Exhibit N: IEPs for Students A through K
- Exhibit O: Timeline of Contract Interpreters

Telephone Interviews

- Parent: December 15, 2025
- General Education Teacher: January 5, 2026
- DHH Teacher: January 5, 2026
- Director: January 7, 2026
- Coordinator: January 8, 2026