Decision of the Colorado Department of Education
Under the Individuals with Disabilities Education Act (IDEA) and
Protection of Students from Restraint and Seclusion Act (RSA)

State Complaint SC2026-563
Pueblo County School District 70

DECISION

INTRODUCTION

On April 21, 2026, the parent ("Parent") of a student ("Student") identified as a child with a disability under the Individuals with Disabilities Education Act ("IDEA")[1] filed a state complaint ("Complaint") against Pueblo County School District 70 (Pueblo 70 (Rural)) ("District"). The Colorado Department of Education ("CDE") determined that the Complaint identified two allegations subject to its jurisdiction under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153 and the Protection of Students from Restraint and Seclusion Act ("RSA")[2] and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act ("RSA Rules").[3]

The CDE extended the 60-day investigation timeline because the parties agreed to participate in mediation, consistent with 34 C.F.R. § 300.152(b)(1)(ii). The mediation resulted in impasse, and the CDE resumed the investigation on May 26, 2026. The CDE subsequently extended the 60-day investigation timeline due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1)(i).

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 RSA and 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 not more than one year prior to the date the Complaint was properly filed. 34 C.F.R. § 300.153(c); RSA Rule 2.07(2)(f).

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[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] In May 2025, Colorado adopted the RSA (C.R.S. § 22-15.5-101 *et seq.*) which replaced the Protection of Persons from Restraint Act ("PPRA") as the governing framework regulating the use of restraint and seclusion in schools. H.B. 25-1248 (Co. 2025).

[3] The RSA Rules are codified at 1 C.C.R. 301-45.

Accordingly, findings of noncompliance shall be limited to events occurring on or after April 21, 2025. Information prior to April 21, 2025 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 RSA Rule 10.00(2)(f):[4]

1. School did not properly restrain Student on August 27, 2025, because it:

    a. Used restraint in a non-emergency and without extreme caution, as prohibited by PPRA Rule 2.01(1)(a).

    b. Did not first use less restrictive alternatives or determine that less restrictive alternatives would be inappropriate or ineffective under the circumstances, as required by PPRA Rule 2.01(1)(b).

    c. Used restraint and/or seclusion for more than the period of time necessary, as prohibited by PPRA Rule 2.01(3)(a).

    d. Did not provide proper notification and documentation of the use of restraint and/or seclusion, as required by PPRA Rule 2.04(2)(c)-(e).

Additionally, the Complaint raises the following allegation subject to the CDE's jurisdiction under 34 C.F.R. § 300.153(b)[5] of the IDEA:

2. District did not implement Student's Individualized Education Program ("IEP") from November through December 2025 and from February through March 2026 because it:

    a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and

    b. Did not provide the support services listed in Student's IEP, specifically a sticker reward system, as required by 34 C.F.R. § 300.323(c).

[4] The RSA became effective in May 2025, so the RSA was the governing law at the time the of the incident in August 2025. However, new rules implementing the RSA were not adopted until April 2026. To the extent the RSA and the old PPRA rules ("PPRA Rules") conflict, the RSA controls. Because this Complaint was filed before the new RSA Rules were adopted, the allegations were accepted using the language of the PPRA Rules.

[5] 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.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,[6] the CDE makes the following findings of fact ("FF"):

A. Background

1. Student attended kindergarten at a charter school authorized by District ("School") during the 2025-2026 school year. *Exhibit G*, p. 1*; Interview with Parent*. District is responsible for providing FAPE to all IDEA-eligible children with disabilities attending charter schools it authorizes. ECEA Rule 2.02.

2. She qualifies for special education and related services under the disability categories of Developmental Delay and Speech or Language Impairment. *Exhibit A*, p. 1.

3. Student is a kind, empathetic, and energetic child who loves dinosaurs, music, art, and story time. *Interviews with Parent, Teacher, and Educational Assistant*.

4. This investigation concerns an incident at School on August 27, 2025. *Complaint*, p. 4; *Response*, pp. 3-4. On that date, Parent alleges School improperly restrained Student and that School did not appropriately document its use of restraint. *Complaint*, p. 4; *Interview with Parent*. This investigation also involves the implementation of an accommodation in Student's IEP. *Complaint*, p. 5; *see generally Exhibit A*.

B. District's Policies, Practices, and Procedures: Restraint

5. District has a written policy governing the use of restraint. *Interviews with Director of Exceptional Student Services ("Director of ESS") and Principal*; *see Exhibit P*, pp. 168-77. The policy outlines restraint definitions and practices consistent with the RSA. *See Exhibit P*, pp. 168-77.

6. School adheres to District's restraint policy. *Interviews with Director of ESS and Principal.*

7. Following any use of restraint, School would document the incident as required under District policy and input all documentation into PowerSchool, an online system that automatically sends the information to District. *Interview with Principal*.

C. August 27, 2025 Incident

8. In her Complaint, Parent alleges that on August 27, 2025, District improperly restrained Student. *Complaint*, p. 4; *Interview with Parent*. Specifically, Parent contends Student's kindergarten teacher ("Teacher") "dragged" her down a hallway and into a classroom where

[6] The appendix, attached and incorporated by reference, details the entire Record.

Parent was attending a meeting, at which time Teacher "threw" Student at Parent. *Id.* Parent also alleges that District did not appropriately document the use of restraint. *Id.*

9. On August 27, 2025, Student exhibited several disruptive behaviors throughout the school day, including screaming, crying, and throwing rocks at another student on the playground. *Interview with Teacher*. Although Teacher described that Student had a "rough day," she indicated that this was "typical" for Student during the first few weeks of the school year. *Id.*

10. After school was dismissed, Teacher kept Student in her classroom while Parent and School's Dean of Special Services ("Dean of Special Services") attended an unrelated meeting down the hall in the Collaboration Room. *Id.*; *Interviews with Parent and Dean of Special Services*.

11. At or around the time that she believed the meeting had ended, Teacher escorted Student to the Collaboration Room. *Interview with Teacher*. Teacher walked side-by-side with Student down the hallway while holding Student's wrist between her thumb and middle finger "like a little bracelet." *Id.; see also Response*, p. 3. Teacher stated that this was her typical practice when walking with students, along with linking pinkie fingers. *Id.*

12. According to Teacher, Student was reluctant to go meet Parent because she knew that she was "in trouble" for her behavior that day. *Id.*; *see also Response*, p. 3. Student "didn't want to go," but she "wasn't tugging to get away" or trying to elope. *Id.* Teacher recalled Student was pushing her body back slightly and saying "no" as they walked down the hallway, but that anytime she did so, Teacher slowed or stopped and encouraged her to keep walking. *Id.*

13. After approximately one to one and a half minutes, Teacher and Student reached the door to the Collaboration Room, which Teacher opened with her free hand. *Id.*

14. Teacher entered the room while holding Student by the wrist as Student attempted to pull away. *Interviews with Parent and Dean of Special Services; Response*, p. 3. After entering the room, Teacher maintained this contact with Student for approximately thirty seconds before releasing her. *Interview with Dean of Special Services*. Teacher then placed her hand on Student's back and nudged her towards Parent. *Interview with Teacher*.

15. Student ran to Parent, while Teacher updated Parent on Student's behavior. *Interviews with Teacher, Parent, and Dean of Special Services*. After Parent acknowledged Teacher's report, Teacher left the room. *Interviews with Parent and Teacher*.

D. District's Response to Incident

16. After the incident, Parent contacted several School administrators regarding the interaction, including Principal and Dean of Elementary School. *Interviews with Parent, Principal, and Dean of Elementary School*.

17. They recalled the incident initially being reported as a personal conflict between Parent and Teacher. *Interviews with Principal and Dean of Elementary School*. Particularly, they

remembered Parent being upset with Teacher for interrupting the meeting and being unprofessional. *Interviews with Principal and Dean of Elementary School*. Both indicated that Parent conveyed to them that she was unhappy with how Teacher had handled Student, but neither recalled this being the primary focus of the report or that Parent described the handling as a restraint. *Id.*

18. School staff indicate that March 2026 was the first time that Parent reported the incident as an improper restraint or used words such as "dragged," "threw," or "abuse" to describe Teacher's actions. *Interviews with Principal and Dean of Elementary School*.

19. School did not document the incident according to its restraint policies because it had no knowledge that a restraint had occurred. *Interviews with Principal, Dean of Elementary School, and Director of ESS*.

E. District's Policies, Practices, and Procedures: IEP Accessibility and Implementation

20. Director of ESS described District's efforts to ensure that staff and teachers are knowledgeable about and compliant with IDEA and ECEA requirements. *Interview with Director of ESS*. These efforts include professional development trainings held by District's special education team throughout the year, such as annual compliance training, as well as a specific training for new teachers and staff held at the beginning of the school year regarding their roles and responsibilities for IEP implementation. *Id.* Charter school special education teachers attend District's trainings at the beginning of the school year and are welcome, but not required, to attend additional trainings. *Id.*

21. Principal and Dean of Special Services described separate efforts undertaken by School to ensure compliance with IDEA and ECEA requirements. *Interviews with Principal and Dean of Special Services*. Like District, School also offers professional development trainings provided by School's special education team throughout the year. *Interview with Principal*. All employees are also required to complete the self-paced Vector Training, which includes modules such as "Accommodations and Modifications," "Federal Laws in Special Education," "IDEA Overview," and "IEP Compliance." *Id.*; *see also Exhibit L Supplement*, pp. 2-3.

22. District has a practice to ensure that each IEP is accessible to teachers and related service providers responsible for its implementation. *Interview with Director of ESS.* At the beginning of the school year, all teachers and service providers receive a snapshot of each student's IEP, which gives an overview of each student's accommodations, goals, and service delivery. *Interviews with Director of ESS and Dean of Special Services*. All teachers have access to students' IEPs via Enrich, and District's PowerSchool system automatically adds an icon to a student's profile if a student has an IEP. *Interview with Director of ESS*.

23. In addition to following District practices, School makes IEPs accessible to teachers and related service providers via Google Drive. *Interviews with Principal and Dean of Special Services*. In particular, Dean of Special Services created Google Drive folders for each teacher

or provider that contained the IEP snapshots of each student taught or serviced by that person. *Interview with Dean of Special Student Services*. If a student's IEP is created or updated after the beginning of the school year, new snapshots are uploaded to the appropriate Google Drive folder. *Id.*

24. Teachers and staff are directed to implement IEPs with fidelity. *Interviews with Director of ESS, Principal, and Dean of Special Services*. District reviews the schedules of all special education teachers and paraprofessionals, including the list of students to whom they are providing services, and offers assistance in creating these schedules to ensure that all students are receiving the services required by their IEPs. *Interview with Director of ESS*. Additionally, School monitors IEP-related data such as service logs and behavioral or disciplinary records on a biweekly basis, and it regularly checks in with educational assistants and paraprofessionals assisting with or administering services. *Interview with Principal*. Dean of Special Services also performed classroom observations and met with teachers and service providers to discuss the implementation of accommodations or services. *Interview with Dean of Special Services*.

25. School's dean of tiered supports ("Dean of Tiered Supports") ensures that educational assistants are familiar with the services and accommodations of each student to whom they provide support. *Interview with Dean of Tiered Supports*. If educational assistants have any questions or need clarity, both Dean of Tiered Supports and Dean of Special Services are available. *Interviews with Dean of Tiered Supports, Dean of Special Services, and Educational Assistant*.

F. Student's IEP

26. On November 5, 2025, District convened an IEP Team to develop Student's initial IEP ("IEP"). *See generally Exhibit A*. That IEP was in effect during the portion of the 2025-2026 school year when Parent contends District did not implement Student's accommodation requiring a sticker chart. *Complaint*, p. 5.

27. The IEP documented Student's present levels of educational performance, noting that a recent assessment indicated her early academic abilities fell within the first percentile. *Exhibit A*, p. 4. A speech-language assessment also showed Student's expressive and receptive language skills to be in the low average range. *Id.* at p. 5.

28. The IEP contained four annual goals, one each in reading, mathematics, speech, and physical motor skills. *Id.* at pp. 10-12.

29. The IEP identified nine accommodations as necessary for Student to access general education. *Id.* at p. 12. Relevant to this investigation, one accommodation required use of a "reward chart" for "positive reinforcement for expected behaviors (specific feedback)." *Id.*

30. The IEP specified that Student would receive 200 minutes per week of specialized math and reading instruction, 60 minutes per month of speech language therapy, and 60 minutes per month of occupational therapy. *Id.* at p. 14. Student spent at least 80% of her day in the general education classroom. *Id.* at p. 15.

G. Accessibility of Student's IEP to Teachers and Others

31. Teacher attended Student's IEP meeting on November 5. *Interview with Teacher*; *see also Exhibit A*, pp. 2, 17. She later read Student's IEP and was able to access a copy as needed, including the snapshot available in the Google Drive folder created for her by Dean of Special Services. *Interviews with Teacher and Dean of Special Services*. She expressed familiarity with Student's accommodations and other requirements of her IEP during this investigation. *Id.*

32. Before Student was eligible for special education and related services, School implemented a similar sticker reward chart for Student. *Interview with Dean of Special Services.* In September 2025, Dean of Special Services met with Teacher and other service providers to provide the reward chart and go over instructions for its use. *Interviews with Dean of Special Services and Teacher*. Dean of Special Services also observed Teacher's classroom on several occasions and provided feedback on her implementation of Student's accommodations. *Interviews with Dean of Special Services and Teacher*.

33. Dean of Tiered Supports also met with the educational assistant assigned to Teacher's classroom ("Educational Assistant") to go over the accommodations for which she would be providing support, including the sticker chart. *Interviews with Dean of Tiered Supports and Educational Assistant*.

34. Educational Assistant expressed familiarity with Student's accommodations, including the sticker reward chart. *Interview with Educational Assistant*.

H. Implementation of Student's Accommodation

35. Parent's Complaint asserted that School did not implement certain accommodations in Student's IEP, specifically the sticker reward chart. *Complaint*, p. 5. Specifically, Parent claimed that Teacher was not using the sticker reward chart in her classroom and that Educational Assistant was responsible for doing so because Teacher was "unable." *Id.*; *Interview with Parent*.

36. Parent and School staff indicated the implementation of the sticker reward chart began informally at the end of September or beginning of October, and that the expectations regarding its use did not change after the accommodation was formalized in the IEP. *Interviews with Parent, Teacher, Dean of Special Services, and Educational Assistant*.

37. The reward chart contained six rows with five circles in each row where a sticker was to be placed. *Exhibit I*, p. 1. Teacher and other providers were required to place a sticker on the chart immediately after Student exhibited any "expected behaviors," such as following

directions, finishing an assignment, sitting still for a certain amount of time, using her "inside voice," or any other behavior they wanted to encourage. *Interviews with Parent, Teacher, Educational Assistant, and Dean of Special Services*. After earning enough stickers to fill the chart, Student received a prize from a prize box. *Id.*

38. Teacher credibly described that, while her use of the chart was not perfect, she consistently added stickers to Student's reward chart. *Interview with Teacher*. She explained that she had a class of 25 students, so there were times when she did not have the chart on hand or was otherwise unable to provide a sticker immediately after Student exhibited an expected behavior. *Id.*; *Interview with Dean of Special Services*. She described that after the novelty wore off, Student did not particularly care about the chart itself, as Teacher would often find the chart crumpled up in the classroom, hallway, or Student's backpack. *Interview with Teacher*. Instead, Student loved receiving the stickers separately from the chart, which she used to decorate her Chromebook, classroom furniture, or her clothing and body, and which were counted toward Student's prize from the prize box. *Id.*

39. Educational Assistant was never solely responsible for implementing the reward chart in Teacher's classroom. *Interviews with Dean of Tiered Services, Educational Assistant, and Teacher*. Instead, her role was to assist with the implementation when Teacher was busy teaching or interacting with other students. *Id.* If Educational Assistant was unavailable, Teacher would use the sticker chart herself. *Id.*

40. Dean of Special Services observed Teacher's classroom on at least three occasions throughout the school year. *Interviews with Dean of Special Services and Teacher*. She recalled witnessing several instances of Teacher not implementing the chart with fidelity, such as by giving Student a sticker for behavior that occurred earlier in the day rather than immediately or by not having the chart on hand. *Interview with Dean of Special Services*.

41. Other School staff who observed Teacher's classroom indicated that both Teacher and Educational Assistant consistently utilized the sticker chart in Teacher's classroom. *Interviews with Principal and Dean of Elementary School*. Educational Assistant—who spent a significant amount of time in Teacher's classroom—described that the sticker chart was "always being used" by Teacher and that she had no concerns about Teacher's implementation of this accommodation. *Interview with Educational Assistant*.

42. Parent expressed satisfaction with Educational Assistant's implementation of the sticker reward chart in Teacher's classroom and did not have any concerns regarding the use of the chart by others involved in Student's services, such as School's speech language therapist. *Interview with Parent*; *see also Complaint*, p. 5.

43. Based on these facts, the CDE finds that District provided this accommodation consistent with the IEP during the 2025-2026 school year.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: School did not restrain Student on August 27, 2025, and thus the RSA was not applicable.

In her Complaint, Parent alleges School restrained Student on August 27, 2025. (FF # 8.) The CDE must first determine whether Student was restrained as defined by the RSA.

I. The RSA's Definition of "Restraint"

The RSA defines "restraint" as "a method or device that is used to limit a student's voluntary freedom of movement." C.R.S. § 22-15.5-102(9). The term "restraint" expressly includes "physical restraint," which is defined as "the use of bodily, physical force to limit a student's voluntary freedom of movement for more than one minute." *Id.* at § 22-15.5-102(7). Physical restraint does not include "[m]inimal physical contact for the purpose of safely escorting a student from one place to another." *Id.* at § 22-15.5-102(7)(c).

Neither the RSA nor its predecessor, the PPRA, explain what constitutes "minimal physical contact" in the context of an escort. *See* RSA 2.00(7)(c)(iii) and PPRA 2.00(8)(c)(iii). Historically, the CDE has relied on guidance from the U.S. Department of Education to establish whether an escort of a student involved "minimal physical contact" and, therefore, did not constitute a restraint under Colorado law. *See, e.g.*, *Facility Sch.*, SC2026-901, 126 LRP 12694 (SEA CO 2026); *Mesa Cnty. Valley Sch. Dist. 51*, SC2025-901, 125 LRP 24931 (SEA CO 2025); *Denver Pub. Schs.*, 2024:901, 124 LRP 22120 (SEA CO 2024). That guidance provides that "[p]hysical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location." *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions,* 81 IDELR 138 (OSERS 07/19/22)*; see also Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities,* 69 IDELR 80 (OCR 2016) (containing the same quotation).

II. Student Was Not Restrained on August 27

Here, the Record indicates that Teacher escorted Student down the hallway from Student's classroom and the Collaboration Room; Teacher held Student by the wrist using her thumb and middle finger. (FF # 11.) Teacher described that Student did not want to walk down the hallway but that she did not tug at her hold or attempt to run away. (FF # 12.) If Student resisted or stopped walking, Teacher also stopped and encouraged her to continue down the hallway. (*Id.*) The walk down the hallway lasted approximately one to one and a half minutes. (FF # 13.) Teacher temporarily held Student's wrist to induce her to walk down the hallway. For these reasons, the CDE finds and concludes that Teacher's contact with Student constituted minimal physical contact for the purpose of escorting Student safely to the Collaboration Room.

Upon reaching the Collaboration Room, Student attempted to pull out of Teacher's grip as the two entered the room, while Teacher maintained the hold. (FF # 14.) After they entered the room, Teacher held Student's wrist for approximately 30 seconds before Teacher released her. (*Id.*) While Teacher's continued hold on Student's wrist after Student demonstrated resistance could have amounted to the use of bodily, physical force to limit Student's voluntary freedom of movement, this contact lasted less than one minute and, therefore, does not constitute restraint.

Therefore, the CDE finds and concludes that Student was not restrained on August 27, 2025. As such, the RSA does not apply, and no further analysis of District's compliance with its provisions—such as whether the use of restraint was appropriate under the circumstances or whether District complied with the RSA's notification requirements—is necessary.

Conclusion to Allegation No. 2: District made Student's IEP accessible to teachers and service providers responsible for its implementation and ensured they were informed of their specific responsibilities related to its implementation, as required by 34 C.F.R. § 300.323(d). District also implemented Student's IEP, as required by 34 C.F.R. § 300.323(c). District complied with the IDEA.

Parent raised concern that Student did not receive the accommodations required by her IEP, specifically the use of a sticker reward chart. (FF # 35.)

I. Legal Requirements: IEP Implementation

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (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 are made available to the child in accordance with the IEP. 34 C.F.R. §§ 300.323(d), 300.323(c)(2).

II. IEP Accessibility to Teachers and Others

A school district must ensure that each regular education teacher, special education teacher, related service 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, School staff responsible for implementing Student's IEP were aware of their responsibilities and had access to information regarding Student's IEP. (FF #s 31-34.) Dean of Special Services met with Teacher and other providers to review Student's IEP and their responsibilities. (FF # 32.) Dean of Tiered Supports also met with Educational Assistant to go over Student's accommodations. (FF # 33.) Teacher and Educational Assistant described a detailed understanding of Student's services and accommodations, particularly the sticker reward chart. (FF #s 31, 34.) Based on these facts, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

III. Implementation 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 "no 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 F. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirement which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 2018). 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 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 F. App'x 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.*, 927 F.3d 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 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?

A. *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).

The Record shows that District implemented the sticker reward chart consistent with Student's IEP. (FF # 43.) Teacher credibly reported consistent use of the chart, and outside observers indicated that she was implementing the chart with fidelity. (FF #s 38, 41.) Parent did not have concerns with any other School staff member's implementation, including Educational Assistant. (FF # 42.) Although Teacher did not always use the sticker chart exactly as required, (FF #s 38, 40), "there is no statutory requirement of perfect adherence to the IEP." *Van Duyn*, 502 F.3d at 821. Accordingly, the CDE finds and concludes that there was no shortfall between the accommodation required by the IEP and what was made available to Student.

B. *Prong 2: Was the Shortfall Material?*

Because there was no shortfall in the provision of the accommodations required by the IEP, the CDE does not need to address the second question of whether any shortfall was material.

For these reasons, the CDE finds and concludes that District complied with its implementation obligations under 34 C.F.R. § 300.323(c).

REMEDIES

The CDE concludes that District complied with the requirements of the RSA and of the IDEA. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. ECEA Rule 7.06(3); *CDE's State Complaint Procedures*, Section E, ¶ 2; RSA Rule 10.00(9)(c). If a party disagrees with this Decision, that party may file a Due Process Complaint if the law permits a due process hearing on the issue in dispute. ECEA Rule 7.06(3); *CDE's State Complaint Procedures*, Section E, ¶ 2; 34 C.F.R. § 300.507(a); 71 Fed. Reg. 46,607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer ("SCO").

Dated this 29th day of September, 2026.



Erin Vanek
State Complaints Officer

APPENDIX

Complaint, pages 4-5

Response, pages 3-4

- Exhibit A: IEPs
- Exhibit G: Schedule, Grades, & Attendance
- Exhibit I: Service Logs
- Exhibit L Supplement: Teacher's Vector Training
- Exhibit P: District Policies & Procedures

Telephone Interviews

- Parent: August 18 and 24, 2026
- Teacher: August 18, 2026
- District Director of Special Education: August 21, 2026
- Dean of Special Services: August 28, 2026
- Dean of Tiered Services: August 31, 2026
- Principal: September 1, 2026
- Educational Assistant: September 2, 2026
- Dean of Elementary School: September 4, 2026