

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

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**State-Level Complaint 2019:552  
Denver Public Schools**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on July 22, 2019 by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the SCO determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from July 22, 2018 through July 22, 2019 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATION**

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

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

1. Failing to implement Student’s IEP by not providing the supports listed in the service delivery statement for Student’s core classes in the 2018-19 school year, consistent with 34 C.F.R. § 300.323(c)(2).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **Background**

1. Student is a ninth-grade student at High School in the District. He is currently identified as eligible for special education and related services under the disability category of Autism Spectrum Disorder (ASD). *Exhibit A*, p. 23.
2. Parents and Teachers describe Student as an intelligent, kind, and empathetic person who loves to draw and has a quirky sense of humor. *Interviews with Parents, Writing Teacher, Case Manager, Special Education Teacher*.
3. As a result of his disability, Student has difficulty with attention and focus, as well as with initiating work during class. Student also struggles with multistep or complex problems. *Interviews with Case Manager, Reading Teacher, Science Teacher*.
4. Parents allege that School failed to implement Student’s IEP in his core classes during his eighth-grade year. *Complaint*, p. 3. Student’s “core” classes included math, writing, reading, science, and social studies. *Exhibit A*, p. 20. At Parents’ request, beginning in December 2018 and lasting through the end of the school year, Student received individualized instruction in math class. *Interview with Parents*. Accordingly, Parents are not alleging that School failed to implement Student’s IEP in math class. *Interview with Parents; Reply*, pp. 1-2.
5. Parents’ belief that Student’s IEP was not properly implemented is based on several pieces of evidence, namely: a perceived lack of completed school work shown in two software programs; a documented observation during reading class in March 2019; and a decline in Student’s grades during his eighth grade year. *Complaint*, pp. 5-6.
6. The SCO now turns to Student’s core classes in question – writing, reading, science, and social studies – to determine whether the District properly implemented Student’s IEP during the 2018-19 school year.

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

## Implementation of IEP in Writing during the 2018-19 School Year

7. The service delivery statement in Student's IEP for the 2018-19 school year required the following for writing class: "[Student] will receive additional adult support in writing with an adult in the classroom who will provide re-directs and accommodate assignments as needed and opportunities for increased support to review concepts or complete assignments during independent practice and pull [Student] for small group or 1 on 1 support based on data." *Exhibit A*, p. 20.
8. Writing Teacher and Special Education Teacher were both responsible for implementing Student's IEP in writing class. These two teachers met weekly to create modified work packets and to discuss Student's progress. *Interviews with Special Education Teacher and Writing Teacher*. Student's modified packet included sentence stems, highlighted sections, and was "chunked down" meaning Student's packet had a portion of the work contained in his classmates' packets. For instance, Student would be required to write a paragraph half as long as his classmates, or he would be assigned three out of five questions rather than all five questions in an assignment. *Interviews with Special Education Teacher and Writing Teacher*.
9. Both teachers frequently checked in on Student to assist him with work and to redirect him if they noticed he was not focusing. For example, if Writing Teacher saw Student laughing at his computer screen, she knew he needed redirection. Writing Teacher and Special Education Teacher also always sat Student next to a supportive peer to help keep him focused. *Interview with Writing Teacher*. Special Education Teacher regularly pulled Student for small group sessions based on his progress on the essay the class was working on. This occurred around once a week on average. *Interview with Special Education Teacher*.
10. Central to Parents' allegation that School did not implement Student's IEP is their belief that Student did not complete classwork during his eighth-grade year. In April 2019, Parents learned how to access Engrade and Google Classroom. *Interview with Parents*. Engrade is an online testing platform that teachers at School utilized to assign tests and quizzes. Google Classroom is an online platform used to distribute in-class assignments and homework. Google Classroom also allows teachers to see and comment on student assignments in real time during class. *Interview with Case Manager*. Based on the data Parents saw in these programs, they believe Student failed to complete or attempt a substantial amount of assignments, tests, and quizzes during the 2018-19 school year. *See Complaint*.
11. In writing class, Parents state Google Classroom showed the following: "125 assignments were given. Only 4 were turned in as done. That represents a completion rate, for the year, of 3.2% of the assignments. Only 1 of the four had a grade and was graded at 100%. The other 3 just received check marks." Regarding Engrade, Parents

state: “31 tests and quizzes assigned to [Student]. Only 15 (48%) were even attempted and of those, only 4 were passing scores (18%).” *Complaint*, p. 3.

12. Parents first expressed their concerns about the data they saw at an IEP meeting on April 18, 2019. *Reply*, p. 1. Following this meeting, Special Education Teacher emailed Curriculum Director on April 26, writing:

[i]n response to a parents (sic) concerns to a student not turning in their writing assignments, that parent is more than welcome to compare the rate of turned in assignments to any of the 180 other 8<sup>th</sup> grade students. The only assignments that are required to be submitted in Google Classroom are the assignments that are very clearly marked TURN IN ASSIGNMENT X HERE. There are a total of 10 assignments to date in the classroom that meet that requirement. The student that these parents are concerned about has turned in 7 of these 10 assignments to date, which gives him a 70% success rate. This student is also currently on track to complete the social movements essay, which will account for two of those missing assignments once revisions are done.

*Exhibit J*, p. 14. On April 29, Curriculum Director sent Parents an email conveying the relevant portions of Special Education Teacher’s explanation. *Id.* at pp. 12-13.

13. Writing Teacher and Special Education Teacher’s explanation for the disparity in assigned versus completed or attempted assignments is consistent with the email above. All daily in-class packets are shown as assigned in Google Classroom, however students were rarely required to turn these daily packets in. *Interviews with Special Education Teacher and Writing Teacher*. Special Education Teacher stated that at the end of the year, only ten or eleven assignments were required to be turned in. *Interview with Special Education Teacher*. Regarding Engrade, Writing Teacher stated that many of the tests and quizzes cited by Parents were mastery checks, which are short exams reviewing what the class had learned that day. Students were rarely required to submit mastery checks for grading. Additionally, at times Writing Teacher and Special Education Teacher would prioritize other writing work rather than have Student complete the mastery check if they felt it would be more beneficial. *Interview with Writing Teacher*.
14. Both teachers observed Student grow academically throughout the course of the school year, with Special Education Teacher noticing a marked improvement in Student’s ability to revise his written work. *Interviews with Writing Teacher and Special Education Teacher*. Additionally, Student’s IEP progress report shows that he made progress on his two writing goals during both the first and second trimesters. *Exhibit J*, pp. 50-53. As an example, Student’s IEP progress report from March 6, 2019 notes: “[Student] has also

shown proficiency in multiple styles of writing in 8th grade. He scored 85% . . . on narrative writing and 90% on argumentative/persuasive. He has shown proficiency on revising his writing with 88% accuracy." *Exhibit J*, p. 51.

### **Implementation of IEP in Reading during the 2018-19 School Year**

15. The service delivery statement in Student's IEP for the 2018-19 school year required the following for reading class: "[Student] will receive additional adult support in reading, where he will be provided redirection as needed. He will also receive additional adult support during independent work time, provided either in a small group (less than 5 total) or individually. Assignments will be modified as needed, in order to prioritize standards and provide opportunities for guided practice in areas of need." *Exhibit A*, p. 20.
16. Reading Teacher and Case Manager were responsible for implementing Student's IEP in reading class. Reading Teacher described a "teach assist" model wherein she provided the majority of the classroom instruction, and Case Manager would either circulate through the classroom assisting students as necessary, or pull up individual student work in real time through Google Classroom, allowing her to comment and redirect as needed. *Interview with Reading Teacher*. Case Manager served as the additional adult support in the classroom required by Student's IEP. She attended reading class every day except Wednesday, when Special Education Teacher would attend. *Interview with Case Manager*. Case Manager and Reading Teacher also met weekly to discuss Student's supports, modified work, and what content to prioritize. *Interviews with Case Manager and Reading Teacher*.
17. In terms of in-class work, Student received a modified packet via Google Classroom every day that included graphic organizers, sentence stems, and starred questions for Student to focus on. Case Manager and Reading Teacher would also frequently check in with Student to ensure he was working and following along, and both made a point to do so discreetly so as not to single Student out. In addition to these check-ins, Case Manager would look to see if Student was paying attention, and communicate with Student in real-time via Google Classroom to redirect or comment on his in-class work. *Interviews with Reading Teacher and Case Manager*.
18. Parents point to the data they saw in Engrade as proof that School staff did not implement Student's IEP in reading class: "156 tests and quizzes assigned to [Student]. Only 82 (53%) were attempted, and of those, only 21 were passing scores (13%). 49 (31%) of the assignments were scored at a 50% or below." *Complaint*, pp. 3-4.
19. Reading Teacher and Case Manager stated that a mastery check was assigned to all students at the end of every class period through Engrade, thus accounting for the high number of tests and quizzes shown. However, not every mastery check was required to

be turned in or graded. Case Manager also stated that Student may not have completed some mastery checks due to decisions she and Reading Teacher made in the moment. For instance, if they felt it would benefit Student to continue working on the in-class assignment at the end of class rather than complete the mastery check. *Interview with Case Manager.*

20. Student's IEP progress report shows that Student made progress in reading during the 2018-19 school year. The progress update from March 6, 2019 noted that Student's scores improved on assessments for one performance standard, but not the other. The report also noted: "[Student] is able to get concrete ideas and concepts extremely well, but he does tend to struggle when content moves into the abstract realm. In class when working on this standard, we are working at looking at specific pieces of language . . . and talking through the connections." *Exhibit J*, pp. 49-50.
21. Reading Teacher and Case Manager observed Student make progress throughout the school year. With the help of graphic organizers, Reading Teacher saw improvements in Student's ability to cite and analyze the materials that he had read. Student also showed an increased use of critical reasoning when analyzing reading assignments. *Interview with Reading Teacher.* Case Manager reported that by the end of the year, Student could discuss Shakespeare with her, specifically by explaining the different narrative themes in *Romeo and Juliet*. *Interview with Case Manager.*
22. Parents cite to a structured observation conducted during reading class on March 4, 2019 as proof that the District failed to implement Student's IEP. *Complaint*, p. 5. On that date, Speech Language Pathologist conducted an observation as part of a reevaluation, noting:

When the direction was given for independent work to begin that involved reading and answering 2 comprehension questions, the teacher checked in on him individually within 30 seconds and repeated directions/expectations. Five minutes were put on a timer for this work. [Student] stared at a sheet of (unrelated) paper that was on his desk during this time. He did not produce any work (written or typed) that would reflect him being on-task with the material, but was able to maintain silence during the work period independently.

*Exhibit B*, pp. 3-4.

23. Parents contend that this observation "is strongly supportive of the data in Engrade showing [Student] just doesn't do the work and is not being supported/redirected to be on task." *Complaint*, p. 5. Case Manager stated that during this observation she had Student's assignment open in Google Classroom and was commenting on it in real time.

*Interview with Case Manager.* Following an IEP meeting on April 23, 2019, Special Education Manager acknowledged that it appeared Student's supports were not fully provided as documented in the evaluation report: "I believe we are all in agreement that it is concerning that appropriate supports were not in place during that observation window." *Exhibit 6*, p. 1. Though there is conflicting evidence, the SCO finds that more likely than not Student's IEP was not fully implemented during the five minute independent work time during reading class documented in the evaluation report.

### **Implementation of IEP in Science during the 2018-19 School Year**

24. The service delivery statement in Student's IEP for the 2018-19 school year required the following for science class: "[Student] will receive additional adult support in science with an adult in the classroom who will provide re-directs and accommodate assignments as needed, with increased support during independent practice and to pull [Student] for practice in a small group (5 or fewer students) or 1:1. [Student] will not receive homework in science during this transitional year, but may need to complete in class assignments at home if he does not complete them during the class period." *Exhibit A*, p. 20.
25. Science Teacher and a group of three rotating paraprofessionals were responsible for implementing Student's IEP in science class. At least one paraprofessional attended Science Teacher's class each day. *Interview with Science Teacher.* Science Teacher credibly described the supports provided to Student per his IEP during the 2018-19 school year. He frequently checked in on Student to ensure he understood the classroom work and was staying on task. After explaining the first in-class assignment known as the "do now" to the class, Science Teacher would check on Student first. Then, as he would make his rounds while the class worked, Science Teacher always prioritized checking in with Student. Science Teacher stated that Student was engaged in class and often conducted research on his own into areas that interested him. Student seemed to understand the material that was presented in class, but this was not always reflected in his grade. *Interview with Science Teacher.*
26. Science Teacher modified Student's in-class work pursuant to his IEP. Science Teacher's practice is to create three versions of the in-class packet: mild, medium, and spicy. The spicy packet would contain more requirements and questions and less prompts, while the mild packet would contain fewer questions, be chunked down, and contain sentence stems. An example of Science Teacher's three versions of packets shows that the "mild" version contains sentence stems and chunked down work. *Exhibit J*, pp. 24-48. Science Teacher also always paired Student with supportive peers during group work to help push Student and keep him on task. Science Teacher did not have a regular set time that he consulted with Case Manager. However, he reported consistently speaking with her throughout the school year and discussing Student and other students with IEPs. *Interview with Science Teacher and Case Manager.*

27. Parents point to the following Engrade data as proof that School staff did not implement Student's IEP in science class during his eighth-grade year: "97 tests and quizzes assigned to [Student]. Only 42, were attempted, and of those, only 2 (3%) were passing scores!" *Complaint*, p. 4.
28. Science Teacher explained that many of the tests and quizzes listed in Engrade were not required to be turned in or completed, and therefore none of the other students in his classes would have completed them either. Additionally, some tests and quizzes that were assigned through Engrade were turned in on paper, and would not be recorded as completed even when they were required to be turned in. *Interview with Science Teacher*.

### **Implementation of IEP in Social Studies during the 2018-19 School Year**

29. The service delivery statement in Student's IEP for the 2018-19 school year required the following for social studies class: "[Student] will receive 50 minutes daily in a social studies block with an adult in the classroom who will provide re-directs and accommodate assignments as needed and pull [Student] for small group (less than 5 total) or 1 on 1 support based on data. [Student] will not receive homework in social studies . . . ." *Exhibit A*, p. 20.
30. Social Studies Teacher and a group of paraprofessionals were responsible for implementing Student's IEP in social studies. Social Studies Teacher created accommodated packets for Student every week, wherein he would chunk down and prioritize Student's work by selecting certain topics from the normal packet for Student to focus on. For example, Social Studies Teacher would highlight the most important sentences from primary sources in the materials the class was studying. Student's packet would also contain sentence starters. Social Studies Teacher consistently checked in on Student to re-direct him when he recognized he was not focused. Additionally, Social Studies Teacher ensured Student was seated either in the front or back of class so any redirection could be done without drawing undue attention to Student. Student would also be pulled for small group or 1:1 when he was not grasping the material. *Interview with Social Studies Teacher*.
31. At the beginning of the year, Social Studies Teacher met with Case Manager twice a month to discuss Student's progress and accommodations. Around midyear, when Social Studies Teacher felt Student began to struggle, he met with Case Manager every week. *Interview with Social Studies Teacher*. Though Student did well during the classes Socratic Seminar, Social Studies Teacher reported that overall Student did not show much progress throughout the year. *Id.*
32. Parents cite to the following data from Engrade to support their allegation that School did not implement Student's IEP in social studies during his eighth-grade year: "32 tests



and quizzes assigned. Only 14 were attempted, and of those, only 4 were passing scores (12.5%).” *Complaint*, p. 4.

33. Social Studies Teacher stated that many of the quizzes and exams listed in Engrade for his class were mastery checks that would be periodically assigned to test student’s knowledge on certain topics. Social Studies Teacher posited that if three mastery checks were assigned in a given week, only one of them would go in his grade book. Additionally, many of Student’s mastery checks would be accommodated and on paper, rather than on a computer, and would therefore not be reflected on Engrade. *Interview with Social Studies Teacher*.

### **Decline in Academic Performance and Increase in Student’s Services**

34. Student’s grades as well as his Measures of Academic Progress (MAP) testing scores declined during his eighth grade year. At the end of the 2018-19 school year, Student had failed Writing and Science, and had earned a C in Social Studies and a C+ in Reading. *Exhibit F*. Additionally, it is noted in the re-evaluation conducted in February and March 2019 that Student’s MAP testing scores had declined, citing Student’s test anxiety as a possible reason: “[w]hen testing, [Student] can experience quite a bit of anxiety, which could have an effect on performance.” *Exhibit B*, p. 13.
35. Parents and School staff disagree over the cause of Student’s academic decline. Parents assert School staff failed to properly implement Student’s IEP and provide him with the required supports, which resulted in the decline in grades and testing. *Complaint*, p. 4. Case Manager responds that Student’s grades suffered due to anxiety around school in general and testing in particular. *Interview with Case Manager*. Additionally, the SCO finds that Student presented with increased mental health concerns beginning in late October 2018. *Exhibit G*, p. 4. According to Special Education Manager, the District members of Student’s IEP team attributed an impact to Student’s progress on these mental health concerns. *Interview with Special Education Manager*.
36. To address observed struggles, Student’s IEP team convened on April 18, 2019 to update Student’s IEP. The team modified Student’s IEP to include “support from a 1:1 paraprofessional to guide his on-task behavior, work completion, and growing independence in core content classes.” *Exhibit A*, p. 38. Thereafter, Student received a one-to-one paraprofessional for all core classes for the remainder of the school year. *Interviews with Parents and Case Manager*. An email from Special Education Manager on April 23, 2019 illustrates that the District took Parents’ concerns and Student’s needs into consideration when making this change:

As we shared, based on [Student’s] increased need we’ve been seeing this year and you’ve identified, we are proposing to add additional supports for [Student’s] core content classes that are

specific 1:1 supports for [Student]. I think these added supports in the new draft recognize that [Student] may need increased support especially initially with the transition to high school so we start building on success for [Student].

*Exhibit 6, p. 1.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District properly implemented Student's IEP in writing, reading, science, and social studies during the 2018-19 school year.**

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education by providing special education and related services designed to meet their unique needs. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

To that end, a public agency must implement a student's IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, a public agency must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "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)(2). This duty includes confirming that "as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2). Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

For the following reasons, the SCO concludes that the District properly implemented Student's IEP in his classes that are the subject of this investigation during the 2018-19 school year.

First, all staff interviewed credibly described the requirements in Student's IEP during the 2018-19 school year, as well as how those supports were provided in practice. All staff described how assignments were modified, that there were at least two adults present in class to support student and provide re-direction when needed, and that Student was pulled for small group or one-on-one attention when the data supported it. Additionally, all of Student's general education teachers consulted with Case Manager or Special Education Teacher regarding Student's needs, progress, and academic instruction.

Second, based on FF# 12, 13, 19, 28 and 33, the SCO finds and concludes that the information from Engrade and Google Classroom is not an accurate reflection of the percentage of work

Student completed or the supports he received. All core content teachers credibly explained that many assignments, tests, and quizzes were not required to be turned in through Engrade and Google Classroom for grading. For example, when Parents checked Engrade for reading class, it showed 156 tests and quizzes assigned, with Student only attempting 82. *FF #18*. However, Reading Teacher and Case Manager clarified that a mastery check was distributed to the class at the end of every class period through Engrade to test students on the material covered that day. The students were not required to submit these mastery checks every day, thus accounting for the low completion rate of assignments Parents cite to. The evidence showed that Student's teachers followed similar practices in writing, science, and social studies.

The SCO finds Special Education Teacher's email to Curriculum Director noted at *FF #12* especially persuasive. There she wrote that at the end of April 2019 only ten assignments were required to have been turned in, and that Student's completion rate was similar to the class at large. Also, teachers in both reading and writing class explained that, at times, they would make judgment calls regarding which work was more important for Student to complete. Based on what they were seeing in the moment, they would choose to have Student work on something other than a mastery check. For these reasons, the SCO concludes that the disparity in assigned versus completed work in Engrade and Google Classroom is not reflective of a lack of work on Student's part, nor of a paucity of services delivered by School staff.

Third, the SCO concludes that Student's declining grades do not indicate that School staff failed to implement his IEP. As discussed in *FF #34*, Student's grades and MAP testing scores declined during the 2018-19 school year. However, poor performance in school does not necessarily indicate a failure to implement a student's IEP. *Williams v. Milwaukee Pub. Sch.*, 58 IDELR 252 (E.D. Wisc. 2012) (the fact that student "was not performing well in school does not necessarily indicate that her teachers were not adhering to the IEP and BIP requirements"). The court in *Williams v. Milwaukee Public Schools* deferred to the ALJ's ruling that it is "possible for a student to make satisfactory progress towards an IEP goal, yet at the same time barely earn a passing grade." *Id.* Here, as documented in *FF #14* and *20*, Student made progress on all of his IEP goals during the 2018-19 school year despite the decline in his grades during eighth grade. Additionally, the District did not ignore this decline, but rather increased Student's services at the April 18, 2019 IEP meeting to include a 1:1 paraprofessional. The record shows that following that IEP meeting, the District assigned a dedicated paraprofessional to work with Student for the last five weeks of eighth grade.

Finally, though the SCO found in *FF #23* that it appeared Student's IEP was not fully implemented during the in-class observation in reading class, the SCO concludes that this failure was not material, and is therefore not a substantive violation.

"[T]o prevail in a failure-to-implement case, a [complainant] must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the [complainant] must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not

enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP." *L.J. v. Sch. Bd. of Broward Cnty.*, 74 IDELR 185 (11th Cir. 2019). Regarding whether an implementation failure is material, the Ninth Circuit Court of Appeals gave the following example: "if the child is not provided the reading instruction called for and there is a shortfall in the child's reading achievement, that would certainly tend to show that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material." *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir 2007). And while academic progress or a lack thereof is not essential to proving whether an IEP has been implemented, it "may be probative of whether there has been more than a minor shortfall in the services provided." *Id.* Nevertheless, not every deviation from an IEP's requirements results in a denial of a FAPE. See, e.g., *L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP).

During the March 4 observation, though a teacher checked in on Student initially, it appears he did not complete the assignment. Student's IEP called for re-direction when necessary, and that did not happen in this instance. However, this single, five-minute documented instance of non-compliance is insufficient to prove that Student's IEP was not implemented over the course of the academic year. The SCO considers the IEP progress report documented in FF #20 more illuminating than the documented observation from March 4, 2019. The progress report shows not only that Student made progress on his reading goal, but also includes a detailed explanation of Student's growth, strengths, and areas of struggle. Here, Student finished the school year with a C+ in reading, and his progress report showed he made progress on his IEP reading goal. Accordingly, the SCO concludes that any implementation failure was not material.

For the above stated reasons, the SCO concludes that the District properly implemented Student's IEP in writing, reading, science, and social studies during the 2018-19 school year.

### **REMEDIES**

Concluding that the District has not violated IDEA, no remedy is ordered.

### **CONCLUSION**

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

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

Dated this 20th day of September, 2019.

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Thomas Treinen  
State Complaints Officer

## **Appendix**

### **Complaint, pages 1-6**

Exhibit 1	2018 IEP
Exhibit 2	2019 IEP
Exhibit 3	writing assignment example
Exhibit 4	2019 evaluation

### **Response, pages 1-8**

Exhibit A	2018 IEP; 2019 IEP
Exhibit B	2019 evaluation report
Exhibit C	<i>no documents responsive to SCO's request</i>
Exhibit D	Prior Written Notices
Exhibit E	3/15/19 notice of meeting; 4/12/19 notice of meeting; 12/11/18 notice of meeting
Exhibit F	2018-19 report card
Exhibit G	Various email correspondence
Exhibit H	District "school choice" regulations
Exhibit I	List of District employees
Exhibit J	Science assignment; Reading end of year essay; email correspondence; examples of daily science packets; IEP progress reports

### **Reply, pages 1-7**

Exhibit 5	email correspondence between Parents, Curriculum Director, and Special Education Manager
Exhibit 6	email correspondence between Parents, Curriculum Director, and Special Education Manager

### **Interviews with:**

Parents  
Case Manager  
Writing Teacher  
Social Studies Teacher  
Special Education Teacher  
Reading Teacher  
Science Teacher  
Special Education Manager  
Special Education Director