

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

**State-Level Complaint 2022:551
Valley RE-1 School District**

DECISION

INTRODUCTION

On October 14, 2022, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Valley RE-1 School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations 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. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged 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 October 14, 2021 through October 14, 2022 for the purpose of determining if a violation of the 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 ALLEGATIONS

Whether the District denied Student a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to conduct an initial evaluation, as requested by Parent between October 14, 2021 and November 2, 2021, to determine whether Student qualified as a child with a disability under the IDEA, in violation of 34 C.F.R. § 300.301.
2. Failed to properly determine Student’s eligibility for special education and related services on or around November 10, 2021, in violation of 34 C.F.R. §§ 300.304-305.

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.

3. Failed to identify and evaluate Student between October 14, 2021 to present, when the District was on notice that Student may have a disability and be in need of special education and related services, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student attends second grade at a District elementary school (“School”). *Interview with Parent*. During the 2021-2022 school year, Student was in first grade at School. *Id*. Student is not currently eligible for special education and related services. *Id*.
2. Student was born prematurely at 27 weeks of gestation. *Id*. As a result, Student has developmental delays and ongoing health problems. *Id*. In particular, Student has a weakened immune system and chronic lung disease resulting from his prematurity. *Id*. His health problems cause Student to miss school more often than his peers. *Id*.
3. Student is a kind young man with a great sense of humor. *Interviews with First Grade Teacher, Parent, and Second Grade Teacher*. He likes collecting treasures and sorting them into boxes. *Interviews with Parent and Second Grade Teacher*. Student enjoys sharks, building toys, and math. *Id*. At times, Student struggles with social interactions and social communication and makes sounds when he feels uncomfortable. *Id*.

B. Student’s Move to the District

4. During pre-kindergarten, Student’s prior school district (“Prior District”) determined Student was eligible for special education and related services under the disability category Developmental Delay, though his IEP was not implemented. *Interview with Parent*. Student began kindergarten during the 2019-2020 school year. *Id*. A few months into the school year, Parent began homeschooling Student. *Id*.
5. During the 2020-2021 school year, Student repeated kindergarten in Prior District. *Id*. Due to his health concerns, Student received remote instruction during the Covid-19 pandemic instead of attending in person. *Id*. Prior District did not complete an evaluation of Student due to the Covid-19 pandemic. *Id*.

² The appendix, attached and incorporated by reference, details the entire Record.

6. Student’s family moved to the District in April 2021. *Id.* He continued to receive remote instruction from Prior District through the end of the 2020-2021 school year. *Id.* Prior District was modifying Student’s assignments and providing him MTSS. *Id.*
7. In April or May 2021, Parent enrolled Student in School for the 2021-2022 school year. *Id.* At that time, Parent reached out to Assistant Principal to discuss Student’s needs. *Id.* Assistant Principal convened a meeting between Parent and District staff to discuss Student. *Interviews with Assistant Principal and Parent.* During the meeting, Parent shared her concerns and asked about ways the District could support Student. *Id.* Parent recalled specifically requesting that Student be evaluated for an IEP during the meeting on May 5, 2021; however, Assistant Principal did not recall Parent making such a request. *Interview with Parent; Exhibit I, p. 47.* Parent’s memory was that Assistant Principal said Student would be assessed in the fall, along with other students, and they could determine his needs at that time. *Interview with Parent.*

C. Beginning of 2021-2022 School Year

8. Before the 2021-2022 school year began, First Grade Teacher contacted Parent to introduce herself and schedule Student’s literacy testing. *Interview with Parent.* First Grade Teacher similarly called the parents of the other students in her class. *Interview with First Grade Teacher.*
9. During this phone call, Parent shared some background information regarding Student’s developmental delays and Student’s needs. *Interviews with First Grade Teacher and Parent.* Parent told First Grade Teacher that she wanted Student to be evaluated for an IEP. *Interview with Parent.* Parent recalled First Grade Teacher saying that it was not a problem and that she would get back to Parent regarding her request. *Id.* First Grade Teacher did not recall Parent asking for Student to be evaluated during the phone conversation. *Id.*
10. Parent sent a letter to School with Student on the first day of school, reiterating the information she shared with First Grade Teacher over the phone. That letter—which was provided to First Grade Teacher on August 19, 2022—provided, in part:

He also has some health problems as well. Due to him being so premature, his immune system is weakened and he is prone to viruses easier. He also has asthma and chronic lung disease caused by prematurity. . . . In October of 2020 he was also diagnosed with ADHD. His doctor and I are also looking into possible spectral disorders (Asperger’s syndrome maybe). Due to the ADHD and possible spectral disorders, he has some behavioral issues. One big problem is he is impulsive and cannot explain why he does some things more than what other kids his age do.

Exhibit 11, p. 6. The letter continued by describing Student’s challenges with “comprehension” and his “sensory issues.” *Id.* at pp. 6-7. In closing, Parent stated that she

and Student's doctor were "waiting until he has a new IEP screening and plan this year to finish getting his evaluations done." *Id.*

11. Parent had no further conversations with First Grade Teacher about evaluating Student until she sent an email on September 28, 2021. *Interview with Parent*. In that email, Parent explained Student's absence from School:

I wanted to let you know that [Student] has been out sick and he went to the doctor and has a bad respiratory virus. Because of his health conditions, it has affected him worse than it would a regular kid. He is on nebulizer treatments and steroids to help his breathing. I am hoping he will be able to return to school on Thursday after he has been on the steroids for a few days and his oxygen levels increase.

Exhibit 11, p. 5. Parent then asked about the status of Student's initial evaluation: "I also wanted to ask you when his IEP testing/meeting was going to be scheduled. If you could let me know, I would appreciate it." *Id.*

12. The following day, First Grade Teacher responded:

As for the IEP testing, at the current time our special education teacher has resigned so we are in a pause with services. Also, I would really like to give [Student] some consistent time in the classroom to show us how much he can grow without services before we go to an education plan. I would also like to reassess him, like I did with all students this week, to see how much he has grown.

Id. One of School's special education teachers quit at the end of September, and her replacement did not start for a couple of weeks later. *Interview with Principal*. However, Special Education Mentor was handling evaluations during the interim period and did not recall the departure of the special education teacher having any impact on evaluations of students or scheduling of IEP Team meetings. *Interview with Special Education Mentor*.

13. Meanwhile, Student completed District assessments, including the NWEA math and reading tests and the Phonological Awareness Literacy Screening ("PALS"). *Interview with First Grade Teacher; Exhibit F*, pp. 1-10. On the NWEA reading assessment, Student scored 142, below the fall grade level score of 156. *Exhibit 6*, p. 5; *Exhibit F*, p. 3. Student received a score of 155 on the NWEA math assessment, below the fall grade level score of 160. *Exhibit 6*, p. 5; *Exhibit F*, p. 4. Student received a summed score of 36 on the PALS, below the benchmark score of 41. *Exhibit 6*, p. 1; *Exhibit F*, p. 1. All three assessments showed Student's math and reading skills to be below grade level. *Exhibit F*, pp. 1-10; *Exhibit 6*, pp. 1-5.
14. Because Student missed the PALS benchmark, he participated in Reading Bootcamp with Reading Interventionist. *Exhibit 6*, p. 4. Reading Bootcamp helps students get past the "summer slump." *Interview with First Grade Teacher*.

15. Student participated in Reading Bootcamp for 4-6 weeks before he completed the PALS testing again. *Id.* At that time, Student received a summed score of 46, above the benchmark. *Exhibit 6*, pp. 2-3. As a result of this score, First Grade Teacher determined that Student did not qualify for a READ Plan. *Interview with First Grade Teacher.*
16. On October 7, 2021, Parent's advocate ("Advocate") emailed Special Education Director ("Director") regarding the delays in the District's evaluation of Student. *Id.* at p. 2. Advocate's email outlined the three times Parent had requested that Student be evaluated for special education: (1) in May 2021 during a conversation with Assistant Principal; (2) in August 2021 in a letter to First Grade Teacher; and (3) in September 2021 in an email to First Grade Teacher. *Id.* Director responded the same day indicating that she would get the process started. *Id.* at p. 1.
17. On October 13, 2021, District staff met with Parent and Advocate to discuss Parent's concerns and her request for an initial evaluation. *Interview with Parent; Exhibit L*, pp. 2-3. District attendees included Director, First Grade Teacher, Occupational Therapist, Principal, Special Education Mentor, Special Education Teacher, and Speech Language Pathologist ("SLP"). *Exhibit L*, pp. 2-3.
18. During the meeting, the District proposed evaluating Student in the areas of academic, cognitive, communication, health, motor, and social/emotional. *Exhibit C*, p. 1. Parent signed consent to evaluate at the end of the meeting. *Id.* at pp. 1-2.
19. By October 13, Student had missed eight days of school. *Exhibit Q*, pp. 2-3.

D. Student's Initial Evaluation

20. Special Education Mentor oversaw Student's initial evaluation. *Interview with Special Education Mentor.*
21. SLP assessed Student's communication skills using the Test of Language Development-Primary: Fourth Edition ("TOLD-P:4"). *Exhibit F*, p. 3. Student's overall score for spoken language skills fell in the average range, though he showed some slight weaknesses in the areas of Relational Vocabulary and Sentence Imitation. *Id.*
22. SLP also rated Student's speech using the Colorado Communication Rating Scales and found Student's speech to be within normal limits. *Id.*
23. The District assessed Student's academic performance using input from First Grade Teacher, the results of his Fall 2021 District assessments, and an observation by Special Education Mentor. *Id.* at pp. 3-4. First Grade Teacher indicated that Student "perform[s] to the best of his ability" and that "there are no flags to refer him at this time, district testing supports this." *Id.* at p. 3. Her remarks contain no information about Student's ability to complete grade level

work. *Id.* First Grade Teacher noted that Student was “on an RTI plan which allows interventions that are appropriate for [Student’s] learning needs at this time.” *Id.* at p. 3. Though Student participated in Reading Bootcamp, he was not on an RTI plan at the time of his initial evaluation. *Interviews with First Grade Teacher and Parent.*

24. The Evaluation Report contained Student’s scores on the NWEA math and reading assessments and PALS testing without any commentary. *Exhibit F*, p. 3.
25. Special Education Mentor observed Student during a writing lesson in his first-grade classroom. *Id.* at p. 4. During the lesson, Student “was focused and attentive.” *Id.* Though Student worked independently and listened to the teacher, Special Education Mentor does not provide any information regarding Student’s ability to perform at grade level during the lesson. *See id.*
26. School Nurse evaluated Student’s health. *Id.* School Nurse’s summary of Student’s health noted only that he has a prior diagnosis of ADHD and that he passed recent vision and hearing screening. *Id.* Student’s premature birth and resulting health complications, which caused frequent absences, were not mentioned. *Id.*
27. Occupational Therapist assessed Student’s handwriting using the Learning Without Tears Screener of Handwriting Proficiency. *Id.* at p. 5. Overall, Student’s score exceeded the expected score for the beginning of first grade, though he demonstrated some weaknesses in the areas of placement and orientation. *Id.*
28. Occupational Therapist also evaluated Student’s sensory functioning using the Sensory Profile 2 School Companion. *Id.* First Grade Teacher completed the questionnaire, and her responses indicated Student had age-expected sensory skills and did not identify any areas of concern. *Id.*
29. School Psychologist used the Gilliam Autism Rating Scale-Third Edition (“GARS-3”) and the Behavior Assessment System for Children-Third Edition (“BASC-3”) to evaluate Student’s social/emotional functioning. *Id.* at pp. 5-6. The GARS-3 is a screener tool used to identify children with ASD. *Id.* at p. 5. First Grade Teacher and Parent completed the GARS-3 rating scales. *Id.* at p. 6. Both raters scores were consistent and showed a “very likely probability” that Student had ASD. *Id.* The scores fell within Level 2, indicating that Student would require “substantial support.” *Id.*
30. School Psychologist used the BASC-3 to measure Student’s “adaptive and problem behaviors in the school and home setting.” *Id.* First Grade Teacher, a P.E. teacher, and Parent completed the BASC-3 ratings scales. *Id.* First Grade Teacher and the P.E. teacher’s ratings all fell within the typical range and did not identify any social/emotional or behavioral issues. *Id.* Parent’s ratings did not show any clinically significant areas of concern, though ratings for aggression, atypicality, attention problems, adaptability, and functional communication fell within the at-risk range. *Id.*

31. The District did not assess Student’s cognitive abilities, even though the District obtained consent to do so. *Id.* at pp. 1-13.

E. Determination of Student’s Eligibility

32. On November 10, the District convened a properly constituted multi-disciplinary team to consider Student’s initial evaluation and determine his eligibility for special education and related services. *Exhibit N*, pp. 1-4. Parent and Advocate attended the meeting. *Id.*; *Interview with Parent*.

33. The team concluded that the evaluation was comprehensive, though no attendees recalled the nature of that discussion or if any occurred. *Interviews with Director, First Grade Teacher, Parent, Principal, and Special Education Mentor*.

34. The team considered Student’s eligibility under the disability category of ASD. *Exhibit N*, pp. 1-4. However, the team determined that Student could receive reasonable educational benefit from general education alone, eliminating the need to consider any of the disability-specific criteria. *Id.* As a result, Student was found ineligible for special education and related services. *Id.* The team reached this conclusion because they felt that Student was demonstrating “growth and achievement” and that Student’s ability to access the general education curriculum was not impacted by a disability. *Interview with Director*.

35. That same day, the District issued prior written notice (“PWN”) documenting the team’s determination that Student was not eligible for special education. *Exhibit C*, p. 3. The PWN indicated that the team felt Student’s needs could be met by “interventions through the RTI process.” *Id.*

36. The District’s notes from the eligibility meeting stated that the District would meet with Parent to develop a 504 plan. *Exhibit L*, pp. 4-5.

37. By the time the District held Student’s eligibility meeting, Student had been absent for 13 days. *Exhibit Q*, pp. 2-3.

F. Continued Concerns and Development of 504 Plan

38. Parent continued to have concerns about Student’s ability to access his education after he was found ineligible for special education. *Interview with Parent*. In particular, Parent felt Student’s academic performance started to slide backwards during Winter and Spring 2022. *Interview with Parent; Complaint*, pp. 8-9. Indeed, Student’s scores on the NWEA math and reading assessments from Winter 2021/2022 show Student to be farther behind the normed grade level score than he was at the beginning of the school year. *See Exhibit 6*, pp. 6, 12, 14.

39. In response to Parent’s concerns and at her request, the District considered Student’s eligibility for a 504 plan in March and April 2022. *Interview with Parent*. Ultimately, the District developed a 504 Plan for Student. *Exhibit A*, pp. 1-2.
40. The 504 Plan noted Student’s “slight fall back” in reading but attributed it to his absences. *Id.* at p. 1. As of April 2022, Student had missed 34 of 118 days of school. *Exhibit L*, p. 8. During the meeting, First Grade Teacher told Parent that she did not re-teach lessons after students were absent. *Interview with Parent; Complaint*, p. 9.
41. The 504 Plan indicated that Student’s physical or mental impairment impacted his reading. *Exhibit A*, p. 1. The 504 Plan contained two accommodations (frequent check-ins and extra support to stay focused) and one service (participation in a social skills group). *Id.* at p. 2. The accommodations and the service were suggested by Parent; District staff did not contribute to the 504 Plan. *Interview with Parent*. No accommodations or services were directly related to Student’s reading. *See Exhibit A*, pp. 1-2.

G. Private Evaluation

42. On June 15, 2022, Clinical Psychologist completed a private evaluation of Student (“Private Evaluation”). *See Exhibit 8*, pp. 1-34. Clinical Psychologist considered the following information and assessments:

- Clinical interview of Parent
- Review of records
- Clinical observations
- Differential Ability Scale-Second Edition (“DAS-II”)
- Woodcock Johnson-IV Tests of Achievement (“WJ-IV”)
- Oral and Written Language Scales, Second Edition (“OWLS-2”)
- Gray Oral Reading Test-Fifth Edition (“GORT-5”)
- Comprehensive Test of Phonological Processing-Second Edition (“CTOPP-2”)
- NEPSY-II Neuropsychological Battery
- BASC-3
- Social Responsiveness Scale (“SRS”)
- Social Communication Questionnaire-Current (“SCQ-C”)
- Autism Diagnostic Observation Schedule, Second Edition (“ADOS-2”)

Id. at p. 3.

43. The DAS-II showed variability in Student’s cognitive skills. *Id.* at pp. 5-6. While Student had average verbal and working memory skills, he had slow processing speed and difficulty with fluid reasoning. *Id.*

44. Based on Student's performance on the academic assessments, Clinical Psychologist concluded that Student had a specific learning disability in reading and math. *Id.* at pp. 7-10, 18. Student struggled to accurately read words and passages, comprehend what he read, and read fluently. *Id.* at p. 18. His scores on reading assessments were significantly below age and grade level expectations. *Id.* Clinical Psychologist found "significant deficits with all aspects of phonological processing and phonemic awareness skills." *Id.*
45. As for math, Student demonstrated difficulty in understanding math concepts, applying math skills, and with computation. *Id.* Though he had basic addition skills, he had difficulty with basic subtraction and word problems. *Id.*
46. Clinical Psychologist's observations and assessments confirmed Student's prior diagnosis of ADHD. *Id.* During the assessments, Student struggled with task initiation, focus, attention, impulsivity, and tasks requiring his memory. *Id.*
47. Clinical Psychologist found Student's language skills to be below the expected level, particularly Student's receptive language skills and language processing. *Id.* As a result, Clinical Psychologist diagnosed Student with Mixed Receptive-Expressive Language Disorder. *Id.*
48. The assessments revealed deficits in social communication and social reciprocity often seen in children with high-functioning autism. *Id.* at p. 19. Clinical Psychologist confirmed Parent's suspicions and diagnosed Student with ASD. *Id.*
49. The Private Evaluation recommended that Student be evaluated for an IEP. *Exhibit 8*, p. 20. Additionally, the Private Evaluation suggested accommodations that could be used in an educational setting to best support Student. *Id.* at pp. 20-23.

H. 2022-2023 School Year

50. In August 2022, Principal called Parent to see how Student was doing. *Interviews with Parent and Principal*. Parent told Principal that Clinical Psychologist had completed the Private Evaluation, though Parent did not share the findings of the evaluation with Principal. *Id.* Instead, Parent said she would send the Private Evaluation to Principal. *Id.* Parent recalled discussing the District reevaluating Student or redetermining his eligibility during the phone call, but Principal recalled no such conversation. *Id.*
51. On August 12, 2022, Parent sent the Private Evaluation to Principal and Director. *Exhibit I*, p. 60. Parent did not mention an IEP or reevaluating Student in her email. *Id.*
52. The 2022-2023 school year began on August 16, 2022. *Exhibit G*, p. 3.

53. On August 24, 2022, Principal responded to Parent’s email with the Private Evaluation: “I chatted with our team yesterday. We would like to meet on September 14 at 8:00 am. Will this work for you?” *Exhibit I*, p. 62.
54. In the interim, Student completed the NWEA math and reading assessments and PALS testing. *Exhibit 7*, pp. 1-8. Student scored 174 on the NWEA math, one point below the Fall grade level score of 175. *Id.* at p. 1. Similarly, Student received a score of 163 on the NWEA reading test, below the Fall grade level score of 172. *Id.* Student’s summed score on PALS was 24 and was significantly below the cutoff of 35. *Id.* As a second-grader, Student currently reads at a kindergarten level. *Exhibit I*, p. 79.
55. As a result of his PALS score, Student qualified for a READ plan. *Interview with Second Grade Teacher; Exhibit F*, pp. 15-27. Under his READ plan, Student receives 30 minutes of small group reading intervention services outside the classroom four times per week (for 120 minutes per week). *Exhibit L*, p. 11; *Interview with Second Grade Teacher*. Student also uses Lexia, an online intervention program inside the classroom. *Exhibit L*, p. 11; *Interview with Second Grade Teacher*.
56. On September 14, 2022, District staff, Parent, and Advocate met to discuss the Private Evaluation. *Id.* Parent assumed it would be an IEP Team meeting; however, District staff only intended to review the Private Evaluation and discuss what accommodations should be added to Student’s 504 Plan. *Interviews with Parent and Principal; Exhibit I*, p. 49. As revised, Student’s 504 Plan listed his diagnoses and stated that his disabilities “affect his ability to keep up in class, to participate in discussions, or to stay focused.” Specifically, his “limited processing speed and dyslexia limit[] his learning of verbally presented information.” (*Id.*)
57. During the meeting, Parent questioned why the District was not developing an IEP based on the Private Evaluation. *Interview with Parent*. Director replied that the District had considered the Private Evaluation but as long as Student was making progress, he would not qualify for an IEP. *Id.*; *Interview with Director*.

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 failed to conduct an initial evaluation of Student or properly respond to Parent’s requests for an evaluation, in violation of 34 C.F.R. §§ 300.301 and 300.503. However, the violation occurred outside the one-year time limitation.

In her Complaint, Parent alleges the District failed to evaluate Student despite her repeated requests that he be evaluated for special education and related services.

A. The Child Identification Process under the IDEA

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process “shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education.” ECEA Rule 4.02(1)(a)(ii).

Under the “special education referral” component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a).

The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is “whether the child should be referred for an evaluation, not whether the child actually qualifies for the services.” *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion “may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation.” *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

B. Initial Evaluations

An initial special education evaluation seeks to determine whether a child has a disability within the scope of the IDEA and, if so, aids the IEP Team in the development of the child’s IEP. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). School districts must complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a).

As explained above, a school district may initiate a special education evaluation, or a parent may request an initial special education evaluation. *Id.* § 300.301(b); ECEA Rule 4.02(3)(a). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with prior written notice explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); 34 C.F.R. § 300.503(a). Neither the IDEA nor the ECEA require parents to submit requests for evaluation in writing or use any magic language for their request. *Charlotte-Mecklenburg Bd. of Ed. v. Brady*, 2022 WL 989231, 122 LRP 11445 (W.D. N.C. 2022) (collecting cases) (finding notice of student’s diagnoses and request for information about available resources sufficient to constitute a request for an evaluation).

C. Parent's Requests for Evaluation

Here, the SCO finds and concludes that Parent requested a special education evaluation three times before the District initiated the evaluation process.

Parent first requested an evaluation during the May 2021 meeting with District staff. (FF # 7.) Parent told the District that Prior District had not completed his initial evaluation due to the COVID-19 pandemic and that Student had been receiving MTSS in Prior District. (FF # 6.) Parent shared concerns about Student's performance and asked how the District could support him so he would not struggle. (FF # 7.) Though Parent remembered explicitly asking for an evaluation, Assistant Principal did not share that memory. (*Id.*) Regardless, the SCO finds that this information, taken together, was sufficient to constitute a request for an evaluation. *See Boulder Valley Sch. District*, 122 LRP 39736 (SEA CO 06/17/22) (finding parents' generic request for an "evaluation" and "additional support" to be a request for a special education evaluation).

Parent's second request for an evaluation occurred at the beginning of the 2021-2022 school year. (FF # 10.) On or around August 19, 2021, Parent sent a letter to First Grade Teacher outlining her concerns related to Student's development and academic performance. (*Id.*) Parent mentioned Student's ADHD diagnosis and his suspected ASD. (*Id.*) In closing, Parent stated that she and Student's doctor were "waiting until he has a new IEP screening and plan this year to finish getting his evaluations done." (*Id.*) Only school districts evaluate students for IEPs, so this statement by Parent indicated that she expected that the District would be evaluating Student (perhaps based on her Spring 2021 meeting with District staff). No one from the District asked Parent to clarify what she meant, and Parent did not receive any response to her letter. (FF # 11.)

Finally, Parent requested an evaluation for a third time in an email to First Grade Teacher on September 28, 2021. (*Id.*) That email specifically asked when Student's "IEP testing/meeting was going to be scheduled." (*Id.*) Parent's question evidenced her understanding that she had already requested an evaluation and was waiting on the District to initiate the process. First Grade Teacher responded by dismissing Parent's request, saying that School was short-staffed, and they should give Student more time to show growth. (FF # 12.) Only after Advocate contacted Director did the District initiate Student's evaluation. (FF # 16.)

However, Parent filed her Complaint on October 14, 2022. Therefore, the one-year investigation period runs from October 14, 2021 through October 14, 2022. 34 C.F.R. § 300.153(c). Though the SCO can consider information beyond this period to determine whether a violation occurred, the violation itself must occur during the investigation period. *Id.* The one-year time limitation "applies even if the problems/concerns are continuing or if a parent is requesting compensatory services." *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-18, 61 IDELR 232 (OSEP 2013).

Here, each of Parent's requests for an evaluation occurred *before* the investigation period. (FF #s 7, 10, 11.) Parent's latest request occurred on September 28. (FF # 11.) On October 7, Director agreed to initiate the evaluation process, and, on October 13, District staff met with Parent to

determine the scope of the evaluation and obtain Parent’s consent. (FF #s 16, 17.) By October 14, 2021—the first day in the investigation period—the District had already begun the initial evaluation process. For this reason, the SCO finds and concludes that the District’s violation fell outside the scope of the one-year time limitation. This conclusion does not excuse the District’s failures but, instead, is a result of a procedural limitation.

Conclusion to Allegation No. 2: The District failed to properly determine Student’s eligibility for special education and related services in November 2021. Specifically, the District failed to conduct a comprehensive evaluation of Student, in violation of 34 C.F.R. § 300.304. This violation resulted in a denial of FAPE.

The second allegation in Parent’s Complaint concerns whether the District properly determined Student’s eligibility for special education and related services in November 2021, following his initial evaluation.

Eligibility for special education and related services under the IDEA requires that a child have one of thirteen qualifying impairments, and “by reason thereof, need[] special education and related services.” 34 C.F.R. § 300.8(a)(1); ECEA Rule 2.08. Thus, even if a child has one of the thirteen qualifying disabilities, he or she must also require “specially designed instruction . . . to meet the unique needs of a child with a disability” 34 C.F.R. § 300.39(a)(1).

To resolve a challenge to a school district’s eligibility determination, the SCO must first ascertain whether a school district followed the relevant IDEA procedures in reaching its determination and, if so, whether the resulting determination was consistent with and supported by child-specific facts, such as evaluation data and other data in the record. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). As a matter of policy, the CDE will not declare a student IDEA eligible through a state complaint decision as eligibility is best determined by a qualified multi-disciplinary team, including parents, who best understand a student’s educational needs. *Id.* If a state complaint investigation concludes that a district’s eligibility determination is inconsistent with IDEA’s evaluation procedures, or that a district otherwise improperly determined eligibility, CDE may instruct the school district to conduct an evaluation that remedies the deficiencies and concerns noted in the state complaint decision, and to then reconsider eligibility consistent with specific guidance provided in such decision. *Id.*

A. Compliance with IDEA Procedures

In analyzing whether the District properly determined that Student was not IDEA eligible here, the SCO first considers whether the District followed the relevant IDEA procedures and standards for conducting an evaluation. *Id.* An evaluation under IDEA has two purposes: (1) to determine whether the child has a disability, and because of the disability needs special education and related services, and (2) to help the IEP team determine the child’s specific needs. 34 C.F.R. § 300.304(b)(1)(i)-(ii). The IDEA has specific and extensive procedural requirements governing how school districts evaluate students to determine eligibility. 34 C.F.R. §§ 300.304-300.306.

Relevant to this investigation, the IDEA requires an evaluation to assess a student “in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” *Id.* § 300.304(c)(4).

Here, the District chose to evaluate Student in the areas of academic, cognitive, communication, health, motor, and social/emotional. (FF # 18.) The District selected these areas based on the concerns Parent shared during the October 2021 meeting. (*Id.*) Yet the District failed to conduct any cognitive assessments. (FF # 31.) This area of evaluation was completely omitted from Student’s evaluation. (*Id.*)

Additionally, Student’s health assessment lacked significant information about Student that was known to the District at the time. (FF # 26.) The District knew about Student’s health challenges due to his prematurity and the effect those challenges had on his attendance. (FF #s 2, 7, 9, 10.) However, those challenges are not included in the assessments of Student’s health. (FF # 26.) Instead, School Nurse mentioned only that Student had a prior diagnosis of ADHD. (*Id.*)

Also, the assessment of Student’s academic abilities consisted of his performance on District assessments and observations from First Grade Teacher and Special Education Mentor. (FF # 23.) Student’s assessment scores indicated he was performing below grade level, while the observations from District staff contain no information about Student’s ability to access grade-level content. (*Id.*)

Finally, the SCO also notes that the District only considered Student’s eligibility under the ASD disability category. (FF # 34.) As demonstrated in the Findings of Fact, Student’s ADHD and medical problems raised the question of whether he would be eligible under the Other Health Impairment (“OHI”) category. (FF #s 2, 10, 19.)

For these reasons, the SCO finds and concludes that the District failed to evaluate Student in all areas of suspected disability. This resulted in a violation of 34 C.F.R. § 300.304(c)(4).

B. Procedural Violation

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

Here, the District’s procedural violation resulted in a denial of FAPE. The District’s failure to conduct a comprehensive evaluation caused the multidisciplinary team to determine Student’s

eligibility without all of the information needed. The lack of information significant impeded Parent’s opportunity—as a member of the multidisciplinary team—to participate in the decision-making process. For this reason, the SCO finds and concludes that the procedural violation resulted in a violation of FAPE. The SCO has crafted a remedy, outlined below, that address this violation.

Conclusion to Allegation No. 3: The District failed to identify and evaluate Student after the District was on notice that Student may have a disability and need special education and related services, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3). This violation resulted in a denial of FAPE.

As explained above, the IDEA imposes an affirmative obligation on school districts to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe County Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

To decide whether the District fulfilled its child find obligations here, the SCO considers the individual circumstances of this case to determine whether the District had a reason to suspect that Student needed to be evaluated for special education. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); *Weld RE-4 School District*, 119 LRP 5662 (SEA CO 1/2/19) (citing *Clark County Sch. Dist.*, 114 LRP 45477 (SEA NV 8/28/14)).

Here, the Findings of Fact make clear that the District had a reason to suspect that Student needed to be evaluated for special education as late as August 12, 2022—when Parent provided Private Evaluation to Principal—and perhaps much earlier based on Student’s academic performance (and the District’s decision not to place Student on an RTI plan). (FF # 22, 38, 51.) In the Private Evaluation, Clinical Psychologist diagnosed Student with (or confirmed a prior diagnosis) ADHD, ASD, specific learning disability in reading and math, and Mixed Receptive-Expressive Language Disorder. (FF #s 43-48.) Clinical Psychologist conducted cognitive assessments that demonstrated Student’s slow processing speed and difficulty with fluid reasoning. (FF # 43.) Additionally, Clinical Psychologist found “significant deficits with all aspects of phonological processing and phonemic awareness skills.” (FF # 44.)

Assistant Principal and Director received the Private Evaluation and convened Student's 504 team to discuss adding accommodations to Student's 504 Plan, even as Student's struggles with reading persisted. (FF #s 54-56.) As revised, Student's 504 Plan listed his diagnoses and stated that his disabilities "affect his ability to keep up in class, to participate in discussions, or to stay focused." (FF # 56.) Specifically, his "limited processing speed and dyslexia limit[] his learning of verbally presented information." (*Id.*)

The Private Evaluation gave the District a new reason to suspect that Student might need special education and related services. The District's failure to refer Student for an initial evaluation resulted in a procedural violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

A. Procedural Violation

As noted above, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Here, the District's procedural violation resulted in a denial of FAPE. The District's failure to refer Student for an evaluation deprived Parent of the opportunity to participate in the evaluation process. The SCO has crafted a remedy, outlined below, which addresses this violation.

Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.

Pursuant to its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, nothing in the Record indicates that the District's failure to properly refer students for special education evaluations or properly respond to requests from parents for evaluations is systemic in nature. However, this investigation raises significant concerns about the understanding of School staff with regard to child find or, at least, their implementation of District-wide procedures and practices related to child find. The violations spanned two separate school years and involved a broad swath of staff (first grade, second grade, administration, and

special education). To remedy this, the SCO has required all School staff to participate in the ordered training.

REMEDIES

The SCO concludes that the District has violated the following IDEA requirements:

- a. Failing to properly determine Student’s eligibility for special education and related service, specifically by failing to conduct a comprehensive evaluation, in violation of 34 C.F.R. § 300.304; and
- b. Failing to identify and evaluate a student when the District was on notice that the student may have a disability and be in need of special education and related services, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3);

To remedy these violations, the District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Tuesday, January 31, 2023**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - i. Attendance and completion of training provided by CDE on child find and initial evaluations. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.111, 300.304, and the related concerns addressed in this Decision. Special Education Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Special Education Director and all School staff. Such training shall be completed no later than **Tuesday, February 28, 2023**.
 - ii. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to the CDE no later than **Tuesday, March 7, 2023**.

- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District’s timely correction of the areas of noncompliance.

2. Evaluation of Student and Determination of Eligibility

- a. By **Tuesday, January 31, 2023**, the District must conduct a comprehensive evaluation of Student in all areas of suspected disability. Consent for the evaluation must be obtained no later than **Tuesday, January 3, 2023**. The District may determine the appropriate evaluations and evaluators. The evaluation must be conducted in all areas of suspected disability and be consistent with the IDEA’s evaluation procedures at 34 C.F.R § 300.304 and the evaluator(s) must appropriately licensed, trained, and knowledgeable to conduct the assessments. The District may, at its discretion, adopt the assessments conducted by Clinical Psychologist, in whole or in part.
 - i. Evidence that this evaluation has occurred—including consent to evaluate and the evaluation report—shall be provided to the CDE by **Tuesday, February 7, 2023**.
- b. By **Tuesday, February 14, 2023**, the District must convene a multi-disciplinary team to determine Student’s eligibility for special education and related services in light of the evaluation. The multi-disciplinary team must consider Private Evaluation, as well as the District’s evaluation, and the determination must be consistent with the IDEA’s procedures at 34 C.F.R. § 300.306.
 - i. The District must provide Parent a copy of the evaluation report at least two business days prior to the scheduled eligibility meeting.
 - ii. Evidence that this evaluation has occurred—including confirmation that the report was provided to Parent, notice of meeting, the eligibility determination, and PWN—shall be provided to the CDE by **Tuesday, February 21, 2023**.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District’s annual determination under the IDEA and subject the District to enforcement action

by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 13th day of December, 2022.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-17

- Exhibit 1: Email correspondence
- Exhibit 2: Email correspondence
- Exhibit 3: 504 Plans
- Exhibit 4: PWN, eligibility determination, and evaluation report
- Exhibit 5: Report card
- Exhibit 6: 2021-2022 District assessment results
- Exhibit 7: 2022-2023 District assessment results
- Exhibit 8: Private evaluation report
- Exhibit 9: Email correspondence
- Exhibit 10: Email correspondence
- Exhibit 11: Email correspondence

Response, pages 1-5

- Exhibit A: 504 eligibility determination and 504 plans
- Exhibit B: Notice of meeting
- Exhibit C: Consent to evaluate and PWN
- Exhibit D: Blank
- Exhibit E: Evaluation report
- Exhibit F: District assessment results
- Exhibit G: District calendars
- Exhibit H: District policies
- Exhibit I: Correspondence
- Exhibit J: Blank
- Exhibit K: Verification of delivery to Parent
- Exhibit L: Meeting notes
- Exhibit M: Safety plan
- Exhibit N: Eligibility determination
- Exhibit O: Letter from Parent
- Exhibit P: Letter to Parents
- Exhibit Q: Attendance records

Reply, pages 1-20

- Exhibit 12: Email correspondence
- Exhibit 13: Messages from Classroom Dojo

Telephone Interviews

- First Grade Teacher: November 17, 2022
- Parent: November 28, 2022

- Principal: November 17, 2022
- School Psychologist: November 17, 2022
- Second Grade Teacher: November 18, 2022
- Special Education Director: November 17, 2022
- Special Education Mentor: November 18, 2022