

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

**State Complaint 2024:611
Pueblo School District 60**

DECISION

INTRODUCTION

On November 18, 2024, 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 School District 60 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

On December 9, 2024 and again on January 13, 2025, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Although the parties scheduled mediation, Parent did not attend or respond to attempts to contact her. The CDE resumed the investigation on January 24, 2025.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after November 18, 2023. Information prior to November 18, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. §

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.

300.153(b)² of the IDEA:

1. The District did not develop, review, and revise an Individualized Education Program (“IEP”) that was tailored to meet Student’s individualized needs from November 18, 2023 to the present because it did not include sufficient special education and related services—specifically positive behavioral interventions and supports, and other strategies—to address behavior impeding Student’s learning or that of others, as required by 34 C.F.R. §§ 300.320 and 300.324.
2. The District improperly changed Student’s placement on two occasions—between November 18, 2023 and the end of the 2023-2024 school year, when it shortened Students’ school day, and again on or about October 14, 2024, when it placed Student in an online program—because it:
 - a. Did not provide Parent with prior written notice (“PWN”) of Student’s change of placement, as required by 34 C.F.R. § 300.503(a)-(b).
 - b. Did not ensure the placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8).
 - c. Made a significant change to Student’s placement without consideration of reevaluation, as required by 34 C.F.R. § 300.503 and ECEA Rule 4.03.
3. The District did not fully implement Student’s IEP from approximately October 14, 2024 to the present because it did not provide the services required by his IEP as required by 34 C.F.R. § 300.323(c).

FINDINGS OF FACT

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

A. Background

1. Student is a six-year-old boy who attends first grade at his neighborhood elementary school in District (“School 1”). *Exhibit A*, p. 1; *Interview with School Psychologist*. He is “super smart, very respectful,” and enjoys drawing, creating art, and building with blocks. *Exhibit A*, p. 3;

² The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

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

Interview with Special Education Teacher 1 (“Special Ed Teacher 1”).

2. Student is eligible for special education and related services under the category of Autism Spectrum Disorder. *Exhibit A*, p. 1. His disability results in needs for emotional self-regulation and social skills. *Id.* at p. 5.
3. Parent raises concerns regarding, first, the adequacy of the District’s response to Student’s behavioral challenges beginning in the 2023-2024 school year; second, the District’s placement of Student on a shortened school day for a portion of the spring semester of that year; and, finally, Student’s placement in an online school in another district in the fall semester of the 2024-2025 school year. *Complaint*, pp. 1-6. She raises a concern about the District’s implementation of Student’s IEP following the changed placement. *Id.*
4. The District, in response, states that Student was provided with effective behavioral supports through the Response to Intervention (“RTI”) process even prior to his being identified as a child with a disability under the IDEA. *Response*, pp. 2-4, 6-7. It states that the RTI process led to development of an IEP with additional services and supports. *Id.* It states that, although Student was initially placed on a shortened day as part of the RTI process, and this schedule was adopted in the IEP, his schedule was extended and then restored to a full day as his behavior improved with the newly added IEP services and supports. *Id.* Regarding Student’s placement in an online school in the 2024-2025 school year, the District states that it was Parent’s choice to withdraw Student to an online school in a different school district. *Id.* at pp. 7-8.

B. Kindergarten - 2023-2024 School Year

Fall Semester

5. Student had not yet been identified as a child with a disability for purposes of the IDEA when he began Kindergarten at School 1, which was a new school for him, in the 2023-2024 school year. *Exhibit A*, p. 1.
6. Late in the fall semester, he began exhibiting physical aggression and refusals to participate. *Exhibit B*, pp. 1-5; *Interviews with School Psychologist and General Education Teacher 1 (“Gen Ed Teacher 1”)*. He began to refuse to come to school, and he would avoid participating in classroom activities by lying on the floor, refusing to follow directions, and exhibiting disruptive outbursts. *Id.*
7. Parent enrolled Student in private therapy, where he was diagnosed with an Adjustment Disorder. *Id.* At this time, Student’s home life had experienced significant change. *Id.* He also had a new teacher at School 1. *Id.*
8. At the end of the fall semester, School changed Student to Gen Ed Teacher 1’s classroom, and his aggressive behaviors and refusals decreased significantly. *Id.* Parent stated that he no

longer needed or received private therapy. *Id.*

Spring Semester – RTI Interventions

9. At the beginning of the spring semester, Gen Ed Teacher 1 went on leave. *Id.* Student again began exhibiting disruptive behaviors. *Id.* He exhibited physical aggression toward his grandmother when she dropped him off. *Interviews with School Psychologist and Special Ed Teacher 1.* He exhibited physical aggression toward adults and other students. *Exhibit B*, pp. 1-5; *Interviews with School Psychologist and Special Ed Teacher 1.* He began throwing objects, pushing over desks and other furniture, and climbing bookshelves. *Id.*
10. School convened an RTI Team, with Parent’s consent and participation, on January 23, 2024. *Exhibit B*, p. 1. The RTI Team discussed his behaviors, triggers, and potential interaction between his home life and school life. *See Exhibit*, pp. 1-5; *Interview with School Psychologist.* It put into place a reward system to provide positive reinforcement for accomplishing small tasks—like entering the classroom—and coordinated with Parent to avoid reinforcing work refusals by ensuring that work that was not done at school would be done at home. *Exhibit B*, p. 2.
11. The RTI Team also initiated a Functional Behavior Assessment (“FBA”) to study Student’s behavioral triggers and motivations. *Exhibit B*, pp. 4-5.
12. On February 8, 2024, after the FBA was completed, the RTI Team met a second time to discuss the FBA results and potential interventions. *Id.* at p. 2.
13. The FBA report reflected that Student’s behavioral challenges were of similar intensity and type at both school and home. *Id.* at pp. 2-5. He exhibited sensory issues, such as disliking wearing certain clothing, bright lights, noise, and difficulty socializing. *Id.* He found transitions difficult. *Id.* He was observed to exhibit physical aggression toward his peers and scored as “at-risk” on an assessment for bullying. *Id.* He expressed an intense desire not to attend school at all. *Id.*
14. The RTI Team expanded Student’s plan of positive behavioral supports. *Id.* at p. 3. These supports included a daily communication sheet to share communications with Parent regarding his classroom behavior; regular check-ins by his teachers to determine his mood; behavioral tracking tied to rewards for nondisruptive behavior and acquiescence to nonpreferred tasks; access to breaks; and access to sensory items. *Id.*; *Interview with School Psychologist.*
15. District, with input from the RTI Team and Parent’s agreement, also gave Student a late start so that, beginning on February 8, 2024, he began school at 11:00 a.m. *Exhibit B*, p. 2; *Interviews with Special Ed Teacher 1 and School Psychologist.* He began his school day with a specials class (specifically, art class) followed by recess and lunch. *Id.*; *see Exhibit H*, p. 2. The RTI Team’s goal was to begin his day with a positive, desired experience at school so he could

experience success and be motivated to go to school. *Interview with School Psychologist*. The team also wanted to reestablish positive social relationships between him and his peers. *Id.* The team's goal was to foster a more positive attitude toward school and gradually lengthen his day. *Id.*

16. Finally, also at the February 8 meeting, the RTI Team suspected that Student may have a disability and a need for special education and related services, initiated a referral for a special education evaluation, and obtained Parent's consent. *Exhibit B*, p. 2; *Interviews with Special Ed Teacher 1 and School Psychologist*; see also *Exhibit A*, p. 1.
17. With the late start that began with a specials class, Student exhibited less disruptive behavior, less aggression, and fewer refusals to attend school and participate. *Exhibit A*, p. 7; *Exhibit B*, p. 9; *Interviews with School Psychologist and Special Ed Teacher 1*.

Spring Semester – Development of IEP and BIP

18. The special education evaluation initiated by Student's RTI Team culminated in an evaluation report dated March 11, 2024. *Exhibit B*, p. 6.
19. The evaluation, conducted by School Psychologist and Special Ed Teacher 1, reflected that his cognitive abilities were in the average range, and that he might benefit from a rewards system with visual goals. *Id.*, p. 7. Assessments for autism spectrum disorder indicated a high level of autism spectrum-related symptoms. *Id.* at pp. 10-11.
20. On March 13, Student's multidisciplinary team, including Parent, met and found him eligible for special education under the category of Autism Spectrum Disorder. *Id.* at p. 12.
21. The next day, a properly composed IEP Team, including Parent, School Psychologist, Special Ed Teacher 1, who also acted as the District's designee, and Student's general education teacher—a long-term substitute, because Gen Ed Teacher 1 was still on leave—convened and developed an IEP. *Exhibit A*, pp. 1-2; *Interview with Special Ed Teacher 1*. The IEP stated that it was offering services to enable Student to make progress, based on his evaluation. *Id.* at p. 18.
22. Student's IEP described his behavioral needs, which tracked the same needs identified during the RTI process, including his need for emotional self-regulation, challenges related to work refusals, difficulty with transitions, and difficulty forming positive social relationships. *Id.* at pp. 4-5.
23. The IEP set two goals: one addressed his writing, and the other was a behavioral goal to follow directions when asked to perform a non-preferred task with only one prompt in three out of four opportunities, as tracked by his teachers. *Id.* at pp. 13-14.
24. The IEP provided behavioral accommodations: He was to receive sensory breaks as needed, have access to noise canceling headphones and sensory items, and receive positive

reinforcements for following directions. *Id.* at p. 14.

25. The IEP provided daily, direct specialized instruction, evenly divided between writing and behavior, from a special education teacher outside the general education environment. *Id.* at pp. 16-17; *Interviews with Special Ed Teachers 1 and 2*. It provided that, while he was on the late-start schedule, he would receive 60 minutes per day, and that the minutes would be increased to 120 minutes per day when he began to attend for full days again. *Id.* It provided 15 minutes per week of indirect support from a special education teacher. *Id.* Student's specialized instruction for behavior consisted of social stories to teach appropriate responses to challenging situations, self-regulation strategies such as counting breaths or asking for a break, and practice expressing his needs through his words rather than disruptive behavior or refusal. *Interviews with Special Ed Teacher 1 and Special Education Teacher 2 ("Special Ed Teacher 2")*.
26. The IEP provided paraprofessional support for behavior and writing in the general education classroom. *Exhibit A*, p. 16.
27. The Team determined that Student's least restrictive environment ("LRE") would be 40-70%, meaning that he spent 40-70% of his time in the general education environment. *Id.* at p. 18.
28. The IEP reflected that Student would continue to have a late start and then transition to a full school day. *Id.* at p. 16. The Team, including Parent, discussed lengthening Student's day but determined to keep the current late start time of 11:00 a.m. because it was working well to improve his behavior. *Id.* at p. 18. Parent had no objection to Student's late start and agreed that it was working well to motivate him to attend school and improve his social relationships with other children. *Interviews with School Psychologist and Special Ed Teacher 1*.
29. Although the Team, including Parent, agreed to lengthen Student's day as his capacity for schooling increased as a result of his new accommodations and specialized instruction, they did not put this plan in writing. *Id.* This was not in compliance with the District's standard practice of writing a plan for any shortened day, with objective metrics and milestones leading to a full day. *Id.*; *Interview with Special Education Director ("Director")*.
30. The Team developed a behavior intervention plan ("BIP"), which was embedded in the IEP. *Exhibit A*, pp. 10-12. The BIP contained the results of the FBA, which concluded that his behaviors were motivated by a desire to escape the classroom and demands of school in general. *Id.* He also seemed to be looking for "a measure of control" and he was "very rigid in wants and needs and it appears he is attempting to . . . steer his environment to one that is more to his liking." *Id.*
31. The BIP provided that staff would give him a daily check-in to gauge his emotional state; schedule sensory breaks and allow Student to request breaks; give choices (acceptable to staff) for academic and social activities; provide verbal and visual identification of transitions; correct, in a non-confrontational manner, negative self-talk; track Student's behavior; and

provide a reinforcer menu of rewards and a visual or tactile tracker of positive to reinforce pro-social engagement with school. *Id.*

32. Staff implemented these strategies and supports. *Interviews with Gen Ed Teacher 1, General Education Teacher 2 (“Gen Ed Teacher 2”), Special Ed Teacher 1, and Special Ed Teacher 2.*

Spring Semester – Return to Full Day

33. Student’s behavior continued to improve through the remainder of March with the late start and added supports. *Interviews with Gen Ed Teacher 1, Special Ed Teacher 1, and School Psychologist; see Exhibit G; Exhibit I, p. 2.*
34. On April 1, Gen Ed Teacher 1, with whom Student had done well, returned from leave, and his engagement with schooling continued to increase. *Interviews with Gen Ed Teacher 1 and Special Ed Teacher 1*
35. Shortly after Gen Ed Teacher 1’s return, on April 9, staff consulted with Parent and Student’s grandmother and decided to start his day at 10:00 a.m. with an academic class rather than a specials class. *Interviews with Gen Ed Teacher 1, Special Ed Teacher 1, and School Psychologist.*
36. Student continued to do well, and, on May 6, his schedule was restored to a full school day through the end of the semester on June 3. *Id.; Exhibit N, p. 1; Exhibit A, p. 35.* He continued on a full day schedule in the 2024-2025 school year. *Interviews with Gen Ed Teacher 2 and Special Ed Teacher 2; accord Exhibit N, p. 1.*
37. Student’s progress report for the end of the school year stated that he had made adequate progress on his annual behavioral IEP goal. *Exhibit I, p. 2.*

C. First Grade – 2024-2025 School Year

Beginning of the Year to Suspension on October 8, 2024

38. Parent moved Student from School 1, his neighborhood school, to School 2, a choice school in District, for first grade in the 2024-2025 school year. *Interviews with Gen Ed Teacher 2, Special Ed Teacher 2, RTI Coordinator, and Director.*
39. A week after classes began, his new school’s IEP Team, including Parent, met to discuss how to meet his needs at School 2. *Exhibit A, p. 21; Interviews with Gen Ed Teacher 2 and Special Ed Teacher 2.* Separately, School 2’s RTI Coordinator introduced herself to Student on the first day of school; Special Ed Teacher 2 and the school principal had informed her that Student had had behavioral challenges at School 1 and might need additional support. *Interview with RTI Coordinator.*
40. The IEP Team convened and revised his IEP by adding an accommodation—Student would be

given a choice regarding the type of break he needed—and reducing his direct specialized instruction from 120 minutes per day to 90 minutes per day. *Exhibit A*, pp. 32, 35. The reduction in instruction minutes was intended to reflect his increased ability to self-regulate and participate in school, and to increase his time in the general education environment. *Interviews with Gen Ed Teacher 2, Special Ed Teacher 2, and RTI Coordinator.*

41. A week or two into September, Student began exhibiting disruptive behaviors, aggression, and refusals to engage in his education. *Id.*
42. Gen Ed Teacher 2, Special Ed Teacher 2, and RTI Coordinator decided to respond to these challenges by working within Student’s existing supports with small changes—specifically, by notifying him of his scheduled breaks (one in the morning and one in the afternoon) so he could depend on having time outside the classroom, and by instructing his paraprofessional to take a more active role in monitoring his mood and reminding him to use his emotional self-regulation strategies. *Id.* Gen Ed Teacher 2 increased her efforts to make a positive environment for Student by making him a bucket with building blocks and a basket of sensory toys, involving him in class such as by having him read aloud the instructions for class assignments, and letting him use a special pen. *Interview with Gen Ed Teacher 2.*
43. Although there were several incidents where Student attempted to refuse to come into the school building, his behaviors up to the end of September did not reach a point where they significantly interfered with his learning. *Interviews with Gen Ed Teacher 2, Special Ed Teacher 2, and RTI Coordinator.*
44. On September 30, there was an incident where Student pushed desks around the room and approached a peer while stomping his feet and raising his fist. *Exhibit G*, p. 1; *Interview with RTI Coordinator.* RTI Coordinator wrote a disciplinary report and contacted Parent to discuss the incident. *Id.*
45. The next week, on October 8, Student was suspended for two days because he swung his fist at Special Ed Teacher 2. *Exhibit G*, p. 1; *Interviews with RTI Coordinator and Special Ed Teacher 2.*

Re-entry Meeting, Transfer to Online School, and Return to School 1

46. On October 14, School convened a re-entry meeting. *Exhibit M*, p. 24. The purpose of the meeting—like all post-suspension re-entry meetings in District—was to discuss potential causes for Student’s actions (such as changes at home), Student’s reintegration into school, behavioral expectations, and to hear and include Student in the discussion of how to proceed moving forward. *Interviews with Gen Ed Teacher 2 and RTI Coordinator.*
47. The re-entry meeting included Parent, Student, RTI Coordinator, Gen Ed Teacher 2, and School 2’s principal. *Exhibit M*, p. 24.

48. Parent expressed frustration with Student’s behavior at both School 2 and home. *Id.* Student said he did not want to go to any school. *Id.* She raised the idea that online school might be a better fit. *Id.* She asked what the online schooling options were. *Id.* School 2’s principal explained that District does not have an online school for elementary school students but provided the name of an online school within a different school district. *Id.* Parent said she wanted to look into the online school before discussing the next steps for re-entry. *Id.*
49. Staff told Parent that other students had had success in online schools but cautioned her to consider whether she had someone at home to support Student in attending online. *Id.* Parent mentioned that Student’s grandmother would be available. *Id.* Parent said that she would look into the online school and let School 2 know what she decided. *Id.*
50. Although the Complaint states that staff said that School 2 could not meet Student’s needs and Parent’s advocate initially stated that Parent had been told that Student was unwelcome at School 2, an email from Parent acknowledges that nobody said that Student was not welcome at School 2. *Complaint*, p. 3; *Exhibit M*, p. 8. Nobody told Parent that School 2 could not serve or support Student. *Interviews with Gen Ed Teacher 2 and RTI Coordinator*; see *Exhibit M*, p. 73.
51. That same day, Parent asked for Student’s transcripts. *Exhibit M*, p. 63. The next day, on October 15, Parent informed School 2’s secretary that Student had been accepted to the online school. *Id.* at p. 64. The day after, on the 16th, the online school requested Student’s records including his special education records. *Id.* at p. 22. The online school is operated by a different school district. See *id.* at p. 23.⁴
52. The following Tuesday, Parent emailed School 2’s principal stating that she did not have the support at home that she had expected for Student’s online schooling, and she asked to return him to School 2. *Id.* at p. 4. School and District staff told her that Student’s spot at School 2 had been filled from the school-of-choice waitlist. *Id.* at p. 10. Parent was told that she would need to apply to transfer to School 2—which was a choice school—but she could immediately register Student with his neighborhood school, School 1, and an IEP meeting would be held to discuss Student’s needs including any additional behavioral supports. *Id.* at pp. 7-8, 10.
53. Parent agreed to return Student to his neighborhood school, School 1, on December 10. *Exhibit N*, p. 1.
54. Student returned to School 1 on December 16. *Interviews with School Psychologist, Gen Ed Teacher 1, and Special Ed Teacher 1; CDE Exhibit 1.* He has been attending for a full day with an LRE of 80% or more of his time in the general education environment. *Id.* He has had no

⁴ Accord CDE, Financial Transparency School Lookup, <https://www.cde.state.co.us/schoolview/financialtransparency/homepage>.

disciplinary incidents, and, in School Psychologist's observations, is participating in class and following group directions. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District developed an IEP that contained appropriate behavioral supports and strategies, as required by 34 C.F.R. §§ 300.320 and 300.324. District complied with the law.

Parent alleges that Student's IEP did not provide adequate behavioral supports and strategies.

A. Substantive Adequacy of the IEP

The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas 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)). The IDEA requires districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Id.* at 399.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.*

Parent's allegation challenges the substance of the IEP and not the IEP development process; as such, this Decision addresses only the second prong of the *Rowley* standard.

B. Behavioral Supports

Under the IDEA, an IEP must consider the use of positive behavioral interventions and supports whenever a student's behavior interferes with the student's ability to benefit from her educational programming. 34 C.F.R. § 300.324(a)(2)(i). This includes where the consequences of a child's behavior, including "violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures," impede the child's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22).

Here, School 1 first became aware of Student's behavioral challenges in the fall semester of the

2023-2024 year before it was suspected that Student might have a disability. (FF #s 5-17.) At this time, Student had been experiencing significant changes in his home life as well as at school, and his private therapist determined that his behavioral issues were attributable to difficulty adjusting to these changes. (*Id.*) By the end of the semester, with the passage of time and reassignment of Student to Gen Ed Teacher 1's classroom, Student's behavior improved to the degree that Parent ceased his private therapy. (*Id.*) Because the causes of Student's behavioral challenges initially seemed transient, rather than the result of a disability, the state complaints officer ("SCO") finds District did not act unreasonably when it intervened in Student's behavior only by changing his classroom teacher.

When Student began to exhibit more severe behavioral challenges in the spring semester, after Gen Ed Teacher 1 went on leave, the District responded by convening an RTI Team with Parent on January 23, 2024, immediately implementing some behavioral supports and initiating an FBA to gather more information concerning the reasons for Student's behaviors. (*Id.*) The RTI Team convened with Parent again just over two weeks later, on February 8. (*Id.*) The FBA report identified concerns with sensory stimuli, socializing, physical aggression, and bullying. (*Id.*) The RTI Team developed behavioral interventions that responded directly to these concerns. (*Id.*) In addition to formalizing more regular communications with Parent, the behavioral plan included check-ins to track his mood and sensory relief in the form of breaks and sensory items. (*Id.*) District, with input from the RTI Team and Parent's agreement, had Student begin his day late with a specials class as a means of both increasing his motivation to attend school and repairing his social relationships with his peers, who he had alienated through physical aggression and bullying. (*Id.*) Finally, through this work, the RTI Team suspected that Student might have needs arising from a disability and referred him for an evaluation under the IDEA. (*Id.*)

The referral ultimately led to Student's identification as a child with a disability under the IDEA, development of an IEP, and development of further behavioral supports and strategies. (FF #s 18-37.) Like the supports provided through the RTI process, the services and supports in Student's IEP—including a comprehensive BIP—were targeted at Student's specific needs for support in emotional self-regulation, sensory issues, and forming positive social relationships. (*Id.*) Student's IEP provided a goal and specialized instruction for emotional self-regulation, and it provided access to breaks and sensory devices. (*Id.*) The IEP Team, including Parent, agreed to continue using a late start, because it had resulted in improvements to Student's attendance and social relationships with the other children. (*Id.*) The Team planned to, and then did, extend Student's day to test his capacity for attending school beginning with a regular academic class, and then it restored him to a full day as he became more proficient in using his accommodations and regulating his emotions. (*Id.*)

Following Parent's transfer of Student to School 2, his IEP Team, including Parent, met to discuss how his needs would be addressed at his new school. (FF #s 38-42.) The Team added an accommodation to better meet his sensory needs and reduced his specialized instruction to reflect his progress from the last school year and increase his time in the general education environment. (*Id.*) When Student began exhibiting challenging behaviors again at the beginning

of September, staff worked within his existing plan to better structure his breaks and increase his paraprofessionals' engagement in an attempt to address those challenges. (*Id.*)

In consultation with a CDE Specialist, the SCO finds and concludes that these behavioral supports, including the temporary late start schedule in the 2023-2024 school year, were reasonably calculated to enable Student to make progress appropriate in light of his circumstances. The supports were targeted to his needs, reasonable in quality and quantity, reasonably timely in response to those needs, and effective in improving his behavior.

The SCO cautions the District, however, that it should have written out the plan to lengthen and ultimately restore Student's shortened school day with clear, objective metrics and milestones. The IEP Team did not do so in this case, even though the District's standard practice requires writing a plan to ensure that any use of a shortened day for behavioral reasons is thoughtful, objective, and temporary. (*Id.*) The District is strongly encouraged to train its staff to follow its standard practice. The SCO notes that a recently enacted Colorado statute will soon result in requirements to carefully limit and document the use of shortened days. See 2024 Colo. Legis. Serv. Ch. 436 (H.B. 24-1063) (West 2024).

For these reasons, the SCO finds and concludes that the District properly developed, reviewed, and revised Student's IEP in the spring semester of the 2023-2024 school year and again at the beginning of the 2024-2025 school year to meet Student's behavioral needs, as required by 34 C.F.R. §§ 300.320 and 300.324. District complied with the law.

Conclusion to Allegation No. 2: District did not change Student's placement during the 2023-2024 and 2024-2025 school years. District followed the requirements for PWN, participation, and consideration of reevaluation at 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501(c), 300.503, and ECEA Rule 4.03. District complied with the law.

Parent alleges that the District did not follow certain requirements when it changed Student's placement by shortening his school day in the 2023-2024 school year and by moving him from School 2 to an online school in October 2024.

A child's placement—a term used to denote the provision of special education and related services—must be determined by a group of persons, including parents, knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); see also *id.* §§ 300.321(a)(1), 300.322, 300.324, 300.327, 300.501(c). Decisions regarding a child's placement must be based on the child's IEP and consistent with the IDEA's least restrictive environment obligations. *Id.* § 300.116(a)(2), (b)(2). When a district changes a child's placement, it must provide PWN of the change. *Id.* § 300.503. When a district makes a significant change of placement—defined to include a change in opportunities to participate in nonacademic and extracurricular services or a change from a brick-and-mortar school to an online program—this

change must be made by the IEP Team and upon consideration of reevaluation. ECEA Rule 4.03(8)(b)(ii).

Here, Parent first alleges that the District did not follow the IDEA's procedural requirements when Student was given a late start in February 2024 so his day would begin with a specials class. However, this schedule was determined prior to Student's identification as a child eligible for special education services under the IDEA in March 2024. (FF # 15.) The SCO finds and concludes that IDEA's procedural requirements did not apply at that time.

When Student's IEP Team met to develop his initial IEP the next month in March, his placement determination was made by the IEP Team, which included Parent, School Psychologist, Special Ed Teacher 1, who was also the District's designee, and Student's general education teacher at the time. (FF #s 18-32.) School Psychologist and Special Ed Teacher 1 had conducted Student's evaluation and understood the meaning of the evaluation data. (*Id.*) Parent and the other members of the IEP Team determined that Student's initial placement would include the late start, with a transition to a full day as he grew proficient in using the accommodations and emotional self-regulation supports he was receiving through the RTI and IEP processes. (*Id.*) Accordingly, the SCO finds that Student's placement was determined by an appropriate team including Parent and others knowledgeable about Student, the meaning of the evaluation data, and the placement options as required by 34 C.F.R. §§ 300.116(a), 300.321, 300.327, 300.501(c), and ECEA Rule 4.03. Contrary to the Complaint allegation, there was no change of placement; therefore, the District did not need to issue PWN of a change of placement as required by 34 C.F.R. §§ 300.322 and 300.503. Finally, the IEP Team meeting occurred the day after the IEP Team reviewed Student's evaluation, and the Team initiated, rather than changed, Student's placement. (FF #s 18-32.) Accordingly, the District was not required to comply with the ECEA's requirement that the IEP Team consider reevaluation prior to making a significant change of placement in this instance. *See* ECEA Rule 4.03(8)(b)(ii).

Parent also alleges that the District did not follow the IDEA's change-of-placement requirements when Student transferred to an online school in another district in October 2024. However, Parent—rather than the IEP Team or District—chose to transfer Student. (FF #s 46-54.) The Record shows that Parent was the first to raise the idea of online schooling. (*Id.*) The Record does not support a finding that, as alleged, District said that it could not meet Student's needs or that she was not welcome at School 2. (*See id.*) Because Parent unilaterally withdrew Student from the District, the District was not required to convene the IEP Team, provide notice of the change, or consider reevaluation prior to the change per 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501, and 300.503.

For these reasons, the SCO finds and concludes that the District complied with the requirements of 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501(c), 300.503, and ECEA Rule 4.03.

Conclusion to Allegation No. 3: After Parent transferred Student to a different school district on October 14, 2024, the District was no longer required to provide his IEP services per 34 C.F.R. § 300.323. No noncompliance is found.

Parent alleges that the District did not provide Student’s IEP services after October 14, 2024.

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. §§ 300.1, 300.17, 300.101(a); ECEA Rule 2.19. School districts must have an IEP in effect for each child with a disability within the district or otherwise within the district’s jurisdiction. 34 C.F.R. § 300.323(a). 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.*, 580 U.S. at 391 (2017). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). The school district of attendance is generally responsible, under the ECEA and IDEA, for the special education needs of a student with a disability that attends one of the district’s schools. ECEA Rule 8.02(1).

Here, Parent unilaterally withdrew Student from the District following the re-entry meeting on October 14, 2024. (FFs # 46-54.) As noted in the discussion for Allegation 2, District did not say that, as alleged, it could not meet Student’s needs or that she was not welcome at School 2. (*See id.*) The online school is operated by a different school district. (*Id.*)

For these reasons, the SCO finds and concludes that the District was not required by 34 C.F.R. § 300.323 to provide Student’s IEP services following October 14, 2024. District complied with the law.

REMEDIES

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

CONCLUSION

The Decision of the CDE 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 4th day of March, 2025.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-6

Response, pages 1-11

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit D: Meeting Notices
- Exhibit E: Prior Written Notices
- Exhibit G: Disciplinary Records
- Exhibit H: Schedules
- Exhibit I: Progress Monitoring
- Exhibit K: Calendars
- Exhibit L: Policies and Procedures
- Exhibit M: Correspondence
- Exhibit N: Communication logs

Telephone Interviews⁵

- School Psychologist: February 3, 2025
- Gen Ed Teacher 2: February 4, 2025
- Special Ed Teacher 2: February 5, 2025
- Director: February 5, 2025
- RTI Coordinator: February 10, 2025
- Special Ed Teacher 1: February 11, 2025
- Gen Ed Teacher 1: February 11, 2025

⁵ Consistent with 34 C.F.R. § 300.152(a)(2), the SCO provided the Parent the opportunity to submit additional information, either orally or in writing. Specifically, Parent did not respond to the SCO's attempts to contact her to schedule a telephone interview. Parent also did not submit a written Reply or any additional written information pursuant to the letter the SCO sent to Parent on January 24, 2025.