

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

State Complaint SC2025-536
Denver Public Schools

DECISION

INTRODUCTION

On March 31, 2025, 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 complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

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 March 31, 2024. Information prior to March 31, 2024, may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

1. District did not provide Parent with proper written notice of its proposed or refused actions regarding the provisions of FAPE—specifically, the determination by a

¹ The IDEA is codified at 20 U.S.C. § 1400 *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1 *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

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

multidisciplinary team (“MDT”) that Student was not eligible for special education and related services on or around September 24, 2024—as required by 34 C.F.R. § 300.503.

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 thirteen years old and is a seventh grader at a District middle school. *Response*, p. 1. Student is not eligible for special education and related services. *Id.*; *Interview with Parent*.
2. Student is consistently described as a hardworking child who excels at math and other preferred topic areas. *Response*, p. 1. He struggles with reading comprehension and focusing in class at times. *Id.*; *Interview with Parent*.
3. In January 2025, Parent filed a state-level complaint (“Prior Complaint”) against District. *Denver Public Schools*, 125 LRP 13689 (SEA CO 3/25/25). The Prior Complaint alleged, among other things, that an MDT improperly determined Student was no longer eligible for special education and related services at a meeting on September 23, 2024. *Id.* Ultimately, the CDE found District complied with IDEA’s standards and procedures in making its eligibility determination. *Id.* The facts from the Prior Complaint will only be repeated here to resolve the issue in this Complaint.
4. Parent’s Complaint now asserts District did not provide her with proper notice of the MDT’s determination that Student was no longer eligible for special education and related services following the September 2024 meeting. *Complaint*, pp. 4-5.

B. District’s Policies, Practices, and Procedures

5. District has a comprehensive special education procedural manual (“the Procedure”) which describes, among other things, the requirements for providing prior written notice (“PWN”) to parents. *See Exhibit F*, pp. 27-29. Under the Procedure, PWN “is a notice that school teams must provide to the parents in writing before (prior to) taking or refusing to take certain actions that impact a child’s educational program.” *Id.* at p. 27.
6. The Procedure notes PWN is “essential to protecting the rights of students receiving special education and their parents” and highlights the “vital component” PWN plays in providing a clear record for students and parents of the decisions that have been made, the basis for those decisions, and the actions that have been proposed or refused. *Id.* Among other

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

reasons, the Procedure requires PWN to be provided when there is any change in educational placement or a “[t]ermination of special education and related services.” *Id.* at pp. 28-29.

C. PWN Following September 2024 Meeting

7. On September 23, 2024, an MDT, including Parent, met to review Student’s reevaluation and determine his continued eligibility for special education and related services. *Response*, p. 2. The MDT determined Student was not IDEA eligible, but he did qualify as a student with a disability under Section 504 and began receiving accommodations pursuant to a 504 plan. *Id.*
8. Parent asserts she was not provided PWN of the MDT’s eligibility determination following this meeting. *Complaint*, p. 4; *Reply*, pp. 3-5.
9. District acknowledges it did not provide Parent timely PWN following this meeting, explaining that while District “wrote and finalized a PWN for [Student’s] September 2024 eligibility determination, due to an error, the District regrettably did not send the PWN until the District produced records responsive to [Prior Complaint] on February 11, 2025.” *Response*, p. 3. District explains “the PWN was timely drafted and finalized,” but Student’s Case Manager mistakenly did not send the PWN to Parent. *Id.*; *Exhibit A*, pp. 1-4; *see Exhibit B*, p. 7. District admits this delay was unreasonable but asserts it did not impede Parent’s participation in the process or otherwise result in the denial of FAPE for Student. *Response*, p. 3.
10. Following the September 2024 meeting, Parent requested an Independent Educational Evaluation (“IEE”), which District granted. *Response*, pp. 2, 4; *Exhibit B*, p. 9. School’s special education instructional specialist (“SEIS”) issued Parent PWN of its proposal to initiate an IEE at public expense on November 12, 2024. *Exhibit A*, p. 1.
11. After issuance of the IEE Report, an MDT, including Parent, met several times in March 2025 to review the results and reconsider Student’s eligibility for special education and related services. *Response*, p. 2; *Exhibit B*, pp. 4-6. On March 20, 2025, Student’s former special education case manager (“Case Manager”) issued Parent PWN of District’s refusal to change the identification of Student. *Exhibit B*, pp. 2-6.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District did not provide Parent with PWN of its determination that Student was no longer eligible for special education and related services after the September 23, 2024 meeting, as required by 34 C.F.R. § 300.503(a). This noncompliance did not result in a denial of FAPE.

Parent’s concern is that District did not provide PWN of its determination that Student was no longer eligible for special education and related services. (FF #s 4, 8).

PWN must be issued a reasonable time before a district proposes or refuses to change “the educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district’s proposal or refusal. *Id.* § 300.503(b)(1)-(7).

Adequately identifying and explaining the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Canty. Sch. Dist.*, 118 LRP 35788 (SEA CO 07/06/18).

Here, District concedes it did not provide Parent PWN in a timely manner after the September 23, 2024 meeting. (FF # 9). Therefore, the CDE finds and concludes District did not issue PWN of its proposal to change Student’s provision of FAPE, as required by 34 C.F.R. § 300.503(a).

A. Procedural Noncompliance

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, procedural noncompliance is only actionable to the extent it impedes the child’s right to a FAPE, significantly impede the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, the CDE finds that District’s procedural noncompliance did not significantly impede Parent’s ability to participate in the decision-making process. First, Parent attended and participated in the September 23, 2024 meeting where the MDT determined Student did not continue to be IDEA-eligible (and thus was aware of the decision made and documented in the PWN she did not initially receive). (FF # 7). Second, as a result of knowing of the MDT’s decision, Parent requested and obtained an IEE at public expense, as well as filed a state-level complaint on the issues with which she disagreed, even before she received the PWN. (FF #s 3, 10). Finally, there was no deprivation of an educational benefit for Student, who is not IDEA eligible. (FF # 1); *D.G. v. Flour Bluff Indep. Sch. Dist.*, 481 F. App’x 887, 893 (5th Cir. 2012) (holding that a school district cannot be held liable for a denial of FAPE unless the student has a need for special education). For these reasons, the CDE finds and concludes this noncompliance did not result in the denial of FAPE.

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is 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, CDE must 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 Disability and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the Record does not indicate that District’s noncompliance with the PWN requirement is systemic in nature. District’s practices and procedures regarding PWN are consistent with IDEA’s requirements, and District acknowledges this standalone error in not complying with those requirements in this situation. (FF #s 5-6, 9). Instead, District’s noncompliance here is an instance of District staff not following District’s procedures in one instance. (*Id.*). Therefore, the CDE finds and concludes that District’s noncompliance is not systemic and is not likely to impact the future provision of services for all IDEA-eligible students in District.

REMEDIES

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

1. Providing PWN of its proposal to change Student’s provision FAPE, as required by 34 C.F.R. § 300.503.

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

1. Corrective Action Plan

- a. By **June 30, 2025**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance 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 District is responsible. 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 District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Case Manager and SEIS must read this decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.503, by **July 14, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals

occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **July 21, 2025**.

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
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it may adversely affect District's annual determination under the IDEA and subject District to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE 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's State Complaint Procedures*, Section E, ¶ 2; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer ("SCO").

Dated this 30th day of May, 2025.



Lee Sosebee, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Exhibit 1: PWN

Response, pages 1-5

- Exhibit A: PWN
- Exhibit B: PWN
- Exhibit C: Correspondence
- Exhibit D: Staff List
- Exhibit E: Verification of Delivery
- Exhibit F: District Procedures

Reply, pages 1-6

Telephone Interviews

- Parent: April 24, 2025