

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

**State-Level Complaint 2021:508
El Paso County School District 49**

DECISION

INTRODUCTION

On April 2, 2021, 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-level complaint (“Complaint”) against El Paso County School District 49 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one (1) allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 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), 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 April 2, 2020 through April 2, 2021 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 Student has been denied a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to make an offer of FAPE and provide special education and related services in accordance with an IEP from January 17, 2021 to the present, consistent with 34 C.F.R. § 300.323.

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.

FINDINGS OF FACT

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

A. Background

1. Student is eighteen years old and qualifies for special education and related services under the Other Health Impairment disability category. *Exhibit 7*, p. 1. He is a determined young man with a great memory and a love of lizards and dinosaurs. *Interview with Parent*. He can be rigid with routines and has some difficulty in social situations, but he likes people, especially those who share similar interests. *Id.* Academically, Student struggles with executive functioning. *Id.* Student is in 12th grade but does not currently attend school or receive services pursuant to his IEP. *Id; see Exhibit A*, pp. 1-15.
2. Student resided at a residential facility and attended an approved facility school overseen by the CDE Office of Facility Schools from 2017 until the end of 2020. *Interview with Parent*; *CDE Exhibit 3*, p. 12; *CDE Exhibit 4*. Upon turning eighteen in December of 2020, Student transitioned into a lower level of care by moving to a host home for adults (“Residence”) within the geographical boundaries of District. *Exhibit 7*, p. 8, 10.
3. After transitioning into Residence, Student’s supervision shifted from the County Department of Human Services (“DHS”) to a local Community Centered Board (“CCB”), a program which helps manage and deliver services to individuals with developmental disabilities and provides funding to private host homes. *Interviews with Parent and Special Education Director*; *see CDE Exhibit 1; Exhibit I*, p. 28. Although Student remains under the supervision of CCB, Parent supports Student and is an active part of his life. *Interview with Parent*; *see Exhibit 9*, pp. 1-8; *see Exhibit I*, p. 28.
4. This investigation concerns an enrollment dispute that occurred during the 2020-2021 academic year. *Interviews with Parent, Special Education Director, and Central Registrar*. The issue is whether District denied Student a FAPE when it did not provide educational services to him after he moved to Residence on January 17, 2021. *See Complaint*, pp. 1-5; *Response*, pp. 1-4.

B. Student’s Placement in Residence

5. On January 17, 2021, Student was placed into Residence where he lives full time. *Interview with Parent; Exhibit I*, p. 28; *see Exhibit 9*, pp. 1-8. Residence has beds for two adults and is managed by Caretaker 1, who manages several host homes, oversees benefits for residents, and serves as a point of contact for parents and CCB. *Interview with Parent*. Residence is

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

staffed by two adult caretakers who live on site and provide 24-hour care. *Id.* Caretaker 1 does not live at Residence. *Id.*

6. Residence is located within the geographical boundaries of District. *Interviews with Special Education Director and Central Registrar.* Upon being placed at Residence, no one from DHS, CCB, or Student's previous school district notified District that he was transferring into District. *Id.*
7. Soon after moving into Residence, Student attempted to register with his neighborhood high school located within District. *Interview with Parent; see Exhibit H, pp. 1-16.* Caretaker 1 recommended to Parent that Student enroll on his own to build independence, so Student attempted to enroll using the District's online enrollment portal on February 15, 2021. *Interview with Parent; see Exhibit H, pp. 1-16.*

C. District's Residency Policy

8. Under District policy, a student is deemed to reside within the District if the student is permanently dependent for his or her maintenance and support on someone other than nonresident parents or upon any charitable organization, and the student actually makes his or her home and receives support within the District. *Exhibit L, p. 1.*
9. Regardless of the residence of a student's parents or guardians, a student is also deemed a resident of the District if the student adopts a dwelling place within the District with the intent to remain there indefinitely and the student regularly eats and/or sleeps there during the school year. *Id.* Thus, if a student lives and receives care at an adult care home (such as Residence) within the geographical boundaries of the District, that student is deemed to reside within the District. *Interviews with Special Education Director and Central Registrar.*
10. District policy requires proof, as necessary, to support a claim of residency. *Exhibit L, p. 1.* Proof of residency can be established by providing the District with a service bill, rental or lease agreement, home purchase contract, or mortgage statement dated within the preceding 60 days of registration. *Id.* at p. 7. If applicants do not have a service bill in their name, or if they are living with another family, they may instead establish residency by providing the District with a notarized letter from the owner or renter of the property within the District. *Id.* at pp. 7-8. The notarized letter must indicate the names of all individuals within the applicant's family and include the owner's or renter's current service bill or mortgage statement dated within the preceding 60 days of registration. *Id.*
11. According to District's Central Registrar ("Central Registrar"), District sometimes accepts documentation that does not appear on the list of approved documents. *Interview with Central Registrar.* If the documentation is like one of the approved documents outlined in District policy, the decision to accept alternative documentation can occasionally be made

by the registrar who reviews the enrollment application. *Id.* If the document is outside the list of approved documents, the decision whether to accept the proof is left to supervisors in the enrollment office. *Id.*

12. In this case, District does not dispute that if Student lived and received care at Residence, he would be considered a resident in the District. *Interviews with Special Education Director and Central Registrar*, see *Response*, pp. 1-4. Rather, District's position is that Student has not established he lives at Residence because District has not received a proof of residency deemed acceptable under District policy. *Interviews with Special Education Director and Central Registrar*; see *Response*, pp. 1-4.

D. Student's First Enrollment Attempt in February 2021

13. On February 15, 2021, Student attempted to enroll using District's online enrollment application. *Interviews with Parent, Special Education Director, and Central Registrar*; see *Exhibit 1*, pp. 1-6. Student indicated he lived at Residence, which is located within the geographical boundaries of District. See *Exhibit H*, p. 1. Student provided the name and contact information for one of the adult caregivers who resides in Residence ("Caretaker 2") and indicated that Caretaker 2 was his DHS or agency caseworker. *Id.* at p. 3. Student also indicated that he qualifies for special education and related services under the IDEA. *Id.*
14. To prove he resided within District, Student attached to the enrollment application a photocopy of an envelope sent to him at Residence. *Id.* pp. 5, 11. The mail in question contained Student's bank card, but the identity of the sender did not appear on the outside of the envelope. See *id.* at p. 11. The enrollment application was rejected because the attached letter was tied to Student rather than Residence, the identity of the sender was unknown, and the mail was not an approved form of proof under District policy. *Interview with Central Registrar*; see *Exhibit L*, pp. 7-8. There were no other deficiencies in Student's enrollment application. *Interviews with Central Registrar and Special Education Director*.
15. Upon rejecting the application, District sent Student a LiveChat ticket to indicate he needed to prove residency by providing a notarized letter signed by the owner or renter of Residence, along with a service bill in the name of the owner or renter. *Interviews with Central Registrar and Parent*. The LiveChat ticket was sent to the email address provided on Student's enrollment application and was received by Caretaker 1. *Interviews with Central Registrar and Parent*.
16. On March 5, 2021, Caretaker 1 contacted the District enrollment office and spoke to Central Registrar. *Interview with Central Registrar*. Although Central Registrar was not the individual that initially reviewed the February 15, 2021 enrollment application, she reassigned the enrollment ticket to herself because the registrar that had reviewed the application was no longer with the District. *Id.*

17. Caretaker 1 indicated Student lived at Residence, a host home managed by Caretaker 1, and inquired as to what needed to happen to enroll Student. *Id.* Central Registrar informed him that the District required proof of residency—specifically the notarized letter and service bill described by District's policy—to complete Student's enrollment. *Id.* Caretaker 1 indicated he would provide those documents via email, but they were never received by the District. *Id.* Central Registrar did not have a phone number or email address for Caretaker 1, so no further attempt to contact him was made (although Central Registrar indicated she unsuccessfully attempted to recover Caretaker 1's number though caller ID). *Id.*

E. Student's Subsequent Attempts to Enroll in March 2021

18. Almost two weeks passed, and Parent was unaware Student was not successfully enrolled in the District. *Interview with Parent.* District was on holiday break from March 15, 2021 through March 26, 2021, during which time students were not in school, but District remained open. *Interview with Central Registrar; see CDE Exhibit 2.*
19. During meetings between Student, Parent, and Caretaker 1, Student and Caretaker 1 both indicated that they thought registration was complete. *Interview with Parent.* On or about March 17, 2021, however, during a therapy appointment with Student and Caretaker 1, Parent became aware there was an issue with the enrollment application. *Id.* Caretaker 1 indicated he thought enrollment was complete, but that there was an issue with a "notarized bill," prompting Parent to follow up with District. *Id.*
20. On March 17, 2021, Parent contacted District and spoke to Central Registrar. *Interviews with Parent and Central Registrar.* Parent indicated she is Student's mother and that Student lived and received care at Residence, and Parent asked for a status update on his enrollment. *Id.* Central Registrar told Parent that Student's enrollment application was incomplete, and the District required proof of residency—specifically the notarized letter and service bill—to complete enrollment. *Id.*
21. Parent expressed concern that Caretaker 1 manages multiple host homes and numerous students, and she asked about alternative ways to establish residency. *Interview with Parent.* Central Registrar stated a letter from CCB indicating Student lived at Residence would be acceptable but added that District also needed a service bill with Caretaker 1's name. *Interviews with Parent and Central Registrar; see Exhibit 3, p. 2.*
22. Parent said that during her phone conversation with Central Registrar she indicated that Student lived with Caretaker 2, but that Caretaker 1 was both the owner of Residence and the point of contact for Parent and CCB. *Interview with Parent.* Parent informed Central Registrar that District should contact Caretaker 1 rather than Caretaker 2 because Caretaker

2 was the in-home caregiver and does not own Residence or oversee Student's benefits. *Id.*; see *Exhibit I*, p. 24.

23. Parent stated she offered to provide contact info for Caretaker 1, but Central Registrar declined and indicated District already had Caretaker 1's phone number. *Interview with Parent*. Parent also indicated that during the phone conversation Central Registrar told her that parents often satisfy the residency proof requirement by bringing up a service bill in-person on a phone rather than sending the District a photocopy. *Interviews with Parent and Central Registrar*. Parent reported that she suggested setting up an IEP meeting for Student, as Caretaker 1 is contractually obligated to appear at IEP meetings through his contract with CCB. *Interview with Parent*; see *Exhibit I*, p. 21. Parent suggested District could obtain a bill or other proof from Caretaker 1 at the meeting in-person to establish Student resided in the District, while simultaneously getting Student started with services. *Interview with Parent*.
24. Central Registrar denied that such a request was made during that conversation or at any other time. *Interview with Central Registrar*. However, the SCO finds that the Record supports Parent's position that she did suggest setting up a meeting so Caregiver 1 could provide the service bill in person. See *Exhibit I*, p. 21.
25. On March 17, 2021, Parent provided the District's registration office with a copy of Student's IEP and an Affidavit of State of Colorado Residency, signed by Caretaker 1, indicating Student lived at Residence. *Interviews with Parent and Central Registrar; Exhibit K*, pp. 5, 8. The affidavit was an old form from the 2015-2016 academic year, and although it was signed by Caretaker 1, the form was not notarized. *Interviews with Central Registrar and Parent*; see *Exhibit K*, p. 5. Nevertheless, District accepted the form as proof of residency to satisfy the notarized letter requirement contained in its residency policy. *Interviews with Central Registrar, Special Education Director, and Parent*.
26. Once District accepted the affidavit, all that remained to complete Student's enrollment was a service bill in Caretaker 1's name. *Interviews with Central Registrar and Special Education Director*. The purpose of the service bill was to demonstrate that Caregiver 1 either rented or owned Residence. *Interview with Central Registrar*, see *Exhibit L*, pp. 7-8.

F. The Dispute Regarding the Service Bill

27. On March 18, 2021, at Parent's request, Service Coordinator at CCB ("CCB Coordinator") sent an email to the District enrollment office regarding Student. *Exhibit I*, p. 3; *Interviews with Parent and Central Registrar*. CCB Coordinator indicated she was Student's service coordinator at CCB, and she confirmed that the address CCB had for Student was Residence. *Id.* District deemed the email to be an unacceptable proof of residency because it was not a placement letter on official letterhead, and during interviews, Central Registrar indicated she was skeptical because there was no evidence CCB had proof Student lived at Residence.

Interview with Central Registrar. District indicated attempts were later made via email and phone to contact CCB Coordinator to inquire about getting the service bill from Caretaker 1, but CCB Coordinator did not respond. *Interviews with Central Registrar and Special Education Director; Exhibit I*, p. 7.

28. On March 18, 2021, CCB Coordinator also emailed Special Education Director. *Exhibit I*, p. 7. In her email to Special Education Director, CCB Coordinator indicated she was aware there was a request for documentation regarding Student's placement into CCB services and asked if sending out Student's service plan through CCB would be sufficient to establish residency. *Id.* Special Education Director responded on March 23, 2021 and indicated Caregiver 1 would have to provide a service bill for Student to complete registration. *Id.*
29. On March 23, 2021, Parent and Special Education Director exchanged emails regarding enrollment. See *Exhibit I*, pp. 5-6, 11-18. Parent asked to get a schedule set up for Student and indicated a service bill should not be holding up the process. *Id.* at pp. 11, 18. Special Education Director told Parent multiple times that under District policy the District needed proof that Caregiver 1 lived at Residence with Student. *Id.* at pp. 6, 11-12, 17, 18, 33. The SCO finds that there is nothing in District's written policies to suggest the renter or owner of Residence needed to live at Residence with Student to establish residency, and that Special Education Director's statements conflict with those of Central Registrar which had indicated the purpose of requiring the service bill was to demonstrate Caretaker 1 owned or rented Residence. See *Exhibit L*, pp. 1-14, *Interview with Central Registrar*.
30. On or about March 24, 2021, Central Registrar called Caretaker 2. *Interviews with Parent and Central Registrar*. Central Registrar told Caretaker 2 that to enroll Student the District needed a service bill from Caretaker 1. *Interview with Central Registrar*. Caretaker 2 indicated Student lived with him at Residence and that he would try to obtain a service bill from Caretaker 1 and provide it to District. *Id.*
31. Student was in the car with Caretaker 2 when Central Registrar called, and after listening to the conversation, he became confused and distressed. *Interview with Parent*. Student called Parent, worried that there was a problem with his registration, and indicated he did not understand why he was not yet in school. *Id.* Parent asked to speak with Caretaker 2 and told him that she was handling enrollment. *Id.*
32. On March 24, 2021, when Caretaker 2 did not provide a service bill, Central Registrar called Caretaker 2 to follow up and Caretaker 2 indicated that Parent said that proof of residence no longer needed to be provided. *Interview with Central Registrar; Exhibit I*, p. 21. Parent emailed Central Registrar on the same date and indicated that Student was upset and confused about the phone calls regarding enrollment, and stated she told District to contact Caretaker 1, not Caretaker 2. *Exhibit I*, pp. 21-22.

33. In her email to Central Registrar, Parent reiterated her request to set up an in-person meeting to get Caretaker 1 to provide the service bill in-person. *Id.* Parent also attached county records showing that Caretaker 1 is the registered owner of Residence and asked if that would suffice to demonstrate Caretaker 1's connection to Residence. *Id.; Interviews with Parents and Central Registrar.*
34. Central Registrar responded to Parent that once the registration office received a current service bill in Caretaker 1's name, District could enroll Student. *Id.*
35. During interviews, when asked why county records were insufficient to demonstrate Caretaker 1's connection to Residence, Central Registrar indicated the documentation was rejected because District has never accepted county records to establish residency. *Interview with Central Registrar.* Central Registrar indicated she did not ask her supervisors if county records could be accepted, and she did not suggest there were any questions regarding the validity of the county records. *Id.* Special Education Director did not offer an opinion on why this or any other piece of enrollment evidence was rejected, and indicated such decisions are left to enrollment. *Interview with Special Education Director.*

G. State Complaint filed by Parent on April 2, 2021

36. On April 2, 2021, Parent filed the Complaint with concerns that District violated the IDEA by failing to provide an offer of a FAPE to Student. *Complaint*, pp. 1-5.
37. Subsequently, Special Education Director followed up with CCB. See *Exhibit I*, pp. 33-36. In emails, Special Education Director indicated Student was placed in a host home within District but added her belief that Caretaker 1 did not live with Student within District's geographical boundaries. *Id.* at p. 33. This understanding conflicts with statements from both Parent and Central Registrar as they had indicated Caretaker 1's home residence is within the geographical boundaries of the District, and that Student lived at Residence with Caretaker 2. *Id.* at p. 33; *Interviews with Parent and Central Registrar.*
38. Special Education Director also reiterated her understanding that all school districts require that host home providers show proof that they live with students within the district to establish residency. *Exhibit I*, pp. 33-36. Special Education Director asked that the situation be remedied so that Student would receive services wherever his host home provider lived. *Id.*
39. Special Education Director spoke to Case Management Director at CCB ("CCB Case Management Director") on the phone but did not obtain the service bill. *Interview with Special Education Director.* Special Education Director indicated CCB Case Management Director told her Caretaker 1 operated several host homes, some in different school districts. *Id.* When asked during interviews if District had information to suggest Student

lived at an address outside of District's geographical boundaries, such as one of Caretaker 1's other host homes, both Central Registrar and Special Education Director indicated the District did not. *Interviews with Special Education Director and Central Registrar*.

40. District's position is that until Student completes enrollment by producing the service bill in Caretaker 1's name, its responsibility to provide FAPE has not been triggered. *Interviews with Special Education Director and Central Registrar; see Response*, pp 1-4. District further maintains that CCB is responsible for ensuring transition services and helping Student enroll, and Caretaker 1 should have provided proof of residency. *See Response*, pp. 1-4.
41. To date, Student has not been enrolled in District because of the missing service bill, and he is not receiving the services under his IEP. *Interview with Parent; see Exhibit A*, pp. 1-15.

H. Student's May 19, 2020 IEP

42. When Student first attempted to enroll in District on February 15, 2021, his May 19, 2020 IEP ("Student's IEP") was in effect. *See Exhibit A*, pp. 1-15; *see Exhibit H*, pp. 1-16. Student's IEP detailed his present levels of academic achievement and functional performance. *Exhibit A*, p. 4-5. Student's IEP describes him as a social young man, with a love of learning and an interest in reptiles, fish, and origami. *Id.* at p. 4.
43. Academically, Student is at grade level in reading comprehension, with an 8th grade level reading vocabulary. *Id.* at p. 5. In math, Student is functioning at a 9th grade level, and he demonstrates some struggles maintaining appropriate social skills and using his coping skills. *Id.* In speech/language, Student is at grade level with his pragmatic skills (social language) and ability to develop skills to access general education, and he shows speech/language skills commensurate with his same age typical peers. *Id.*
44. Student's IEP details a Transition Planning Inventory ("TPI") he took on April 7, 2020. *Id.* at p. 7. Upon graduating, Student is interested in pursuing a skilled trade, such as masonry, landscaping, or becoming an electrician. *Id.* Student can identify the types of jobs he is interested in and he is aware what types of skills he needs to get a job in those fields, but he needs help knowing how to go about getting a job. *Id.* Regarding education, the TPI showed Student believes he will do well in a program after high school, but he does not know how to find or get into a school or a training program that will meet his needs. *Id.* The TPI further showed that he requires support in finding a place to live, organizing day to day tasks, and managing a budget and financial responsibilities. *Id.* Student also indicated he is not confident in his understanding of his rights, how to navigate interpersonal relationships, or how to navigate the community and locate services and resources he might need. *Id.*
45. Student's IEP contained several post-school goals, including obtaining an apprenticeship in stone masonry, landscaping, or with an electrician. *Id.* at p. 8. Transitioning to a less

restrictive environment, such as a host home, upon turning 18 was also listed as an independent living skills goal. *Id.*

46. Student's IEP contained annual goals in Independent Living Skills and Social/Emotional Wellness *Id.* at p. 10. Specifically, these goals involved increasing independence in time management skills, accepting critical feedback without expressing anger, budgeting, and learning financial responsibility. *Id.*
47. Student's IEP provided for 1,800 minutes of weekly direct specialized instruction from a special education teacher outside of the general education classroom. *Id.* at p. 13. Specifically, Student's IEP provided for service hours working on independent living, vocational, and social skills within a community setting. *Id.* Student's IEP contemplated Student receiving these services through a school district 18-21 transition program. *Id.*
48. Student's IEP contained several accommodations and modifications, including the use of preferred fidgets to support anxiety, prior notification of fire and other drills, the presence of an informed supervisor with line-of-sight supervision, and the use of visual organizers. *Id.* at p. 11. Over the summer of 2020, Student qualified for Extended School Year services because he showed severe regression on IEP goals and objectives and required an unreasonably long period of time to relearn previously learned skills. *Id.*
49. An annual review of Student's IEP was due on or before May 18, 2021. *Exhibit A*, p. 1. The IEP has not been reviewed or revised, and no new IEP has been drafted or developed. *Interview with Parent*. District's last day of school was May 28, 2021. *CDE Exhibit 2*.

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 make an offer of FAPE and provide special education and related services in accordance with an IEP from March 29, 2021 to the present, in violation of 34 C.F.R. § 300.323.

i. **Promoting Educational Stability for Students in Out-of-Home Placements**

In Colorado, there are specific provisions intended to ensure continuity in educational services when a student receiving special education and related services is publicly placed and transfers from one school to another. ECEA Rule 9.02. Public placement means "the placement of a child with a disability in a facility with an approved facility school or another out-of-home placement by a court or public agency." ECEA Rule 9.01(6). Public agency "means a public agency that is not an administrative unit and is legally authorized to place a child in a facility with an approved facility school or another out-of-home placement." ECEA Rule 9.01(5). For non-emergency public placements, the public agency placing the student shall work cooperatively with the

child's then current school district and the school district in which the placement is to be made to ensure that appropriate special education services are available to the student. ECEA Rule 9.02(1)(a).

Predictably, students in out-of-home placements are often students subject to IDEA's transfer provisions, and in 2013, the Education Department's Office of Special Education and Rehabilitation Services (OSERS) issued a Dear Colleague Letter regarding the unique educational needs of highly mobile children with disabilities. *Letter to State Directors of Special Education*, 61 IDELR 202 (OSERS 7/19/2013). This OSERS letter highlighted the importance of timely evaluations, as well as the timely provision of comparable services, in ensuring educational stability when a student transfers into a new school district. *Id.*

As an initial matter in this case, District argues it did not violate the IDEA because CCB failed to ensure transition services and help Student enroll. (FF #40). Contrary to this position, however, nothing in IDEA or the ECEA Rules excuses District from providing a FAPE to an IDEA-eligible student even if CCB failed to follow proper procedure under the ECEA Rules. *See Montrose County School District RE-1*, 102 LRP 21273 (SEA CO 5/15/02) ("[T]he fact that [county DHS] failed to comply with its collaborative obligations under [state law] and the Interagency Agreement does not alter in any way the District's obligations to comply with the IDEA.").

In *Montrose County School District RE-1*, a district argued that it was not liable for the timely provision of special education and related services to a student in foster care when the county DHS had failed to follow state law in notifying and collaborating with the school district when making the placement decision. *Id.* In consideration of the district's argument, the Administrative Law Judge concluded that "[a]lthough the District was not the only entity at fault in this matter, equitable principles indicate that the Student, who was not to blame . . . should receive compensatory education to make up for the special education he did not receive . . . as a result of the District's IDEA violations." *Id.*

Here, while some fault may rest with CCB for failing to notify and collaborate with District, Student is not responsible for this inaction, and the responsibility to provide FAPE ultimately rests with District. (FF #6, 16-17). Consequently, this dispute must be resolved by determining whether District violated the IDEA and not whether CCB failed to provide transition services or help Student enroll. *See Colo. Dep't of Ed.*, 119 LRP 37641 (SEA CO 07/29/19). Because Student transferred from one Colorado school district to another within the same school year, the SCO relies on the IDEA's intrastate transfer provisions to determine whether District failed to provide an offer of special education and related services.

ii. IDEA's Intrastate Transfer Provisions

A school district is required to provide eligible students with disabilities a FAPE by providing special education and related services individually tailored to meet the student's unique needs,

in conformity with an IEP that meets the IDEA's requirements. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982)). To that end, the U.S. Supreme Court concluded an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at p. 999.

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." 34 C.F.R. § 300.323(c)(2). For students with IEPs in effect who transfer from one school district to another within the same school year, IDEA's transfer provisions require that the new school district, in consultation with parents, provide FAPE (including comparable services) until the school district adopts the IEP developed by the previous school district or develops, adopts, and implements a new IEP that meets the applicable requirements for developing an IEP. 34 C.F.R. § 300.323(e). Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the school district to adopt the child's IEP from the previous school district or to develop and implement a new IEP. However, consistent with 34 C.F.R. § 300.323(e), the new school district must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services. *Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11).

iii. District's Failure to Offer Special Education and Related Services

District's position is that the information provided by Student with his enrollment application is insufficient to establish that Student lives within the geographic boundaries of the District, and thus District's responsibility to provide FAPE has not been triggered. (FF #40). Specifically, District claims that Student has not met its residency requirements because he has not provided a service bill for Residence in Caretaker 1's name. (FF #40).

District policy provides that a student is deemed a resident of the District if the student is permanently dependent for his or her maintenance and support on someone other than nonresident parents or upon any charitable organization, and the student actually makes his or her home and receives support within the District. (FF #8). If a student does not have a service bill in his or her name and/or he or she lives with another family, the student can establish residency by providing the District with a notarized letter and a service bill in the name of the renter or owner of the residence. (FF #10). District staff agree that if Student lives and receives care at Residence, he would be deemed a resident under District policy. (FF #12).

Student moved into Residence, a host home for adults located within the geographical boundaries of District, on January 17, 2021. (FF #5). Student first attempted to enroll in District on February 15, 2021. (FF #13). Although District did not receive notice from CCB or Student's previous school district, Student indicated he was eligible for special education and related services and that he lived under the supervision of a DHS or agency caseworker. (FF #6, 13). Parent also provided District with a copy of Student's IEP on March 17, 2021. (FF #25).

To establish residency, Student provided District with: (1) his own statement that he lives at Residence; (2) Caretaker 1's statement to Central Registrar that Student lives at Residence; (3) Parent's statements to various District staff that Student lives at Residence; (4) an email from CCB Coordinator indicating Student lives at Residence; (5) an Affidavit of Colorado Residency signed by Caretaker 1 that was accepted by the District in place of a notarized letter indicating Student lived at Residence; (5) a piece of mail sent to Student at Residence; (6) statements by Caretaker 2 indicating Student lives at Residence; and (7) county records showing Caretaker 1 is the registered owner of Residence. (FF #13-14, 16-17, 20-21, 23, 25, 27, 33). Despite this, the District rejected Student's enrollment application. (FF #41).

While a school district is free to write its own policies and procedures, there is no legal authority that permits a school district to use strict adherence to its own policies as a basis to avoid its responsibilities under the IDEA. Each school district, in providing for the education of children with disabilities within its jurisdiction, "must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163 and §§ 300.165 through 300.174". 34 C.F.R. § 300.201. To the extent that a school district's policies and procedures create artificial barriers that prevent vulnerable students with disabilities from accessing special education and related services guaranteed by the IDEA, those policies are inconsistent with the spirit of the Act.

In this case, District improperly relied on its enrollment policies and procedures to abdicate its responsibilities under the IDEA. First, contrary to Special Education Director's interpretation, District's written policy does not require proof that a caregiver lives with a student to establish residency. (FF #8-10, 26, 29, 38). Second, residency here was established through county records that showed Caretaker 1 owned Residence, and District did not have any information to suggest Student did not live at Residence or that he resided outside of District's boundaries. (FF #37, 39). Third, and most importantly, District knew Student was IDEA-eligible and a member of a vulnerable student subgroup (out-of-home placement). (FF #13). Despite knowledge that Student had not been receiving special education and related services, and that the annual review of Student's IEP did not occur in May 2021, District has not attempted to remedy the situation (even after the filing of the Complaint). (FF #13, 25). For these reasons, the SCO finds and concludes that District's failure to timely enroll Student and offer special education and related services in accordance with 34 C.F.R. § 300.323(e) resulted in a denial of FAPE.

A showing of educational harm is not required to conclude that Student here is entitled to compensatory services. Instead, it is sufficient to consider the timely provision of educational services, comparing the services Student should have received to the services Student actually received. *See Holman v. District of Columbia*, 67 IDELR 39 (D.D.C. 2016) (stating that “[t]he ‘crucial measure’ under the materiality standard is the ‘proportion of services mandated to those provided’ and not the type of harm suffered by the student.”)

In this case, comparable services could have been determined and offered by March 29, 2021. If District had provided the comparable services identified in Student’s IEP, Student would have received approximately 270 hours of direct instruction in living, vocational, and social skills. (FF #47). Instead, Student received no educational services during this time. (FF #41). The difference between what should have been provided and what Student received is sufficient to demonstrate educational harm in this case. Consequently, the SCO concludes that Student is entitled to compensatory education services to remedy the denial of FAPE.

iv. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position they would have been, if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package to help place Student in the same position with respect to making progress if not for the violation.

Student’s IEP provided for 1,800 weekly minutes of direct specialized instruction to improve independent living, vocational, and social skills. (FF #46). Student moved into Residence on January 17, 2021 and attempted to enroll within the District on February 15, 2021. (FF #5, 13). District was first on notice at the time Student attempted to enroll that he was IDEA-eligible and lived with a DHS or agency caseworker. (FF #6, 13). At that time, District was justified in requesting additional information to establish Student’s residency per its policy. (FF #8-10). District was on holiday break from March 15, 2021 through March 26, 2021, during which time students were not in school. (FF #18).

Once District received proof that Student lived at Residence during his holiday break, however, its strict adherence to policies became an unreasonable barrier to Student’s enrollment. (FF #20-35). It was at this point in time that District’s continued refusal to enroll Student without the service bill resulted in an IDEA violation. As such, for the purposes of calculating compensatory education, District’s violation began on March 29, 2021, the date that students returned to classes after District’s holiday break.

Had Student been enrolled in District, he would have been eligible to receive 1,800 weekly minutes of specialized instruction until District's last day of classes on May 28, 2021. (FF #48). Thus, Student missed out on approximately 16,200 minutes, or 270 hours, of specialized instruction (approximately 9 weeks x 1,800 minutes).

Although Student missed a total of 270 hours of specialized instruction, the SCO finds and concludes that a compensatory education award in this full amount has the potential to burden Student. For instance, an award of 270 hours would result in Student receiving an average of approximately 1.5 hours of additional specialized instruction each day across the 2021-2022 academic year (270 hours divided by approximately 160 school days in the 2021-2022 academic year equals 1.6875 hours each school day). The SCO considered that Student's now-expired IEP had provided for a significant amount of specialized instruction each week (1,800 minutes), but also recognized that an IEP team at District has not yet reviewed and revised Student's IEP to set out the anticipated frequency, location, and duration of services for the 2021-2022 academic year. (FF #47, 49). For these reasons, and in consultation with an internal CDE Specialist, the SCO finds that one third of the total missed hours would be most appropriate to help place Student in the same position with respect to making progress if not for the violation. The SCO therefore finds and concludes that he is entitled to 90 hours of compensatory services.

v. Systemic IDEA Violations

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 Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the SCO finds and concludes that the IDEA violation is systemic in nature. Written procedures are essential to ensuring school staff understand their responsibilities and provide special education services consistent with ECEA Rules, the IDEA, and school district policy. District provided enrollment policies as part of this investigation, but its position that it did not violate the IDEA by rejecting Student's enrollment application is rooted in strict and uncompromising adherence to these policies. (FF #40). The concern for the SCO is that District may continue to rely on the practice of strict adherence to its written policies to prevent known children with disabilities—particularly those similarly situated in a vulnerable subgroup—from enrolling simply because they are unable to produce a specific proof of residency. (FF #8-10). Because District's practice of strict adherence to these policies contributed to the denial of FAPE, the SCO finds and concludes that the violation is not unique to Student. Accordingly, the SCO will set forth specific remedies consistent with IDEA to ensure procedures are in place and designed for the appropriate provision of services for all IDEA-eligible students in District.

REMEDIES

The SCO finds and concludes that the District has violated the following IDEA requirement:

1. Failing to make an offer of FAPE and provide special education and related services in accordance with an IEP from March 29, 2021 to the present, consistent with 34 C.F.R. § 300.323.

To remedy this violation, the District is ORDERED to take the following actions:

1. Corrective Action Plan
 - a. By **Tuesday, July 6, 2021**, the District shall submit to CDE a corrective action plan ("CAP") that adequately addresses the violation 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:
 1. Special Education Director and all District enrollment/registration staff, in particular Central Registrar and her immediate supervisor(s), must review this Decision, as well as the requirements of 34 C.F.R. § 300.323. This review must occur no later than **Friday, August 13, 2021**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **Friday, August 20, 2021**.
 2. By **Monday, September 6, 2021**, District must submit written procedures that address all areas of noncompliance identified in this Decision, specifically to ensure that admission/enrollment practices do not require strict adherence to written enrollment policies in such a way as to create artificial barriers that prevent IDEA-eligible students and students suspected of being IDEA-eligible from enrolling in District, in compliance with 34 C.F.R. §§ 300.201 and 300.323.
 - b. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. Enrollment and IEP Meeting

- a. By Thursday, July 2, 2021, the District must enroll Student in the District at his neighborhood high school, using Residence as Student's home address. The District may not require a service bill or any further evidence to establish Student's residency within the District and must enroll Student regardless of what records the District possesses regarding Student. District staff must assist Student in completing any necessary enrollment paperwork. The District must also promptly submit a records request to Student's former school district to obtain any records necessary for enrollment and development of Student's IEP, no later than Friday, July 23, 2021.
- b. By Wednesday, July 28, 2021, the District must convene an IEP meeting with Parent, at a mutually convenient time and setting, to develop an IEP for Student for the 2021-2022 academic year, in accordance with this Decision. Evidence that this IEP meeting occurred must be documented by providing a copy of the Notice of Meeting, IEP, and prior written notice to CDE no later than ten (10) days following the IEP meeting. If Parent does not respond to the District's efforts to convene an IEP meeting by July 28, 2021, the CDE will determine compliance with this remedy in accordance with 34 C.F.R. § 300.322.

3. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive ninety (90) hours of independent living, vocational, and social skills training through either District's 18-21 transition program or a contract between the District and a suitable provider at the District's expense. Student's IEP Team, including Parent, may determine the weekly schedule for the compensatory education. If Parent and the District do not agree to a provider, CDE will select the provider. All ninety (90) hours must be completed by Friday, March 4, 2022, though Parent and Student may opt out of some or all of the compensatory educational hours if they wish. Given the COVID-19 pandemic, these services may be provided remotely where necessary.
- b. To verify that Student has received the services required by this Decision, the District must submit records of service logs to CDE by the second Monday of each month, once services begin, until all compensatory education services have been provided. Service logs must contain the name and title of the provider (if services are delivered through a private provider), and the date, the duration, and a brief description of the service, must be included in the service log (even if services are delivered through the District's 18-21 transition program). The District shall communicate with the private provider to obtain this information if the compensational education is provided through a contract with a private provider.

- c. By Wednesday, August 11, 2021, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents their efforts. A determination that the District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with CDE.
- d. The District shall submit the schedule of compensatory services to CDE no later than Monday, September 9, 2021. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify CDE of the change in the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Becky O'Malley
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 Department. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the 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. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 1st day of June, 2021.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-5

- Exhibit 1: Student Enrollment Form
- Exhibit 2: Foster Care Information
- Exhibit 3: Correspondence 1
- Exhibit 4: Correspondence 2
- Exhibit 5: JFAA Residency Policy
- Exhibit 6: Correspondence re [County] Records
- Exhibit 7: Student's IEP

Response, pages 1-4

- Exhibit A: Student's IEPs
- Exhibit B: none
- Exhibit C: none
- Exhibit D: none
- Exhibit E: none
- Exhibit F: none
- Exhibit G: none
- Exhibit H: Enrollment Materials
- Exhibit I: Correspondence 1
- Exhibit J: none
- Exhibit K: Correspondence 2
- Exhibit L: District Policies
- Exhibit M: List of Staff with Knowledge of Allegation
- Exhibit N: Verification of Transmission to Complainant

Reply, pages 1-7

- Exhibit 8: [County] Records
- Exhibit 9: Court Documentation

Telephonic Interviews:

- Special Education Director: May 11, 2021
- Central Registrar: May 12, 2021
- Parents: May 13, 2021

CDE Exhibits:

- CDE Exhibit 1: List of Colorado Community Centered Boards
- CDE Exhibit 2: *2020-2021 District Calendar*
https://www.d49.org/site/handlers/filedownload.ashx?moduleinstanceid=643&dataid=79717&FileName=2020-2021_D49_Calendar-817-COVID-REV2.pdf (last visited May 19, 2021).
- CDE Exhibit 3: Financial Statements
- CDE Exhibit 4: Colorado Facility Schools Directory