

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

**State-Level Complaint 2022:524
Denver Public Schools**

DECISION

INTRODUCTION

On May 4, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”).¹ The State Complaints Officer (“SCO”) determined that the Complaint identified three (3) allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), CDE has the authority to investigate violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation was limited to the period of time from May 4, 2021, through May 4, 2022, for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the Complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to conduct a re-evaluation of the Student after Parent consent was provided in September 2021, consistent with the IDEA and its implementing regulations at 34 C.F.R. § 300.303, and ECEA Rule 4.02(5).

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. Failed to develop an IEP for the 2021-2022 school year, based on a recent evaluation, that was reasonably calculated to address the Student's unique educational and functional needs and enable the Student to be involved in and make progress in the general education curriculum as required by 34 C.F.R. §§ 300.320 and 300.324, and ECEA Rule 4.03.
3. Failed to reimburse the Student and Parent for expenses of private evaluations and education from September 1, 2021 until the date of the Student's death, including specialized instruction and related services, consistent with the IDEA and its implementing regulations at 34 C.F.R. § 300.148, and ECEA Rule 5.01(9).

FINDINGS OF FACT

After thorough and careful analysis of the entire record² and investigation, the SCO makes the following FINDINGS:

A. Background

1. The Student lived within the District boundaries until his death [early 2022]. *Exhibit 3*, p. 734.
2. The Student had a diagnostic history of major depressive disorder, generalized anxiety disorder, autism spectrum disorder, and auditory processing disorder as reflected by a report of Private Treatment Program 1 on February 2, 2022. *Exhibit C*.
3. In March of 2019, the Parent and District entered into a settlement agreement and release regarding private school reimbursement claims and agreed that, should the Parent seek to re-enroll the Student in the District, the Parent would provide sixty days' notice to permit a reevaluation of the Student and development an IEP. *Exhibit 4*.
4. From May 2020 until at least November 22, 2021, the Parent provided private transition services to the Student through private school programs. *Exhibit C*.
5. At the start of the 2021-2022 school year, the Parent reported that the Student attended an unidentified private school, and that the Student last attended school in the District in 2018 where he received special education and related services while attending School 1. *Exhibit 2*, pp. 26-44; *Exhibit E*.

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

6. On September 8, 2021, the Parent notified the District of an intent to reenroll the Student in School 2 to participate in secondary school services concurrently with existing post-secondary services. *Exhibit 3*, p. 30.

B. Reevaluation

7. On September 28, 2021, the District proposed a reevaluation of the Student and parent consent was provided the same day. *Exhibit 1*, pp. 1-3.
8. District staff began communicating with the Parent and outside providers in early October and, on October 14, 2021, sent a detailed list of evaluation activities and evaluators to the Parent. *Exhibit 3*, pp. 61-92.
9. During October 2021, District staff continued to communicate with the division of vocational rehabilitation, the Parent, her husband, and the Student regarding assessment activities. *Id.* at pp. 61-230.
10. During October 2021, District staff continued evaluation activities. *Id.* at pp. 237-261.
11. On October 26, 2021, District staff offered to convene the Student's IEP Team to develop an interim IEP and reconvene when the reevaluation was done but indicated a preference to complete the reevaluation directly with the Student before his return to the District to ensure an appropriate plan was in place. *Id.* at p. 296.
12. On October 27, 2021, the District's school psychologist met virtually with the Student as part of the reevaluation, described by one of his parents as leaving the Student "pleased and relieved" and by the school psychologist as "a great conversation" and "a pleasure." *Id.* at pp. 233-237.
13. On October 27, 2021, the Parent indicated to District staff that the Student "is at a college level and has been determined to have completed all of the Colorado high school graduation requirements already." *Id.* at pp. 291-292.
14. On October 28, 2021, the Parent emailed the District's school psychologist in response to a request for completion of evaluation materials and said that the Student had been very depressed for the past two weeks, that dealing with the District was stressful, and that he was suicidal. *Id.* at pp. 261-263.
15. In response, the District's school psychologist expressed flexibility to complete the reevaluation activities with the Student. *Id.* at p. 273.

16. On October 29, 2021, the Parent informed District staff that the Student was scheduled for an assessment for placement in a mental health facility, Private Treatment Program 2. *Id.* at p. 283.
17. On October 30, 2021, the Parent informed District staff that the Private Treatment Program 2 assessment resulted in a recommendation for an intensive outpatient treatment program. *Id.* at p. 287.
18. On November 2, 2021, District staff responded, proposing to meet to develop an interim IEP until the pending reevaluation of the Student was completed and requesting additional information and contact with the Student. *Id.* at p. 304.
19. On November 2, 2021, the Parent informed District staff that the Student was “unable to meet with [District staff] or to complete any further assessments with [District staff] at this time” and sought his admission to a partial hospitalization program as well as an IEP from the District. *Id.* at p. 734.
20. On November 5, 2021, the Parent informed District staff that the Student would begin treatment at a mental health facility, Private Treatment Program 3, the following Monday, November 8, 2021. *Id.* at p. 325.
21. On November 5, and 7, 2021, District staff requested signed authorizations to obtain updated information from the Student’s private school, audiologist, and mental health provider, as well as completion of evaluation instruments previously sent to the Parent. *Id.* at pp. 322, 328.

C. The November 11, 2021 IEP Meeting

22. The Student’s IEP Team was convened on November 11, 2021 and developed an Interim IEP for the Student in a separate school due to a serious emotional disability and urgent mental health needs, based on evaluation data then available including a record review. *Exhibit 1*, pp. 27-55; *Exhibit C*.
23. At the November 11, 2021, IEP Team meeting, the Parent reported that the Student became suicidal when the District started its evaluation as “he hates [the District]” and “[the District] has traumatized him and his family” and that when he met with the District’s school psychologist “that triggered him and caused him to be suicidal.” *Exhibit 1*, p. 31.
24. In contrast, the Student told Private Treatment Program 1 staff that he had a “mental breakdown” in October that was “due to radical life alterations and some family drama.” *Exhibit C*.

25. On November 11, 2021, the Student's IEP Team considered information from his treating counselor, Private Treatment Provider 4, reporting "significant mental health challenges that have profoundly impacted his ability to attend school, work and function" and diagnoses of major depressive disorder and generalized anxiety disorder. *Exhibit 1*, p. 34.
26. On November 11, 2021, current evaluation data indicated that the Student was experiencing significant generalized anxiety, physical anxiety, obsessive compulsive behaviors, and significant social anxiety, as well as adaptive behavior in the low range. *Id.* at pp. 35-36.
27. On November 11, 2021, current evaluation data also revealed that the Student experienced clinically significant deficiencies in reciprocal social behavior that led to "substantial interference with everyday social interactions." *Id.* at p. 36.

D. The November 11, 2021 Interim IEP

28. The Interim IEP identified the Student's needs in the areas of sensory differences, pragmatic language difficulties, social and emotional difficulties, and executive functioning deficits. *Id.* at p. 41.
29. On November 11, 2021, the Parent requested only transition and medical services from the District and placement in a medical facility, but the Interim IEP reflected the IEP Team agreement to placement in a separate school. *Id.* at pp. 29, 41-42.
30. The Interim IEP provided thirteen transition activities, primarily special education and related services. *Id.* at p. 45.
31. The Interim IEP provided three goals: to increase participation in structured activities to support social communication and interactions, to utilize taught psychological strategies to engage in school and work, and to improve task/project completion. *Id.* at pp. 46-48.
32. The Interim IEP provided twenty-two accommodations and modifications. *Id.* at pp. 48-49.
33. The Interim IEP provided the following services: ninety minutes per month of speech-language pathologist services; two hours per year of occupational therapy consultation; four hundred eighty direct minutes per month of psychological services; one hundred twenty indirect minutes per month of occupational therapy; and one thousand two hundred minutes per week of specialized instruction in executive functioning and emotional management (all provided outside of general education). *Id.* at pp. 51-52.
34. The Interim IEP reflected that a reevaluation was pending completion and that the Parent indicated the Student was unavailable for assessment. *Id.* at p. 54.

E. Placement and Continued Reevaluation Attempts

35. On November 16, 2021, the Parent provided District staff and the Student's other public and private providers a list of residential mental health treatment programs and asked about the availability of funding from any source for the Student's placement. *Exhibit 3*, p. 399.
36. On November 17, 2021, the District's school psychologist asked the Parent to make the Student available for an interview and completion of mental health rating scales. *Id.* at p. 406.
37. On November 17, 2021, the Parent replied that the Student was unable to meet with District representatives until his mental health improved and that he was then still at Private Treatment Program 3 and awaiting admission to Private Treatment Program 5. *Id.* at p. 414.
38. On November 18, 2021, the Parent acknowledged that the Student's IEP Team agreed on his need for a separate school placement. *Id.* at p. 478.
39. At an IEP Team meeting on November 18, 2021, the District agreed to contact a facilities coordinator to locate a placement for the Student. *Exhibit B*.
40. On November 19, 2021, division of vocational rehabilitation staff indicated that the Student's case would be closed due to lack of participation and engagement. *Exhibit 3*, p. 479.
41. On November 22, 2021, the Parent notified District staff that the Student would begin the partial hospitalization program at Private Treatment Program 5 the following day. *Id.* at p. 482.
42. On November 22, 2021, the Parent requested a public medical services review of the request for "medically necessary services" for the Student to receive care in a therapeutic program to "restore his health and enable him to attend college and participate in an appropriate transition program to advance his vocational goals." *Exhibit C*.
43. On November 29, 2021, the District's school psychologist again sent links to the outstanding reevaluation instruments needing completion by the Parent and Student. *Exhibit 3*, p. 491.
44. On December 2, 2021, District staff notified the Parent that a separate school had been identified for the Student's placement, Private Treatment Program 6, that offered day treatment services including mental health services, and on-site educational services

including functional communication, group participation skills, independent work, math, reading, technology, and problem-solving. *Id.* at p. 505.

45. The Student's IEP Team met on December 3 and 10, 2021, to discuss placement at Private Treatment Program 6, including the fact that no other students in the program were currently the same age as the Student, and agreed to consider placement at Private Treatment Program 6. *Id.* at pp. 509, 564; *Exhibit 1*, pp. 70, 72-73.
46. The Parent indicated on December 10, 2021, that the Student may no longer need placement in a separate school because his mental health had stabilized, and his IEP Team agreed to reconsider placement once the pending reevaluation was complete. *Exhibit 1*, pp. 72-73.
47. On December 14, 2021, the Student and Parent met with a representative from Private Treatment Program 6 and agreed to tour the program. *Exhibit 3*, pp. 583-584.
48. On January 3, 2022, the Parent indicated to District staff that Private Treatment Program 6 would not meet the Student's needs because no other post-high school students were then enrolled, and the Student was then receiving private school services. *Id.* at pp. 587, 590-592.
49. On January 3, 2022, District staff sent the Student and his Parent enrollment information for a virtual transition course and a link to a transition survey. *Id.* at p. 593.
50. On January 4, 2022, the Parent reported that the Student was again suicidal and needed placement in a mental health program, and not a focus on transition services, and that the Student did not want to attend Private Treatment Program 6. *Id.* at p. 599.
51. On January 5, 2022, the Parent wrote to District staff that she had contacted residential treatment centers to address the Student's medically-necessary mental health needs that were covered by public health funds, without success, and provided notice to the District of a private school reimbursement claim. *Id.* at p. 604.
52. The Parent submitted documentation of expenses for the Student after January 5, 2022, from Private School Program 2, a program designed to "broaden the support and services for deaf and hard-of-hearing individuals, their families, and the community members and professionals who work with them", that totaled \$2,980 for work adjustment training, self-advocacy training, and job exploration, all authorized for payment from the division of vocational rehabilitation. *Exhibit D*.

53. The Parent submitted a spreadsheet of “Medical Expenses” from Private Treatment Programs 1 and 9 and Private Treatment Provider 4 totaling \$38,090 that do not establish the services provided, the dates of services, or the source(s) of payment. *Id.*
54. On January 7, 2022, the Parent told District staff that “a day treatment program” had been located and requested support from the District to immediately implement the Interim IEP in that unidentified placement. *Exhibit 3*, p. 609.
55. On January 10, 2022, the Parent notified the District that the Student had an intake appointment scheduled the following day for placement in a partial hospitalization program at Private Treatment Program 7. *Id.* at p. 611.
56. On January 11, 2022, the Parent and District staff had a telephone conversation, and the District requested that the IEP Team be convened to discuss placement which the Parent rejected on the basis that Private Treatment Program 7 was a private placement. *Id.* at p. 615.
57. On January 11, 2022, the Parent reported that the Student needed mental health treatment “to address the school trauma.” *Id.* at pp. 617, 623-625.
58. The Student attended the Private Treatment Program 7 partial hospitalization program from January 13, 2022 until January 31, 2022, when he transferred to the Private Treatment Program 8 intensive outpatient program. *Exhibit C*.
59. On January 31, February 3, and February 15, 2022, the District again sought completion and submission of outstanding reevaluation information from the Student and Parent, such as authorizations to release information from private providers including Private Treatment Programs 7 and 8 and for information related to past private school services for which the Parent sought high school credit for the Student. *Exhibit 1*, pp. 74-75; *Exhibit 3*, pp. 645-646.
60. On February 15, 2022, the Parent wrote to District staff to meet and provide updates on the Student and to complete outstanding evaluation information. *Exhibit 3*, p. 659.
61. On February 23, 2022, Private Treatment Program Provider 1 summarized the Student’s experiences in Private Treatment Programs 7 and 8 and reported a diagnosis of autism spectrum disorder. *Exhibit C*.
62. Sometime after March 3, 2022, the District issued an undated draft Evaluation Report reflecting the evaluation information it had been able to compile. *Exhibit 1*, pp. 82-88.

63. On March 13, 2022, the Parent notified the District that the Student remained in Private Treatment Program 8 and would begin a 90-day transition program on April 11, 2022. *Exhibit 3*, p. 690.
64. On March 15, 2022, the Parent indicated to the District that documents from the Student's private providers could be shared with the District, and the Parent provided current program records directly to the District on March 17, 2022. *Id.* at pp. 692, 694.
65. On March 22, 2022, District staff continued to seek additional specified information from the Student's current private treatment program. *Id.* at pp. 695-696.
66. On March 22, 2022, the Parent notified District staff that the Student was assessed at and planned to attend a "transition program" at Private Treatment Program 9. *Id.* at p. 695.
67. On March 24, 2022, the Parent provided District staff with progress reports from the Private Treatment Program 8. *Id.* at p. 702; *Exhibit C*.
68. On March 25, 2022, the Parent notified the District and others that the Student would attend Private Treatment Program 9 "which has been determined to be a medically necessary recreational therapy and coeducational transition program" [] starting April 11, 2022, also described in Private Treatment Program 8 records as a Wilderness Therapy Program. *Exhibit 3*, pp. 709-716; *Exhibit C*.
69. Private Treatment Program 9 describes its program as "nature-based experiential learning and traditional therapy with all-around wellness principles including nutrition, exercise, and mindfulness, to offer a dynamic expression of the Wilderness Adventure Therapy model." *Exhibit D*.
70. [Early 2022], the Student died while attending the Private Treatment Program 9. *Exhibit 3*, p. 734.

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 did not violate 34 C.F.R. § 300.303 or ECEA Rule 4.02(5).

An initial evaluation must be completed within sixty days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301(c)(1). However, the timeline *does not* apply if the "parent of a child repeatedly fails or refuses to produce the child for the evaluation." *Id.* § 300.301(d)(1) (emphasis added). A school district must reevaluate a student with a disability in two situations:

- (1) if the [school district] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) if the child's parent or teacher requests a reevaluation.

Id. § 300.303(a). Such a reevaluation must occur at least once every three years and may not occur more than once a year, unless the parent and school district agree otherwise. *Id.* § 300.303(b).

A reevaluation must be “sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” *Id.* § 300.304(c)(6). Thus, school districts must be permitted to complete a comprehensive special education evaluation of the student. *M.T.V. v. DeKalb Cty. Sch. Dist.*, 446 F.3d 1153, 1160 (11th Cir. 2006) (noting that “[e]very court to consider the IDEA's reevaluation requirements has concluded ‘[i]f a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation’”); *Dubois v. Conn. State Bd. of Educ.*, 727 F.2d 44, 48 (2nd Cir. 1984) (noting that “[b]efore a school system becomes liable under [IDEA] for special placement of a student, it is entitled to up-to-date evaluative data[, and . . .] the school system may insist on evaluation by qualified professionals who are satisfactory to the school officials”); *Andress v. Cleveland Ind. Sch. Dist.*, 64 F.3d 176, 178 (5th Cir. 1995) (noting “[i]f a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student”).

Here, when the Parent provided sixty days’ notice on September 8, 2021, of intent to re-enroll the Student in the District pursuant to the terms of the parties’ past settlement agreement, the District initiated reevaluation of the Student to prepare for his return on November 8, 2021 (parental consent was received on September 28, 2021). Before the reevaluation could be completed, the Parent unilaterally placed the Student in a private treatment facility due to a mental health crisis and failed to produce the Student for further reevaluation assessments. While it is understandable that the Parent responded to the Student’s mental health crisis by providing private mental health treatment, the District’s responsibility to complete the reevaluation was necessarily suspended due to the Student’s unavailability to participate in the reevaluation.

The timeliness of a reevaluation must consider the availability of the Student and the cooperation of the Parent because the determination of a child’s disability-related needs must be based on sound evaluation data. The Parent either failed or refused to produce the Student for the reevaluation after October 27, 2021. This failure or refusal throughout the period covered by the Complaint, as well as the Parent’s repeated unilateral private treatment placements starting on

November 8, 2021, were not factors within the District's control. Still, an IEP Team developed the Interim IEP on November 11, 2021, with the assessment information then available as recorded in the draft Evaluation Report. The District also continued to make efforts after November 11, 2021, to complete the reevaluation until the Student sadly passed away [early 2022].

Overall, the Parent's actions impaired the District's attempts to complete the comprehensive reevaluation required to determine the Student's special education and related service needs. For these reasons, the SCO finds and concludes that the District did not violate 34 C.F.R. § 300.303 or ECEA Rule 4.02(5).

Conclusion to Allegation No. 2: The District did not violate 34 C.F.R. §§ 300.320 or 300.324, or ECEA Rule 4.03.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). 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 question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.*

An IEP Team must determine a child's need for special education and related services on an individual basis, given the child's unique needs. 34 C.F.R. § 300.320. When developing an IEP, the IEP Team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. *Id.* § 300.324(a)(1). Placement decisions must be made by individuals with knowledge of the child, including the child's parents, and the meaning of evaluation data. *Id.* § 300.116.

Here, the Parent prevented the District from completing a comprehensive reevaluation by failing or refusing to make Student available for assessments after October 27, 2021. As a result, the District could not comprehensively collect and consider data on the Student's academic, developmental, and functional needs despite efforts to do so. The Parent's actions effectively prevented development of an IEP based on recent information about the Student's unique needs, as required by the law. Nevertheless, even after the Parent's initial unilateral placement of the Student in a private treatment program on November 8, 2021, the IEP Team developed an Interim IEP on November 11, 2021. The District proposed placement at a separate school, Treatment Program 6, which included mental health treatment and educational services designed to meet the Student's unique disability-related needs (to the extent those needs could

be identified by the information available to the District). The Parent did not dispute the appropriateness of the Interim IEP or the ability of the separate school placement to meet the Student's needs, only that Student would be the oldest child at the separate school. For these reasons, the SCO finds and concludes that the District did not violate 34 C.F.R. §§ 300.320 or 300.324, or ECEA Rule 4.03.

Conclusion to Allegation No. 3: Parent is not entitled to reimbursement consistent with 34 C.F.R. § 300.148 and ECEA Rule 5.01(9).

Parents may be entitled to private school tuition reimbursement where “the court or hearing officer finds that the [school district] had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.” 34 C.F.R. § 300.148(c). Reimbursement may be reduced or denied if parents fail to make the child available for an evaluation. *Id.* § 300.148(d).

Here, as described in the conclusions to allegations one and two, the District offered the Student a FAPE (or attempted to and was denied access to the Student by Parent) in a timely manner over the period of this Complaint. Moreover, even if the District had denied the Student a FAPE, the Parent did not make the Student available to the District for reevaluation. For these reasons, the SCO finds and concludes that Parent is not entitled to reimbursement consistent with 34 C.F.R. § 300.148 and ECEA Rule 5.01(9).

REMEDIES

The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

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

Dated this 3rd day of July, 2022.

/s/ CDE Contract State Complaints Officer
CDE Contract State Complaints Officer

APPENDIX

Complaint, pages 1-50

Response, pages 1-16

- Exhibit 1: Records
- Exhibit 2: Records
- Exhibit 3: Emails
- Exhibit 4: Settlement Agreement
- Exhibit 5: Procedures Guide

Reply, pages 1-5

- Exhibit A: Response and Notes
- Exhibit B: Meeting Notes
- Exhibit C: Medical Records
- Exhibit D: Miscellaneous Documents
- Exhibit E: Emails
- Exhibit F: Records
- Exhibit G: Emails

Telephone Interviews

- Parent and Parent Advocate: June 20, 2022