

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

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**State-Level Complaint 2024:565  
Colorado Springs School District 11**

**DECISION**

**INTRODUCTION**

On June 3, 2024, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Colorado Springs School District 11 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified 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 CDE has jurisdiction to resolve the Complaint.

On June 5, 2024, the parties agreed to toll the investigation timeline to attempt to resolve their differences at mediation. Mediation was unsuccessful, and the investigation resumed on June 19, 2024.

**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 June 3, 2023. Information prior to June 3, 2024 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to provide Parents with proper notice of an IEP meeting held on September 29, 2023, in violation of 34 C.F.R. § 300.322.
2. Improperly determined Student’s educational placement in September and/or October 2023, specifically by:

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<sup>1</sup> 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.

- a. Failing to ensure the placement decision was made by a group of persons that included Parents and others with knowledge of Student, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8);
  - b. Failing to determine placement based on Student’s IEP, in violation of 34 C.F.R. § 300.116(b) and ECEA Rule 4.03(8)(a); and
  - c. Making a significant change to Student’s educational placement without consideration of a reevaluation, in violation of ECEA Rule 4.03(8)(b)(ii).
3. Failed to conduct a triennial reevaluation of Student that was due on or about December 8, 2023, in violation of 34 C.F.R. § 300.303(b).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. Student is a twelve-year-old girl who is “creative,” “an artist” who enjoys hands-on activities, music, and dancing. *Exhibit A*, p. 31; *Exhibits C*, p. 69; *Interview with Parents*. She is mostly nonverbal and faces challenges in the areas of communication, cognitive abilities, social skills, and academics. *Exhibit A*, p. 33; *Interview with Parents*.
2. She is eligible for special education and related services under the disability category of Autism Spectrum Disorder. *Exhibit A*, p. 2. In fifth grade, she attended a Significant Support Needs (“SSN”) program at an elementary school in the District, and in sixth grade she was enrolled in an SSN program at a middle school in the District (“School”). *Interviews with Parents, Behavioral Interventionist 1 (“Interventionist 1”), Student’s special education teacher (“SSN Teacher”), and District-Level Special Education Coordinator (“Coordinator”)*.
3. Parents’ concerns arise from Student’s change of placement, at a meeting on September 29, 2023, from the SSN program at School to a CDE-approved facility school (“Facility School”). *Complaint*, pp. 3-11. They state that they did not receive proper notice of the IEP Team meeting at which the placement was changed; that the change was made without their involvement; that, although they filled out paperwork to enroll Student in Facility School, they believed it was merely a trial; that the change was not based on Student’s IEP; and that the change should have been made only after considering reevaluation. *Id.* They also state

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

that the District did not conduct a required triennial evaluation that was due in December 2023. *Id.*

4. The District responds that Parents were involved in and agreed with the change of placement. *Response*, pp. 5-7. It states that the change was made by the IEP Team at a meeting with all necessary participants, including Parents, and that it was based on Student's needs as described in her IEP. *Id.* It concedes that the required triennial evaluation has not been performed but notes that Parents have declined to provide their consent in response to a belated request for consent for reevaluation. *Id.*

**B. August and September 2023: Beginning Sixth Grade**

5. Student's IEP, developed in December 2022 while she was in fifth grade at an SSN program in a District elementary school and still in effect at the beginning of her sixth-grade year, described her needs: Academically, she was working to match words to pictures, identify letters, count objects, write her name, and participate appropriately in class activities. *Exhibit A*, pp. 31-33. She had deficits in the areas of communication, cognitive abilities, access skills, and social skills. *Id.* She had a history of elopement and pika, and she required safety monitoring both in school and for her transportation. *Id.*
6. Although the IEP did not, when developed in December 2022, reflect significant aggressive behaviors, her May 2023 progress report for a communications goal stated that progress was becoming increasingly challenging due to Student's frustration and an increase in negative behaviors. *Id.* at p. 48. It noted that the increase in behaviors coincided with a medication change. *Id.*
7. Similarly, all of Student's educators had noticed, at the end of Student's fifth grade year, an increase in aggressive behaviors such as pinching adults, sometimes hard enough to leave a bruise. *Interview with Coordinator*. Nonetheless, her behavioral challenges were manageable with the use of strategies tailored to her antecedent behaviors, such as transitions. *Exhibit A*, pp. 31; *Interview with Interventionist 1*.
8. To prepare for Student's start of sixth grade in the SSN program at School, SSN Teacher collaborated with Interventionist 1, who had worked with Student and Student's teachers at the elementary school. *Interviews with SSN Teacher, Interventionist 1, and Coordinator*. The two also consulted with the school psychologist and speech language pathologist. *Id.*
9. SSN Teacher and Interventionist 1 discussed implementation of the positive behavioral interventions and strategies that had been effective in fifth grade. *Id.* They discussed new strategies that might be appropriate, and how both old and new strategies would be implemented in sixth grade. *Id.*

10. The interventions and strategies employed included:

- a. Teaching strategies: Staff would use first-then visuals to demonstrate that a non-preferred task would be followed by a preferred task or item, vary between preferred and non-preferred, minimize verbalization in favor of visual aids when Student became visibly frustrated, and provide redirection by stating, positively, what staff wanted Student to do (in contrast to stating what staff wanted Student not to do). *Id.*
- b. Communication and behavior strategies: Staff would use pictures and visual aids along with words to convey the school schedule, pro-social behaviors such as “safe hands,” and to-do lists. *Id.* Staff also employed a choice board and Student’s AAC device. *Id.* Staff would offer frequent access to preferred items, sensory items, reinforcers for transitions, and movement breaks. *Id.*
- c. Environmental strategies: Student was given a large table for herself, her assigned paraprofessional, and SSN Teacher. *Id.* She was also given the option to sit on a regular chair, ball chair, or the floor. *Id.*

11. They also developed an escalation management plan with the intention that all Student’s educators and paraprofessionals would respond to Student’s challenging behaviors with positive interventions. *Id.* When Student exhibited aggressive or self-harming behaviors, staff were to respond with de-escalation techniques. *Id.* Specifically, they were to redirect Student to a designated safe space, use visual aids or Student’s AAC device to allow Student to communicate which alternate activity she sought, direct Student to movement or sensory tools, and use minimal words and supportive tones. *Id.*

12. SSN Teacher communicated with Parents in advance of the 2023-2024 school year. *Exhibit E*, pp. 84-97. They discussed Student’s tolerance for a new environment, her motivators, and class schedules. *Id.* SSN Teacher explained that she planned to dedicate a paraprofessional to Student at all times as well as ensure that Student would become comfortable working with multiple paraprofessionals. *Id.*

13. On the first day of school, August 16, 2023, when Student was taken from class to meet Parent to go home, Student responded to the transition by pinching, hitting, and biting SSN Teacher. *Interview with SSN Teacher; Exhibit A*, p. 4. When they arrived at the entrance to the school, Student went into the front office rather than the doors. *Id.* When Parent attempted to redirect her, Student responded by scratching, hitting, and biting Parent before throwing herself to the ground. *Id.*; *see also Interview with Parents.*

14. On the second day of school, August 17, Student exhibited physical aggression toward SSN Teacher by hitting, scratching, and biting her. *Interview with SSN Teacher; Exhibit L*, p. 227.

15. Student's actions injured SSN Teacher to the degree that she filed a formal accident report, including photographs of the injuries, with the District's risk management department. *Exhibit L*, pp. 227-37.
16. Each day thereafter, Student exhibited physical aggression toward staff similar to the first two days of school. *Interview with SSN Teacher; Exhibit A*, pp. 5-7. She also threatened to harm herself by stomping, punching and kicking walls, and throwing herself to the ground. *Id.*
17. In the second week of school, staff began tracking Student's behaviors in detail using "ABC sheets," which stands for "antecedent, behavior, and consequence." *Exhibit G*, pp. 143-51. The goal was to collect data to understand her behaviors, develop strategies to prevent the behaviors, and teach Student how to regulate her emotions. *Interviews with SSN Teacher, Coordinator, and Interventionist 2*. This data collection was a start on what staff intended to become a functional behavioral assessment leading to the creation of a behavioral intervention plan. *Id.*
18. The ABC sheets reflect an evolution of aggressive behavior from only pinching, to pinching and hitting, and then to biting, scratching, and kicking, and finally to knocking over furniture in an unsafe manner. *See Exhibit G*, pp. 143-51.
19. On September 15, Coordinator, along with other School staff including the District's out-of-district placement coordinator, met with Parents and their advocate to discuss whether the District could meet Student's needs at School. *Interviews with Coordinator, Interventionist 2, and Parents*.
20. Coordinator told Parents that placement at an out-of-district program might be necessary if Student's behavioral needs could not be met in School's SSN program. *Id.* Parents acknowledged that Student was going through a difficult time and exhibiting physical aggression at home as well, including directing aggression at her baby brother while she was trialing a new medication. *Id.* They said they were working to admit her to a day treatment program affiliated with a hospital. *Id.* They assured the staff, however, that Student was on new medication that was reducing her aggressive behaviors. *Id.*
21. Student did not attend for several days, and Parents and District agreed to try again with a high level of support along with the use of all the strategies that had previously worked in addressing Student's behavioral needs. *Interviews with SSN Teacher, Interventionist 1, and Interventionist 2*. On September 21, Student returned to School. *Id.* The District sent both Interventionist 1 and Interventionist 2 to support SSN Teacher and take first-hand observations of the antecedents to Student's behavior as well as the behavior itself. *Id.* Interventionist 1's time at Student's elementary school meant she was a familiar face to Student and understood her needs, and Interventionist 2 was the behavioral interventionist assigned to School. *Interviews with SSN Teacher, Interventionist 1, and Interventionist 2*.

22. Both behavioral interventionists had a great deal of experience and education concerning students with behavioral challenges:
- a. Interventionist 1 had sixteen years of experience working in special education, including six years of running a high school affective needs program. *Interview with Interventionist 1*. She had been a BCBA since 2017, and she had spent several years with a private firm acting as a behavioral consultant at schools both inside and outside of the United States before joining the District. *Interview with Interventionist 1*.
  - b. Interventionist 2 also had sixteen years of experience in special education, of which twelve were spent in settings such as SSN programs, affective needs programs, and the Boys Town behavioral school. *Interview with Interventionist 2*. She had a Master's Degree in special education and was finishing a BCBA program. *Id.*
23. When the school day began, Student visited the bathroom, ate breakfast in the classroom, performed a counting activity, and then had free time with adult engagement and preferred items. *Interviews with SSN Teacher, Interventionist 1, and Interventionist 2; Exhibit A, pp. 4-6; Exhibit G, pp. 149-51*. When it was time for the next activity, around 9:00 a.m., she began pinching her paraprofessional hard, and she did not respond to redirection. *Id.*
24. Student requested the bathroom, and she began to walk there escorted by the interventionists, a paraprofessional, and SSN Teacher. *Id.*
25. In the hallway, she began screaming. *Id.* She threw herself to the ground, screamed, cried, and she hit, scratched, pinched, bit, and kicked the staff. *Id.* She kept screaming and threw herself to the ground again. *Id.* She bit a staff member on the upper bicep hard enough to produce an immediate welt, and she bit another on the calf causing immediate bruising. *Id.* Other School staff cleared the hallway, closed fire doors, and redirected students out of the hallway. *Id.*
26. After almost half an hour, staff managed to allow Student to try to use the bathroom and then escorted her to a quiet room with dimmed lights, no other students, and very little stimulation. *Interviews with SSN Teacher, Interventionist 1, and Interventionist 2; Exhibit A, pp. 4-6; Exhibit G, pp. 149-51*. From 9:30 a.m. until almost 11:00 a.m., her behavior remained elevated. *Id.* Staff attempted both leaving her alone quietly and talking to her. *Id.* They tried offering incentives, preferred activities, sensory objects, comfort objects, a movement break, music, a beanbag chair, and a video. *Id.* Student screamed, kicked the ground, lay on the ground, hit the wall, cried, and banged her head, although there were brief periods when she was quiet, listened to music, and requested a particular video. *Id.* She repeatedly became re-escalated. *Id.* She threw items and hit, kicked, and grabbed staff. *Id.* Staff finally called Parents to pick her up. *Id.*

27. The incident left the staff physically injured. *Interview with Coordinator*. One of the interventionists took two personal days off work to recover. *Id.*

### **C. September 29, 2023 Meeting and Facility School**

#### **Scheduling the September 29, 2023 Meeting**

28. Coordinator emailed Parents, the other members of Student’s IEP Team, and the District’s outside placement coordinator (“Outside Placement Coordinator”) to explain that, in light of the events of September 21, the District wanted to meet and discuss “next steps,” because the District had not successfully met Student’s needs in “the school setting” despite providing a “high level of support.” *Interview with Coordinator; Exhibit N*, p. 284. Parents, their advocate, and the other participants including Outside Placement Coordinator exchanged additional emails to find a time and date that would work for everyone. *Id.* at pp. 282-84.

29. The District concedes that the email did not constitute a notice of meeting compliant with the IDEA. *Response*, p. 4; *Interview with Coordinator*. District policy requires formal notices in accordance with the IDEA. *Interview with Special Education Director (“Director”)*. Coordinator states that she is ordinarily “meticulous” with such requirements, but the severity of the situation—and its effect on the staff—affected her and led to the mistake. *Interview with Coordinator*. The District’s policy is to send a formal notice of meeting at least ten days prior to an IEP Team meeting. *Interview with Director*.

#### **Parents’ Involvement in the September 29, 2023 Meeting**

30. Parents and their advocate attended the meeting. *Interviews with Parents, Coordinator, Interventionist 1, Interventionist 2, and SSN Teacher*. The meeting was not recorded. *Id.*

31. Interventionist 1 also attended the meeting. *Interviews with Coordinator, Interventionist 1, Interventionist 2, and SSN Teacher*. Because of her involvement through Student’s elementary school education, she was familiar with Student’s 2020 evaluation data—which was Student’s most recent evaluation—as well as its connection to Student’s strengths and needs through fifth grade. *Interviews with Coordinator and Interventionist 1*.

32. Coordinator attended as the Special Education Director’s designee. *Interview with Coordinator*. She had participated in Student’s 2020 evaluation and worked with Student on several occasions in elementary school when she acted as a coach in the SSN classroom by demonstrating model teaching techniques and behavioral supports. *Id.* By virtue of these involvements in Student’s education, as well as twenty-nine years of experience in the District as a special education teacher, coordinator, and administrator, she understood the instructional implications of Student’s evaluation results. *Id.*

33. During the meeting, the staff discussed the strategies that had been put in place prior to Student’s first day; the behavioral challenges that had occurred despite those strategies; the

ABC data that staff had gathered; Parents' prior information concerning the new medication that had been tried and their attempt to enroll Student in a day program; and the events of September 21, which had occurred despite the District providing the highest level of support it could. *Interviews with Coordinator, Interventionist 1, Interventionist 2, and SSN Teacher.*

34. The staff stated that the District schools could not meet Student's behavioral needs, and the IEP Team discussed outside placement options. *Interviews with Interventionist 1, Interventionist 2, and Coordinator.* Two options were presented to address Student's academic, communication, and behavioral needs: Facility School and a program at a neighboring BOCES. *Id.* Parents turned down the BOCES option because they believed it was an ABA program, and they view ABA methodology as "predatory and disrespectful of [Student's] autonomy." *Interviews with Parents, Interventionist 2, and Coordinator; Exhibit N, p. 291.*
35. The reasons that Facility School could meet Student's needs were presented to Parents. *Interviews with Interventionist 1, Interventionist 2, and Coordinator.* It was a much smaller program, with many fewer students, than School, allowing for a less stimulating environment throughout the school day. *Id.* It had resources to provide even greater supervision than the ratio of three-to-one and even four-to-one (on September 21) adult-to-Student ratio that could be provided at School, particularly given the unlikelihood that School could offer such a high level of support on a long-term basis. *Id.* The teaching at Facility School would come exclusively from experts in autism-related needs, such as Student's communication, social, social-emotional, and behavioral needs. *Id.* Her existing services, accommodations, and academic work could be provided at Facility School. *Id.* Finally, Facility School regularly integrated children into the community to learn to generalize the social skills they learned outside the narrow contexts of one-to-one and small-group learning, which would address Student's social and communication needs. *Id.*
36. Parents and their advocate participated in this discussion. *Id.* Parents asked whether it was an ABA school, and staff responded that Facility School would have a number of options for behavioral intervention, and some methods from ABA could be among those options. *Interview with SSN Teacher; accord Exhibit N, p. 297.* They discussed a "soft start," meaning that Student would be accompanied by a familiar adult, and it was agreed that Interventionist 1 would accompany Student on her first days at Facility School. *Interviews with Interventionist 1 and Coordinator.* The staff who were at the meeting understood the meeting's purpose as finding a new placement for Student, which they did, and they do not recall any discussion of a return to School if Facility School did not work out or any suggestion that Student would merely "trial" Facility School. *Interviews with SSN Teacher, Interventionist 1, Interventionist 2, and Coordinator.*
37. The IEP Team did not discuss, as a group, whether Student should be reevaluated. *Interviews with Parents, Interventionist 1, Interventionist 2, Coordinator, and SSN Teacher.* Staff were focused on placing Student in a setting where her behavioral needs could be addressed. *Interview with Coordinator.* Coordinator believed that explaining the ABC behavioral data to



Parents accomplished the goals of a reevaluation within the constraints the IEP Team faced as they sought an appropriate placement for Student. *Id.* District policy, however, required a formal consideration of reevaluation at the meeting itself, to comply with the ECEA. *Interview with Director.*

38. Student's IEP was updated with the new placement and information concerning Student's aggressive behaviors and the many behavioral strategies, listed above in FF #s 10-12, that had been tried without success. *Exhibit A*, pp. 2-26. The IEP was otherwise unchanged in any relevant part. *See id.*

#### *Student's Enrollment in Facility School*

39. On October 3, Parent toured Facility School along with Interventionist 1 and Parents' advocate. *Complaint*, p. 6; *Interview with Interventionist 1.*
40. On October 4, Student visited class for two hours, and she was accompanied by Interventionist 1. *Id.*
41. On October 8, Parent emailed Outside Placement Coordinator, Coordinator, and Interventionist 1, writing:

I was told after our visit at [Facility School] on [October 4] that someone was going to contact me to let me know if [Student] was starting tomorrow [October 9]?

If not, do we know when she will? I believe they have all our paperwork other than a physical form which I was told to bring on Monday.

I do not have any contact email for [Facility School] to add to this thread.

*Exhibit N*, p. 316. Outside Placement Coordinator replied, "[Facility School] is ready for [Student] to start [October 9]." *Id.*

42. On October 9, Parent emailed and explained that Student was not in attendance because "No one reached out to me after our visit [on October 4] about her start date" and "I did not feel comfortable sending her for her first full day without her teacher (a semi-familiar face to her) being there." *Id.* at p. 313.
43. On October 10, Parents provided Student's enrollment paperwork to Facility School, and Student attended for a full day. *Complaint*, p. 4; *Response*, p. 4.

44. The enrollment paperwork, which stated “Student Enrollment Information” at the top of the first page, consisted of 35 pages of forms collecting information concerning Student’s family, culture, insurance, immunizations, health needs, medical history, social history, developmental history, school history, personal strengths, behavioral triggers, and behavioral challenges. *Exhibit Q*. It included authorizations for school pick-ups, medical treatment, hygiene management, unspecified therapeutic treatment, unspecified testing, the use of physical restraint, field trips into the community, bicycling trips, and the use of school transportation. *Id.* It included Student’s birth certificate and social security card, and Parent’s driver’s license. *Id.* It included a broad, general release of information allowing Facility School to seek any records concerning Student, as well as specific authorizations for school records and the use of publicity photographs. *Id.* It included acknowledgements of Facility School’s privacy policy and the school handbook. *Id.*
45. The paperwork had two spots for Parents to state their reasons for enrollment: Parents wrote, first, “[Student] not acclimating to public [District] school. Goal is to help her learn skills to integrate back to her home school.” *Id.* at p. 2. In the second spot, they wrote, “Family’s Goal for Child: To learn skills to be able to attend and enjoy school, and potentially integrate back into home school.” *Id.* at p. 3.

*Findings: Parents’ Involvement at the September 29, 2023 Meeting*

46. In light of these facts, the SCO finds that Parents understood, at the September 29, 2023 IEP Team meeting, that the IEP Team was changing Student’s placement to the Facility School. This finding is based on the emails regarding Student’s “start date” and “first full day,” the thoroughness and nature of the enrollment paperwork, Parents’ description of long-term goals as their reason for submitting the paperwork with only “potential” re-integration in a public school, and the lack of any writing—in the emails, enrollment paperwork, or elsewhere—describing Student’s enrollment at Facility School as a short-term period of attendance.
47. The SCO also finds that Parents were active and involved in the IEP Team’s determination of placement because staff explained the ABC data and Student’s behavioral needs to Parents; Parents brought their advocate; Parents scheduled a visitation during the meeting; they evaluated and rejected the BOCES as a second option; they asked and were told about Facility School’s relationship to ABA methodology; and they asked for and received a soft start with Interventionist 1 as Student’s familiar face at Facility School.

*Student’s First and Last Day at Facility School, and Triennial Reevaluation*

48. Student attended Facility School for one full day; Parents asked Student’s teacher to provide updates regarding Student throughout the day, which the teacher did. *Complaint*, p. 7; *Interview with Parents*. The teacher stated that she withheld a preferred item from Student until Student stopped creating a disruption. *Id.* The teacher used the word “compliant,” saying “[Student] was just tantruming, but being compliant.” *Id.*

49. Parents determined from this communication that Facility School was using “control tactics,” revealing that Facility School used ABA methodology. *Id.* Parents refused to send Student back. *Id.*
50. Staff reached out to attempt to see if Parents’ concerns could be addressed at Facility School, which was still the District’s offer of FAPE, but Parents refused any further involvement with Facility School. *Interviews with Parents and Coordinator.*
51. On July 30, 2024, the District belatedly requested Parents’ consent for reevaluation and sent a consent form. *Exhibit D; Interviews with Parents and Coordinator.* Director concedes that the District, which is Student’s district of residence, should have requested consent for a reevaluation earlier. *Interview with Director.* District policy required reevaluation to be completed within three years of Student’s prior evaluation, which was on December 4, 2020. *Id.; Exhibit A, p. 29.* When Parents received the July 30, 2024 request, they did not grant their consent because the reevaluation would occur at Facility School, and they will not grant consent until the reevaluation can occur in one of District’s public schools in a program that Parents determine is appropriate for Student. *Interview with Parents.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District did not provide Parents with proper notice of the IEP meeting held on September 29, 2023, as required by 34 C.F.R. § 300.322. This did not result in a denial of FAPE.**

Parents have alleged that the District did not give them proper notice of the September 29, 2023 IEP Team meeting.

The IDEA requires school districts to “take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.” 34 C.F.R. § 300.322(a). To that end, districts are required to give parents notice of an IEP Team meeting “early enough to ensure that they will have an opportunity to attend” and to “schedule the meeting at a mutually agreed on time and place.” *Id.* That notice must include certain specific information: the purpose, time, and location of the meeting; a list of who will be in attendance; an explanation that the parent or school district may bring other individuals to the meeting in accordance with 34 C.F.R. § 300.321; and, if the child is old enough or the IEP Team deems it appropriate, information pertaining to postsecondary goals and transition services. *Id.* § 300.322(a)-(b).

Here, the District has conceded that it did not provide proper notice of the September 29, 2023 meeting. (FF # 29.) Specifically, Coordinator’s email did not provide three required elements: First, although it explained that the District needed to discuss “next steps” in light of the District’s inability to meet Student’s behavioral needs “in a school setting,” the District was required to

clearly state that placement would be discussed. (FF # 28). Second, although the email was sent to the individuals who would attend, the District was required to expressly state which individuals were certainly going to attend because a person's appearance in the "To" or "Cc" fields does not necessarily mean that they will attend the meeting. (*Id.*) Third, although Parents knew they could bring their advocate, and did so, their familiarity with the process did not remove District's obligation to formally tell them in writing that either party could bring other individuals to the meeting in accordance with 34 C.F.R. § 300.321. (FF #s 28, 30.)

Accordingly, the SCO finds and concludes that the District did not comply with the IDEA's procedural requirement for providing notice, as required by 34 C.F.R. § 300.322.

Procedural noncompliance of the IDEA may result in a denial of FAPE only to the extent that it (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Nothing in the Record suggests that the lack of formal notice impeded Student's right to a FAPE or caused a deprivation of educational benefit. Nor did the lack of formal notice impede Parents' opportunity to participate in the change-of-placement decision. Parents understood, from the September 15 meeting, that Student's needs might need to be met in an out-of-district placement if the District was unable to meet them at School. (FF # 20.) After September 21, Coordinator emailed Parents and told them there needed to be a meeting to discuss "next steps" after Student's needs could not be met at School even with a "high level of support." (FF # 28.) Outside Placement Coordinator was part of the email exchange and expressed her scheduling availability. (*Id.*) Parents then attended the September 29 meeting with their advocate and discussed the BOCES option, whether Facility School was an ABA school, and whether a "soft start" at Facility School could be provided by sending Interventionist 1 in with Student. (FF # 36.) Nothing in the Record shows that Parents objected to the conduct of the meeting or the placement change until after Parents determined that Facility School used ABA methodology.

Because the lack of formal notice did not impede Parents' opportunity to participate in the placement decision, the SCO finds and concludes that this noncompliance did not result in a denial of FAPE. No remedies are ordered.

**Conclusion to Allegation No. 2: The District ensured that Student's change of placement on September 29, 2023, was made by a group of persons that included Parents and others with knowledge of Student, the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8). The change of placement was based on Student's IEP, as required by 34 C.F.R. § 300.116(b) and ECEA Rule 4.03(8)(b)(ii). The IEP Team made a significant change of placement without considering a reevaluation, in noncompliance with ECEA Rule 4.03(8)(b)(ii). This resulted in a denial of FAPE.**

Parents have alleged that the District determined Student’s placement without including the appropriate individuals—including Parents—in the decision, without basing Student’s placement on her IEP, and without considering reevaluation.

A child’s placement—a term used to denote the provision of special education and related services—must be determined by the IEP Team, including parents, and must be individualized, as well as based on the student’s IEP. 34 C.F.R. §§ 300.116, 300.322, 300.327; ECEA Rule 4.03(8)(a); *Questions and Answers on Andrew F. v. Douglas Cnty. Sch. Dist.*, 71 IDELR 68 (OSERS Dec. 7, 2017). School districts must ensure that the placement decision is made by a group of persons including parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); *see also id.* §§ 300.321(a)(1), 300.322, 300.324, 300.327, 300.501(c). If a change of placement will be a “significant” change—a term that includes, as relevant here, placement in a facility school—the IEP Team must consider reevaluating the student. ECEA Rule 4.03(8)(b)(ii).

Importantly, “parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student, even if it is the best possible education for their child, as the district is not required to maximize educational benefits.” *M.S. by and through Emily S. v. Downingtown Area Sch. Dist.*, 2022 WL 16531962, \*12 (E.D. Pa. Oct. 28, 2022); *Douglas Cnty.*, 2023:557, p. 17 (Colo. SEA Sept. 12, 2023). Parents do not have “veto power” over IEP Team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (Calif. SEA May 5, 2025).

Here, the decision to change Student’s placement to Facility School was (1) made by an appropriate group of individuals and (2) the placement was based on Student’s IEP, but (3) the IEP Team did not consider reevaluating Student.

First, as the Findings of Fact show, Parents attended the meeting and were actively involved in the placement decision. (FF #s 30-38.) As for the inclusion of persons knowledgeable about Student and the meaning of her evaluation data and placement options, both Coordinator and Interventionist 1 had been involved in Student’s education for years. (*Id.*) They were familiar with Student, her evaluation data, and the meaning of that data for her education. (*Id.*) Indeed, Coordinator and the other staff explained Student’s new ABC data and its significance to Student’s behavioral needs and education. (*Id.*) Outside Placement Coordinator attended to explain Student’s placement options. (*Id.*) Accordingly, the SCO finds and concludes that the placement decision was made by a group of persons including parents and other persons knowledgeable about Student, the meaning of Student’s evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.324, 300.327, and 300.501(c).

Second, Student’s placement in Facility School was based on her IEP. (FF #s 30-38.) The IEP Team discussed and then revised her IEP to reflect the behavioral data captured by the ABC sheets and how that data impacted her behavioral needs. (*Id.*) The IEP was revised to reflect Facility School as the new placement. (*Id.*) Coordinator and Outside Placement Coordinator explained how Facility School could meet Student’s individual behavioral and social needs in addition to meeting her other needs. (*Id.*) Because Student was placed in Facility School specifically to meet her

needs, and her needs and placement were both described in the new IEP, the SCO finds and concludes that the change of placement was based on Student's IEP, as required by 34 C.F.R. § 300.116.

Finally, the IEP Team did not discuss, as a group, whether Student should be reevaluated. (FF # 37.) Because Facility School is a facility school, Student's change of placement was considered a "significant" change under the ECEA. ECEA Rule 4.03(8)(b)(ii). IEP Teams are required to consider reevaluation prior to making a significant change of placement. *Id.* Accordingly, the SCO finds and concludes that the IEP Team did not comply with ECEA Rule 4.03.

Procedural noncompliance of the IDEA may result in a denial of FAPE only to the extent that it (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable*, 238 F.3d at 765-66.

Here, not considering reevaluation at the change-of-placement IEP Team meeting significantly impeded Parents' opportunity to participate in the decision-making process. The additional information that would have been gathered through a comprehensive reevaluation would have shed light on why Student's behaviors escalated so dramatically between the end of fifth grade and the beginning of sixth grade. This information would have been considered by the IEP team, including Parents, in determining Student's educational placement. At a minimum, a comprehensive reevaluation would have added useful information to Student's record that would allow her future educators and IEP Team members to better understand and address her needs. Indeed, school districts must consider the use of positive behavioral interventions and supports whenever behavior interferes with a student's ability to benefit from his or her educational programming. 34 C.F.R. § 300.324(a)(2)(i). To that end, IEP teams typically conduct an FBA prior to developing a BIP, though the IDEA does not require that positive behavioral supports be based on an FBA or recorded in a BIP. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46683 (Aug. 14, 2006). Even if the staff members of the IEP Team determined that Student's needs could be assessed on a review of the existing data, they were required to inform Parents of their right to request an assessment to determine Student's needs. *Id.* § 300.305(d). Finally, Student's triennial reevaluation was due not long after the change-of-placement meeting, which was a sign that Student's evaluation data was not recent and an updated evaluation was needed.

Accordingly, the SCO finds and concludes that the lack of consideration of an evaluation resulted in a denial of FAPE.

**Conclusion to Allegation No. 3: The District did not conduct a triennial reevaluation due on December 4, 2023, as required by 34 C.F.R. § 300.303(b)(2). This resulted in a denial of FAPE.**

Parents have alleged that the District did not conduct Student's triennial reevaluation.

A school district must ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the district and parent agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303. The school district in which a child resides is responsible for the child’s reevaluation, even if the child is enrolled in a facility school. ECEA Rule 8.04(1)(c).

Here, Student’s last evaluation was December 4, 2020. (FF # 51.) Her school district of residence was District. (*Id.*) Accordingly, the District was required to reevaluate Student no later than December 4, 2023, unless the parties agreed that it was unnecessary. 34 C.F.R. § 300.303(b)(2). The parties did not so agree. (*Id.*) The District did not pursue the triennial reevaluation until July 30, 2024, after the deadline had passed. (*Id.*)

Accordingly, the SCO finds and concludes that the District did not conduct a triennial reevaluation as required by 34 C.F.R. § 300.303.

As noted, procedural noncompliance of the IDEA may result in a denial of FAPE only to the extent that it (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable*, 238 F.3d at 765-66.

For the same reasons that the lack of an open discussion of reevaluation at the change-of-placement meeting resulted in a denial of FAPE, so too the lack of a timely triennial reevaluation significantly impeded Parents’ opportunity to participate in the decision-making process regarding Student’s education. The District did not request consent for reevaluation until eight months later than required by the IDEA, at the end of July 2024. Although Student’s placement was changed to Facility School, the District—Student’s administrative unit of residence—was obligated to perform reevaluations. ECEA Rule 8.04(1)(c). Nor did Parents’ decision to keep Student at home, rather than allow her to attend her new placement, change the District’s duty to seek consent for a timely reevaluation. *See* 34 C.F.R. § 300.303.

Accordingly, the SCO finds and concludes that the lack of a triennial reevaluation resulted in a denial of FAPE.

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic and will likely impact the future provision of services for all children with disabilities in 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 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 State Educational Agency’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).

Nothing in the record suggests that the District’s noncompliance—not providing a formal notice for the IEP Team meeting, not considering reevaluation at the meeting, and not conducting a timely triennial reevaluation—is systemic in nature. The lack of formal notice of the IEP Team meeting was a mistake acknowledged by District and was not in alignment with District policy. (FF # 29.) The lack of formal consideration of reevaluation at the IEP Team meeting was also not in alignment with District policy, and nothing suggests it occurs systemically. (FF # 37.) Finally, the District has acknowledged that the triennial evaluation was not conducted in a timely manner as required by the District’s policies. (FF # 51.) Nothing in the Record suggests a widespread problem regarding timely reevaluations.

### **REMEDIES**

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

- a. Did not provide a proper notice of an IEP meeting as required by 34 C.F.R. § 300.322.
- b. Did not consider reevaluation when making a significant change of placement as required by ECEA Rule 4.03(8)(b)(ii)(B).
- c. Did not conduct a triennial reevaluation as required by 34 C.F.R. § 300.303.

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

#### **1. Corrective Action Plan**

- a. By **Monday, October 14, 2024**, the 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 Students and all other students with disabilities for whom the 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 the District’s timely correction of the areas of noncompliance.

#### **2. Final Decision Review**

- a. Director and Coordinator must review this Decision. This review must occur no later than **Monday, October 14, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, October 18, 2024**.



### 3. Reevaluation and Review of IEP


- a. The District must provide Parents with a form seeking consent to reevaluate Student by **Monday, October 14, 2024**. The District must simultaneously submit a copy of the consent form to the CDE.
  - i. If Parents refuse to sign consent for evaluation within 10 days of receipt, the District will be excused from conducting the reevaluation, provided the District diligently attempts to resolve disagreements about the scope and location of the evaluation, and to secure Parents' consent, and documents such efforts.
  - ii. If the District offers the evaluation to be conducted in Student's placement of Facility School, the District will be deemed to have diligently attempted to resolve disagreements about the location of the evaluation.
  - iii. If the District and Parents cannot agree to the scope and location of the evaluation, the District must submit to the CDE all documentation evidencing diligent attempts to resolve the disagreement, including but not limited to copies of correspondence sent to Parents and any responses received (such as emails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Friday, November 1, 2024**.
  - iv. A determination that the District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student, rests solely with the CDE.
  - v. If Parents sign the consent, the District must submit a copy of the signed consent to CDE within 7 days of receiving the signed consent.
- b. If Parents sign the consent, the District must conduct the reevaluation in accordance with 34 C.F.R. §§ 300.303 through 300.305 by **Friday, November 22, 2024**.
- c. Student's IEP Team shall convene, at a mutually agreeable date and time, by **Friday, November 22, 2024**. In consideration of the concerns identified in this Decision, Student's IEP Team must review and, as appropriate, revise Student's IEP to reflect her current needs.
- d. A copy of Student's evaluation, IEP, the notice of meeting for the IEP meeting, any notes from the IEP meeting, and any PWNs issued must be provided to the CDE no later than **Friday, November 15, 2024**. The CDE may determine, in its sole discretion, whether the evaluation and IEP meetings complied with this Decision.

- e. If Parents have disenrolled Student from the District, then the District will be excused from completing the requirements of this section of the Remedies, section 3.

### CONCLUSION

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

Dated this 13<sup>th</sup> day of September, 2024.



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Nicholaus Podsiadlik  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-11

#### Response, pages 1-9

- Exhibit A: IEPs
- Exhibit C: Evaluations
- Exhibit D: Prior Written Notices
- Exhibit E: Meeting Documentation
- Exhibit F: Service Logs
- Exhibit G: Behavior Logs
- Exhibit I: Attendance Records
- Exhibit J: School Calendar
- Exhibit K: Communications
- Exhibit L: Accident Reports
- Exhibit M: Policies
- Exhibit N: Correspondence
- Exhibit O: Staff Contacts
- Exhibit P: Verification of Delivery
- Exhibit Q: Enrollment Documents

#### Telephone Interviews

- Director: August 15, 2024
- Interventionist 1: August 15, 2024
- Interventionist 2: August 15, 2024
- Coordinator: August 15, 2024
- SSN Teacher: August 15, 2024
- Parents: August 22, 2024