

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

**State-Level Complaint 2024:596
Mesa County Valley School District 51**

DECISION

INTRODUCTION

On September 24, 2024, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Mesa County Valley School District 51 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

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

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after September 24, 2023. Information prior to September 24, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

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

1. The District did not identify and evaluate Student—from September 24, 2023 to present—when it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

FINDINGS OF FACT

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

A. Background

1. Student attends eighth grade at a District middle school (“School”). *Interview with Parent.* She enjoys art, music, and makeup. *Id.* While Student is a loving and caring young woman, she also struggles with stress and anxiety. *Id.* At school, Student has difficulty handling social situations and coping with her anger. *Id.*; *Interviews with Assistant Principal 1 and School Psychologist.*
2. Student is not currently eligible for special education, nor has she ever been eligible before. *Interview with Parent.* Prior to the 2024-2025 school year, Student has never been evaluated for special education. *Id.*

B. 2022-2023 School Year

3. During the 2022-2023 school year, Student was a sixth grader at School. *Id.* Student has struggled with behavioral challenges since fourth grade; however, those challenges escalated in sixth grade and resulted in Student spending a week in a psychiatric hospital. *Id.*
4. Following Student’s hospitalization, Parent emailed School Psychologist on May 7, 2023 to request information regarding evaluating Student. *Id.* Parent stated:

[Student] has been having a lot of learning difficulties as well as mental health issues. It was suggested by her psychologist . . . to have her tested for dyslexia/learning disability. I was told you would be the person to help me with this. If you could please email me back regarding how I would need to go about starting that process I would be most grateful.

Exhibit 2, p. 3.

5. School Psychologist responded on May 8, 2023:

In order to qualify for an IEP (a type of support plan for a learning disability), her academic scores would need to fall at the 12th percentile or below. Reviewing her

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

CMAS and NWEA data, she's quite a bit higher than that (around the 30-50s percentiles in math, 60-80s percentiles in reading).

Id. at p. 2. School Psychologist indicated that Student "could potentially qualify" for a 504 Plan and asked whether Parent wanted the School's 504 coordinator to contact her. *Id.*

6. Later that day, Parent reiterated her interest in evaluating Student: "What about testing her for learning disabilities and dyslexia? We are trying to figure out if it's mental or learning or both." *Id.*
7. School Psychologist provided the criteria for specific learning disability, explaining that Student would need low academic performance (typically, "12th percentile or below") and a lack of growth. *Id.* Parent expressed frustration at the criteria and said she would "take the 504 option." *Id.*
8. At the time, School Psychologist thought Parent was requesting information about the special education process. *Interview with School Psychologist.* However, looking back, School Psychologist acknowledged she should have treated Parent's email as a request for evaluation or, at the very least, sought some clarification as to what Parent wanted. *Id.*
9. No one from the District contacted Parent during the remainder of the 2022-2023 school year to discuss a 504 Plan. *Interviews with Parent and School Psychologist.*

C. 2023-2024 School Year

10. During seventh grade, Student continued to struggle in school. *Interviews with Assistant Principal 1, Parent, and School Psychologist.* That school year, Student missed fifty days of school, including nine days of suspension. *Exhibit F*, pp. 6-10. Student's grades were poor. *Id.* at p. 1. She was involved in more than thirty disciplinary incidents and a remedial discipline plan was in place. *Exhibit B*, pp. 1-2.
11. In March 2024, School staff referred Student to the District's alternative middle school ("Alternative School"). Assistant Principal 2 gathered information from Student's teachers to include in the referral paperwork. *Exhibit B*, pp. 5-9. Those comments indicated, in part:
 - "Since her last suspension, she has been asking to spend increasing amounts of time in the hall doing her work, saying that being surrounded by the class bothers her. . . . I don't know what is going on, but [Student's'] behavior seems to be going downhill."
 - "I have seen [Student] get overwhelmed with the traditional classroom setting a plethora of times because of people off task or high volume levels. . . . When alone in a quiet area, [Student] does well getting her work done."

Id. at pp. 5-7. Though Student was accepted at Alternative School, Parent declined to send her there. *Interviews with Assistant Principal 1 and Parent.*

12. Neither Parent nor School staff initiated any conversations about evaluating Student for special education during the 2023-2024 school year. *Interviews with Assistant Principal 1, Parent, and School Psychologist.*
13. In its Response, the District conceded that it did not timely complete an initial evaluation of Student during the 2023-2024 school year: “The District admits [District staff] did not initially evaluate nor ensure compliance with the IDEA requirements beginning in September 2023 when the District was on notice that the Student may have a disability and need special education and related services.” *Response*, p. 2.

D. 2024-2025 School Year

14. On August 2, 2024, a private psychologist completed a neuropsychological evaluation of Student at Parent’s request (“Private Evaluation”). *Exhibit C*, pp. 1-17. The results of the Private Evaluation prompted Parent to submit a written request for the District to evaluate Student for special education on August 23, 2024. *Exhibit D*, p. 1.
15. The District obtained Parent’s consent to evaluate Student in the areas of academic performance, communicative status, social/emotional status, health, and motor abilities on September 4, 2024. *Exhibit A*, p. 1. The District completed several assessments during September 2024 and prepared a draft evaluation report. *Exhibit 3*, pp. 1-30.
16. On October 31, 2024, the District convened a multidisciplinary team to review the draft evaluation report and discuss Student’s eligibility for special education. *Interview with Parent*. During the meeting, the team expressed concern about the validity of the evaluation given Student’s admitted cannabis use. *Id.*; *Exhibit 4*, p. 1. Ultimately, the team decided not to “move forward with completing the eligibility document after agreeing that due to the continued drug use and the low attendance rate [the team did] not have an accurate picture of [Student’s] skills.” *Exhibit 4*, p. 1.
17. The District subsequently issued a prior written notice indicating that it would conduct new testing once Student had been drug-free for 30 days and was “attending school regularly.” *Id.* at p. 1. Student has not yet been drug-free for 30 days, so the District has not completed any additional assessments as of the date of this decision. *Interviews with Compliance Officer and Parent*.

E. District Policies and Procedures

18. The District has a detailed Procedural Guidelines manual that explains many special education processes. *Exhibit H*, pp. 1-51. However, the manual does not explain the District’s child find obligations or explain how staff should respond when a parent requests an initial evaluation or a staff member refers a student for an initial evaluation. *See id.* The Procedural Guidelines

would not have provided guidance to any staff member handling Student’s situation during the 2023-2024 school year. *See id.*

19. Though not documented in the Procedural Guidelines, the District has an established child find process in each school. *Interview with Compliance Officer.* Each school has a multi-tiered system of supports team (“MTSS”) that meets regularly to discuss students who need interventions or additional supports. *Id.* Depending on the school, a variety of staff participated in the meetings, including administrators, counselors, school psychologists, and general education teachers. *Interviews with Compliance Officer and School Psychologist.* During MTSS meetings, staff would discuss students whose parents requested initial evaluations, as well as students referred by staff for initial evaluations. *Id.*
20. During the 2023-2024 school year, School experienced significant staff turnover and multiple positions remained unfilled during the school year. *Id.* Though School’s MTSS team typically met every other week; however, last school year, the team did not start meeting regularly until second semester. *Interview with School Psychologist.* Before that, the MTSS team met sporadically to address bigger concerns or school-wide policies. *Id.* At times, administrators missed the MTSS meetings, because they were substituting in classrooms. *Interview with Assistant Principal 1.*

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 identify and evaluate Student even though it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. §§ 300.111 and ECEA Rule 4.02(1)-(3). This noncompliance did not result in a denial of FAPE.

In her Complaint, Parent asserted that the District declined to conduct an evaluation to determine Student’s eligibility for special education, even though Parent requested an evaluation and the District was on notice that Student might have a qualifying disability.

A. The IDEA’s Child Identification Process

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process “shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education.” ECEA Rule 4.02(1)(a)(ii).

Under the “special education referral” component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. §

300.111(c); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a). A student who is gifted may still be eligible for special education and related services under the IDEA as long as the student has a qualifying disability. *Letter to Anonymous*, 110 LRP 52277 (OSEP 01/13/10) (“[S]tudents who have high cognition, have disabilities, and require special education and related services are protected under the IDEA and its implementing regulations”).

The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is “whether the child should be referred for an evaluation, not whether the child actually qualifies for the services.” *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion “may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation.” *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe County Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

B. Identification of Student

During this investigation, the District acknowledged that it did not identify or evaluate Student once it was on notice that Student might need special education. (FF # 13.) The District’s inaction resulted in procedural noncompliance with 34 C.F.R. § 300.111(a) and ECEA Rule 4.02(1)-(3).

C. Impact of Procedural Noncompliance

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, noncompliance with a procedural requirement results in a denial of FAPE only if the noncompliance: (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); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding procedural noncompliance can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

Here, the CDE cannot find that the District’s noncompliance resulted in a denial of FAPE because it is not yet clear whether Student is eligible for special education and related services. *See Pueblo Sch. Dist. 60*, 124 LRP 36441 (SEA CO 05/31/24); *Douglas Cty. Sch. Dist.*, 119 LRP 30196 (SEA CO 04/15/19).⁴ Without knowing Student’s eligibility, the CDE cannot determine how—and to what level—the District’s noncompliance impacted Student and Parent. For that reason, the CDE finds and concludes that the procedural noncompliance did not result in a denial of FAPE.

This conclusion, however, does not mean that the District’s noncompliance has not negatively impacted Student. Student’s behavioral challenges and poor attendance have persisted throughout middle school. (FF #s 10, 11.) Though Parent requested an evaluation in May 2023, the District only acted upon Parent’s second request for an evaluation in August 2024. (FF #s 3-8, 14, 15.) The District’s noncompliance hindered Parent’s ability to understand whether Student’s struggles were the result of a disability. Even now, the District has delayed Student’s eligibility determination by conditioning that decision on Student not using drugs for 30 days and attending school regularly. (FF # 17.) These conditions seem to ignore the possibility that Student’s drug use and poor attendance might be a result of a disability, instead of social maladjustment. *See Oakland Unified Sch. Dist.*, 114 LRP 49754 (SEA CA 11/03/14) ("There is a difference between providing drug treatment and assessing and addressing environmental issues and internal distress of a student with a disability that may be contributing to the use of controlled substances. [The district] was responsible for the latter."); *see also CDE, Determining the Presence of Social Maladjustment while Considering Eligibility for Serious Emotional Disability and Intervention Strategies* (Nov. 2015), available at https://www.cde.state.co.us/cdesped/topicbrief_sed_socialmaladjustment. To remedy the noncompliance, the CDE has ordered the District to complete Student’s evaluation and determine Student’s eligibility for special education and related services.

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic and likely to impact the future provision of services for other children with disabilities in the District if not corrected.

Pursuant to its general supervisory authority, the CDE must also 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 Findings of Fact indicate that staff turnover contributed to the District’s noncompliance. During the 2023-2024 school year, School had two different principals and

numerous unfilled positions. (FF # 20.) As a result, School staff did not convene regular MTSS meetings until the second semester of the school year. (*Id.*) Even then, meetings often focused on “bigger concerns” and school-wide practices, not specific students. (*Id.*) These Findings of Fact indicate a breakdown in the child find process at School during the 2023-2024 school year.

Additionally, even though the District has Procedural Guidelines detailing special education processes, the manual does not address the District’s child find process. (FF #s 18-19.) The manual does not explain how staff should respond when a parent refers a student for an initial evaluation or when staff suspect a student might have a qualifying disability. (*Id.*) Written procedures or a checklist might have helped new (and old) staff understand and fulfill their child find responsibilities. For these reasons, the CDE finds and concludes that the District’s noncompliance is systemic.

REMEDIES

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

1. Identifying and evaluating Student once the District was on notice that Student might have a disability and need special education, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

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

1. Corrective Action Plan

- a. By **Friday, January 10, 2025**, 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 Student 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. Written Procedures

- a. By **Friday, February 14, 2025**, the District must submit a written procedure outlining how the District ensures compliance with 34 C.F.R. §§ 300.111 and ECEA Rule 4.02(1)-(3).
- b. At a minimum, the procedure must offer clear guidance on:
 - i. The District’s child find obligations;

- ii. How staff should respond to requests for initial evaluations from parents; and
 - iii. How and when staff should refer students for initial evaluations.
- c. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized. Upon approval, the procedure shall be incorporated into the District’s existing Procedural Guidelines.
- d. The District must ensure that all principals, assistant principals, counselors, social workers, and school psychologists receive a copy of the approved written procedures no later than **Friday, March 14, 2025**.
- e. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to the CDE no later than **Friday, March 21, 2025**.

3. Evaluation of Student and Determination of Eligibility

- a. By **Friday, January 24, 2025**, the District must conduct a comprehensive evaluation of Student in all areas of suspected disability. The District may determine the appropriate evaluations and evaluators. The evaluation must be conducted in all areas of suspected disability and be consistent with the IDEA’s evaluation procedures at 34 C.F.R. § 300.304. The evaluator(s) must be appropriately licensed, trained, and knowledgeable to conduct the assessments.
- i. The District may, at its discretion, rely in part on assessments conducted by Private Psychologist in the Private Evaluation or completed by the District in September and October 2024.
 - ii. Consent for the evaluation must be obtained no later than **Friday, December 6, 2024**. If Parent does not provide consent within 10 days of receiving the request to evaluate, the District will be excused from conducting the evaluation ordered in this Decision. If Parent conditions consent for evaluation inconsistent with the scope of the evaluation ordered in this Decision, this may be construed as a refusal to provide consent. A determination that parent refused consent by adding conditions rests solely with the CDE.
 - iii. The District cannot further condition Student’s evaluation on the results of drug testing or her attendance.
 - iv. Evidence that this evaluation has occurred—including consent to evaluate and the evaluation report—shall be provided to the CDE by **Friday, January 31, 2025**.

- b. By **Friday, February 7, 2025**, the District must convene a multi-disciplinary team to determine Student’s eligibility for special education in light of the District’s evaluation(s) and Private Evaluation. The determination must be consistent with the IDEA’s procedures at 34 C.F.R. § 300.306.
- i. The District cannot further condition Student’s eligibility determination on the results of drug testing or her attendance.
 - ii. The District must provide Parent a copy of the evaluation report at least three business days prior to the scheduled eligibility meeting.
 - iii. Evidence that the eligibility determination has been completed—including confirmation that the report was provided to Parent, notice of meeting, the eligibility determination, and any resulting prior written notice—must be provided to the CDE by **Friday, February 14, 2025**.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

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

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE 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 State Complaints Officer (“SCO”).

Dated this 22nd day of November, 2024.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-12

- Exhibit 1: Videorecording of conversation
- Exhibit 2: Email correspondence
- Exhibit 3: Prior Written Notice
- Exhibit 4: Evaluation

Response, pages 1-2

- Exhibit A: Consent for initial evaluation
- Exhibit B: Discipline and behavior documentation
- Exhibit C: Private evaluation
- Exhibit D: Written request to evaluate
- Exhibit E: Excusal from state assessments
- Exhibit F: Grades and attendance records
- Exhibit G: District calendar
- Exhibit H: District's Procedural Guidelines
- Exhibit I: Miscellaneous logs and email correspondence
- Exhibit J: Blank (originally contained District's Response)
- Exhibit K: Discipline and behavior documentation

Telephone Interviews

- Assistant Principal 1: November 6, 2024
- Compliance Officer: November 6, 2024
- Parent: November 8, 2024
- School Psychologist: November 6, 2024