

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

State-Level Complaint 2024:614
Adams 12 Five Star Schools

DECISION

INTRODUCTION

On December 2, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Adams 12 Five Star Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

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

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after December 2, 2023. Information prior to December 2, 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. District did not review and, as appropriate, revise Student’s Individualized Education Program (“IEP”) between April 2024 and August 2024 to address information provided by

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 District 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.

Parent, specifically regarding Student’s private applied behavior analysis (“ABA”) services, as required by 34 C.F.R. § 300.324(b).

FINDINGS OF FACT

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

A. Background

1. Student is six years old, participated in District’s early intervention program at a District preschool during the 2023-2024 academic year, and was assigned to attend a District elementary school (“School”) during the 2024-2025 academic year. *Exhibit A*, p. 1; *Exhibit F*. She currently attends an elementary school outside of Colorado. *Interview with Parent*. Student was found eligible for special education and related services under the disability category of Autism Spectrum Disorders. *Exhibit A*, p. 1.
2. Student is friendly, sweet-tempered, and receptive, and thrives with routines. *Interviews with Parent, District Speech-Language Pathologist (“SLP”), and District Special Education Coordinator (“Coordinator”)*. She loves listening to music, and particularly enjoys Disney songs. *Id.*
3. At two years old, Student was diagnosed with autism, which affects her communication skills, cognition, social-emotional regulation, sensory processing, motor skills, and attention. *Interview with Parent; Exhibit A*, p. 6.
4. This investigation involves the review and revision of an IEP developed on April 11, 2024 (“the IEP”) during preschool, which was in effect from that date through Student’s withdrawal from District in August 2024. *Exhibit A*, p. 1; *Exhibit F*.

B. Student’s IEP

5. Student’s IEP documents her strengths, preferences, and interests, noting her sweet nature and love of music. *Exhibit A*, p. 3.
6. The IEP’s Present Levels of Performance section describes the results of Student’s March 2024 evaluation in the areas of health, cognition, communication, pre-academics, social-emotional functioning, and motor skills. *Id.* at pp. 3-5.
7. The IEP describes Student’s needs and the impact of her disability, noting her limited school-readiness skills. *Id.* at p. 6.

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

8. The IEP includes input from Parent, including a statement from Parent that the context of Student's environment has a substantial impact on Student's success. *Id.*
9. The IEP's Consideration of Special Factors section notes that Student has unique communication needs, requires the use of assistive technology, and requires specialized transportation. *Id.*
10. Student's IEP contains nine annual goals: three in social-emotional wellness, two in language, and one each in physical motor, reading, mathematics, and communication. *Id.* at pp. 7-12.
11. The IEP lists seventeen accommodations necessary for Student to access the general education curriculum. *Id.* at p. 12. Specifically, these accommodations include provision of personal care services, availability of calming spaces, use of picture schedules and social stories, and other strategies designed to ease school transitions. *Id.*
12. The IEP describes the services that Student must receive, noting that Student's parents opted to defer the implementation of services until Student started kindergarten on August 12, 2024. *Id.* at pp. 15-16, 19. Those services include:
 - 120 minutes per month of direct occupational therapy services and 20 minutes per month of indirect occupational therapy services;
 - 30 minutes per week of direct mental health services;
 - 360 minutes per week of direct specialized instruction in literacy, including 120 minutes each in the areas of reading, mathematics, and activities of daily living;
 - 60 minutes per week of direct speech-language services, and 20 minutes per month of indirect speech-language services.

Id. at pp. 15-16.

13. The IEP Team determined that it was appropriate for Student to be in the general education classroom between 40% and 70% of the time, noting that Student "will spend the majority of her day in the Significant Support Needs (SSN) classroom while she works on more student readiness skills." *Id.* at pp. 17-18.

C. District's Policies, Practices and Procedures

14. District's assistant director for special education ("Assistant Director") described District's duty to review and revise student IEPs, stating that District staff must closely monitor student progress and consider parent concerns when determining whether an IEP team should reconvene to address a student's individualized needs. *Interview with Assistant Director.*

15. Following the Colorado legislature’s 2022 passage of House Bill 22-1260—legislation pertaining to student access to medically necessary services within schools—District developed a “Medically Necessary Treatment in School” policy. *Id.*; *Exhibit I*, pp. 14-19. This policy requires that a parent requesting that their child receive treatment in the school setting submit a form describing the treatment requested, submit a copy of the student’s prescription or medical orders regarding that treatment, provide a release of information authorizing District to confer with the student’s health care provider, and sign an agreement with respect to financial responsibility and liability regarding those services. *Exhibit I*, p. 14.
16. District’s policy further states that if either the parent or District believe that the medically necessary treatment could or should be provided by District through an IEP or Section 504 plan, District will convene the appropriate team to address the request. *Id.* Assistant Director explained that this component of the policy is designed both to minimize the overlap between private services and IEP services and to ensure that any unmet student needs identified by the request are appropriately addressed by the IEP team. *Interview with Assistant Director.*
17. District’s website contains a link to the online form described in the policy. *Exhibit I*, p. 18. That form asks parents to submit information regarding the student, their contact information, and the contact information for the health care provider proposed to provide services in the school setting. *Exhibit M*, pp. 2-4. In addition, the form asks parents to upload copies of a statement from the student’s health care provider, and a copy of the student’s prescription or medical orders regarding the requested services. *Id.* Finally, the form asks parents to check a box indicating their agreement with the following statement: “I understand that this request form is not a request for an IEP or 504 team meeting. If I believe the requested treatment could or should be provided through my student’s IEP or 504 plan, I understand that I need to request a meeting with my student’s school.” *Id.*
18. Following the submission of this request, the building principal, in consultation with the appropriate District special education coordinator, will determine whether to approve the request. *Exhibit I*, p. 15. If approved, District will develop a written plan describing the time, place, and way the services will be provided. *Id.* Assistant Director stated that the involvement of a special education coordinator in this process is designed to ensure that any medical service plan does not conflict with District’s IDEA obligations to provide FAPE in the least restrictive environment. *Interview with Assistant Director.*

D. Development of Student’s IEP

19. Student, prior to her enrollment in District, received occupational therapy, speech-language therapy, and ABA from a private provider, totaling 40 hours per week. *Interview with Parent; Exhibit G*, p. 1.

20. On March 4, 2024, Student's parents signed a Prior Written Notice and Consent for Initial Evaluation form, consenting for Student to be evaluated to determine whether she is eligible for special education and related services. *Exhibit C*, pp. 1, 3.
21. Student's evaluation was completed by a team including SLP, a school psychologist, and an occupational therapist. *Exhibit G*, p. 1. The in-person component of the evaluation was conducted in a play-based setting at a District preschool. *Id.*; *Interview with SLP*.
22. Following the completion of the evaluation, a multidisciplinary team meeting was scheduled for April 11, 2024 to determine whether Student qualified for special education and related services. *Exhibit D*. At that meeting, the multidisciplinary team determined that Student was eligible. *Exhibit A*, p. 1.
23. During the meeting, Parent expressed concern regarding Student's readiness to transition into a school environment without one-on-one adult support. *Interviews with Parent and SLP; Exhibit A*, p. 19. She suggested that one of the ABA therapists from Student's private provider be permitted to act as a trusted adult for Student during her transition into the kindergarten classroom. *Id.*
24. Due to Parent's concerns regarding school readiness, the IEP team proposed and adopted additional accommodations to promote Student's successful transition into the kindergarten environment. *Interview with SLP*.
25. Following this meeting, Parent spoke with one of District's special education coordinators, who recommended that she submit a request for medically necessary services through District's website. *Interview with Parent*.

E. Parent's Request for In-School ABA Services

26. On June 5, 2024, Parent submitted the request for medically necessary services form to District, listing Student's private ABA provider as the medical provider. *Exhibit M*, p. 1.
27. Parent's submission stated: "[Student] requires 1:1 on support all day to assist with challenging behaviors, transitions, communication needs, and completing most routines," and "Due to her ASD, [Student] would not be able to participate in any way in a school environment without familiar 1:1 support." *Id.*
28. Parent checked the box indicating "I understand this request form is not a request for an IEP or 504 team meeting." *Id.* She also provided a copy of Student's prescription indicating that she should receive 40 hours of ABA services per week and a release of information permitting District to exchange medical information with Student's outside providers. *Id.*; *Interview with Parent*.
29. On June 7, 2024, Parent emailed Coordinator to ask when she should expect a response to her request. *Exhibit J*, p. 79. Coordinator responded, noting that the building-level staff that

would be involved in the determination would return from summer break in August, at which time a determination would be made. *Id.*

30. Coordinator proposed a meeting including Parents, school staff, and herself, for August 5, 2024, the first day of staff's return from break and a week prior to the start of the school year. *Id.* at p. 85. Due to a scheduling conflict, this meeting was rescheduled for August 8, 2024. *Id.* at pp. 143-144.
31. On June 18, 2024, the clinical director of Student's private ABA provider ("Clinical Director") submitted a letter and an ABA Plan of Care report to District, recommending that, within the school setting, Student receive 40 hours of ABA direct service from a registered behavior technician per week, and 8 hours of supervision from a board-certified behavior analyst per week. *Id.* at p. 133.
32. Coordinator communicated frequently with Clinical Director throughout July and early August to ensure that District received the information it needed to be able to consider the request, and to connect Clinical Director's staff with District's human resources department for necessary fingerprinting and background checks. *Interview with Coordinator; Exhibit J*, pp. 99-154.
33. On August 7, 2024, the day prior to the meeting, Clinical Director submitted a revised plan of care as well as the same forms requested by District's human resources department. *Id.* at p. 155.
34. On August 8, 2024, Parent, Parent's advocate, Student, and Coordinator, as well as Student's proposed special education teacher, speech-language pathologist, social worker, and occupational therapist, met at School. *Id.* at p. 158; *Interviews with Parent and Coordinator*.
35. During the meeting, School staff was able to meet Student and learn about her needs from Parent. *Id.* Specifically, Parent emphasized Student's difficulty with transitions. *Interview with Parent*.

F. The 2024-2025 Academic Year

36. Later that day, Student's proposed special education teacher emailed Parent to provide the contact information for all relevant school staff and a proposed schedule for Student. *Exhibit J*, p. 158.
37. Student's proposed social worker, with contributions from other School staff, prepared and sent to Parent a slideshow containing an illustrated social story describing the plan for Student's first day of school to aid with transitions. *Id.* at pp. 167-175
38. Over the following week, Coordinator and Clinical Director continued to communicate regarding the development of an in-school services plan, and Clinical Director sought to

obtain final human resources and insurance approval for her employees involved in that proposal. *Id.* at pp. 202-206.

39. The 2024-2025 academic year began August 12, 2024, but Parent stated that she did not wish for Student to attend school until a plan to provide private ABA services was put in place. *Id.* at p. 203.
40. On August 21, 2024, Coordinator emailed Parent, stating that she and Clinical Director had agreed on a short-term plan to begin transitioning Student into the school environment. *Id.* at p. 208. According to that plan, a registered behavior technician would be present with Student in the school environment for two hours each morning to facilitate the morning transition, and Clinical Director would perform two observations during the first two weeks of school. *Id.*
41. Parent responded to this email, stating that she agreed to the plan proposed by Coordinator and Clinical Director. *Id.* Student's start date would be contingent upon Parent's insurer's approval of the proposed services. *Id.*
42. On August 29, 2024, Parent emailed Coordinator, indicating that she had not yet been able to reach her insurer to seek approval of the proposed services. *Id.* at p. 209. Parent also stated that the family had decided to enroll Student in an out-of-state autism program and would be withdrawing from District. *Id.*
43. Student currently attends kindergarten successfully in her new school. *Interview with Parent.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District developed, reviewed and, as appropriate, revised an IEP that was tailored to Student's individualized needs, as required by 34 C.F.R. §§ 300.320, 300.324. District complied with the IDEA.

Parent's concern is that Student's IEP was not designed to enable her to transition from a home and clinical setting into a classroom environment. (FF #s 23, 39).

A. Jurisdiction to Resolve Complaint Allegation

The state complaint process authorizes the CDE to investigate concerns regarding special education and related services under the IDEA or ECEA Rules, but not concerns about whether a school district has complied with Section 504 of the federal Rehabilitation Act of 1973 ("Section 504") or Title II of the Americans with Disabilities Act of 1990 ("the ADA") in responding to a parent's requests under House Bill 22-1260. *See* 34 C.F.R. § 300.153(b)(1).

In relevant part, House Bill 22-1260 amended the ECEA Rules to require that school districts and other state administrative units “adopt a policy that addresses how a student who has a prescription from a qualified health-care provider for medically necessary treatment receives such treatment in the school setting,” as required by Section 504 and the ADA. *Colo. Rev. Stat.* § 22-20-121(2)(a). Indeed, “[a]dministrative units should always consider whether a request under HB22-1260 implicates its FAPE obligations but should not treat FAPE as the only relevant inquiry.” *Id.* Since the “inquiry for FAPE and the inquiry for reasonable accommodations are not the same, administrative units’ policies must ensure that the administrative unit and the legal entities within it honor not only their obligation to provide FAPE but also their separate obligation to provide reasonable modifications.” *CDE Guidance on HB 22-1260 and Medically Necessary Services*, at p. 2 (January 7, 2025) <https://www.cde.state.co.us/cdesped/revhb22-1260-access-medically-necessary-services-jan2025>.

In this case, although Parent’s concern stems from her request under HB 22-1260, the Complaint raises, and thus this investigation involves, the related—but not identical—inquiry of whether the services requested by Parent are a necessary component of an IEP that provides Student a FAPE. *Id.* at p. 1. Because Parent’s concerns in the Complaint implicate a school district’s FAPE obligations, the CDE has authority to investigate Parent’s concerns. 34 C.F.R. § 300.101(a).

B. Legal Standard for IEP Development

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.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

C. The IEP Development Process

Here, Parent did not raise concerns regarding the IEP development process under the first prong of the *Rowley* standard, so the state complaints officer (“SCO”) turns directly to consider the second prong of the *Rowley* standard and whether the IEP was substantively adequate. *Id.* at 207.

D. Substantive Adequacy of the IEP

The IDEA requires school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F.*, 137 S. Ct. at 999. An IEP must include a statement of special education and related services that allow the student to advance

appropriately toward annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate with other children. 34 C.F.R. § 300.320(a)(4).

Here, Parent first raised concerns regarding Student’s school readiness during the initial development of Student’s IEP in April 2024. (FF # 23). Considering these concerns, the IEP team developed an IEP containing accommodations including provision of personal care services, availability of calming spaces, use of picture schedules and social stories, and other strategies designed to ease Student’s transition into the kindergarten environment. (FF #s 11, 24.) The IEP noted that Student would spend most of her time at school in the SSN classroom to help her develop school readiness skills. (FF # 13). Although the IEP was developed to take effect at the start of the 2024-2025 academic year, District did not have an opportunity to implement the IEP because Parent withdrew Student from District prior to her attending School. (FF # 12, 39, 42).

For these reasons, the SCO finds and concludes that District developed an IEP that adequately addressed Student’s individualized needs, as required by 34 C.F.R. § 300.324(a)(4).

E. Review and Revision of IEP

i. Legal Requirements

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

In developing a child’s IEP, the IEP team must consider the “concerns of the parents for enhancing the education of their child.” 34 C.F.R. § 300.324(a)(1)(iii). In reviewing and revising, as appropriate, a child’s IEP, the IEP team must address “information about the child provided to, or by, the parents.” 34 C.F.R. § 300.324(b)(1)(ii). When information comes to light, whether through evaluations, progress monitoring, or parent concerns, that indicates an unmet need, districts should reconvene an IEP team to review and revise the IEP in light of the new information. 300 C.F.R. § 300.324(b); *Andrew F.*, 137 S. Ct. at 994.

ii. Parent’s Concerns

Here, after the IEP was developed, Parent requested that Student’s private ABA providers be involved in Student’s school day and was encouraged to submit a request via District’s Medically Necessary Treatment policy. (FF #s 23, 25). Over the summer, Parent submitted a form to District via that policy, requesting that Student receive one-to-one support to assist with her transition into the school environment. (FF # 27). With this request, Parent provided documentation from

Student's ABA provider and doctor indicating that she should receive 40 hours per week of ABA services. (FF # 28).

Following Parent's request, Coordinator worked closely with Clinical Director, a professional with Student's outside ABA provider, to reconcile Parent's request for in-school ABA services with District's IDEA obligations, eventually reaching an agreement that Student would receive 2 hours of services from an outside provider per day. (FF #s 32-40). Coordinator also scheduled and facilitated a meeting between School staff, Parent, and Student to help plan for Student's imminent transition into the school environment. (FF #s 30, 34-35). After that meeting, School staff tasked with working with Student began to implement strategies to facilitate Student's transition, including an illustrated social story. (FF #s 36-37). Ultimately, Parent chose not to send Student to School, and eventually transferred Student to an out-of-state school district before District could implement Student's IEP. (FF # 42).

Although Parent raised concerns regarding Student's school readiness skills while submitting her request for outside services, these concerns pertained to a need already contemplated and addressed in Student's IEP. The IEP developed in April addressed Parent's concerns about school readiness by placing Student in a more individualized environment and by crafting accommodations designed to support her transition into the school environment. (FF #s 11, 13).

Nevertheless, following Parent's request, Coordinator worked directly with Student's ABA providers to discuss Student's needs and ensure that School was prepared to meet them. (FF #s 32-40). Following that collaboration, District proposed that Student's ABA provider be able to provide in-school services for two hours per day during the transition into the school environment. (FF # 40). At the same time, School staff prepared to start implementing the IEP's provisions related to the school transition, meeting with Parent and Student and developing a plan to introduce Student into the kindergarten environment. (FF #s 34-37).

If that transition had proven unsuccessful, District may have been obligated to review and revise the IEP to address the information gathered during the unsuccessful transition. But Student never attended School, and shortly thereafter withdrew from District. (FF # 42). District made its offer of FAPE through the IEP and stood ready and willing to facilitate Student's transition into kindergarten. Accordingly, the SCO finds and concludes that District considered Parent's concerns and addressed them in reviewing, and as appropriate, revising Student's IEP, as required by 34 C.F.R. § 300.324(b).

REMEDIES

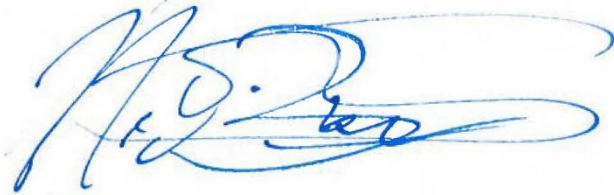
The CDE concludes that District complied with IDEA. Accordingly, no remedies are ordered.

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 SCO.

Dated this 31st day of January, 2025.

A handwritten signature in blue ink, appearing to read "N. Butler", with a large, sweeping flourish extending to the right.

Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Exhibit 1: Correspondence

Response, pages 1-5

- Exhibit A: IEP
- Exhibit B: n/a
- Exhibit C: Prior Written Notice
- Exhibit D: Notices of Meeting
- Exhibit E: n/a
- Exhibit F: Student Attendance
- Exhibit G: Evaluation
- Exhibit H: District Calendar
- Exhibit I: District Policies
- Exhibit J: Correspondence
- Exhibit K: District Staff with Knowledge
- Exhibit L: n/a
- Exhibit M: Medical Necessity Request Form

Telephone Interviews

- Parent: December 27, 2024
- Coordinator: December 20, 2024
- SLP: December 20, 2024
- Assistant Director: December 20, 2024