

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

State-Level Complaint 2024:615
Gunnison Watershed School District RE-1J

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 Gunnison Watershed School District RE-1J (“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 afford Parent an opportunity to inspect and review Student’s education records—specifically, documentation regarding Student’s November 2023 initial special

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.

education evaluation—after Parent’s request on or around September 25, 2024, as required by 34 C.F.R. §§ 300.501 and 300.613.

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 twelve years old and is currently a sixth grader at a District middle school (“School”). *Complaint*, p. 9; *Response*, p. 1.
2. Student is eligible for special education and related services under the disability category of a specific learning disability in reading comprehension. *Response*, p. 2; *Exhibit 8*, pp. 7-8.
3. Parent is concerned that District did not respond to his initial request for Student’s education records and did not provide him access to certain documentation when it provided Student’s records in response to his subsequent requests—specifically, information related to the decision-making process prior to Student’s 2023 initial special education evaluation. *Complaint*, pp. 11-12, 15; *Reply*, pp. 3-4. District asserts it “respond[ed] promptly and fully to [Parent’s] requests for information and documents” and has “provided Parent with all responsive educational records.” *Response*, pp. 2-3.

B. District’s Policies, Practices, and Procedures

4. District has written policies that address the content and custody of student education records and parents’ access to those records. *Exhibit B*, pp. 3-13. Education records generally include documentation such as attendance records, report cards, state and district assessments, discipline reports, and special education records, if applicable. *Id.* at p. 3; *Interview with District’s Director of Special Services (“Director”)*.
5. Under District policy, school principals are the official custodians of education records for students in their buildings. *Exhibit B*, p. 3. District maintains student education records both in hard copy and electronically through Frontline educational software. *Interview with Director*. A parent or guardian, and any student 18 years of age or older, “has the right to inspect and review the student’s education files.” *Exhibit B*, p. 3.
6. A request to inspect and review a student’s education records must be made in writing to the school principal and must identify the records the parent wishes to inspect. *Id.* at pp. 3, 10. Upon receipt of the written request, the principal “shall provide access to inspect and review

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

the records and set a date and time for such inspection and review,” in no case more than three working days after the request. *Id.* at pp. 3-4, 10.

7. Director described District’s practices and procedures regarding parents’ requests to inspect and review students’ special education records, specifically. *Interview with Director*. While requests for access to general student education records are directed to and processed by school principals, requests for access to special education records are directed to and processed by the special education office. *Id.* Once the special education office receives a request for records, Director compiles all education records—those maintained both in the Frontline system and in hard copy—and provides those records as quickly as possible and before any scheduled IEP meetings, but always within 45 days of the request. *Id.*

C. Parent’s Initial Request for Education Records

8. District conducted an initial special education evaluation of Student in November 2023 (“2023 evaluation”). *Response*, p. 1; *see Exhibit 2*, pp. 1-6. On November 22, 2023, a multidisciplinary team (“MDT”) determined Student was not eligible for special education services. *Response*, p. 1; *Exhibit 2*, pp. 7-8. Parent disagreed with the process and results of the 2023 evaluation and eligibility determination and, during the summer of 2024, began seeking further information from Director “regarding the 2023 evaluation’s scope and decision-making process.” *Complaint*, pp. 12, 14; *Interview with Parent*.
9. On June 24, 2024, Parent emailed Director with several questions and requested “copies of the parent consent form and the Prior Written Notice (“PWN”) related to [Student’s] fall 2023 evaluation.” *Exhibits A & C*, p. 56. Director responded to Parent via email on June 27, 2024, providing both requested documents and responsive answers to Parent’s questions. *Id.* at pp. 63-64.
10. On July 10, Parent sent a letter to Director (“July 10 letter”) detailing his “disagree[ment] with [District’s] 2023 special education evaluation” and “request[ing] an Independent Educational Evaluation [(“IEE”)] at public expense for [Student].” *Id.* at pp. 264-67. Parent also requested in the July 10 letter “a copy of [Student’s] case file, including all correspondence, so that [he could] understand the complete timeline and the parties involved in making decisions” about Student’s 2023 evaluation. *Id.* at p. 265; *Interview with Parent*. The State Complaints Officer (“SCO”) finds that Parent’s request in the July 10 letter for a copy of Student’s case file constituted a request to inspect and review Student’s education records.
11. On July 25, Director responded to Parent’s July 10 letter via email, noting District would “comply with the request for an [IEE]” and sharing additional information regarding the IEE process and next steps for the MDT in determining Student’s eligibility. *Exhibits A & C*, p. 90. Director also provided Parent a formal “Notice of Approval of Request for IEE at Public Expense,” along with Prior Written Notice (“PWN”) of District’s agreement to the IEE. *Id.* at pp. 90-91, 155; *see id.* at pp. 140-51, 156.

12. Parent acknowledges that District responded to the July 10 letter, in terms of agreeing to his request for an IEE, but asserts District did not specifically respond to his request for Student’s case file. *Reply*, pp. 2-3; *Interview with Parent*. Director’s response to the July 10 letter—including his responsive email, the formal notice of approval of the IEE, PWN, and related email correspondence with Parent—did not acknowledge or respond to Parent’s request for a copy of Student’s case file, and Director did not specifically recall Parent’s request for records within the July 10 letter. *Exhibits A & C*, pp. 90-92, 152-56; *Interview with Director*. Therefore, the SCO finds that District did not respond to Parent’s July 10, 2024 request for Student’s education records.

D. Parent’s Subsequent Requests for Records and District’s Responses

13. On September 19, 2024, District scheduled a meeting for October 22, 2024, in coordination with Parent, to reconsider Student’s eligibility for special education services considering the results of the IEE. *Exhibits A & C*, pp. 226-27.

14. On September 25, Parent emailed Director requesting a copy of “all education records that the school used during [Student’s] 2023 evaluation,” noting he had not received any information “describing the activities and evaluation procedures” used during the 2023 evaluation. *Id.* at p. 228.

15. On October 11, Parent requested further records from Director via letter, including “copies of all documents, meeting notes, evaluation results, and any other relevant records related to [Student] pertaining to the initial evaluation.” *Id.* at p. 236. Specifically, Parent requested “any communication related to the evaluation,” “notes, minutes or records from any team discussions or meetings where decisions about [Student’s 2023] evaluation were made,” “evaluation reports, assessments, and testing materials used during the evaluation,” and “[a]ny documentation outlining the rationale” regarding the scope of the evaluation. *Id.*

16. On October 16, Director responded to Parent’s requests and provided Parent with “all responsive educational records, as well as relevant email communications and Board policies.” *Response*, p. 3; *Exhibits A & C*, pp. 237-39; *see Exhibits A & C*, pp. 240-421. The same day, Parent acknowledged receipt of the records provided by Director and, among other things, again requested “any supporting documentation” regarding the decision-making prior to Student’s 2023 evaluation. *Exhibits A & C*, pp. 239, 392.

17. On October 18, Director provided Parent additional documentation and explanatory responses regarding documents Director was not able to provide. *Id.* at pp. 396-97. Specifically, Director explained that the only “supporting document” relevant to Parent’s request that Director had was the special education referral—which Parent was provided—and that Director did not have “specific notes” around the decision-making prior to Student’s 2023 evaluation outside of what had already been provided. *Id.* at pp. 396, 398-99; *Reply*, p. 3; *Interview with Director*.

18. District asserts that all of Student’s education records requested by Parent and maintained by District were provided to Parent by October 18, 2024, and before Student’s eligibility meeting on October 22, 2024. *Response*, pp. 3-4; *Interview with Director*. Parent does not identify any specific record he has requested which District has not provided and acknowledges the information he seeks likely does not exist as an education record, expressing a belief that Director would have provided all relevant records. *Interview with Parent*. For these reasons, the SCO finds that District provided Parent all requested education records it maintained by October 18, 2024.

19. On October 22, an MDT found Student eligible for special education and related services. *Response*, p. 2; *Exhibits A & C*, pp. 521-24.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District did not afford Parent an opportunity to inspect and review Student’s education records within 45 days of Parent’s request on July 10, 2024, as required by 34 C.F.R. §§ 300.501 and 300.613. This noncompliance did not result in a denial of FAPE. District afforded Parent an opportunity to inspect and review Student’s education records within 45 days of Parent’s requests on September 25, October 11, and October 16, 2024, and before Student’s eligibility meeting on October 22, 2024, as required by 34 C.F.R. §§ 300.501 and 300.613.

Parent’s concern is that District did not respond to his July 10, 2024 request for records and, when it did respond to his subsequent requests, District did not provide the specific information Parent requested. (FF # 3).

A. The Right to Inspect and Review Records

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). This right extends to parents of children whose IDEA eligibility has not yet been established or is in dispute. *Letter to Kashyap*, 68 IDELR 254 (OSEP 2016).

Thus, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” 34 C.F.R. § 300.613(a). A district must comply with a request from a parent to review his or her child’s education records “without unnecessary delay and before any meeting regarding an IEP . . . and in no case more than 45 days after the request.” *Id.* The right to review records includes the right to a response from the district to reasonable requests for explanations and interpretations of the records. *Id.* § 300.613(b)(1).

The IDEA borrows the definition of “education records” from the Federal Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, “education records” are “those

records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a party acting for the agency or institution.” *Id.* § 99.3. While school districts are required to permit parents to inspect and review education records that they maintain, districts are “not required to provide access to information that is not maintained or to create education records in response to a parent’s request.” *Letter to Anonymous*, 115 LRP 18603 (FPCO 2015); *see* 34 C.F.R. § 300.613(a); *Denver Pub. Schs.*, 124 LRP 34401 (SEA CO 02/09/24).

B. Parent’s Requests to Inspect and Review Student’s Records

i. Request in July 10 Letter

Here, Parent requested a copy of Student’s case file via a letter to Director dated July 10, 2024. (FF # 10). Parent’s request constituted a request for Student’s education records (*id.*), and therefore District was required to permit Parent to inspect and review those records without unnecessary delay, before any meeting regarding Student’s IEP or, in any case, by August 24, 2024. *See* 34 C.F.R. § 300.613(a).

District did not respond to Parent’s request for education records in the July 10 letter and ultimately did not provide Parent access to all relevant education records until October 18, 2024. (FF #s 12, 17-18). Therefore, the SCO finds and concludes that District did not permit Parent to inspect and review Student’s education records within 45 days of Parent’s request on July 10, 2024, as required by 34 C.F.R. §§ 300.501 and 300.613.

ii. Subsequent Requests

Parent then made more specific requests for Student’s education records on September 25, October 11, and October 16, 2024. (FF #s 14-16). Therefore, District was required to permit Parent to inspect and review the relevant records without unnecessary delay, before any meeting regarding Student’s IEP, or, in any case, by November 9, November 25, and November 30, 2024, respectively. *See* 34 C.F.R. § 300.613(a).

District provided Parent all responsive education records that District maintained by October 18, 2024. (FF #s 16-18). District also provided explanations of the records in response to Parent’s continued requests for records that did not exist. (FF # 17). Parent acknowledges that District provided Student’s education records after his requests in September and October 2024 but is concerned that District has not provided the specific information he is seeking—namely, further information around decisions made prior to Student’s 2023 evaluation. (FF #s 3, 16-18). However, nothing in the Record suggests that the information Parent is seeking here exists in any records District maintains—which Parent concedes (FF # 18)—and District was not obligated to create specific education records in response to Parent’s requests. *See Letter to Anonymous*, 115 LRP 18603 (FPCO 2015); *Denver Pub. Schs.*, 124 LRP 34401 (SEA CO 02/09/24).

For these reasons, the SCO finds and concludes that District permitted Parent to inspect and review Student’s education records within 45 days of Parent’s requests on September 25, October 11, and October 16, 2024, and before Student’s eligibility meeting on October 22, 2024, as required by 34 C.F.R. §§ 300.501 and 300.613. (FF #s 18-19).

C. 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). Procedural noncompliance with the IDEA results in a denial of FAPE if 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); *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, although District did not respond to Parent’s records request in the July 10 letter, District promptly responded to Parent’s request for an IEE in the July 10 letter and his subsequent requests for records, and it provided Parent all relevant education records that it maintained prior to Student’s eligibility meeting on October 22, 2024. (FF #s 10-12, 16-18). Further, even if District had provided Parent with Student’s education records within 45 days of his request on July 10, Parent still would not have obtained the information he ultimately sought, as that information is not contained in education records that District maintains. (FF #s 17-18). District’s noncompliance, therefore, did not impact Parent’s opportunity to participate in the decision-making process, Student’s right to a FAPE, or Student’s receipt of educational benefit. For these reasons, the SCO finds and concludes that this noncompliance did not result in a denial of FAPE.

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in the 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 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 Disability and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, nothing in the Record indicates that District systemically does not respond to parents’ requests to inspect and review education records. (FF #s 4-7, 16-18). Instead, the Record reflects that District overlooked Parent’s request for records within the July 10 letter but was otherwise responsive to Parent and his requests for Student’s education records. (FF #s 9, 11-12, 14-18). However, the SCO finds that District’s written policies regarding parents’ access to education records—specifically, the requirements that requests to inspect and review records must be in writing and identify the specific records being requested—are inconsistent with IDEA’s

requirements. (FF # 6). IDEA entitles parents to inspect and review their child’s education records and does not require that requests be in writing or specify the records being requested. 34 C.F.R. § 300.613. Accordingly, the SCO finds and concludes that District’s noncompliance in this respect is systemic and has the ability to impact the future provision of services for all children with disabilities in District if not corrected. Thus, the CDE will order District to revise its special education procedures to ensure compliance with IDEA.

REMEDIES

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

1. Affording Parent an opportunity to inspect and review Student’s education records within 45 days of Parent’s request, as required by 34 C.F.R. §§ 300.501 and 300.613.

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

1. Corrective Action Plan

- a. By **March 3, 2025**, 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 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 District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director must review this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.501 and 300.613, by **March 17, 2025**. If this individual is no longer employed by the District, the District may substitute an individual occupying an identical role to demonstrate compliance with this remedy. A signed assurance that these materials have been read and reviewed must be provided to the CDE by **March 24, 2025**.

3. Procedure Development

- a. By **March 31, 2025**, District must submit a written procedure outlining how District ensures compliance with 34 C.F.R. §§ 300.501 and 300.613.
 - i. At a minimum, the procedure must offer clear guidance on how District ensures parents can request access to education records maintained by District, consistent with 34 C.F.R. § 300.613.

- ii. District may submit existing procedures that meet these requirements. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized.
- iii. District must ensure that Director, school principals, and all special education staff in District receive a copy of the approved written procedures no later than **April 28, 2025**.
- iv. Evidence that the procedures were shared with staff, such as a copy of the email notice sent, must be provided to the CDE no later than **May 5, 2025**.

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

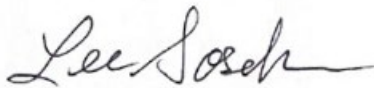
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it may adversely affect District's annual determination under the IDEA and subject 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 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 31st day of January, 2025.



Lee Sosebee, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-18

- Exhibit 1: PWN and Consent for Evaluation
- Exhibit 2: Evaluation Report
- Exhibit 3: Private Evaluation Report
- Exhibit 4: Correspondence
- Exhibit 5: PWN
- Exhibit 6: Correspondence
- Exhibit 7: PWN
- Exhibit 8: Evaluation Report

Response, pages 1-5

- Exhibits A & C: Parent's Requests for Records, District Responses, Correspondence
- Exhibit B: District Policies and Procedures
- Exhibit D: Staff Information
- Exhibit E: Verification of Delivery

Reply, pages 1-4

Telephone Interviews

- Parent: January 6, 2025
- Director: January 7, 2025