

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

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**State Complaint SC2025-506**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On January 24, 2025, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified four allegations 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 January 24, 2024. Information prior to January 24, 2024 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. District did not fully implement Student’s Individualized Education Program (“IEP”) from March 2024 to September 2024 because District:

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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.

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

- a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and
  - b. Did not provide the accommodations listed in the IEP—specifically, a graphic organizer, a seat next to a model peer, and check-ins—as required by 34 C.F.R. § 300.323(c).
2. District did not properly determine Student’s eligibility and educational need at a meeting on or around September 23, 2024, because District:
  - a. Did not draw upon information from a variety of sources—specifically Parent—or ensure that information obtained from Parent was documented and carefully considered, as required by 34 C.F.R. § 300.306(c)(1)(i)-(ii); and
  - b. Did not take whatever action was necessary to ensure that Parent understood the proceedings of the meeting—specifically by not arranging for an interpreter for Parent, whose native language is other than English—as required by 34 C.F.R. § 300.322(e).
3. District did not provide Parent a copy of the procedural safeguards in Parent’s native language upon Student’s reevaluation in or around September 2024, as required by 34 C.F.R. §§ 300.503(c)(ii), 300.504(d).
4. District did not provide an Independent Educational Evaluation (“IEE”) at public expense without unnecessary delay or file a due process complaint to show District’s evaluation was appropriate, following Parent’s request on or around October 11, 2024, as required by 34 C.F.R. § 300.502(b)(1)-(2).

## **FINDINGS OF FACT**

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

### **A. Background**

1. Student is thirteen years old and is a 7th grader at a District middle school. *Response*, p. 1; *see Exhibit F*, p. 1. Student is not eligible for special education and related services. *Response*, p. 1; *see Exhibit E*, pp. 1-6. Student was previously eligible for special education services under the disability category of Autism Spectrum Disorder (“ASD”) until September 2024. *Response*, p. 1; *Exhibit A*, p. 1. Student currently receives accommodations in the general education setting via a Section 504 plan. *Response*, p. 1; *Interview with Parent*; *see Exhibit Q*, pp. 1-3.

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

2. Student is described as a hardworking young man who strives to be successful in school and particularly excels at math. *Interviews with Parent and Student’s 2023-2024 special education teacher and case manager (“Case Manager 1”), Spring 2024 general education English-Language Arts teacher (“ELA Teacher”), and Fall 2024 special education case manager (“Case Manager 2”).* Student struggles with reading comprehension, focusing in class, and difficulty working with peers at times. *Id.*
3. Parent is concerned that District did not fully implement the accommodations required by Student’s IEP in Student’s general education English-Language Arts class (“ELA class”) during Spring 2024. *Complaint*, p. 5; *Reply*, p. 3. Parent is further concerned that, following Student’s reevaluation in Fall 2024, District improperly determined that Student was ineligible for special education services. *Complaint*, pp. 5-7; *Reply*, pp. 2, 6-11, 13-15. Specifically, Parent alleges that District impeded her ability to participate in the decision-making process because District did not provide her with a copy of the procedural safeguards notice in her native language; did not provide an interpreter at the September 2024 eligibility meeting; and did not consider her input in making its determination that Student was ineligible for special education services. *Id.* Finally, Parent is concerned that District did not respond to her request for an IEE at public expense in a timely manner. *Complaint*, pp. 7-8; *Reply*, pp. 16-18.
4. District denies all allegations. *Response*, pp. 1-7. Specifically, District asserts that Student’s accommodations were implemented with fidelity in Student’s ELA class during Spring 2024; a multidisciplinary team (“MDT”) appropriately considered all relevant information during the reevaluation and eligibility process, including Parent’s input; District did not provide an interpreter or the procedural safeguards notice in Parent’s native language due to Parent’s proficiency with the English language; and District agreed to an IEE at public expense without unnecessary delay. *Id.*

## **B. The 2023 IEP**

5. Student’s IEP in effect during the Spring semester of the 2023-2024 school year—the time relevant to Allegation No. 1—was dated September 23, 2023 (“2023 IEP”). *Exhibit A*, pp. 1-15. The 2023 IEP was developed in consideration of school-based evaluation also conducted in September 2023. *Id.* at p. 3.
6. The 2023 IEP describes Student’s then-present levels of performance, noting Student’s strengths in oral reading skills and math calculation and problem solving and indicating Student needs support with “reading comprehension, including making inferences about what he has read,” communication, and social-emotional challenges. *Id.* The IEP indicates Student “demonstrates some deficits in his ability to express emotions and perceive how others feel about him,” particularly in picking up on peers’ nonverbal cues. *Id.* at p. 4. The IEP also indicates Student “demonstrates deficits in his expressive language, namely in using narrative language and in using appropriate grammatical features in more complex sentences.” *Id.*

7. The 2023 IEP describes the impact of Student's disability on his involvement in the general curriculum, noting Student's "lack of proficiency in utilizing healthy coping skills to help him navigate and resolve social conflict affects his school performance in that he loses study time to behaviors and distractions caused by conflicts that he has with others." *Id.* at p. 7. Student's disability also "affects his ability to access grade-level reading comprehension work without supports, small-group instruction to practice skills, and accommodations." *Id.*
8. The 2023 IEP includes three annual goals, one each in the areas of Reading, Communication, and Social/Emotional Wellness. *Id.* at p. 9.
9. The 2023 IEP includes eleven accommodations to support Student's communication, social-emotional success, academics, and assessments in the general education environment, including graphic organizers, "partners for [Student] in group projects/activities that will provide positive social modeling," and frequent checks for understanding. *Id.* at p. 10.
10. The 2023 IEP's service delivery statement identifies Student's direct and indirect specialized instruction in reading, speech-language, and mental health. *Id.* at pp. 12-13.
11. The 2023 IEP reflects that it was appropriate for Student to be in general education at least 80% of the time. *Id.* at p. 14. The IEP Team determined this was the most appropriate placement to allow Student to "continue to benefit from small-group instruction to practice his reading comprehension skills" while also having "greater access to content, collaboration with same-age peers, and inclu[sion] in the general education environment as much as possible." *Id.*

### **C. District's Policies, Practices, and Procedures: IEP Implementation**

12. District has a comprehensive special education procedural guidance document ("the Policy") that describes District's responsibilities under the IDEA and includes, among other things, procedures regarding the implementation of students' IEPs and the responsibilities of District staff to ensure IEPs are fully implemented. *Exhibit M*, pp. 46-70. The Policy is provided to staff at the time of hiring and is electronically available via District's learning management system. *Interviews with District's Senior Manager of Special Education ("Senior Manager") and School's special education instructional specialist ("SEIS").*
13. At the beginning of each school year, District conducts a professional development course prior to the arrival of students, which includes "dedicated time to review IEPs with all relevant staff, including general education teachers, special education teachers, service providers, administrators and paraprofessionals." *Response*, p. 2; *Interviews with Senior Manager, Case Manager 1, ELA Teacher, and School's Principal ("Principal")*. Staff use this time to review class rosters, identify individual student needs, including any accommodations used in class, and ask questions of special education teachers and administrators to ensure understanding of their responsibilities. *Id.*

14. Special education case managers also provide general education teachers and related services providers with a “snapshot” of students’ IEPs at the beginning of the school year, and staff have continuous access to those snapshots via District’s electronic special education management system. *Response*, p. 2; *Interviews with Senior Manager, Case Manager 1, Principal, and ELA Teacher*. Additionally, case managers meet weekly with general education teachers and related services providers to discuss students’ progress or changed needs and collaborate on any questions or concerns. *Interviews with Case Manager 1, ELA Teacher, and Principal*.

#### **D. IEP Implementation: Accessibility and Responsibilities**

15. ELA Teacher and Case Manager 1 indicated that they were made familiar with the 2023 IEP prior to the start of the 2023-2024 school year, had continuous access throughout the year, and understood their responsibilities under the 2023 IEP. *Interviews with ELA Teacher and Case Manager 1*. ELA Teacher and Case Manager 1 also collaborated frequently on Student’s needs and accommodations, including during weekly special education team meetings. *Id.*; see *Exhibit N*, pp. 164-67.

#### **E. IEP Implementation: Accommodations**

16. In March 2024, Parent expressed concerns to District staff about Student’s grades on writing assignments and asked ELA Teacher whether the accommodations in Student’s 2023 IEP were being provided in her class. *Complaint*, p. 5; *Exhibit 1*, p. 1; *Exhibit N*, pp. 49, 95, 265; *Interviews with Parent, Principal, and ELA Teacher*. In response, ELA Teacher shared some of the accommodations Student used in her class and conveyed that she would coordinate with Case Manager 1 to ensure Student received any additional support in writing that he needed. *Exhibit 1*, pp. 1-4; *Interview with ELA Teacher*.
17. ELA Teacher, Case Manager 1, and Principal assured Parent—both during a meeting at Parent’s request and during frequent email communication during the semester—that Student was receiving all accommodations in accordance with his IEP. *Complaint*, p. 5; *Exhibit N*, pp. 95, 104-07, 157-61, 164-65, 182, 188, 222; *Interviews with Parent, Principal, ELA Teacher, and Case Manager 1*. Further, in response to Parent’s concerns, Case Manager 1 and ELA Teacher created a spreadsheet to track Student’s use of accommodations in ELA class over a period of three days in April 2024 to ensure they were being implemented with fidelity. *Exhibit K*, p. 1; see *Exhibit N*, p. 30; *Interviews with Principal, ELA Teacher, and Case Manager 1*. However, Parent remains concerned that these accommodations were not fully implemented during this time: graphic organizers, seating next to a model peer, and frequent checks for understanding. *Complaint*, p. 5; *Interview with Parent*.

#### **Graphic Organizers**

18. Student’s 2023 IEP contains an accommodation that reads “Graphic Organizers.” *Exhibit A*, p. 10.

19. Parent stated that her understanding of this accommodation is that teachers would provide graphic organizers to Student to help him break down instructions and do classwork step-by-step. *Interview with Parent.*
20. School staff described their understanding of the accommodation to mean providing Student access to a system of graphic organizers—referred to by District as “thinking maps”—that are used for writing, brainstorming, and sequencing. *Interviews with ELA Teacher and Case Manager 1.*
21. ELA Teacher described a resource binder used by Student, which included eight different thinking maps for writing support demonstrating concepts such as compare/contrast, sequencing, sentence stems, and context evidence and reasoning. *Interview with ELA Teacher; see Exhibit N, p. 30.* Thinking maps were available in Student’s resource binder, posted on the classroom walls, and printed for use during Student’s participation in “Lit Circle”—a kind of classroom book club. *Interview with ELA Teacher; see Exhibit N, p. 125.*
22. ELA Teacher credibly reported that Student used thinking maps extensively during class and, indeed, it was ELA Teacher’s practice to have all students use thinking maps to support their writing. *Interview with ELA Teacher.* The accommodations spreadsheet also indicates Student used graphic organizers in class during each of the three days ELA Teacher was tracking. *Exhibit K, p. 1; see Exhibit N, p. 30.*
23. Parent is concerned that this accommodation was not fully implemented because Student conveyed that to her and due to his low scores on writing assignments. *Reply, p. 3; Interview with Parent.* However, the Record indicates that Parent and District staff all had the same general understanding of what this accommodation required, and that Student did receive this accommodation in ELA class during Spring 2024. (FF #s 18-22). Accordingly, the state complaints officer (“SCO”) finds that District provided Student with this accommodation in accordance with his 2023 IEP.

#### Positive Social Modeling from Peers

24. Student’s 2023 IEP contains an accommodation that reads: “Select partners for [Student] in group projects/activities that will provide positive social modeling.” *Exhibit A, p. 10.*
25. Parent stated that her understanding of this accommodation was that Student would be seated next to other students who would help him concentrate and encourage him to stay focused. *Interview with Parent.*
26. School staff described their understanding of this accommodation as requiring Student receive preferential seating next to model peers and that Student be paired with model peers for group activities or assignments. *Interviews with ELA Teacher and Case Manager 1.*

27. ELA Teacher credibly reported that she was very intentional with her classroom seating chart—Student’s seat was assigned and consistent, close to the teacher, and next to peers who were “high-strivers.” *Interview with ELA Teacher*. Additionally, ELA Teacher paired Student with model peers during group projects, including during group Lit Circle, and Case Manager 1 described how both he and ELA Teacher were strategic in pairing Student with peers who stayed focused and who modeled positive leadership qualities for Student. *Interviews with ELA Teacher and Case Manager 1*.
28. The accommodations spreadsheet does not include this accommodation. *Exhibit K*, p. 1. ELA Teacher explained that this accommodation was likely omitted due to its set, consistent nature—Student’s seat was assigned, and therefore it was not an accommodation that was offered on an as-needed basis like the other accommodations on the spreadsheet. *Interview with ELA Teacher*.
29. Parent is concerned that this accommodation was not fully implemented because Student conveyed that to her. *Reply*, p. 3; *Interview with Parent*. Parent expressed this concern to ELA Teacher in Spring 2024, noting that Student reported “he sits next to two students [who] do not provide any support for him.” *Exhibit 1*, p. 2. However, District staff confirm, and Parent acknowledges, that this accommodation was not intended to include any direct support from peers, but only to provide Student with positive social modeling from peers. *Interviews with ELA Teacher, Case Manager 1, and Parent*.
30. The Record reflects that Parent and District staff all understood this accommodation to include preferential seating next to model peers, and that Student was consistently provided preferential seating and model-peer partners in ELA class during Spring 2024. (FF #s 24-29). Accordingly, the SCO finds that District provided Student this accommodation in accordance with his 2023 IEP.

#### Frequent Checks for Understanding

31. Student’s 2023 IEP contains an accommodation that reads: “Frequent checks for understanding.” *Exhibit A*, p. 10.
32. Parent understood this accommodation to require the classroom teacher to check in with Student often, especially after giving him instructions to follow up that he is focused. *Interview with Parent*.
33. School staff described their understanding of this accommodation to mean classroom teachers were required to frequently check in with Student regarding his understanding of the material and any instructions given. *Interviews with ELA Teacher and Case Manager 1*.
34. ELA Teacher credibly described checking in with Student frequently at various points during class, noting Student was the “first kid” she checked on after assigning independent work to ensure Student understood the instructions and expectations. *Interview with ELA Teacher*.

Additionally, the accommodations spreadsheet indicates Student received consistent check-ins at the beginning of class, at the start of the lesson, before doing independent work, during worktime to ensure he was focused, and after completing work. *Exhibit K*, p. 1.

35. Parent is concerned this accommodation was not fully implemented because Student conveyed that to her and due to Student's low scores on writing assignments. *Reply*, p. 3; *Interview with Parent*. Parent expressed this concern to ELA Teacher during Spring 2024, noting that "[w]ithout your support in highlighting his mistakes and showing him examples of correct writing, his writing skills will not improve" and asking ELA Teacher to "work with [Student] in every stage of his writing, preview, model, writing phase, editing, etc." *Exhibit 1*, p. 3. Parent's email correspondence indicates that her expectation of ELA Teacher was more in the nature of 1:1 support than what this accommodation in the 2023 IEP required of a classroom teacher. *See id.* However, District staff confirm, and Parent acknowledges, that the "frequent checks for understanding" accommodation did not require that level of individual support. *Interviews with ELA Teacher, Case Manager 1, and Parent*.
36. The Record reflects that Student was provided with frequent checks for understanding in ELA class during Spring 2024. (FF #s 31-35). Accordingly, the SCO finds that District provided Student with this accommodation in accordance with his 2023 IEP.

#### **F. Attendance, Grades, and Progress on 2023 IEP Annual Goals**

37. Student regularly attended school and met or exceeded expectations in all core classes during the 2023-2024 school year. *Exhibit I*, pp. 1-2, 7, 12; *see Exhibit N*, p. 98; *Interview with Case Manager 1*.
38. Student's progress reporting on IEP annual goals reflects that Student made progress on all three of the 2023 IEP's annual goals. *Exhibit J*, pp. 1-3.
39. In response to Parent's continued concerns around Student's writing abilities and low scores on writing assignments during the semester, Case Manager 1 reiterated to Parent that "[Student] does not have a writing goal in his IEP . . . [but instead has] a paragraph writing objective as part of his reading comprehension goal." *Exhibit N*, p. 104. That goal read: "By October 2024, [a]fter reading a grade-level text [Student] will answer a writing prompt with a six sentence CCER paragraph (Claim, Context, Evidence, and Reasoning) with 80% accuracy." *Exhibit A*, p. 8; *see Exhibit N*, p. 104. Progress reporting reflects that, from a baseline of 0% accuracy in September 2023, Student improved to 80% accuracy in April 2024 and finished the school year at 70% accuracy. *Exhibit J*, p. 2; *see Exhibit N*, p. 104.
40. Due to Student's academic growth, Case Manager 1 expressed to Parent at the end of the school year that Student's direct, pull-out services in reading were likely no longer necessary—services that Case Manager 1 provided to Student in "Intervention" class during the 2023-2024 school year—and "suggest[ed] [Student's] IEP be amended at the start of



seventh grade to remove that service and give [Student] one of his electives back.” *Exhibit N*, p. 98; *Interview with Case Manager*.

41. Parent acknowledges Student’s demonstrated academic progress but asserts teachers were “inflating [Student’s] grades to avoid accountability for not providing the necessary accommodations.” *Complaint*, p. 5; *Reply*, p. 6; *Interview with Parent*. However, the Record reflects that Parent asked ELA Teacher several times during Spring 2024 that Student be allowed to re-do or revise assignments for a higher grade, and there is otherwise no indication that teachers were inflating Student’s grades. *See, e.g., Exhibit 1*, pp. 1-4; *Exhibit N*, pp. 49, 121-34, 157-61, 176, 188, 265.

#### **G. Parent’s Request for Reevaluation**

42. At the end of the 2023-2024 school year, Parent expressed to Case Manager 1 her interest in having Student reevaluated given her continued concerns with Student’s reading and writing abilities and, after further discussion, agreed to “get [Student] evaluated next [school] year [to] set him up for success.” *Exhibit N*, p. 101; *Reply*, p. 6; *Interview with Parent*.
43. On August 19, 2024, the first day of the 2024-2025 school year, Case Manager 2 reached out to Parent to confirm whether she would like to proceed with a reevaluation of Student. *Reply*, p. 6; *Exhibit N*, pp. 58-59; *see Exhibit L*, p. 1. Parent confirmed she was “interested in completing an evaluation for [Student] at the beginning of the school year,” noting Student “ha[d] been working over the summer to improve his reading/writing skills.” *Exhibit N*, p. 58.
44. On August 23, District agreed to reevaluate Student and Case Manager 2 provided Parent with Prior Written Notice (“PWN”) and a form seeking Parent’s consent to reevaluate. *Exhibit C*, pp. 5-7; *see Exhibit N*, pp. 84-86. “While the District did not originally intend to reevaluate [Student] so shortly after [the September 2023] evaluation, it did so at Parent’s urging.” *Response*, p. 3; *see Exhibit C*, p. 5.
45. On August 26, Parent signed consent to reevaluate Student in the areas of communicative status, academic performance, social and emotional status, and health. *Exhibit D*, pp. 1-3; *see Exhibit N*, pp. 84-85.
46. On August 27, Case Manager 2 confirmed receipt of Parent’s signed consent and provided Parent a copy of the procedural safeguards notice (“PSN”) via email, explaining the PSN described “the student and parent rights,” which Case Manager 2 would be “happy to example.” *Exhibit N*, p. 55; *see Reply*, p. 14; *Exhibit D*, pp. 5-6; *Interviews with Parent and Case Manager 2*.

#### **H. Student’s Reevaluation**

47. District completed Student’s reevaluation and issued an evaluation report (“Evaluation Report” or “the Report”) on September 23, 2024. *Exhibit F*, pp. 1-18. The reevaluation assessed Student in all areas identified in the consent to evaluate. *Id.*; *see Exhibit D*, pp. 1-3.

48. School's speech language pathologist ("SLP") assessed Student's communicative status using a records review of Student's most recent school-based evaluation in September 2023 and the Clinical Evaluation of Language Fundamentals ("CELF-5"), an "assessment to evaluate [Student's] expressive and receptive language across 8 sub-tests." *Exhibit F*, pp. 2-6. Overall, Student's expressive and receptive language fell within the average range for his age, although Student scored below average in the word classes subtest and low average in the recalling sentences subtest. *Id.* at pp. 1, 3-4.
49. Student's special education teacher administered the Weschler Individual Achievement Test ("WIAT-4") to evaluate Student's academic performance. *Exhibit F*, pp. 11-13. Student scored in the average range for reading, written expression, and mathematics, though he received a low average score in sentence composition and high average score in numerical operations. *Id.* at pp. 11-12. Student also scored extremely high in oral reading fluency and math fluency. *Id.* at p. 12.
50. Case Manager 2 administered several additional academic assessments:
- i-Ready: i-Ready is a computer-based test that monitors a student's overall reading level. Student scored in the 27th percentile, the low average range compared to same-age peers. *Id.* at p. 6.
  - IXL: IXL is a computer-based test that scores students in their overall math level. *Id.* at p. 8. Student scored in the average range compared to same-age peers. *Id.* at pp. 7-8.
  - STAR Reading: STAR Reading is a computer-based test that evaluates a student's reading comprehension level. *Id.* at p. 8. Student scored in the 30th percentile, the low average range compared to same-age peers. *Id.* at pp. 8-9.
  - CMAS: On Spring 2024 CMAS assessments, Student was approaching expectations for language arts and met expectations in math. *Id.* at p. 9.
  - Baseline Writing: Students are given a baseline at the start of 7th grade to determine their overall writing levels. *Id.* at p. 10. Student scored within the average range compared to peers at the start of the school year. *Id.*
51. Student's mental health provider administered several assessments to evaluate Student's social-emotional status, including the Behavior Assessment System for Children ("BASC-3") and Social Responsiveness Scale ("SRS-2"). *Id.* at pp. 13-17. The BASC-3 evaluates how a student is perceived in different settings, with different expectations, as well as how their behavior compares to same-age peers. *Id.* at p. 13. Student's self-report on the BASC-3 showed elevated scores in the areas of attitude to school and self-reliance and Case Manager 1 reported an elevated score in conduct concerns. *Id.* at pp. 14-15. Student's overall score on the Social Responsiveness Scale ("SRS-2"), a measure of the social impairment symptoms

associated with Autism, was within normal limits, although Student's former teacher indicated a mildly elevated score in social awareness. *Id.* at p. 17.

52. The Report includes input from Parent collected from the BASC-3 and SRS-2 parent reports and a student health report completed by Parent. *Id.* at pp. 13, 16-18; *see Exhibit N*, pp. 84-85, 244-45; *Exhibit G*, pp. 1-6. Parent's report on the SRS-2 indicated Student exhibits mild deficiencies in the areas of social communication and restricted interests and repetitive behavior but otherwise did not indicate any clinically significant deficiencies in reciprocal social behavior, and Parent's BASC-3 report "showed no areas of clinically significant concern" regarding Student's behavior. *Exhibit F*, pp. 16-17.
53. The Report also included teacher input and observations, which consistently describe Student as a very hard worker and active class participant, although Case Manager 2 observed an instance in which Student "exhibited heightened emotions when asked to correct a mistake." *Id.* at pp. 2, 10-11, 17-18.
54. On August 26, 2024, District provided Parent with a Notice of Meeting scheduled for September 23, indicating "the purpose of this meeting is to discuss appropriate evaluation data to determine whether [Student] continues to be eligible for special education services." *Exhibit B*, p. 1.

#### **I. Eligibility Determination**

55. On September 23, 2024, a properly convened MDT, including Parent, met to review the Evaluation Report and consider Student's continuing eligibility for special education and related services. *Response*, p. 4; *Exhibit E*, pp. 5-6. The MDT considered Student's eligibility under the disability categories of ASD, Specific Learning Disability, and Speech or Language Impairment. *Exhibit E*, pp. 1-6.
56. The MDT reviewed each component of the Evaluation Report as a team, and various MDT members presented the results of Student's assessments in their respective areas and shared observations and input. *Response*, p. 4; *Reply*, p. 8; *Interviews with Parent, Principal, Case Manager 1, and Case Manager 2*. During the meeting, Parent did not express concerns with the comprehensiveness of District's reevaluation or with any of the specific assessments or their results. *Interviews with Parent, Principal, Case Manager 1, Case Manager 2, and SEIS*. However, Parent did express concerns with Student's continued challenges in reading and writing and her belief that Student "will be unable to follow directions, execute instructions, and perform successfully without receiving appropriate accommodations in the classroom." *Reply*, p. 7; *Response*, p. 4; *Interviews with Parent, Case Manager 1, and Case Manager 2*.
57. To address Parent's concerns, District members of the MDT explained that the assessment data in the Evaluation Report, Student's progress on IEP annual goals, and Student's academic and social progress—as evidenced by grades, standardized tests, teacher observations, and parent input—all indicated that Student could access the general education curriculum,

without specialized instruction. *Response*, pp. 3-4; *Exhibit C*, p. 1; *Interviews with Case Manager 1, Case Manager 2, Principal, and SEIS*. However, the MDT also discussed “a potential 504 [plan]” and the “accommodations [Parent] believe[d] would best support [Student]” moving forward, and District staff reiterated to Parent that “supports [were] absolutely staying in place,” whether or not Student remained eligible for special education services. *Exhibit N*, pp. 114-17; see *Exhibit N*, p. 28; *Interviews with Parent, Principal, Case Manager 2, and SEIS*.

58. Ultimately, the MDT determined that Student was a child with a qualifying disability—ASD—under the IDEA, but that he did not require special education services as a result of his disability. *Exhibit E*, pp. 1-2. The MDT also found student ineligible under the disability categories of Specific Learning Disability and Speech or Language Impairment. *Id.* at pp. 2-3. During the same meeting, Student was determined eligible for a Section 504 plan because of his ASD. *Exhibit Q*, pp. 1-3; see *Exhibit D*, p. 10; *Exhibit 11*, p. 1.
59. District asserts that Parent’s “main point of contention” during the meeting was Parent’s belief that Student’s disability and lower scores in writing meant “that he inherently required an IEP.” *Response*, p. 4; *Interviews with Case Manager 1, Case Manager 2, and Principal*. The MDT “engaged with these concerns by explaining the difference between medical diagnosis [of ASD] versus educational eligibility and discussing how imperfections in a student’s abilities did not necessarily mean they require specially designed instruction in those areas.” *Id.* Parent reported that she does not recall the details of this meeting due to feeling “anxious and concerned” at the time. *Reply*, pp. 8-9; *Interview with Parent*. However, Parent does recall the MDT discussed the assessments and their results and discussed Student’s progress, and that Parent asked questions and raised concerns with Student’s reading and writing abilities and the MDT’s conclusion. *Id.*
60. Parent alleges that District members of the MDT did not consider her input in making its eligibility determination because “[t]hey were all in agreement . . . and did not care about [Parent’s] frustration with this decision.” *Reply*, p. 8; *Interview with Parent*. Parent also indicates that District did not consider her input by not informing her, prior to the September 23 meeting, that the MDT was considering exiting Student from special education. *Reply*, p. 11; *Interview with Parent*; see *Exhibit N*, p. 7.
61. Parent further asserts that Student’s private tutor—who provided Student with support in reading and writing twice per week for 30-minute sessions—expressed to Parent “that [Student’s] reading comprehension is very low as well as his writing” and suggests the MDT did not consider that information in making its eligibility determination. *Complaint*, p. 6; *Reply*, p. 8; *Exhibit 8*, p. 10; *Interview with Parent*. Parent described informing District staff that Student was receiving outside services prior to the eligibility meeting. *Interview with Parent*. However, District staff reported having no knowledge that Student was receiving outside services until the filing of the Complaint, and the Record does not indicate that Parent informed District of Student’s outside services or provided the MDT with the tutor’s input

either before or during the September 23 meeting. *Interviews with Principal, Case Manager 1, Case Manager 2, and SEIS; see Reply*, p. 8; *Exhibit 8*, pp. 1, 10; *Exhibit N*, p. 142.

62. Parent “wasn’t expecting [Student] to be disqualified for IEP services.” *Complaint*, p. 7; *Exhibit E*, p. 6; *Interview with Parent*. As a result, Parent did not indicate her agreement or disagreement with the MDT’s decision at the time of the meeting; instead, Parent noted on the MDT signature page that her signature “indicates [her] presence only” and not agreement with the MDT’s determination. *Complaint*, pp. 6-7; *Reply*, pp. 9-10; *Exhibit E*, p. 6.
63. On September 29, 2024, Parent informed Principal and Case Manager 2, by email, that she disagreed with the MDT’s decision. *Exhibit N*, p. 7. Specifically, Parent acknowledged that “[Student] has made progress” but argued he “still needs support as a student with a disability and will definitely benefit from school services to support his needs.” *Id.*

#### **J. District’s Policies, Practices, and Procedures: Requests for IEEs**

64. District Policy describes the purpose of an IEE, when and how a parent may request a publicly funded IEE, and the procedures District staff must follow in responding to a parent’s request. *Exhibit M*, pp. 7-16. Under the Policy, a parent “can request an [IEE], conducted by a qualified examiner who is not employed by the school district,” if the parent “disagrees with the school’s evaluation of their child.” *Id.* at p. 7.
65. District “prefers” that parents submit IEE requests to the District’s Special Education Director Designee in writing; however, “District will also consider other IEE requests,” including verbal requests and those directed to individuals other than the Director Designee. *Id.* at pp. 8-9; *Interviews with Senior Manager, SEIS, and Principal*. In practice, requests for IEEs are often directed to District staff other than the Director Designee, and staff are instructed—via the Policy and during professional development before and during the school year—to forward or direct any IEE requests to SEIS or Senior Manager. *Interviews with Senior Manager, SEIS, and Principal*.
66. “If a parent requests an IEE based on disagreement with a completed District evaluation, without unnecessary delay, the District will either 1) file a due process complaint to show that its evaluation was appropriate or 2) ensure that a publicly funded IEE is provided.” *Exhibit M*, p. 9. If District agrees to fund an IEE, the Policy directs that the school’s SEIS provide the parent with copies of District’s IEE procedural document and IEE criteria, including a resource list of qualified providers, evaluator qualification requirements, and fee schedules. *Id.* at p. 8. The school’s SEIS is also responsible for coordinating the IEE proposal and acceptance process and serves as the District point of contact for parents through completion of the IEE. *Id.* at pp. 9-10. The Policy indicates that each step in the IEE process “will be completed as soon as reasonably possible, without undue delay.” *Id.* at p. 10.
67. District is required to inform parents of their right to an IEE by providing parents a copy of the procedural safeguards notice at least annually. *Id.* at p. 26; *Interviews with Senior*

*Manager, SEIS, Case Manager 1, and Case Manager 2.* The PSN must also be given after a parent's request for an evaluation or when a child is initially referred for evaluation, upon District's receipt of the first state complaint and due process complaint in a school year, upon a parent's request for a copy, and as required by discipline procedures. *Exhibit M*, p. 26. Further, "a copy of the [PSN] must be given to the parents in the native language of the parents or other mode of communication used by the parent, unless it is clearly not feasible to do so." *Id.*

#### **K. Parent's Requests for IEE**

68. On October 11, 2024, Parent emailed SEIS, noting her disagreement with the MDT's determination and "requesting an independent evaluation." *Complaint*, p. 7; *Exhibit N*, p. 44.
1. On October 14, Parent forwarded the initial October 11 email to SEIS again. *Complaint*, p. 7; *Exhibit N*, p. 40. Parent did not receive a response to these emails. *Complaint*, p. 7; *Interview with Parent*.
69. District "acknowledges that Parent initially requested an IEE on [October 11] via email to [SEIS]" but asserts that, "[f]or reasons unknown to the District," "the email request did not appear in [SEIS's] inbox." *Response*, p. 7. SEIS confirmed that she did not receive Parent's October 11 or October 14 emails, speculating that they may have been misdirected to her spam folder, the contents of which are deleted after 30 days. *Interview with SEIS; see Response*, p. 7.
70. On October 22, Parent emailed her IEE request to District's lead special education instructional specialist ("LSEIS") and followed up again by email on October 25. *Complaint*, p. 7; *Exhibit 2*, p. 3. Parent did not receive a response to these emails. *Complaint*, p. 7; *Interview with Parent*. LSEIS reported that he did not receive either email, despite checking all inboxes, and did not know why he did not receive them. *CDE Exhibit 1*, p. 1.
71. On October 28, Parent emailed her IEE request to a senior-level District special education manager ("Manager"). *Complaint*, p. 7; *Exhibit 2*, p. 5. Parent did not receive a response to this email. *Complaint*, p. 7; *Interview with Parent*. Manager reported that he did not receive this email, found no results in his inbox or spam folder, and speculated that the email may have been blocked by District's firewall. *CDE Exhibit 2*, p. 1.
72. On November 4, Parent emailed her IEE request to District's Director of Special Education ("Director"), noting that she had not received a response from District staff in the three weeks she had been making requests. *Complaint*, p. 7; *Exhibit 2*, p. 7. Parent did not receive a response to this email. *Complaint*, p. 7; *Interview with Parent*. Director reported that he did not receive this email and, in searching all email folders, did not find such email. *CDE Exhibit 3*, p. 1. Director noted that emails are sometimes inadvertently sent to District spam folders, which he regularly checks and would have marked as "not spam" if it had been received. *Id.*

73. On November 10, Parent emailed her IEE request to Principal. *Complaint*, p. 7; *Exhibit H*, pp. 78-79. On November 12, Principal acknowledged receipt of Parent's request and informed Parent that SEIS would be reaching out with further information on the next steps in the process. *Response*, p. 7; *Exhibit H*, p. 78; *Interview with Principal*. The same day, SEIS provided Parent with PWN of District's approval of the IEE at public expense and resources explaining the IEE process. *Exhibit H*, p. 76; *Interview with SEIS*.
74. Parent is concerned that District's lack of response to her multiple emails to District staff requesting an IEE, prior to Principal's acknowledgement of receipt on November 12, indicates an intent to delay Student's IEE. *Complaint*, p. 8; *Reply*, p. 16; *Interview with Parent*. District argues that it "received no additional follow-up" after Parent's October 11 request and, once made aware of Parent's request to Principal on November 10, District issued a PWN approving funding for the IEE within 48 hours. *Response*, p. 7. Therefore, District asserts there was no unnecessary delay in responding to Parent's IEE request. *Id.*
75. Student's IEE was completed on February 15, 2025, and an IEE Report was provided to Parent and District on or around February 18. *Exhibit 8*, pp. 1-18; *see Exhibit 9*, p. 97. On March 11, a properly convened MDT met to reconsider Student's eligibility for special education and related services in light of the IEE, a records review of Student's 2024 evaluation results, recent grades and scores on standardized tests, and teacher and parent input. *Exhibit 10*, p. 1; *Exhibit 12*, p. 1; *see Exhibit 8*, pp. 1-130; *Exhibit 9*, p. 94. The MDT was not able to complete its discussion during this meeting and plans to meet again soon to determine Student's eligibility. *Exhibit 12*, p. 1.

**L. District Policies, Practices, and Procedures: Access to Information in Parents' Native Language**

76. District Policy describes the requirement that District provide parents with access to information in a language or manner that ensures parents' understanding of their rights and any IEP-related proceedings, including by providing translation and interpretation services. *Exhibit M*, pp. 26, 77-81. The Policy is shared with all District staff upon hiring and is continuously available electronically, and District staff consistently reported being aware of the policy and generally described its requirements. (FF # 12); *Interviews with Senior Manager, Principal, Case Manager 1, Case Manager 2, and SEIS*; *see Exhibit M*, pp. 77-81.
77. Parents are not required to request translation or interpretation services from District, although they may, and District's website includes information on the services available and how parents may request them. *Interviews with Senior Manager, SEIS, and Case Manager 1*; *see Exhibit M*, p. 30. Absent a parent request, "[i]nterpreters should be present [at IEP meetings] for parents with limited English proficiency" or who are deaf or hard of hearing. *Id.* at p. 56. The Policy also directs that the procedural safeguards notice "must be given to parents in the native language of the parents or other mode of communication used by the parent, unless it is clearly not feasible to do so," although parents may also request that District provide translated versions of other IEP-related documents. *Id.* at pp. 26, 78-80.

78. The Policy provides that special education case managers are “responsible for facilitating communication with the parent to guide the process of evaluation and the subsequent IEP meeting” and “must also ensure that parents understand the proceedings of the meeting,” including arranging for an interpreter or translation services as necessary. *Id.* at pp. 41-42, 46. Specifically, the Policy directs District staff to identify parents’ preferred language by viewing the student’s profile in Infinite Campus—an electronic system District uses to, among other things, track students’ attendance, class schedules, and personal information. *Id.* at p. 77; *Interviews with Case Manager 1 and Case Manager 2*. Each student’s Infinite Campus profile includes a notation indicating the parents’ preferred language, which is initially collected from parents at the time of a student’s enrollment. *Interviews with Senior Manager and Principal*. This notation may change over time as parents’ circumstances change or as District staff become more familiar with the family. *Id.*
79. To determine whether a parent may require IEP-related translation or interpretation services, including whether the procedural safeguards notice should be provided in a language other than English, District staff rely on the parent language preference indicated in Infinite Campus, as well as any other information known to staff regarding parents’ language preferences or needs—including prior experience with the family or whether the parent has indicated a certain preference to District staff—that would indicate an interpreter or translated documents should be provided. *Interviews with Case Manager 1, Case Manager 2, Senior Manager, and Principal*; see *Response*, pp. 5-6; *Exhibit M*, p. 77.

#### **M. Parent’s Native Language and Preferences**

80. Student’s Infinite Campus profile indicates that Parent’s preferred language is English and the primary language spoken in Student’s home is Arabic. *Exhibit P*, p. 1.
81. Parent’s native language is Arabic. *Interviews with Parent, Case Manager 1, Case Manager 2, and Principal*. Parent indicates that her preferred language is also Arabic, as that is the language she can “understand fluently and comprehend entirely,” although Parent acknowledges that she “do[es] speak some English.” *Reply*, p. 13; *Interview with Parent*.
82. Parent describes her ability to read and write in English as “proficient” and her ability to speak and comprehend English verbally as “average,” noting that “[p]rocessing oral information is more challenging than written information.” *Reply*, p. 13; *Interview with Parent*. Parent does not use translation or interpretation services on a daily or regular basis but does request an interpreter for important or potentially challenging events, such as her children’s medical appointments. *Interview with Parent*.
83. At the beginning of Student’s 6th grade year—the 2023-2024 school year—Case Manager 1 reached out to Parent to introduce himself as Student’s special education case manager. *Interviews with Case Manager 1 and Parent*. Knowing Student’s family spoke Arabic in the home based on Student’s Infinite Campus profile, Case Manager 1 asked Parent to confirm—during a verbal conversation—whether communication in English was acceptable. *Reply*, p.



13; see *Exhibit K*, p. 1; *Interviews with Case Manager 1 and Parent*. District asserts Parent told Case Manager 1 that she preferred communication in English. *Response*, p. 5; *Interview with Case Manager 1*. Parent explains that she communicated to Case Manager 1 that “emails in English should be fine” but asserts she “ha[s] never communicated that [her] preferred language is English.” *Reply*, p. 13; *Interview with Parent*. The SCO finds that, regardless of the specifics of Parent’s communication to Case Manager 1, the Record reflects that Parent did confirm some ability to communicate effectively in English via her conversation with Case Manager 1. *Response*, p. 5; *Reply*, p. 13; *Interviews with Parent and Case Manager 1*.

84. All communication between District staff and Parent during the 2023-2024 and 2024-2025 school years, prior to the filing of this Complaint, was in English, including email correspondence, telephone conversations, and in-person interactions. *Response*, pp. 5-6; *Interviews with Case Manager 1, Case Manager 2, Principal, SEIS, and Parent*. Parent did not raise any concerns regarding her understanding of the subject matter during these communications, including during IEP meetings and other IEP-related conversations. *Id.*
85. Parent did not request an interpreter for the September 23 eligibility meeting but asserts District should have arranged for one to ensure her understanding “in a significant meeting” like an MDT meeting. *Reply*, p. 13; *Interviews with Parent and Case Manager 1*. She said “having an interpreter to explain academic terms in assessments and evaluations would have been helpful,” as she “did not grasp all the terms that were used.” *Reply*, pp. 8, 13; *Interview with Parent*. An interpreter has been present in at least one prior IEP meeting held for Student in elementary school for the benefit of Student’s father, who does not speak English. *Interviews with Case Manager 1, Case Manager 2, and Parent*. However, no interpreter was present for the September 2023 IEP meeting, during which the IEP Team reviewed the results of District’s 2023 evaluation and developed the 2023 IEP. *Interviews with Case Manager 1, Case Manager 2, and Parent*.
86. District acknowledges that it did not arrange for an Arabic interpreter for the September 23 eligibility meeting but asserts “the absence of an interpreter during the meeting in no way impeded Parent’s understanding or ability to participate in the proceedings” given her ability to communicate in English. *Response*, p. 5. Specifically, while Parent did have some “misunderstandings about the difference between [Student’s] medical diagnosis [of ASD] versus educational eligibility,” that is common with all parents, and District had no reason to believe that Parent’s misunderstandings were rooted in a language barrier. *Id.* at p. 6.
87. Parent also asserts that District did not provide her with a copy of the procedural safeguards notice in her native language of Arabic, which made it hard for her “to read it thoroughly and understand it clearly.” *Complaint*, p. 6. However, Parent did receive a copy of the PSN from the District in English prior to the eligibility meeting and concedes that she “forgot about” the PSN and did not review it. *Reply*, pp. 14-15; *Interview with Parent*. District acknowledges it provided Parent with a copy of the PSN in English only but asserts that Parent did not need a PSN in Arabic to understand her rights given her English-language proficiency. *Response*, p. 2; *Interviews with Case Manager 1 and Case Manager 2*.

88. During this investigation, Parent requested translation and interpretation services in Arabic to support her understanding of the state complaint process, which the CDE provided. The SCO also conducted a telephone interview with Parent with aid from a certified Arabic interpreter, at Parent’s request. *Interview with Parent*. Parent communicated with the SCO primarily via email and confirmed she does not use translation services for email correspondence. *Id.* Additionally, the Complaint and Reply—which Parent reported she drafted herself— are in English. *See, e.g., Complaint*, pp. 1-13; *Reply*, pp. 1-18; *Exhibit N*, pp. 1-267; *Interview with Parent*. Parent was also able to verbally communicate with the SCO during the telephone interview, many times independently and at other times with aid from the interpreter. *Interview with Parent*. For these reasons, the SCO finds Parent’s written communication skills in English to be clear and well-reasoned and agrees with Parent’s self-assessment of these skills as “proficient.” *Interview with Parent*. The SCO also finds Parent’s verbal communication skills in English to be competent and effective.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District implemented Student’s 2023 IEP during Spring 2024, as required by 34 C.F.R. § 300.323. District complied with the IDEA.**

Parent’s concern is that Student was not provided certain accommodations required by the 2023 IEP in ELA class during Spring 2024. (FF #s 3, 16-17).

#### **A. Legal Requirements for IEP Implementation**

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

#### **B. 2023 IEP: Accessibility and Responsibilities**

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the Record reflects that Case Manager 1 and ELA Teacher had access to Student’s 2023 IEP,

were informed of their specific responsibilities related to its implementation, including the implementation of Student's accommodations, and understood those responsibilities. (FF # 15). Accordingly, the CDE finds and concludes that District complied with 34 C.F.R. § 323(d).

### **C. 2023 IEP: Accommodations**

The CDE must determine whether District satisfied its obligations under 34 C.F.R. § 300.323(c). Here, the 2023 IEP required that Student be provided with graphic organizers, "partners for [Student] in group projects/activities that will provide positive social modeling," and frequent checks for understanding, as accommodations to ensure Student's access to the general curriculum. (FF # 9). District staff and Parent described the same general understanding of what these accommodations required of a classroom teacher. (FF #s 23, 30, 35).

Parent became concerned that these accommodations were not being provided in Student's ELA class after Student expressed that to her and due to Student's low scores on writing assignments. (*Id.*). However, the Record reflects that Student was consistently provided these accommodations, particularly given ELA Teacher's credible descriptions of how and when these accommodations were provided and District staff's consistent communication with Parent regarding her concerns in this area throughout Spring 2024. (FF #s 16-36).

Accordingly, the CDE finds and concludes that District fully implemented these accommodations in Student's 2023 during ELA class in Spring 2024, as required by 34 C.F.R. § 300.323(c)(2).

**Conclusion to Allegation No. 2: District drew upon information from a variety of sources, including Parent, and ensured that information from those sources was documented and carefully considered, as required by 34 C.F.R. § 300.306(c)(1)(i)-(ii). District took whatever action was necessary to ensure that Parent understood the proceedings of September 23, 2024 eligibility meeting, as required by 34 C.F.R. § 300.322(e). District complied with the IDEA.**

Parent's concern is that District did not consider her input in determining Student was ineligible for special education and related services and did not provide an interpreter for the eligibility meeting. (FF #s 3, 60, 85).

### **A. Legal Requirements: Eligibility Determinations**

Eligibility for special education and related services under the IDEA requires that (1) a child have one of thirteen qualifying disabilities and, (2) "by reason thereof, need[] special education and related services." 34 C.F.R. § 300.8(a)(1); ECEA Rule 2.08. Thus, even if a child has one of the thirteen qualifying disabilities, he or she must also require "specially designed instruction . . . to meet [his or her] unique needs." 34 C.F.R. § 300.39(a)(1).

The IDEA requires that a multidisciplinary team ("MDT") determine "whether the child is a child with a disability." 34 C.F.R. § 300.306(a)(1). An analysis of the appropriateness of an eligibility determination involves two steps. First, the CDE examines whether the school district followed relevant standards and procedures in making the determination. *See Questions and Answers on*

*IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013). Second, the CDE determines whether the eligibility decision was consistent with the data in the record. *Id.*

## **B. Adherence to IDEA Standards and Procedures**

The CDE begins by examining whether District adhered to applicable IDEA standards and procedures regarding how school districts evaluate students and determine eligibility. *See* 34 C.F.R. §§ 300.304-306.

### **i. Information from a Variety of Sources and Consideration of that Information**

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, an MDT must:

- i. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- ii. Ensure that information obtained from all of these sources is documented and carefully considered.

*Id.* § 300.306(c)(1)(i)-(ii). The requirement that an MDT consider parent input in eligibility determinations, however, does not mandate that school districts must agree with a parent's position or accede to a parent's requests. *El Paso 20 (Acad.) Sch. Dist.*, 125 LRP 2530 (SEA CO 12/06/24) (finding a district properly considered parent's input during an IEP meeting despite parent's disagreement with IEP team's decision).

Here, as part of Student's reevaluation, District sought Parent's input on Student's needs through several questionnaires, and that input is documented in the Evaluation Report. (FF # 52). During the September 23 eligibility meeting, Parent expressed her concerns around Student's reading and writing abilities and asked questions regarding support available to address Student's challenges in reading and writing, given the MDT's determination that Student was no longer eligible for special education services. (FF #s 56, 59).

District responded to Parent's concerns by reiterating the results of the evaluative data and Student's demonstrated academic progress, which indicated Student, despite having an IDEA-qualifying disability, did not require specialized instruction, and explaining the distinction between a private medical diagnosis of ASD and educational eligibility. (FF # 57). The MDT also discussed the option of a 504 plan for Student and the accommodations Parent felt were necessary to continue to support Student's needs. (*Id.*). Although Parent ultimately disagreed with the MDT's decision, the Record reflects that District considered the entire body of evidence in making its eligibility determination, including the results of assessments described in the Evaluation Report, grades and test scores, progress on 2023 IEP annual goals, parent input, and teacher observations and recommendations. (FF #s 55-59).

Accordingly, the CDE finds and concludes that District drew upon information from a variety of sources, including Parent's input, and documented and carefully considered that information in determining that Student was no longer eligible for special education and related services, as required by 34 C.F.R. § 300.306(c)(1)(i)-(ii).

ii. Interpreter for MDT Meeting

The IDEA requires school districts to "take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English, unless it is clearly not feasible to do so." 34 C.F.R. § 300.322(e).

IDEA's native-language standard "'protects the informed involvement of parents in the development of an education for their child' . . . and ensures that . . . parents 'understand the proceedings of the IEP Team meeting.'" *Garcia v. Morath*, 624 F. Supp. 3d 690, 703 (W.D. Tex. 2022) (quoting *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 524 (2007)). "Whether a parent needs a certain translation or interpretation service in order to meaningfully participate requires an individualized inquiry." *T.R. v. Sch. Dist. of Phila.*, 4 F.4th 179, 193 (3d Cir. 2021).

Here, Parent's native language is Arabic, and District acknowledges that it did not provide an Arabic interpreter for the September 23 eligibility meeting. (FF #s 81, 86). However, District asserts that Parent did not need an interpreter to understand the proceedings of the IEP meeting, given her English proficiency and expressed ability to communicate in English. (FF # 86).

The CDE agrees for these enumerated reasons: (1) Parent expressed to Case Manager 1 in Fall 2024 some ability to communicate in English effectively (FF # 83); (2) all communication between District staff and Parent during the 2023-2024 and 2024-2025 school years (prior to the filing of this Complaint) was in English, including email, telephone, and in-person communications (FF # 84); (3) Parent did not indicate at any point during that time period that she did not understand the subject matter of conversations or proceedings or request an interpreter, and District did not suspect any misunderstandings due to a language barrier (FF #s 84-85); (4) Student's Infinite Campus profile indicates Parent's preferred language is English (FF # 80); (5) Parent describes her own abilities as "proficient" in reading, writing, and comprehending written English and "average" in speaking and comprehending verbal English (FF # 82); and (6) Parent effectively communicated in English during the course of this investigation (FF # 88).

Parent may understandably be most comfortable communicating in her native language of Arabic. (FF # 81). However, Parent's misunderstandings during the September 23 meeting, or lack of complete understanding of all aspects of Student's reevaluation and assessment results, are indicative of the technical nature of special education processes, rather than a language barrier. (FF #s 56-60). Indeed, parents whose native language is English often have difficulty understanding terms and concepts involved in evaluations and eligibility determinations. However, the IDEA does not "guarantee that parents must fully comprehend and appreciate to

their satisfaction” all aspects of an IEP or eligibility meeting. *Colonial Sch. Dist. v. G.K. ex rel. A.K.*, 763 F. App’x 192, 198 (3d Cir. 2010) (finding meaningful participation does not “require perfect comprehension by parents of all aspects of a student’s IEP”). Thus, the CDE finds, based on a preponderance of the evidence, that Parent did not require an interpreter to understand the proceedings of the September 23 eligibility meeting. (FF #s 80-88).

In the absence of Parent’s request for an interpreter for the September 23 meeting here, and given the other evidence in the Record, the CDE finds and concludes that District took whatever action necessary to ensure that Parent understood the proceedings of the eligibility meeting and reasonably determined that Parent did not need an interpreter to do so, as required by 34 C.F.R. § 300.322(e). (FF #s 76-88).

Overall, the CDE finds and concludes that District adhered to the IDEA’s standards and procedures in its determination of Student’s eligibility at the September 23 meeting, as required by 34 C.F.R. §§ 300.306(c)(1)(i)-(ii) and 300.322(e).

### **C. Consistent with Student-Specific Data**

The CDE next considers whether the eligibility determination was consistent with the data in the record.

Here, the MDT found that Student had a qualifying disability of ASD under IDEA but determined that Student was able to receive reasonable benefit from general education and without special education or related services. (FF # 58). Parent is concerned that Student’s educational performance will be hindered without an IEP due to his disability. (FF #s 56, 59).

A medical diagnosis of ASD does not automatically qualify a student for special education services, and the “IDEA does not cover every student who is struggling in school.” *Charlotte-Mecklenburg Schs. Bd. of Educ.*, 64 F.4th 569, 576 (4th Cir. 2023); see *Denver Pub. Schs.*, 124 LRP 34381 (SEA CO 11/06/23); *Consideration of Clinical Diagnoses in the Educational Identification of Disabilities in Accordance with IDEA* (CDE Dec. 2015), available at [https://www.cde.state.co.us/cdesped/ta\\_clinicaldiagnoses](https://www.cde.state.co.us/cdesped/ta_clinicaldiagnoses). Instead, to be eligible under the IDEA, a child must have a qualifying disability and need special education and related serves as a result of that disability. *Id.* Specifically, not every child with a medical diagnosis of ASD “who has difficulties with communication, social interaction, or change will be eligible for IDEA services as a child with [ASD].” *Reading Sch. Dist.*, 121 LRP 13455 (SEA PA 09/06/19).

Here, the Record reflects that the MDT considered the Evaluation Report, Student’s progress on annual IEP goals, grades and test scores, teacher reports and observations, and Parent’s input in making its determination that Student was able to receive reasonable benefit from general education in spite of his ASD and without special education services. (FF #s 55-59). Parent simply disagreed with the MDT’s determination. (FF # 63).

Additionally, while Parent raised general concerns with Student's reading and writing skills and the MDT's conclusion that Student was not eligible for special education services, Parent did not raise concerns with the comprehensiveness of District's reevaluation or with any of the specific assessments or their results at the time of the eligibility meeting. (FF # 56). To the extent Parent now asserts that District's reevaluation or any specific assessments are invalid based on the IEE Report completed in February 2025—after this Complaint was filed— this is not information that the MDT had at the time of its decision in September 2024. (FF #s 55, 75).

The CDE must evaluate an MDT's decision based on the information the MDT had at the time of the eligibility determination "and not from the perspective of a later time with the benefit of hindsight." *L.J. ex rel. Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017). And the cumulative data in the Record indicates that Student does not need special education and related services as a result of his disability. (FF #s 5-11, 37-41, 47-53, 56-58). Thus, the CDE finds and concludes that District's eligibility determination was consistent with the data in the Record and complied with the IDEA.

**Conclusion to Allegation No. 3: District did not provide Parent a copy of the procedural safeguards in Parent's native language upon Student's reevaluation in September 2024, as required by 34 C.F.R. §§ 300.503(c)(ii), 300.504(d). This did not result in a denial of FAPE.**

Parent's concern is that District did not provide her with a copy of the procedural safeguards in her native language of Arabic at the time she requested Student's reevaluation in Fall 2024. (FF #s 3, 87).

#### **A. Legal Requirements: Procedural Safeguards Notice**

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time per school year, except that a copy must also be given to the parents (1) upon initial referral or parent request for an evaluation, (2) upon receipt of the first state or due process complaint in a school year, (3) in accordance with discipline procedures in 34 C.F.R. § 300.151, and (4) upon request of a parent. 34 C.F.R. § 300.504(a).

The IDEA also requires that the procedural safeguards notice be "[p]rovided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so." *Id.* §§ 300.504(d), 300.503(c). This is because the procedural safeguards notice would "be of limited value if parents were unaware of the rights that the safeguards afford." *T.R. v. Sch. Dist. of Phila.*, 4 F.4th 179, 184 (3d Cir. 2021). To that end, courts have held that school districts may not "dispense with [IDEA's] Notice requirement when a parent appears to know some English," but instead must provide the procedural safeguards notice in a parent's native language "unless it is clearly not feasible to do so," as the language of the statute requires. *Y.A. v. N.Y.C. Dep't of Educ.*, 69 IDELR 76 (S.D.N.Y. 2016); *see also Garcia v. Morath*, 624 F. Supp. 3d 690, 703 (W.D. Tex. 2022) (finding district policy, requiring that interpretation or translation be provided only for parents "unable to speak English," prevented parents who speak some English from being fully informed of and involved in the IEP process).

Here, District provided Parent a copy of the procedural safeguards notice on August 27, 2024, upon Parent's request for Student's reevaluation. (FF # 46). District acknowledges it provided Parent with copy of the PSN in English only, and not in Parent's native language of Arabic. (FF # 87). District does not argue that it was clearly not feasible to provide Parent a copy of the PSN in her native language, and the IDEA does not contain any exception for situations in which a parent, whose native language is other than English, has some English proficiency. *See* 34 C.F.R. §§ 300.503(c), 300.504(d); *Y.A.*, 69 IDELR 76 (S.D.N.Y. 2016).

For these reasons, the CDE finds and concludes that District did not comply with 34 C.F.R. §§ 300.503(c) and 300.504(d).

### **B. Procedural Noncompliance**

The United States Supreme Court has stressed the importance of complying with IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, the Record indicates that Parent has more than a limited English proficiency and did not require a copy of the PSN in Arabic to understand her rights described in the PSN, for the reasons enumerated in Conclusion to Allegation 2(B)(ii), above. (FF #s 80-88). Parent asserts that, without a copy of the PSN in Arabic, she was prevented from reading it thoroughly and understanding it clearly. (FF # 87). However, Parent concedes that she did not review the PSN that was provided to her in English. (*Id.*). Accordingly, the CDE finds and concludes that the procedural noncompliance with 34 C.F.R. §§ 300.503(c) and 300.504(d) did not result in a denial of FAPE.

**Conclusion to Allegation No. 4: District provided an IEE at public expense without unnecessary delay following Parent's request on October 11, 2024, as required by 34 C.F.R. § 300.502(b)(1)-(2).**

Parent's concern is that District did not timely respond to her October 11, 2024, request for IEE. (FF #s 3, 74).

### **A. Legal Requirements: IEEs**

Under the IDEA, parents have the right to seek an IEE at public expense if they disagree with an evaluation completed by the school district. 34 C.F.R. § 300.502(b)(1). An "IEE" is an evaluation conducted by a qualified examiner who is not employed by the child's school district. *Id.* § 300.502(a)(3)(i). Once a parent requests an IEE, the district must "without unnecessary delay" either: (1) file a due process complaint to request a hearing to show that the district's evaluation was appropriate; or (2) provide the IEE at public expense. *Id.* § 300.502(b)(2).



Neither the IDEA nor guidance from the U.S. Department of Education defines what constitutes “unnecessary delay.” *See id.* Whether a delay is unnecessary is a “fact-specific inquiry” which turns on the circumstances of the individual case. *C.W. v. Capistrano Unified Sch. Dist.*, 784 F.3d 1237, 1247 (9th Cir. 2015).

Prior CDE state-level complaint decisions also provide guidance on this issue. The CDE has previously found delays of 63 days and 120 days to be unnecessary. *See Boulder RE-1J, St. Vrain*, 123 LRP 5309 (SEA CO 09/14/22) (finding delay of 63 days without any communication to be unnecessary); *Weld Cnty. Sch. Dist. RE-5J*, 121 LRP 19090 (SEA CO 03/19/21) (finding four-month delay in providing the IEE to be unnecessary). Alternatively, the CDE has found delays of two weeks and 38 days to not be unnecessary. *See Arapahoe Cnty. Sch. Dist. 6*, 121 LRP 13659 (SEA CO 03/03/21) (finding two-week delay before moving forward with an IEE to be acceptable); *Denver Pub. Schs.*, 124 LRP 34289 (SEA CO 08/13/24) (finding delay of 38 days to be acceptable where there was miscommunication among the parties, initial responsiveness by the district, and no intent to purposefully delay the request).

### **B. Parent’s Requests for an IEE**

Here, Parent first requested an IEE on October 11, 2024, via email to SEIS. (FF # 68). Parent did not receive a response to this email. (*Id.*). Although District asserts that it received no follow-up from Parent after her October 11 request, the Record reflects that Parent made several further requests to three other District staff members after her October 11 request to SEIS. (FF #s 70-72). All District recipients of Parent’s email requests for IEE reported not receiving these emails for unknown reasons, though District speculates the emails may have been diverted to spam folders or blocked by District’s firewall. (FF #s 69-72). Ultimately, Parent requested an IEE via email to Principal on November 10, 2024, and on November 12, District agreed to fund the IEE and provided Parent PWN of its agreement. (FF # 73). In total, 32 days elapsed between Parent’s initial request for an IEE and District’s provision of PWN to Parent indicating its agreement to fund the IEE. (FF #s 68-73).

Courts have found no unnecessary delay in situations where the parties continue to discuss a parent’s IEE request and attempt to reach agreement until “a final impasse” is reached. *See L.C. ex rel. Cruz v. Alta Loma Sch. Dist.*, 849 F. App’x 678, 679-80 (9th Cir. 2021). “When a school district’s delay is unexplained, however, that weighs in favor of finding unnecessary delay.” *Id.*; *see Pajaro Valley Unified Sch. Dist.*, 47 IDELR 12 (N.D. Cal. 2006) (finding unnecessary delay where district did not explain why it took three months to file a due process complaint or why that delay was necessary).

Here, District’s lack of response to, or receipt of, several of Parent’s emails is certainly unexplained, as District concedes. (FF # 69). This is particularly so given this same issue recently arose in a prior state complaint involving District. *See Denver Public Schools*, 124 LRP 34289 (SEA CO 08/13/24). There, the parent requested an IEE via email to District, which initially responded and acknowledged receipt, but District did not respond to the parent’s follow-up email and speculated that it may have gone to staff’s spam folder. *Id.* As a result, 38 days elapsed between

the parent's initial request and District's approval of the IEE. *Id.* The CDE found that this delay was not unnecessary because District was initially responsive to the parent's request and there was no evidence that the email miscommunication was the result of any ill intent. *Id.*

Here, while the delay is unexplained, the Record indicates that District promptly approved Parent's request for IEE upon receipt of Parent's November 10 request to Principal and does not indicate the 32-day delay was based on any ill intent by District. (FF # 73). Therefore, given the relatively brief duration of the delay and the absence of any intent to purposefully delay the IEE, the CDE finds and concludes that the 32-day delay between Parent's initial request for an IEE and District's provision of PWN to Parent indicating its agreement was not unnecessary. (FF #s 68-73).

However, given the nearly identical issues presented here and in another state complaint, the CDE is concerned with the impact District's technological challenges may be having on parents' requests for IEEs—and on communication in general—particularly given District's preference that parents request IEEs in writing. (FF # 65). To that end, District has proposed to engage its information technology department to investigate and repair any malfunctions in District's email system to ensure communication is not further disrupted in this manner. District is also strongly encouraged to direct special education staff to check spam folders daily and to take whatever other action is necessary to resolve this technological or infrastructure issue to ensure parents' requests for IEE are not unnecessarily delayed. The Record does not indicate unnecessary delay in this case, but each inquiry is specific to individual circumstances and further unexplained delays of this nature will likely result in a finding of unnecessary delay.

Accordingly, the CDE finds and concludes that District provided an IEE at public expense without unnecessary delay following Parent's request on October 11, 2024, as required by 34 C.F.R. § 300.502(b)(1)-(2).

**Systemic IDEA Noncompliance: This investigation does not demonstrate 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, District's Policy is consistent with IDEA's requirements around IEP implementation, providing parents access to information in parents' native language, and parents' right to an IEE. (FF #s 12-14, 64-67, 76-79). Specifically, the Policy instructs that the procedural safeguards notice must be provided to parents in the parents' native language, unless it is clearly not feasible to do

so, consistent with IDEA. (FF # 77). The noncompliance here with respect to 34 C.F.R. §§ 300.503(c)(ii), 300.504(d) appears to stem from District staff's deviation from the Policy in this instance rather than a systemic concern. (FF #s 46, 77). Accordingly, the CDE finds and concludes that District's noncompliance is not systemic and is not likely to impact the future provision of services for all IDEA-eligible students in District.

### **REMEDIES**

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

1. Providing Parent a copy of the procedural safeguards notice in her native language, as required by 34 C.F.R. §§ 300.503(c) and 300.504(d).

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

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

- a. By **April 24, 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. Senior Manager, Principal, Case Manager 1, Case Manager 2, and SEIS must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.503 and 300.504, by **May 8, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **May 15, 2025**.

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

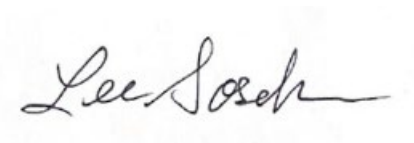
Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
201 E. Colfax Avenue  
Denver, CO 80203

**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 25th day of March, 2025.

A handwritten signature in black ink, appearing to read "Lee Sosebee", is written over a light blue rectangular background.

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Lee Sosebee, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-13**

- Exhibit 1: Email Correspondence
- Exhibit 2: MDT Members
- Exhibit 3: Email Correspondence
- Exhibit 4: Email Correspondence
- Exhibit 5: Email Correspondence
- Exhibit 6: 2023 IEP
- Exhibit 7: Evaluation Report

### **Response, pages 1-8**

- Exhibit A: IEP
- Exhibit B: Notices of Meeting
- Exhibit C: Prior Written Notices
- Exhibit D: Consent Documents and PSNs
- Exhibit E: Eligibility Documents
- Exhibit F: Evaluation Reports
- Exhibit G: Student Health History
- Exhibit H: IEE Documents
- Exhibit I: Attendance and Grades
- Exhibit J: Progress Reports
- Exhibit K: Service Logs
- Exhibit L: District Calendar
- Exhibit M: Policies and Procedures
- Exhibit N: Email Correspondence
- Exhibit O: District Staff
- Exhibit P: Infinite Campus
- Exhibit Q: 504 Plan

### **Reply, pages 1-18**

- Exhibit 8: IEE Report
- Exhibit 9: Email Correspondence
- Exhibit 10: PWN
- Exhibit 11: Consent to Evaluate
- Exhibit 12: Correspondence

### **Telephone Interviews**

- Principal: February 24, 2025

- Case Manager 2: February 24, 2025
- ELA Teacher: February 26, 2025
- SEIS: February 26, 2025
- Case Manager 1: February 26, 2025
- Senior Manager: February 27, 2025
- Parent: March 3, 2025

**CDE Exhibits**

- CDE Exhibit 1: Written Questionnaire of LSEIS
- CDE Exhibit 2: Written Questionnaire of Manager
- CDE Exhibit 3: Written Questionnaire of Director