

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

State Complaint SC2025-556
Pueblo County School District 70

DECISION

INTRODUCTION

On April 21, 2025, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Pueblo County School District 70 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two 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 April 21, 2025. Information prior to that date 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)² of the IDEA:

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

² The CDE’s state complaint investigation 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.

1. District did not review and, as appropriate, revise Student's Individualized Education Program ("IEP") between May 2024 and present to address behavior impeding Student's learning, as required by 34 C.F.R. § 300.324(b).
2. District did not fully implement Student's IEP from May 2024 to present because it:
 - 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);
 - b. Did not provide services listed in the IEP, specifically direct specialized instruction and speech-language services, as required by 34 C.F.R. § 300.323(c).

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 enrolled in a District middle school ("School") in sixth grade. *Exhibit AA*, p. 2. During the 2023-2024 school year, Student was enrolled at a District elementary school ("Prior School"). *Exhibit C*, p. 2. He qualifies for special education and related services under the disability categories of Multiple Disabilities, Autism Spectrum Disorders, Intellectual Disability, and Speech and Language Impairment. *Exhibit AA*, p. 2.
2. Student is kind, likable, and fun-loving. *Interviews with Parents and Student's speech language pathologist ("SLP")*; *Exhibit A*, p. 4. He is interested in electronics, loves to take pictures and movies, and enjoys being outdoors. *Interview with Parents*; *Exhibit AA*, p. 4.
3. This investigation involves the review, revision, and implementation of two IEPs in place for Student from April 2024 to present: one dated November 13, 2023 ("Prior IEP") and one dated November 18, 2024 ("Current IEP"). *Exhibits C and AA*. These IEPs were based on Student's most recent evaluation on November 14, 2022. *Exhibit CC*, p. 2.

B. The IEPs

4. Both IEPs document Student's present levels of educational performance, describing his strengths and interests, the results of recent evaluations and assessments, and the input of his teachers. *Exhibit C*, pp. 4-7; *Exhibit AA*, pp. 4-9.

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

5. Both IEPs describe Student's needs and the impact of his disabilities, noting difficulties in academics, social-emotional functioning, communication, and behavior. *Exhibit C*, p. 8; *Exhibit AA*, p. 10. In addition, both IEPs include input from Parent. *Id.*
6. Both IEPs note that Student exhibits behavior that requires a behavior intervention plan, that Student has limited verbal communication skills, that Student requires assistive technology, and that Student qualifies for special transportation. *Id.*
7. Both IEPs contain annual goals in the areas of reading, writing, mathematics, social-emotional wellness, self-determination, and communication. *Exhibit C*, pp. 8-12; *Exhibit AA*, pp. 10-14.
8. Both IEPs identify accommodations necessary for Student to access general education. *Exhibit C*, p. 12; *Exhibit AA*, p. 15. In addition, both IEPs note that Student's assignments in the general curriculum will be modified to his instructional level. *Id.*
9. Prior IEP's Service Delivery Statement identifies that Student will attend Prior School on a full-day basis, and that he will split his time between the general education classroom and Prior School's autism program. *Exhibit C*, p. 15. In relevant part, Prior IEP describes that Student receives:
 - 440 minutes per week of direct specialized instruction inside the general education classroom;
 - 1,312 minutes per week of direct specialized instruction outside the general education classroom; and
 - 120 minutes per month of direct speech-language therapy outside the general education classroom.

Id.
10. Prior IEP describes that the IEP team found that Student's appropriate least restrictive environment setting would be for him to be in the general education class less than 40% of the time. *Id.* at p. 16.
11. Current IEP's Service Delivery Statement identifies that Student "will receive instruction in a homebound setting at a neutral location" *Exhibit AA*, p. 17. It notes that Student will receive 120 minutes per week of direct specialized instruction outside the general education classroom. *Id.* Relevant to this Decision, Current IEP does not identify that Student will receive speech-language services. *Id.*
12. Current IEP describes that the IEP team found that Student's appropriate least restrictive environment setting would be for Student to receive "Homebound/Hospital" services outside of a school setting. *Id.*

13. Each IEP contains a Prior Written Notice (“PWN”). *Exhibit C*, pp. 16-17; *Exhibit AA*, pp. 18-19. The PWN for Prior IEP notes that the IEP would develop and incorporate a behavior plan to decrease negative behaviors, increase appropriate behaviors, and outline strategies for supporting Student. *Exhibit C*, pp. 16-17. The PWN for Current IEP describes that while District’s offer of FAPE was that Student would attend School on a full- or part-time basis, District would provide services in a homebound setting due to Student’s refusal to attend School. *Exhibit AA*, pp. 18-19.

C. District’s Policies, Practices and Procedures

14. District’s director of special education (“Director”) described District’s responsibilities under the IDEA, stating that District staff must be highly qualified and knowledgeable about special education. *Interview with Director*.
15. District provides regular professional development to staff members in order to ensure that they are knowledgeable about their responsibilities under IDEA and ECEA Rules. *Id.* In addition, District has two special education coordinators who work with building-level staff to answer questions and ensure compliance with special education laws. *Id.*
16. Director stated that when a student’s needs significantly change, District has a responsibility to review and revise the IEP to ensure that it continues to meet those changing needs. *Id.* She noted that although these changes may occur at an annual IEP meeting, an IEP team may need to convene more frequently depending on the nature of the student’s needs. *Id.*
17. Director described District’s responsibilities regarding IEP implementation, stating that District works to deliver the services described in the IEP. *Id.*
18. Director stated that any staff involved in the delivery of IEP services are made aware of their specific responsibilities in several ways. *Id.* Those staff members have access to information related to the IEP through the District’s student information management platform, and it is expected that the case manager for an IEP work with the responsible staff member to ensure that they are aware of their responsibilities. *Id.*
19. The case manager for Prior IEP was Student’s special education teacher at School (“Special Education Teacher”). *Interview with Special Education Teacher*. Following the issuance of Current IEP, one of District’s special education coordinators (“Coordinator”) assumed the role of Student’s case manager. *Interviews with Special Education Teacher and Coordinator*.
20. Special Education Teacher, SLP, and Coordinator each stated that they were able to readily access information about Student’s IEP through District’s student information management platform, and demonstrated familiarity with the services required by the IEP. *Interviews with Special Education Teacher, SLP and Coordinator*.

D. End of the 2023-2024 School Year

21. During the 2023-2024 school year, Student attended Prior School, a District elementary school with an autism program. *Interviews with Parents and Special Education Teacher; Exhibit C*, p. 2.
22. Parent alleges that on or around May 20, 2024, an incident occurred at Prior School in which Student returned home with bruising on his arm. *Complaint*, p. 5; *Interview with Parents*.
23. On May 21, 2024, Parent told Prior School's principal by telephone that Student would not be returning to Prior School during the 2023-2024 school year. *Exhibit MM*, p. 7.
24. Student was absent from Prior School from May 21, 2024, through the last day of the 2023-2024 school year on May 30, 2024—a period which included six school days. *Exhibit EE*, p. 2.

E. Start of the 2024-2025 School Year

25. Student, entering sixth grade, was slated to attend School, a District middle school with an autism program. *Interviews with Parents, Special Education Teacher and SLP; Exhibit AA*, p. 2.
26. On August 7, 2024, Special Education Teacher reached out to Student's previous special education teacher via email to ask for information about Student, and received a response describing Student's personality, learning style, behavioral concerns, and other information. *Exhibit MM*, p. 10.
27. On August 12, 2024, Director contacted Parent by phone to discuss options for Student to attend school, including full- or part-time attendance at School. *Id.* at p. 3. Director also proposed that Student could, at District's expense, receive applied behavior analysis ("ABA") therapy through a local private autism center ("Private Autism Center"). *Id.*; *Interview with Director*.
28. On August 20, 2024, Parent reported in an email to District's superintendent that she drove Student to School, but that he refused to go into the building. *Exhibit MM*, p. 11. Parent asked for a laptop on which Student could do his schoolwork. *Id.*
29. Later that day, Director sent Parent an email proposing an educational program in which Student would split his day between Private Autism Center, where he would receive ABA services and School, where District staff could support the skills learned in ABA and help transition Student into the new school setting. *Id.* at pp. 2-3. Director also stated that while Parent was deciding how to move forward with Student's return to school, she would have a laptop sent to Student's home to enable him to work remotely. *Id.*
30. On August 26, 2024, the laptop was delivered to Parent. *Id.* at p. 17. Two days later, Parent asked for the login information to be able to access Student's schoolwork on the laptop. *Id.* at p. 22.

31. That day, Director replied with Student's login information. *Id.* at p. 23. In the same email, Director urged Parent to discuss the proposals for delivering Student's services, noting that District could arrange for a homebound special education teacher to work with Student and that this instruction could take place in a location of Parent's choosing. *Id.*
32. In September 2024, Student began attending ABA therapy sessions at Private Autism Center, but did not attend School or receive homebound instruction. *Exhibit I*, p. 2; *Interview with Director*.
33. Director scheduled a meeting between herself, Parent, and Parent's advocate ("Advocate") on October 17, 2024 to discuss a plan for resuming Student's instruction. *Exhibit MM*, p. 30. Due to a scheduling conflict, the meeting was rescheduled to October 22, 2024, at which point the participants met and agreed that Student would attempt to attend School on a part-time basis. *Interviews with Director and Parents; Exhibit MM*, pp. 29-38.
34. On October 28, 2024, Parent met with School staff to discuss a re-entry plan for Student at School. *Exhibit MM*, p. 38; *Exhibit J*.
35. Two days later, Special Education Teacher emailed Parent to propose a plan for Student's return: "next week will just be a full week of [Student] coming to school from 11:30 a.m. to 12:30 p.m. to make sure he feels comfortable[.] Then we increase the following week by approximately a half hour or full hour, whichever you feel is best." *Id.* at p. 46. Parent replied, confirming her agreement to the plan. *Id.*
36. On November 4, 2024, Parent brought Student to School. *Interviews with Parents and Special Education Teacher; Exhibit MM*, p. 47. During the visit, Student hid behind Parent, vocalized that he did not want to be at school, and refused to visit Special Education Teacher's classroom. *Id.*
37. On each of the next two days, Special Education Teacher reached out to Parent to see whether Student would be returning to school. *Exhibit MM*, pp. 48-49.
38. On November 10, 2024, Parent emailed to say that because she was scheduled for a surgery, Student would not be attending the following week. *Id.* at p. 52.

F. The November 2024 IEP Meeting

39. On November 6, 2024, Special Education Teacher sent Parent a Notice of Meeting, proposing an IEP meeting for November 18, 2024. *Id.* at p. 50.
40. Student's IEP team, including Parent, Advocate, Special Education Teacher, SLP, an occupational therapist, a school psychologist, and Coordinator, met to review Student's IEP on November 18, 2024. *Exhibit BB; Interviews with Parent, Special Education Teacher, SLP, and Coordinator*.

41. During the meeting, Parent expressed that despite the new school and new staff, it was still too soon after the alleged incident of May 2024 for Student to attend School. *Exhibit BB*, p. 2. She expressed a preference that Student receive homebound services either at a public library or another “neutral” location. *Id.*
42. The IEP team discussed Student’s behavior, including his school refusal and work with the ABA therapists at Private Autism Center. *Exhibit AA*, pp. 4, 8; *Exhibit BB*, p. 2. Parent noted that Student’s behaviors of concern had increased since he had been out of school. *Exhibit BB*, p. 2. The team also discussed that Student’s behaviors are often sensory-seeking, and that he needs breaks built into his schedule. *Id.*
43. Parent stated that Student had discontinued private speech therapy, and that pursuant to his doctor’s recommendation, was only attending ABA. *Id.*
44. Current IEP, noting Parent’s rejection of District’s offer that Student attend School on a part- or full-time basis, identified a homebound placement for Student, in which he would receive two hours of direct instruction outside of the school setting, while continuing to attend ABA at Private Autism Center at District’s expense. *Exhibit AA*, pp. 18-19.
45. Current IEP does not include speech and language services. *Id.* at p. 17. The attached PWN states that “[c]ontinuing related services was considered based on [Student]’s previous IEP, this was rejected at this time because [Student] will temporarily be receiving homebound services outside of a school setting for an interim period based on parental preference.” *Id.*
46. Current IEP does not indicate, nor did members of the IEP team indicate when interviewed, that Student’s speech-language needs had significantly changed at the time of Current IEP’s development. *Exhibit AA; Interviews with Parent, Special Education Teacher, SLP, and Coordinator.*
47. Special Education Teacher stated that based upon this IEP meeting, Student’s behavior plan was updated. *Interview with Special Education Teacher.* However, a side-by-side review of Student’s previous behavior plan, dated November 14, 2023, and Student’s current behavior plan, dated November 19, 2024, shows that the two plans contain entirely identical language on a word-for-word basis, with the exception that Special Education Teacher’s name has replaced the name of Student’s previous special education teacher in all references⁴. *Compare Exhibit F*, pp. 3-7 and *Exhibit KK*, pp. 2-6. As of November 19, 2024, Student had been absent for all 56 instructional days of the 2024-2025 school year. *Exhibit HH*, p. 3.

⁴ The November 19, 2024 behavior plan notes, identically to the previous behavior plan, that a follow-up meeting to review the plan would occur on January 29, 2024, a date ten months prior to the issuance of the behavior plan. *Exhibit KK*, p. 5.

48. On December 13, 2024, Coordinator called Parent to discuss details of Current IEP, including the changes to Student's placement to a homebound setting, and finalized the document. *Exhibit MM*, p. 2.

G. District's Attempts to Provide Homebound Services

49. In December 2024, Director reached out to a retired District teacher with an active special education certification ("Contract Teacher") to ask if she would be willing to provide Student's homebound services and agreed on a contract with her. *Interviews with Director and Contract Teacher*. Director also coordinated with Private Autism Center to arrange for Student's instruction to be provided at their building, pursuant to Parent's request that the instruction take place at a location other than School or Student's home. *Interview with Director*.
50. Director met with Contract Teacher to review Student's services and provide Contract Teacher with a copy of Student's IEP. *Exhibit MM*, p. 68; *Interviews with Director and Contract Teacher*. Contract Teacher demonstrated familiarity with the services she was responsible for providing to Student. *Interview with Contract Teacher*.
51. In a December 27, 2024, email to Parent and Advocate, Director stated that Contract Teacher would provide direct instruction to Student for one hour per day twice a week starting January 8, 2025. *Exhibit MM*, p. 68.
52. Parent, Student, and Contract Teacher met at Private Autism Center on January 6, 2025, to discuss the plan to provide Student's direct instruction services. *Exhibit GG*, p. 2; *Interviews with Parent and Contract Teacher*. Parent and Contract Teacher exchanged phone numbers to communicate regarding the provision of services. *CDE Exhibit 1*, p. 1. During this meeting, Contract Teacher was unable to work directly with Student. *Interview with Contract Teacher*.
53. On January 8, 2025, the day of the first scheduled session, Contract Teacher texted Parent to ask whether Student would be coming to Private Autism Center that day. *CDE Exhibit 1*, p. 1. Parent responded to say that they would not be coming due to weather. *Id.*
54. On Sunday, January 12, 2025, Contract Teacher sent a message to Parent reminding her that sessions were scheduled for Wednesday and Thursday of that week. *Id.* at p. 2. On Wednesday morning, Parent sent a message stating that they would not be at Private Autism Center that day. *Id.* at p. 3. Contract Teacher responded, asking if Student would be attending on Thursday, to which Parent responded that he would not. *Id.*
55. The day before Student's next scheduled session on January 20, 2025, Parent again stated that Student would not be attending. *Id.* at p. 4. Contract Teacher proposed, in messages sent January 19 and January 21, rescheduling the session for January 23. *Id.* at p. 5. Parent expressed a preference that they meet the following Monday, January 27, 2025, and Contract Teacher agreed. *Id.*

56. The day before the January 27, 2025, session, Contract Teacher reminded Parent of the session, and Parent confirmed. *Id.* at pp. 6-7. The morning of the session, Parent texted to say that Student's sibling was ill and that Student would not attend. *Id.* at p. 8.
57. That day, Contract Teacher tried to schedule out for later in the week, but Parent stated that Student would not be available at all that week. *Id.* at pp. 9-10.
58. On February 2, 2025, Contract Teacher sent a text message reminding Parent of the next day's session. *Id.* at p. 10.
59. Parent responded, stating: "After talking it over with my husband and our care team, I think it's best we go another route completely. I've decided to homeschool [Student]. I will notify [Director] in the morning." *Id.* at p. 11.
60. From the first scheduled session on January 8, 2025 through Parent's discontinuation of services on February 2, 2025, Student did not attend any sessions with Contract Teacher or receive any direct instruction from her. *Interview with Contract Teacher; Exhibit MM, p. 68; CDE Exhibit 1.*
61. Contract Teacher emailed Director to inform her that Parent had decided to discontinue homebound services. *Exhibit MM, p. 77.*
62. Director called Parent to discuss her discontinuation of homebound services on February 4, 2025, February 13, 2025, and March 6, 2025, leaving a message each time. *Interview with Director; Exhibit MM, p. 2.* Parent did not return Director's phone calls. *Id.*
63. Parent stated, when interviewed for this investigation, that she discontinued these services because she did not feel comfortable with Contract Teacher and indicated that Student would not feel safe with her. *Interview with Parent.*
64. Student continued to attend ABA services at Private Autism Center through March 18, 2025. *Exhibit V, p. 6.*
65. Following a proposal by the ABA therapist that Student attend therapy without Parent's presence in the room, Parent discontinued ABA services. *Exhibit MM, p. 78.*
66. As of the end of the 2024-2025 school year, Student has not attended School and has not received direct instruction or speech-language services whether in school or out of school. *Interviews with Parent, Coordinator, Special Education Teacher, SLP and Director.*

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 review and revise, as appropriate, Student's IEP to address behavior impeding Student's learning from May 21, 2024 to present, as required by 34 C.F.R. § 300.324(b). This resulted in a denial of FAPE.

Parent's concern is that District did not address Student's behavioral concerns in such a way that he was able to attend School or access his education. (FF # 41.)

A. Legal Obligation to Review and Revise IEPs

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399. The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* at 400. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address any lack of expected progress toward the annual goals, the results of any reevaluation, "[i]nformation about the child provided to, or by, the parents," "[t]he child's anticipated needs," or other matters. *Id.*; see *Endrew F.*, 580 U.S. at 400.

The U.S. Department of Education confirmed that an "IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it." *Questions and Answers on Endrew F.*, 71 IDELR 68 (EDU 2017). This includes monitoring and revising an IEP as necessary, particularly if appropriate progress is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.*

For instance, persistent attendance issues may prompt a district's IDEA obligations in this respect when the student's lack of attendance is connected to his or her disability. *Lamoine Sch. Comm. v. Ms. Z. ex rel. N.S.*, 353 F.Supp.2d 18, 33, 34 (D.Me. 2005); see also *Middleton*, 312 F.Supp.3d at 146 ("[A] student may be denied a FAPE if his educational plan does not contain sufficient interventions to adequately address attendance issues").

B. District's Response to Attendance Issues

Here, District was aware of significant attendance issues, to the point that Student did not attend School (or later, his homebound services) throughout the entire of the 2024-2025 school year. (FF #s 60, 66.) In November 2024, after an attempt to bring Student back to School did not work due to Student's school-related anxiety, District convened an IEP team meeting. (FF #s 36-48.) Upon reviewing Student's records and considering Parent's input, the IEP team made several revisions to Student's IEP. (FF #s 41-48.)

Nevertheless, the CDE finds and concludes that District did not review and revise the IEP to address Student's behavior as required by 34 C.F.R. § 300.324(b), and that additional revisions were made inconsistent with the IDEA and ECEA Rules.

C. Student's Behavior Plan

First, in conducting a review of a child's IEP, school districts must consider the use of positive behavioral interventions and supports. 34 C.F.R. § 300.324(b)(2). Behavioral concerns which significantly impede a student's learning may be addressed through a behavior plan. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). Excessive absenteeism is a behavioral concern to be addressed by a behavior plan. See *District of Columbia Pub. Schs.*, 120 LRP 176 (SEA DC 10/03/19); *Huron Sch. Dist.*, 68 IDELR 178 (SEA SD 2016).

Here, District purports to have revised Student's behavior plan based on the IEP team meeting. (FF # 47.) However, the Record indicates that Student's behavior plan has remained unchanged since November 2023—except an update to the name of Student's special education teacher—long before the onset of Student's school refusal behaviors. *Id.* At the time District declined to substantively update Student's behavior plan, he had been absent for all 56 instructional days that school year, and 62 consecutive instructional days dating back to May 2024. (FF #s 24, 47.)

Based on these facts, the CDE finds and concludes that District did not revise Student's behavior plan to address absenteeism, as required by 34 C.F.R. § 300.324(b).

D. Removal of Student's Speech-Language Services

Second, a student's IEP must be based upon that student's unique educational needs. *Andrew F.* at 387. One factor an IEP team must carefully consider when reviewing and revising an IEP is the input of the student's parents. See 34 C.F.R. § 300.324(b)(1)(ii)(C). But the IEP team must not subordinate the student's needs to the parent's wishes. See, e.g., *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999) ("Nevertheless, the IDEA does not require school districts simply to accede to parents' demands without considering any suitable alternatives"). The IEP Team must also consider the child's anticipated needs and other matters. 34 C.F.R. § 300.324(b)(1)(ii).

An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services" *Id.* If the IEP team cannot reach a consensus, the district must make the decision and provide parents with prior written notice of its proposals and refusals. *Id.* Indeed, parents do not have "veto power" over IEP team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15).

Here, the IEP team removed all speech-language service minutes from Student's IEP. (FF # 45.) Neither the IEP itself nor any IEP team member interviewed expressed that Student's speech-language needs had changed: rather, the removal of these service minutes was based on Parent's statement that Student's doctor had recommended limiting Student's services, and on Student's refusal to attend school. (FF # 41, 13.) At the time the IEP team chose to remove these services, Student, who had a documented need for speech services in Prior IEP, had not attended School and therefore had not received speech services from District for six months—no evidence in the Record indicates that his speech-language needs had diminished or changed. (FF #s 24-38, 47.)

Based on these facts, the CDE finds and concludes that, while revising Student's IEP, District did not consider Student's anticipated speech language needs, as required by 34 C.F.R. § 300.324(b)(1).

E. Significant Change of Placement without Reevaluation

Third, under the ECEA Rules, any significant change of placement made to a Student's LRE must be made upon consideration of a reevaluation. *ECEA Rule 4.03(8)(b)(ii)(B)*. A significant change of placement is one involving "[t]he child having different opportunities to participate in nonacademic and extracurricular services." *ECEA Rule 4.03(8)(b)(ii)(A)*.

Here, the IEP team changed Student's placement from its original offer of services within School's autism program to a homebound placement, reducing Student's direct instruction minutes from 1,712 minutes per week to 120 minutes per week. (FF #s 9-13, 44.) This change of placement was made without considering a reevaluation of Student, instead basing the IEP on Student's most recent evaluation in November 2022. (FF # 3.) Because the change of placement from School's autism program to homebound services involved substantially different opportunities to participate in nonacademic and extracurricular services, it was a significant change of placement under the ECEA Rules and must not have been made without consideration of a reevaluation.

Based on these facts, the CDE finds and concludes that, while revising Student's IEP, District, through the IEP team, made a significant change of placement without consideration of reevaluation, as required by ECEA Rule 4.03(8)(b).

F. Denial of FAPE

The CDE finds and concludes that District's noncompliance related to the review and revision of Student's IEP resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements). As a result, the CDE will order corrective action to address this denial of FAPE.

Conclusion to Allegation No. 2: District fully implemented the IEP from May 2024 to present, consistent with 34 C.F.R. § 300.323. District complied with the IDEA.

Parent's concern is that Student has not received direct instruction or speech-language services since May 2024. (FF # 64.)

A. IEP Implementation: Legal Requirements

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.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. 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.” 34 C.F.R. § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider 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. IEP Accessibility and Responsibilities

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, District staff members responsible for delivering the relevant IEP services had access to the IEP through District’s student information management platform, or in the case of Contract Teacher, received a paper copy of Student’s IEP. (FF #s 20, 50.) In addition, staff members demonstrated familiarity with and understanding of their respective responsibilities under the IEPs. *Id.* Accordingly, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

C. Implementation of Direct Instruction and Speech-Language Services

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2) from May 2024 to present. A parent whose actions prevent a school district’s ability to fully implement an IEP cannot complain that the IEP has not been implemented as written. *Boulder Valley School District RE-2*, 124 LRP 34351, (CO SEA 2023). *See also*, *Montgomery County Public Sch.*, 111 LRP 54915, (Md. SEA 2011). A school district can be held to implement only so much of the IEP as it reasonably can within the constraints imposed by the parent’s actions. *Id.*; *accord D.O. v. Escondido Union Sch. Dist.*, 59 F.4th 394, 412-13 (9th Cir. 2023); *Dougall v. Copley-Fairlawn City Sch. Dist. Bd. of Educ.*, 2020 WL 435385, at *28 (N.D. Ohio Jan. 28, 2020).

Here, the parties agree that Student has not received IEP services since he was withdrawn from Prior School on May 21, 2024. (FF #s 23-24, 28-38, 49-66.) Student has not attended school, or participated in any of his instructional services, since that date. (FF # 66.)

However, the Record shows that District stood ready and able to deliver Student’s IEP services had they been permitted by Parent to provide them. (FF #s 25-38, 49-68.) Prior to the school

year, Special Education Teacher reached out to Student's previous providers to gather information in preparation for his attendance at School. (FF # 26.) Director, aware of Student and Parent's hesitation, offered additional options for Student to receive services. (FF #s 27, 29.) District ensured that Student had access to a laptop on which he could remotely access his schoolwork while Parent decided whether she would permit Student to attend. (FF #s 28-31.) Director scheduled a meeting between herself, Parent, and Advocate to develop a plan to bring Student back to school on a gradual basis, and School staff met with Parent to further discuss and develop that plan. (FF #s 33-35.) School staff arranged for Student to visit School and meet his providers. (FF # 36.) And when Student did not return to school following that visit, Special Education Teacher repeatedly reached out to Parent to try to develop a new plan. (FF # 37.)

Following this, District sought to provide Student with homebound services at Private Autism Center, an environment in which he had demonstrated attendance at ABA sessions paid for by the District. (FF #s 29, 32, 44, 49.) District hired Contract Teacher to provide services, and Contract Teacher met with Parent to plan the provision of those services. (FF #s 49-52.) Contract Teacher scheduled or sought to schedule instruction with Student on eight occasions, and Parent canceled, re-scheduled, or did not attend on all eight instances. (FF #s 53-60.) Following the cancellation of the February 2, 2025 session, Parent communicated that she no longer wished to receive homebound services and would be homeschooling Student. (FF # 59.) Following Parent's discontinuation of services, Director attempted to contact Parent multiple times to discuss further options, but Parent did not return her calls. (FF # 62.)

The CDE finds that, with respect to implementation, District took all necessary steps to ensure that Student would have received his education had he been permitted by Parent to attend school or participate in homebound instructional sessions. *Montgomery County Public Sch.* at 54915. Thus, the CDE finds and concludes that District made Student's IEP services available to him, and therefore complied with 34 C.F.R. § 300.323(c)(2).

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature nor that it will likely impact the future provision of services for all children with disabilities in District if not corrected.

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, nothing in the Record indicates that District's noncompliance is systemic in nature. District provides consistent training to staff members regarding their IEP development responsibilities, and special education administrators make themselves available to building-level staff to ensure compliance with IDEA and ECEA Rules. (FF #s 14-18.) Director described policies, practices and

procedures consistent with these legal requirements. *Id.* Moreover, the unique nature of this investigation's facts renders the noncompliance unlikely to recur because, although District improperly revised Student's IEP, it was in an attempt to provide services to a Student who had not attended school in six months and whose Parent indicated that she would not return him to School barring her requested placement change. (FF #s 25-38, 44.) Accordingly, the CDE finds and concludes that this noncompliance is not likely to impact the future provision of services for all children with disabilities in the District.

REMEDIES

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

1. Review and revise, as appropriate, the IEP, as required by 34 C.F.R. § 300.324(b).
2. Making a significant change of placement without consideration of reevaluation, as required by ECEA Rule 4.03(8)(b).

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

1. Corrective Action Plan

- a. By **Monday, July 21, 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, Coordinator, and all other District special education coordinators must read this Decision in its entirety, as well as the requirements of 34 C.F.R. §§ 300.324 and ECEA Rule 4.03(8), by **Monday, August 4, 2025**. If these individuals are no longer employed by District, 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 no later than **Monday, August 11, 2025**.

3. Evaluation

- a. By **Friday, September 19, 2025**, District must conduct a comprehensive evaluation of Student in all areas of suspected disability. District may determine the appropriate evaluations and evaluators. The evaluation must be conducted in all

areas of suspected disability and be consistent with the IDEA's evaluation procedures at 34 C.F.R. § 300.304. The evaluator(s) must be appropriately licensed, trained, and knowledgeable to conduct the assessments.

- b. Consent for the evaluation must be obtained no later than **Monday, July 21, 2025**. If Parents do not provide consent within 10 days of receiving the request to evaluate, District will be excused from conducting the evaluation ordered in this Decision. If Parents condition consent for evaluation inconsistent with the scope of the evaluation ordered in this Decision, this may be construed as a refusal to provide consent. A determination that Parents refused consent by adding conditions rests solely with the CDE.
- c. Evidence that this evaluation has occurred—including consent to evaluate and the evaluation report—shall be provided to the CDE by **Friday, September 28, 2025**.

4. IEP Meeting

- a. District must convene Student's IEP team, at a mutually agreeable date and time, by **Monday, September 22, 2025**. In consideration of all recent evaluations of Student and the concerns identified in this Decision, Student's IEP team must review, and as appropriate, revise Student's IEP consistent with 34 C.F.R. § 300.324 and ECEA Rule 4.03(8). The IEP team shall discuss and develop strategies designed to address Student's attendance issues.
- b. If Parents refuse to participate in the IEP meeting, District may convene a meeting without Parents, provided District diligently attempts to secure Parents' participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure Parents' participation rests solely with the CDE.
- c. By **Monday, October 20, 2025**, District must provide notice of the IEP meeting, proof the meeting was scheduled at a mutually agreeable date and time, proof of attendance of IEP Team members (such as a signature page), and a finalized IEP to the CDE.

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's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; see also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer ("SCO").

Dated this 20th day of June, 2025.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Exhibit 1: IEPs and medical records

Response, pages 1-8

- Exhibit A: Evaluation
- Exhibit B: November 2022 IEP
- Exhibit C: November 2023 IEP
- Exhibit D: August 2024 email
- Exhibit E: Observation notes
- Exhibit F: September 2023 PWN and Behavior Plan
- Exhibit G: August 2024 email
- Exhibit H: August 2024 email
- Exhibit I: ABA progress monitoring
- Exhibit J: October 2024 meeting notes
- Exhibit K: November 2024 email
- Exhibit L: November 2024 IEP
- Exhibit M: November 2024 PWN
- Exhibit N: Communication log
- Exhibit O: Doctor's note from November 2024
- Exhibit P: Emails from December 2024 and January 2025
- Exhibit Q: January 2025 email
- Exhibit R: February 2025 email
- Exhibit S: April 2025 email
- Exhibit T: Treatment Plan update
- Exhibit U: Contract Teacher notes
- Exhibit V: Service logs
- Exhibit AA: IEPs
- Exhibit BB: IEP Meeting Documentation
- Exhibit CC: Evaluations
- Exhibit DD: PWNs
- Exhibit EE: Schedules, Grades, Attendance
- Exhibit FF: Progress Monitoring
- Exhibit GG: Service Logs
- Exhibit HH: District Calendar
- Exhibit II: n/a
- Exhibit JJ: n/a
- Exhibit KK: Behavior plan
- Exhibit LL: District Policies and Procedures
- Exhibit MM: Correspondence

- Exhibit NN: List of District Staff

Reply, pages 1-2

- Exhibit 2: Various documents related to Complaint

Telephone Interviews

- Parents: May 21, 2025
- Special Education Teacher: May 20, 2025
- SLP: May 20, 2025
- Contract Teacher: May 20, 2025
- Director: May 20, 2025
- Coordinator: May 20, 2025