

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

State Complaint SC2025-572
Colorado Springs School District 11

DECISION

INTRODUCTION

On May 30, 2025, the parents (“Parents”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Colorado Springs School District 11 (“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 final written 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 May 30, 2024. Information prior to May 30, 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)² of the IDEA:

1. District did not provide Parent with proper written notice of its proposed or refused actions regarding the provision of FAPE on March 20, 2025—specifically by not including

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.

an explanation of why District proposed or refused to take the action—as required by 34 C.F.R. § 300.503(b)(2).

2. District did not properly determine Student’s eligibility and educational need at a meeting on May 19, 2025, because it did not ensure that information obtained from a variety of sources was documented and carefully considered, as required by 34 C.F.R. § 300.306(c)(1)(ii).

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 five years old and recently completed kindergarten at a District elementary school (“School”). *Response*, p. 1. He is not eligible for special education services. *Exhibit B*, p. 4.
2. Student is “very intelligent” and “has a desire to learn”; however, he has a “hard time focusing and staying on task.” *Interview with Parents*. He gets overwhelmed and does not know how to ask for help. *Id.* Student “has a great sense of humor” and “a smile that lights up the room.” *Interviews with School’s general education teacher (“General Education Teacher”) and School’s MTSS Coordinator (“MTSS Coordinator”).*
3. This investigation involves Parent’s concerns with a prior written notice issued on March 20, 2025, and with Student’s May 2025 eligibility determination. *Complaint*, pp. 7-12.

B. District’s Policies, Practices, and Procedures

4. District has comprehensive guidance documents on IDEA policies, practices, and procedures. *Interview with District’s executive director of special education (“Director”).* This includes a (1) “One Note”; (2) “Rainbow Book”; and (3) “Special Education Handbook.” *Id.*; *Exhibit L*, p. 1-55.
5. The “One Note” includes examples of various documents, including prior written notices, the CDE’s procedural safeguards notice, and a checklist for IEP Meetings. *Exhibit L*, p. 5. The “Rainbow Book” provides the “required criteria and information for an evaluation needed to determine eligibility” for the IDEA’s thirteen disability categories. *Id.* at p. 6.
6. The “Special Education Handbook” provides information on the responsibilities of special education teachers, case managers, and teachers as they pertain to IDEA requirements. *Id.* at

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

pp. 8, 11. Relevant here, it provides checklists for, in part, eligibility determinations, IEP meetings, initial evaluations, and parent requests for evaluations. *Id.* at pp. 29-39.

7. Director described District must issue a prior written notice any time it makes a change to a student's IEP or programming. *Interview with Director*. District advises staff to issue a prior written notice after a decision is made and before the decision is implemented so the parent is aware of their rights. *Id.* Prior written notices are built into all IEPs, amendments, changes, and requests for evaluations in District paperwork. *Id.*
8. Director explained the process following requests for an initial evaluation. *Id.* A team will meet to ensure they understand a parent's concerns. *Id.* The team discusses the data they already have on Student and what assessments they need to do to have a comprehensive evaluation. *Id.* Then, the team will document its decision in a prior written notice. *Id.*
9. District incorporates multiple training opportunities for staff on IDEA policies, practices, and procedures. *Id.* District holds professional learning days where it provides lengthier training to staff on IDEA topics. *Id.* Every school within District has a staffing coordinator who attends a meeting once a month to be trained on a "hot" topics and then share what they learn with other staff. *Id.* Director also sends out a question and answer of the week. *Id.*

C. Parent's Evaluation Requests

10. In an email to District staff dated March 19, 2025, Parent requested a special education evaluation of Student. *Exhibit M*, pp. 2-4. Parent cited numerous reasons for the request, including that Student "has a difficult time focusing or staying on task" and challenges with "self-regulation." *Id.* at pp. 2-3.
11. One of School's special education teachers ("Special Education Teacher") received Parent's evaluation request. *Id.* at pp. 1-4. *Interview with Special Education Teacher*. Special Education Teacher did not know Student at that point in time but consulted with MTSS Coordinator and School's special education coordinator ("Special Education Coordinator"). *Id.*; *Exhibit M*, pp. 1-2. During this consultation, MTSS Coordinator shared Student had "one suspension for extreme obstinance.⁴ He has been sent to [the] office to get work completed and he does use headphones at time[s]...[t]hey have the aid that often works with him to get work completed." Following the consultation, District issued a prior written notice (the "PWN") to Parent on March 20, 2025, indicating that District would not evaluate Student. *Exhibit B*, p. 1.
12. To explain District's decision, the PWN indicated that Student "has had classroom tier 1 interventions. The team will hold a multi-tiered system of support meeting with parent to determine next steps to support [Student]." *Id.* The PWN lists teacher report and data, review

⁴ Although discipline is beyond the scope of this investigation, the CDE notes that CRS 22-33-106.1(2)(a) limits the use of out of school suspension or expulsion of a child aged preschool through second grade to conduct that involves the possession of a dangerous weapon, the use, possession, or sale of a drug or controlled substance, or conduct that threatens the health and safety of others.

of educational records, classroom observation, parent reports, and an “IEP document” which is information from a 2022 determination in which he was found ineligible for special education services. *Interview with Special Education Teacher; Exhibit P*, p. 27.

13. The PWN includes a statement that Parent has protection under the procedural safeguards and how a copy of a description of the procedural safeguards can be obtained. *Exhibit B*, p. 1. It also includes a source for Parent to contact to obtain assistance in understanding the information contained therein. *Id.*
14. The PWN noted that the other option District considered was “[c]ontinuing in general education without an evaluation” with an “N/A” listed as the reason this option was rejected. *Id.* This is because District proceeded with the option of Student continuing in the general education setting without an evaluation. *Interview with Special Education Teacher.*
15. As other factors that were relevant to the decision, the PWN indicates that “parent input was considered”; the “[t]eam considered the needs of student”; and “[i]nstructional staff will monitor [Student’s] behavioral progress as part of the multi-tiered system of supports.” *Exhibit B*, p. 1.
16. Special Education Teacher had a telephone call with Parent to discuss District’s decision before issuing the PWN. *Exhibit M*, p. 8; *Interviews with Special Education Teacher and Parents*. Special Education Teacher then sent the PWN to Parent via email. *Id.* at pp. 8-9. Parent followed up with District in an e-mail on March 21, 2025, noting her disagreement with the decision and requesting an evaluation for a second time. *Id.* at pp. 14-16.
17. On April 2, 2025, District agreed to evaluate Student. *Exhibit M*, p. 38. On April 7, 2025, District provided Parent with a prior written notice and consent for the evaluation. *Exhibit B*, p. 2. On the same day, Parent signed consent to evaluate Student in the areas of educational impact, health, hearing and vision as necessary, social, emotional, and behavioral development, and communication skills. *Id.*

D. Evaluation

18. School completed Student’s evaluation and issued an evaluation report (the “Report”) on May 21, 2025. *Exhibit E*, pp. 67-78. The evaluation assessed Student in all areas identified in the consent to evaluate. *Id.*; *see Exhibit B*, p. 2.
19. Student’s academic progress is reported to be at grade-level standards in reading and math, and below grade level standards in writing. *Exhibit E*, p. 67. In writing, Student requires one on one support and extended time to complete tasks. *Id.*
20. Student’s social and behavioral observations show that “when anxious or unsure, he may shut down and remain inactive for long period . . . he struggles with organization, attention, and task follow-through.” *Id.* Student’s “emotional responses and self-regulation are less mature than peers, which can impact academic engagement and readiness.” *Id.*

21. General Education Teacher administered the Dynamic Indicator of Basic English Language Skills (DIBELS) three times to Student throughout the 2024-2025 school year. *Id.* at p. 69. In the Letter Naming Fluency and Word Reading subcategories, Student scored well below average at both the beginning and end of the year. *Id.* In the Phoneme Segmentation Fluency category, Student scored in the above average range at the beginning of the year assessment and in the benchmark category at the end of year assessment. *Id.* In the Letter Sound Fluency category, Student scored well below average the beginning of the year assessment and in the benchmark range at the end of year assessment. *Id.* In the Decoding category, Student scored below average at the beginning of year assessment, and in the benchmark range at the end of year assessment. *Id.* Student's composite score was well below average at the beginning of the year, and his end of year score was considered below benchmark. *Id.*
22. Special Education Coordinator administered the AimsWeb Spelling and Math Assessments to evaluate Student's skills, respectively, compared to his grade-level peers nationally. *Id.* In spelling, Student scored in the average range. *Id.* at pp. 69-70. In math, Student scored below the 50th percentile line which is considered below average. *Id.* During the Math Assessment, Student would comment on numbers he liked or about a trip he had to the park when the word problem mentioned a park. *Id.* Student's inability to "focus on the task...impacted his overall scores." *Id.*
23. The Report noted interventions School used throughout the school year for Student. *Id.* In the Fall 2024, due to Student's "refusal to engage in instruction and tantrums" General Education Teacher developed an informal Instruction Support Plan that included a Behavior Monitoring Reward Sheet. *Id.* at p. 71. General Education Teacher and MTSS Coordinator developed Tier 1 interventions for Student in the second semester. This was a Check-In/Check-Out system. *Id.* The MTSS team formally met regarding Student on April 8, 2025, and developed additional Tier 2 MTSS support.
24. This additional support included these accommodations: (1) a "Break Card" which would allow Student to non-verbally request a break when he feels dysregulated or overwhelmed; and (2) scheduled breaks after high activity to provide Student a chance to decompress and self-regulate before transitioning back to class. *Id.* The Report notes that, "despite ...progress, there has been no significant improvement in work completion." *Id.*
25. The Report includes four separate Social Emotional and Behavioral observations of Student. *Id.* During the first three observations, Student followed directions, played with classmates, "was attentive," and responded to questions and directions from his teacher appropriately. *Id.* During the fourth observation, Student "immediately became upset" when corrected during a writing lesson. *Id.* at p. 92. Student was moved to and supported in a calm down room and continued to cry for ten minutes, unable to engage in simple conversation. *Id.* Once he was able to calm down his body, he was able to engage in simple conversation. *Id.*
26. The Report includes four separate "Time on Task" observations of Student. *Id.* During the first two observations, Student was on task 50% of the time compared to two peers who were on

task 65% and 85% of the time; and 53% of the time compared to two peers who were on task 83% and 63% of the time. *Id.* During these observations, Student was wandering around the room, focusing on a loose knot in the headphone cord, and swinging his headphones around. *Id.* Student was also engaging in refusal behavior, including putting his head down and closing his eyes. *Id.* During the third observation, Student was on task 0% of the time. *Id.* at p. 93. Student was observed a fourth time during small group writing time while the students wrote about their field trip. *Id.* Student was on task 97% of the time. *Id.*

27. Parent and General Education Teacher completed the Behavior Assessment System for Children, Third Edition. *Id.* at p. 74. Both Parent and General Education Teacher reported Student struggles significantly with Depression and Withdrawal. *Id.* at p. 75.
28. SLP administered the Clinical Evaluation of Language Fundamentals, a test used to “determine the presence or absence of possible language deficits that may be affecting educational performance.” *Id.* at p. 74. Student scored below average in the sentence comprehension subtest. *Id.* at p. 76. The results of this assessment were used to complete the Colorado Rating Scale, a “tool used to help determine eligibility for speech-language service in the school setting. *Id.* Student scored in the “no impairment” range indicating language skills are functional for the classroom setting. *Id.*
29. School’s occupational therapist administered the Beery-Buktenica Developmental Test of Visual Motor Integration (“VMI”). *Id.* The VMI is “designed to evaluate an individual’s ability to integrate visual and motor skills, which are crucial components of classroom functioning. *Id.* Student scored within the average range on all three subtests. *Id.* at p. 77.
30. General Education Teacher administered the Sensory Processing Measure, 2nd edition. *Id.* at p. 77. This is a “norm-referenced measure of function in the visual, auditory, tactile, olfactory, gustatory, proprioceptive (body awareness), and vestibular (balance and motion) sensory systems, as well as praxis and social participation.” *Id.* Student’s score indicated “typical behaviors” in body awareness, moderate difficulties in taste and smell, and severe difficulties in vision, hearing, touch, balance, sensory total, planning and ideas, and social participation. *Id.* at p. 78.
31. Finally, the Report includes a summary statement that “Student demonstrates difficulty with self-regulation but responds at school to structured interventions.” *Id.* It also reflects that Student is “capable of staying on task, but his instructional day is impacted when he is not.” *Id.* It adds that when Student “is well regulated, his speech and language skills are a strength for him.” *Id.*
32. Based on a review of the Report, the data shows that Student has challenges with managing and sustaining attention. *Consultation with CDE Specialist.* This challenge with attention has lasted throughout the school year, across multiple settings, and with multiple educators. *Id.* The data also reflects that Student cannot perform compared to typical peers. *Id.* And the

fluctuation in scores show this challenge with attention is impacting his ability to access education. *Id.*

33. On May 13, 2025, District provided Parent with a notice of meeting to review the Report and determine Student's eligibility on May 19, 2025. *Exhibit M*, p. 82.

E. Eligibility Determination

34. On May 19, 2025, a properly convened MDT, including Parent, met to review the Report and consider Student's eligibility for special education and related services. *Exhibit E*, pp. 67-78.
35. The MDT reviewed each component of the Report, and MDT members discussed the results of Student's assessments in their respective areas and shared observations and input. *Interviews with Special Education Teacher, Special Education Coordinator, and Parents*. OT was unable to attend the eligibility meeting but completed an excusal sheet. *Exhibit I*, p. 1. OT noted sensory regulation as a challenge for Student as he is "frequently distracted by visual and auditory stimulation, often with difficulties responding to his name and paying attention during a noisy classroom." *Id.* Student "shows difficulties with touch . . . balance and frequent movement . . . [and] with [p]lanning and [i]deas." *Id.* Student would benefit from "sitting near the teacher for instruction, [from] access to a quiet space or noise cancelling headphones . . . and extra time and adult support to complete multi-step directions." *Id.*
36. After reviewing the Report, the MDT discussed whether Student qualified as a child with OHI. *Interviews with Parents and Special Education Coordinator; Exhibit I*, p. 2.
37. The MDT had a broad discussion around both whether Student met the definition of OHI and, if he did, if it prevented him from receiving reasonable educational benefit from general education. *Interviews with Special Education Coordinator and Parents*. Following this discussion, the MDT completed the Determination of Eligibility form (the "Form"). *Id.*
38. The Form reflects that the MDT determined the evaluation was sufficiently comprehensive and that Student "can receive reasonable educational benefit from general education alone." *Exhibit I*, p. 2. It also reflects that the MDT selected "Yes" as to whether Student met the definition of OHI under the IDEA and ECEA Rules. *Id.*
39. Parent recalls the MDT determined that Student does not meet the definition of OHI because Student did not have a "medical diagnosis." *Interview with Parent*. Special Education Coordinator also recalled that it was decided Student did not meet the definition of OHI because his focus difficulties were not "chronic or acute enough." *Interview with Special Education Coordinator*. Special Education Coordinator indicated the MDT should have selected "No" as to whether he met the definition of OHI under the IDEA and ECEA Rules. *Id.*
40. Nevertheless, the MDT continued to the next portion of the Form which seeks to determine whether, because of OHI, Student was prevented from receiving a reasonable educational

benefit from general education as evidenced by one or more of three criteria. *Exhibit I*, p. 2. *Interviews with Special Education Coordinator, School Psychologist, and Special Education Teacher*. The MDT selected “Yes” indicating that Student, because of OHI, has “[l]imited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.” *Id.* Special Education Coordinator indicated that this box, like the other two, should have been checked as “No.” *Interview with Special Education Coordinator*. Based on the information completed by the MDT in the form, Student would qualify under the IDEA for special education services. *See Exhibit I*.

41. Finally, the MDT selected “No” in the Form when asked whether Student has a disability as defined in the ECEA Rules and is thus eligible for special education. *Exhibit I*, p. 2. A prior written notice issued for this determination indicates “the team determined that [Student] did not meet eligibility criteria for Other Health Impairment.” *Exhibit B*, p. 4. On May 20, 2025, Parents informed School that they disagreed with the MDT’s decision. *Exhibit M*, p. 86. On the same day, School granted their request for an Independent Educational Evaluation. *Id.*

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 provide Parent with proper PWN on March 20, 2025, as required by 34 C.F.R. § 300.503. This noncompliance did not result in a denial of FAPE.

A. Prior Written Notice: Legal Requirements

PWN must be issued a reasonable time before a district proposes or refuses to change “the educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a). For instance, if a parent requests an evaluation, a school district has two options: (1) agree to evaluate the child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with PWN explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 05/17/19); 34 C.F.R. § 300.503(a).

PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district’s proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(7).

Adequately identifying and explaining the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. See *Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 07/06/18).

Here, Parent requested that District evaluate for special education services on March 19, 2025. (FF # 10). District determined it would not evaluate Student and provided Parent with the PWN on March 20, 2025. (FF # 11). As detailed in the Findings of Fact, the PWN includes the information required at 34 C.F.R. § 300.503(b)(1), (3-5), and (7). (FF #s 12-13, 15). However, the PWN does not include the information required at 34 C.F.R. § 300.503(b)(2) and (6). First, the PWN does not adequately identify and explain why District did not evaluate Student. (FF # 12). Although it cites to “classroom tier 1 interventions” there is no detail as to the impact or result of those interventions, and the PWN only otherwise lists a series of reports or data without specifics. (FF #s 12-13). Second, the PWN lists District’s determination (i.e., to not evaluate Student) in the section that should identify a description of the other options considered and the reasons why those options were rejected. (FF # 14). There, District should have listed the other options considered, such as to evaluate Student, and the reason why that option was rejected. (FF # 14). For these reasons, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.503.

B. Procedural Noncompliance

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, 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, 1313 (10th Cir. 2008).

Here, the CDE finds that District’s procedural noncompliance did not significantly impede Parent’s ability to participate in the decision-making process. First, despite District’s noncompliance, it was apparent from the PWN that District determined not to evaluate Student. (FF # 11). Second, Parent understood District’s decision, as evidenced by her disagreement and follow up request for an evaluation (FF # 16). And finally, District agreed to evaluate Student shortly thereafter, in April, following Parent’s additional request. (FF # 17). For these reasons, the CDE finds and concludes this noncompliance did not result in the denial of FAPE.

Conclusion to Allegation No. 2: District did not ensure that the information obtained from a variety of sources was documented at an eligibility determination on May 19, 2025, as required by 34 C.F.R. § 300.306(c)(1)(ii). This noncompliance resulted in a denial of FAPE.

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 2.09. 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.* As a matter of policy, the CDE cannot declare a student IDEA eligible through a state complaint decision. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18).

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.

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 ensure that information drawn 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, is documented and carefully considered. *Id.* § 300.306(c)(1)(ii).

Here, as part of Student’s evaluation, District reviewed Parent input (FF # 27), academic assessments (FF #s 19, 21-22), current intervention data (FF #s 23-24), observations of Student’s social, emotional, and behavioral reactions in the classroom, time on task in the classroom (FF #s 25-26), and OT and sensory assessments (FF #s 28-30). This information was detailed in the Report. (FF #s 18-31).

Given the allegation accepted for investigation, the CDE must determine whether District ensured this information was documented and carefully considered. 34 C.F.R. § 300.306(c)(1)(ii). In reaching this determination, the CDE must, in part, determine whether there was a discussion about the characteristics exhibited by Student that support or refute the identification of a disability, and if so whether there is or continues to be an adverse impact on Student’s education performance. *CDE’s IEP Procedural Guidance*, p. 23.

Again, to qualify as a “child with a disability” under the IDEA, the child must have a qualifying disability and, because of that disability, need special education and related services. 34 C.F.R. §

300.8(a)(1). Thus, after completing a comprehensive evaluation, the MDT must first determine if a child has one of thirteen qualifying disabilities. *Id.* Then, if the child has one of these thirteen qualifying disabilities, the MDT must move on to determine whether the student needs special education and related services because of the disability. *Id.*

In this case, the eligibility determination focused on whether Student qualified for special education under the OHI disability category. (FF # 36). Despite concluding during the eligibility meeting that Student did not have OHI, the MDT selected “Yes” in the Form to indicate Student met the definition of OHI under the IDEA and ECEA Rules. (FF #s 36-39). Although this could have been attributed to a typo, the MDT nonetheless moved on at the meeting to determine whether Student needed special education services because of OHI. (FF # 40). The MDT discussed whether he was prevented from receiving a reasonable educational benefit from general education as evidenced by one or more of three criteria to OHI. (FF # 37, 40). The MDT selected “Yes” to indicate that Student, because of OHI, has “[l]imited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.” (FF # 40). According to the Form completed by the MDT—because it indicates that Student met the criteria for OHI and there was an adverse educational impact resulting in a need for special education services—Student would qualify under the IDEA for special education services. (*Id.*).

Nonetheless, this decision is inconsistent not only with what District staff reported to the CDE during interviews—including those MDT members who understood the MDT’s decision was Student could receive educational benefit from general education alone—but also with the “No” the MDT selected in the Form when asked whether Student has a disability as defined in the ECEA Rules and is thus eligible for special education. (FF # 39). Moreover, a prior written notice issued for this determination indicates “the team determined that [Student] did not meet eligibility criteria for Other Health Impairment.” (FF #41). Accordingly, the CDE finds and concludes that District did not ensure that the information obtained from a variety of sources was documented, as required by 34 C.F.R. § 300.306(c)(1)(ii).

C. Consistent with Student-Specific Data

The CDE next considers whether the eligibility determination was consistent with the data in the record. Here, OHI was the qualifying disability being assessed. (FF # 36). OHI “means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, leukemia, kidney disease, sickle cell anemia or Tourette syndrome.” 34 C.F.R. § 300.8(c)(9); ECEA Rule 2.09(7).

For a condition to be chronic or acute, there is no specified length of time for the health problem to be present or continue. *See, e.g. the CDE’s Guidance for Determining Eligibility for Special*

Education Students with Other Health Impairments, p. 2 (Aug. 2020). A chronic condition is a health condition or disease that is persistent or otherwise long-lasting in its effects or a disease that comes with time. *Id.* Many national health organizations will not specify a timeline, but a general rule of thumb may be a condition lasting three months or longer. *Id.* An acute health problem begins abruptly and with marked intensity, then subsides or has rapid onset, severe symptoms, and a short course. *Id.* A medical diagnosis is not necessary, nor by itself a sufficient, criterion for establishing OHI eligibility. *Id.* at p. 3.

In this case, Student demonstrated limited alertness in Fall 2024 which continued throughout the school year (FF #s 23-26). For instance, despite MTSS interventions, Student's academic scores continued to be impacted by his attention; and MTSS data shows Student had not seen significant improvement in work completion. (FF #s 22, 24). He was provided headphones when he became overly stimulated and would also require the assistance of a one-on-one aide or going to the office to complete work (FF #s 11, 19). Moreover, Student has clinically significant sensory needs as shown in assessments and observations. (FF #s 24, 30, 32). Specifically, Student's score in the Sensory Processing Measure showed severe difficulties in vision, hearing, touch, balance, sensory total, planning and ideas, and social participation. (FF # 30). OT reported Student is "frequently distracted by visual and auditory stimulation, often with difficulties responding to his name and paying attention during a noisy classroom." (FF # 35). Indeed, Student's limited attention and heightened alertness to environmental stimuli was persistent. (FF # 19 – 20, 22 – 26, 30 -32). It has lasted throughout the school year, across multiple settings, and with multiple educators. (FF # 32). Finally, as described in Paragraph B of this section, the MDT, within the Form it completed, reflected that Student met the definition of OHI despite concluding as an MDT that Student did not meet the criteria for OHI and did not qualify for special education services. (FF #s 38 -39).

In addition to meeting the definition of OHI, there must be evidence that a child needs special education due to OHI. 34 C.F.R. § 300.8(a)(1). Under OHI, this is evidenced by **one or more** of the following: (1) Limited strength as indicated by an inability to perform typical tasks at school; (2), Limited vitality as indicated by an inability to sustain effort or to endure throughout an activity; and/or (3) limited alertness as indicated by an inability to manage and maintain attention, to organize or attend, to prioritize environmental stimuli, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment. ECEA Rule 2.09(7)(a)-(c) (emphasis added).

In this case, the Report reflects that Student's limited alertness as indicated by an inability to manage and maintain attention and heightened alertness to environmental stimuli resulted in limited alertness with respect to the educational environment. For instance, this is reflected in varying scores on academic testing. (FF #s 21-22). Student's academic progress was reported at grade-level in reading and math, and below grade level in writing. (FF # 19). However, on the AimsWeb Math Assessment, Student scored below the 50th percentile. (FF # 22) It was noted that Student had difficulty focusing during this evaluation. (FF # 22). Student's DIBELS scores fluctuated throughout the year. (FF # 21). These scores show Student's limited alertness impacts his ability to access education. (FF # 32)

The Report further notes in Student's social and behavioral observations that he struggles with organization and attention, and task follow through. (FF # 20). It specifically states that Student's self-regulation can impact his academic engagement and readiness. (FF # 20) Observations from the Report note his time on task in the academic setting was below his peers. (FF # 26). Additionally, the data shows Student often requires one on one support to maintain attention on writing tasks. (FF # 19). The MTSS interventions provided to Student show a heightened alertness to environmental stimuli, such that Student requires breaks to decompress and self-regulate. (FF # 24). Finally, as described in Paragraph B of this section, the MDT, within the Form it completed, reflected that Student was prevented from receiving reasonable educational benefit from general education despite concluding as an MDT that Student did not meet the criteria for OHI and did not qualify for special education services. (FF #s 40 - 41).

For all these reasons, the CDE finds and concludes that District did not make the eligibility determination consistent with the IDEA's procedures and the evaluation and other data in Student's record. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013).

D. Procedural Noncompliance

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, the CDE finds that the procedural noncompliance significantly impeded Parent's ability to participate in the decision-making process. 34 C.F.R. § 300.513(a)(2)(ii). Although the MDT determined Student did not qualify for special education, the Form completed by the MDT does not accurately reflect this determination. (FF #s 40 - 41). According to the Form, Student would be eligible for special education. (*Id.*). Moreover, this resulted in an improper eligibility determination as it was not consistent with the Student-specific data, as described in Paragraph C of this section. That the MDT did not reach its decision consistently with IDEA's procedures, and accurately document that decision, impacts Parent's ability to fully understand the reason for the decision and Parent's ability to challenge the decision, even though the IEE they requested was granted. (FF # 41). For these reasons, the CDE finds and concludes this noncompliance resulted in the denial of FAPE. The CDE will order corrective action to address this denial of FAPE.

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, nothing in the Record indicates that the District’s noncompliance is systemic in nature. District’s policies and procedures regarding special education referrals and initial evaluations are consistent with IDEA’s requirements, and District staff accurately described those policies. (FF #s 4-9). District acknowledges it was required to provide Parent PWN with its decision not to evaluate Student in accordance with its own policies and IDEA’s requirements (FF #s 5-8, 11). District conducted a thorough evaluation and District staff accurately described the criteria for a Student qualifying under the disability that was reviewed during the eligibility meeting (FF #s 18-32). Accordingly, the CDE finds and concludes that the noncompliance in this case was not systemic and is unlikely to affect the future provision of services to children with disabilities.

REMEDIES

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

1. Did not include the required content in a prior written notice, consistent with 34 C.F.R. § 300.503.
2. Did not document the information drawn from a variety of sources in determining eligibility, as required by 34 C.F.R. § 300.306(c)(1)(ii).

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

1. Corrective Action Plan

- a. By **August 28, 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. By **August 8, 2025**, General Education Teacher, Special Education Teacher, Special Education Coordinator, School Psychologist, and Director must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.8(a)(1), 34 C.F.R. § 300.306, and 34 C.F.R. § 300.503. 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 **August 11, 2025**.

3. Determination of Eligibility

- a. By August 28, 2025, District and Parents shall find a mutually agreed upon date and time to convene a multidisciplinary team (MDT) meeting in conformity with the requirements of 34 C.F.R. §§ 300.301-306. That multidisciplinary team shall determine whether Student is eligible for special education and related services. District shall issue a prior written notice in conformity with 34 C.F.R. § 300.503 describing the MDT's determination. The MDT must consider any newly obtained information in making its determination.
- b. Should the multidisciplinary team determine that Student is eligible for special education and related services, District shall, within 30 days of that determination, convene an IEP team in conformity with the requirements of 34 C.F.R. §§ 300.320-328, and develop an appropriate IEP for Student.
- c. By **October 10, 2025**, District must provide copies of the evaluation report, the prior written notice, notice of the IEP meeting (if applicable), and finalized IEP (if applicable) to CDE Special Education Monitoring and Technical Assistance Consultant.

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 29th day of July, 2025.



Tara Carone
State Complaints Officer

APPENDIX

Complaint, pages 1-12

Response, pages 1-8

- Exhibit A: Notices to Parents
- Exhibit B: Prior Written Notices
- Exhibit C: Schedule, Grades, Reports, Attendance
- Exhibit D: Remedial Actions
- Exhibit E: Most Recent Special Education Evaluation
- Exhibit F: Private Evaluations
- Exhibit G: Consents for Evaluation
- Exhibit H: Documents Concerning Request for IEE
- Exhibit I: All Documents from Eligibility Meeting
- Exhibit J: Written Requests to Evaluate
- Exhibit K: School Calendar
- Exhibit L: Policies & Procedures
- Exhibit M: Correspondence
- Exhibit N: Contacts
- Exhibit O: Verification of Delivery
- Exhibit P: MTSS Data and Prior Evaluation

Reply, pages 1-21

- Exhibit 1: Student's Support Plan Daily Sheets
- Exhibit 2: District Transfer Application
- Exhibit 3: Character References

Telephone Interviews

- Parents: June 30, 2025 and July 2, 2025
- Director: June 30, 2025
- Special Education Teacher: July 1, 2025
- Special Education Coordinator: July 1, 2025
- General Education Teacher: July 1, 2025
- School Psychologist: July 1, 2025
- MTSS Coordinator: July 1, 2025