

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

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**State-Level Complaint 2018:530  
El Paso County School District 49**

**DECISION**

**I. INTRODUCTION**

The mother (“Parent”) of a child (“Student”) not currently identified as an eligible child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> initiated this action against School District 49 (“District”) through a state-level complaint (“Complaint”) properly filed on October 3, 2018.

The State Complaints Officer (“SCO”) determined that the Complaint identifies four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The District received notice of the accepted allegations, and a copy of the Complaint from the SCO, on October 9, 2018. The District then filed a response to the Complaint (“Response”) on October 19, 2018, to which Parent filed a reply to the Response (“Reply”) on October 30, 2018.

**II. RELEVANT TIME PERIOD**

The Colorado Department of Education (“CDE”) has the authority to investigate alleged violations of the IDEA that occurred not more than one year from the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will be limited to events that transpired no earlier than October 3, 2017 to determine whether or not a violation of IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate all allegations accepted in this matter. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

**III. SUMMARY OF COMPLAINT ALLEGATIONS**

Whether Student has been denied a Free Appropriate Public Education (“FAPE”) because the District:

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* and its corresponding regulations are found at 34 C.F.R. § 300.1, *et seq.* IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”).

1. Failed to provide Student with services comparable to those described in his most recent out-of-state Individualized Education Program (“IEP”), from May 22, 2018 to September 26, 2018, consistent with 34 C.F.R. § 300.323 and specifically as follows:
  - A. District did not provide Student with appropriate and necessary supplementary aids and services, as determined by an IEP team, to participate in athletics consistent with 34 C.F.R. § 300.117.
  - B. District did not ensure that school athletic personnel had access to Student’s individualized healthcare plan information, consistent with 34 C.F.R. § 300.323(d).
2. Failed to properly evaluate Student in August and September of 2018, specifically as follows:
  - A. District did not assess Student in all areas related to the suspected disability, consistent with 34 C.F.R. § 300.304(c)(4).
  - B. District did not consider Student’s relevant functional information or information provided by Parent, consistent with 34 C.F.R. § 300.304(b)(1).
  - C. District did not consider Student’s existing evaluation data or information provided by Parent, consistent with 34 C.F.R. § 300.305(a).
3. Failed to properly consider Student’s eligibility for special education and related services under the Other Health Impairment category of disability, in violation of 34 C.F.R. § 300.306, on September 26, 2018.
4. Failed to provide Parent with meaningful IEP process participation in August and September of 2018 by not providing notice of meetings related to the provision of FAPE to Student, consistent with 34 C.F.R. § 300.501(b).

#### **IV. FINDINGS OF FACT**

After a thorough analysis of the record as detailed in the appendix attached and incorporated by reference, the SCO makes the following FINDINGS OF FACT:

##### **A. Background**

1. Student, a fourteen-year-old not currently identified as eligible for special education and related services as a child with a disability under the IDEA, transferred into District after completing the entire 2017-2018 academic year at an out-of-state middle school (“Out-of-State District”). *Exhibit 3, p. 3; Interview with Parent.* Student’s family relocated back to

Colorado after receiving a military reassignment through the Exceptional Family Member Program, and Student has continuously resided within District's boundaries since May 22, 2018. *Exhibit 9*, p. 5; *Exhibit 16*, pp. 2-3. Although Parent enrolled Student in District's School on April 27, 2018, Student did not officially attend class there until August 1, 2018, the start of the 2018-2019 academic year. *Exhibit 9*, p. 2.

2. Parent and educators characterized Student as intelligent, reserved, and exceptionally talented athletically. *Interviews with Varsity Coach, Special Education Director, Special Education Case Manager, and Parent*. Based on Student's passion for sports, his family met with multiple athletic directors and toured school campuses prior to moving to Colorado. *Exhibit 2*, p. 1. After visiting with School's Athletic Director, Parent wrote that School was selected because Athletic Director "made [Student's family] feel like [Student] would have had the best opportunity to participate, compete and grow." *Id.*
3. Student resided out of state for three years prior to the instant interstate transfer, and arrived to Colorado with an IEP ("Out-of-State IEP") setting forth services contemplated to begin for the 2018-2019 school year. *Exhibit C*. Out-of-State District determined on May 8, 2018 that Student met the criteria for special education eligibility, under the category of multiple disabilities, for emotional disability and other health impairment. *Exhibit 7*, p. 1.
4. In mid-July of 2018, Parent provided School with the Out-of-State IEP and corresponding Eligibility Determination Report, as well as a 2015 out-of-state psychological evaluation and IEPs in effect at the time Student was previously enrolled within District for grades three through five. *Exhibit 9*, p. 12-13.
5. The Out-of-State IEP specifies that Student had a healthcare plan and that his "anxiety and health issues may affect the time he is in class receiving on grade level instruction." *Exhibit C*, p. 4. This written health care plan was developed on May 14, 2018 to address asthma, anxiety, and severe allergies. *Exhibit 7*, pp. 36-43. An out-of-state medical assessment completed on April 26, 2018 reflects diagnoses of asthma, allergic rhinitis, eczema, cholinergic urticaria, anxiety, and depression. *Exhibit 6*, p. 24. It also signals Student's "anaphylaxis reaction" to peanuts, pistachios, almonds, and cashews, and notes that he requires an epinephrine pen. *Id.* The school-based service suggestions include self-care education, a referral for outside counseling, and availability of a nurse to address "sudden symptoms due to asthma or urticaria." *Id.* at p. 25.
6. The Out-of-State IEP's offer of services for the upcoming 2018-2019 school year is based largely on this medical assessment and an independent educational evaluation performed in April of 2018. *Exhibit C*, p. 4. Relevant here, the accommodations for Student included, in part, access to the special education teacher or nurse at any time for health-related issues, access at all times to his medical bag, a sign in his locker and a peer tutor to serve as reminders to bring his medical bag with him to class and athletic events, and the directive that his medical plan be followed by all educators. *Id.* at pp. 12, 14.

7. The SCO finds the genesis of the instant conflict, as predominantly detailed in the Complaint and throughout the Record, can be traced to the intersection of the Out-of-State IEP's accommodations and School's gridiron, where Student first participated in a summer football team camp from May 29, 2018 – June 8, 2018. *Exhibit 9*, p. 6.

### **B. Development of the Interim Plan**

8. Prior to the team camp, Parent briefly discussed Student's Out-of-State IEP, medical conditions, and self-advocacy needs with Varsity Coach and Athletic Trainer at the football program's equipment issue event, though Parent wrote that "it was difficult to explain 9 diagnoses in front of other students and parents with no one taking any notes." *Exhibit 2*, p. 1. Parent thereafter reached out to Varsity Coach and Athletic Director on May 30, 2018 to obtain Freshman Coach's contact information. *Id.* That same day, Parent "explained [Student's] medical [needs] and his IEP" by telephone to Freshman Coach, who also introduced himself in-person to Parent prior to football practice that afternoon. *Id.*
9. On July 8, 2018, Parent e-mailed Principal to request a meeting to discuss Student's Out-of-State IEP and medical needs. *Exhibit 5*, p. 11. Parent did not receive an immediate response, and consequently contacted District's Chief Education Officer on July 16, 2018 to notify him that she had been "trying to ensure the coaching staff was aware of [Student's] medical needs before summer sports activities but it never happened." *Id.* Chief Education Officer replied to Parent on July 17, 2018, and Assistant Principal communicated with Parent that same day, also requesting the Out-of-State IEP. *Id.* at pp. 9-11. Parent met with Assistant Principal, Principal, and School Nurse two days later to explain "[Student's] medical [needs], how his anxiety is tied to his medical [needs] and frustration with the football programming." *Exhibit 2*, p. 2. Parent thereafter wrote to Principal that the meeting "drastically reduced [family's] anxiety." *Exhibit K*, p. 113.
10. On August 1, 2018, following a meeting with Athletic Trainer and a weight training coach to "discuss [Student's] medical [needs]," Parent met with School to review the Out-of-State IEP. *Exhibit 2*, p. 3.
11. School did not adopt the Out-of-State IEP, citing the failure of Out-of-State District's eligibility determination to meet Colorado's differing criteria for eligibility and educational standards. *Id.* As a result, Special Education Case Manager initiated the creation of a transfer action plan pursuant to District's Transfer Guidelines. *Interview with Special Education Director and Special Education Case Manager.*
12. District's Transfer Guidelines define "transfer" as "[w]ithin the current school year" and provide that School, where an out-of-state IEP is not adopted due to a significant change, must "[c]reate and complete the Interim Plan (Transfer Not Adopted), [c]omplete Pre-Evaluation Data Discussion form, [o]btain consent on Prior Written Notice and Consent for

Evaluation, and [s]chedule the Reevaluation meeting within 60 days of signed consent.”  
*Exhibit J*, pp. 8, 10.

13. Parent signed a *Prior Written Notice & Consent for Evaluation* form, for School to reevaluate Student in the areas of health, academic performance and social emotional status, on August 1, 2018. *Exhibit G*. School scheduled an IEP meeting for September 19, 2018, providing Parent with a *Notice of Meeting* form and a *Student Invitation for the Transition IEP Meeting* form, both dated September 7, 2018. *Exhibit H*, pp. 1-2. School ultimately rescheduled the IEP meeting for September 26, 2018, at Parent’s request, based on complications between District Psychologist and Parent on connecting to complete reevaluation assessments. *Exhibit A*, p. 38; *Exhibit H*, pp. 3-4.

### C. The Interim Plan

14. The transfer action plan (“Interim Plan”) took effect August 1, 2018, five days prior to the first formal football practice, and offered services and accommodations until September 26, 2018. *Interview with Special Education Director and Special Education Case Manager*. In an effort to provide accommodations similar to those outlined in the Out-of-State IEP, the Interim Plan delineates the following for Student: access to School Nurse when Student gives a teacher the proper agreed upon cue of School Nurse in sign language, medical check-ins during athletics with either a coach or Athletic Trainer at the prompting of staff, and the provision of playbooks so he can learn plays prior to game day. *Exhibit A*, p. 10.
15. The Interim Plan also indicates that Student “requires a Health Care Plan” and includes the results of an IEP Nursing Evaluation Report finalized on August 28, 2018 by School Nurse, a licensed professional with seventeen years of nursing practice and experience. *Id.* at p. 9; *Interview with School Nurse*. This report is informed in part through a health questionnaire completed by Parent on August 9, 2018, and a *Colorado Asthma Care Plan and Medication Order for School and Child Care Settings* form, along with a *Colorado Allergy and Anaphylaxis Emergency Care Plan and Medication Orders* form, completed by Student’s healthcare provider on July 25, 2018. *Id.* at p. 9; *Exhibit B*, pp. 1-2. These two healthcare documents comprise Student’s individualized healthcare plan (“Current IHP”), which continues to remain in effect at School. *Interview with School Nurse*.
16. As reported in the Interim Plan, Student is in “good general physical health” and has no “physical limitations.” *Exhibit A*, p. 9. In addition to an anxiety disorder, Student is diagnosed with asthma, eczema, chronic hives (cholinergic urticaria), allergic rhinitis, and allergies to pollen, peanuts and tree nuts. *Id.* The Interim Plan details Student’s medication regimen required to treat these diagnoses, to include rescue medications such as an epinephrine pen, proair Inhaler, Benadryl, Atarax, and hydrocortisone cream. *Id.*
17. Special Education Case Manager sent a copy of the Interim Plan home with Student in mid-August 2018. *Interview with Special Education Director and Special Education Case*

*Manager*. Parent did not sign the initial version, instead penning “I do not agree to the participants” above the parent signature line on August 27, 2018. *Exhibit A*, p. 19. In a related e-mail sent to Special Education Case Manager, Special Education Coordinator, and Principal, Parent indicated that she was “not in agreement with the IEP participants and the Accommodations.” *Exhibit K*, p. 101. Parent also specifically indicated that Student should have medical check-ins, and that the Interim Plan was “missing vital medication information on [Student’s] other medical diagnoses.” *Id.*

18. Special Education Coordinator and Special Education Director separately responded to Parent on August 28, 2018, informing Parent that the “IEP” she referenced was actually the Interim Plan, and that they were willing to meet with Parent to address concerns. *Id.* That same day, Parent requested a facilitated IEP meeting. *Id.* at p. 96.
19. Special Education Coordinator’s detailed notes transcribed during this September 5, 2018 meeting are consistent with the Record and reflect discussions related to the Interim Plan, Student’s medical needs, and extracurricular activities. *Exhibit A*, pp. 32-37. These topics align with the pre-meeting agenda questionnaire completed by Parent, and the notes further indicate that Parent “stated that she feels [her] concerns were addressed.” *Id.* Parent signed the Interim Plan on September 12, 2018. *Id.* at p. 7. The SCO does not find Parent’s representation that she provided no input into the Interim Plan’s creation to be credible. For instance, at Parent’s request, School made a “good faith decision” to include two football-related accommodations into the Interim Plan. *Id.* at p. 38.
20. Markedly, the crux of the Complaint regarding the provision of services comparable to those described in the Out-of-State IEP relate to football, specifically in the form of supplementary aids and services, and not to academia or specialized instruction.

#### **D. Provision of Supplementary Aids and Services pursuant to the Interim Plan**

21. Student, at all times relevant to the Complaint, has been an active member of the freshman football team, and was also selected to play one level up for the junior varsity team. *Exhibit K*, pp. 4-5. Student first participated in an unofficial summer football team camp from May 29, 2018 – June 8, 2018, and some additional voluntary workouts leading up to the first official football practice on August 6, 2018. *Exhibit 9*, p. 6; *Interview with Varsity Coach*. The “extra curricular activities” accommodations for Student, as noted at FF #14, include medical check-ins during practice at the prompting of staff, and playbooks. *Exhibit A*, p. 10. These accommodations were included at Parent’s request with School’s caveat that they “would be reviewed at the [September 26, 2018 Meeting] and that the team may make a different decision once they find out more about [Student’s] needs. *Id.* at p. 38.
22. Notably, the SCO finds that the Out-of-State IEP does not identify accommodations with respect to medical check-ins during sports practice or playbooks. *Exhibit C*, pp. 1-24. The Interim Plan’s accommodations therefore exceed those in the Out-of-State IEP with respect

to athletics. *Exhibit A*, p. 10. In this instance, Varsity Coach provided Parent with a hard copy “reads” sheet on July 31, 2018 to help Student, the only player to receive this information, accelerate coverage recognition. *Interviews with Varsity Coach and Parent*. Student obtained electronic access to the playbook through the Hudl application on September 12, 2018, at the exact same time and in an identical format as all other freshman football players. *Id.*

23. It was also determined, as early as six days prior to the first practice, that one of the football coaches would be assigned as the “go to” individual for Student’s needs. *Exhibit 5*, p. 2. The “go to” individual fluctuated throughout the season, with different coaches performing the role, but a “mentor” football coach (“Mentor Coach”) for “medical check-ins” was established by mid-September. *Exhibit A*, pp. 35-36. The Interim Plan provides that Student “carries [a rescue medication bag] in school at all times.” *Exhibit A*, p. 9. By all accounts, Student has carried and accessed his “[ ]” rescue medication bag, at least beginning July 24, 2018, at all football practices and games. *Interviews with Varsity Coach and Parent*. The SCO finds it credible that a peer volunteer, when available, assisted Student in managing the rescue medication bag at football practice and games. *Id.*
24. Finally, notes from the July 31, 2018 meeting between Parent, a military student transition consultant (“Military Consultant”), Principal, Varsity Coach and Athletic Director indicate that coaches would “allow [Student] the ability to just walk off the field if he needs to take care of himself (without reprimand)” and that they agreed if “[Student] leaves to self-medicate, he has the ability to rejoin practice immediately after medicating.” *Exhibit 5*, p. 2.

#### **E. Access to the Current IHP**

25. On August 1, 2018, prior to the first official football practice on August 6, 2018, School Nurse sent an e-mail titled “SEVERE FOOD ALLERGY, PLEASE BE AWARE” to fourteen of Student’s educators, to include Special Education Case Manager and Athletic Trainer. *Exhibit B*, p. 11. The correspondence includes not only specifics about Student’s allergies, asthma, and anxiety, but also indicates that Student has a healthcare plan, backup rescue medications in the health room, and a rescue medication bag, with medications in the front pocket, to be carried by him at all times. *Id.* School Nurse also wrote that “[Student] is in sports, I will be communicating with coaching staff and address Epinephrine administration with them in case of a life threatening emergency.” *Id.*
26. School Nurse comprehensively trained athletic staff on the Current IHP in 2018 as follows: Athletic Trainer, Athletic Director and Physical Education Coach on August 1; Varsity Coach on August 7; ten football coaches including Mentor Coach on August 22; and four basketball coaches on September 11. *Exhibit K*, p. 18; *Interview with School Nurse*. Freshman Coach’s training did not occur until September 24 because of difficulties in aligning the schedules between School Nurse and Freshman Coach, a non-District employee. *Id.* The SCO finds any concerns cited by Parent in this respect were alleviated through comprehensive training

of other coaches on “[Student’s] health care plan, how to recognize an anaphylactic reaction, action to take, administration of Epinephrine Pen and calling 911.” *Exhibit B*, p. 13.

27. The SCO finds that School Nurse also e-mailed the Current IHP to Principal, Athletic Director, and Varsity Coach on August 22, 2018, indicating that she “uploaded all of this information along with medical orders onto PowerSchool under [Student’s] attached medical documents as well.” *Id.* at p. 13. On August 1, 2018, five days prior to the first official football practice, the Current IHP was placed in School’s health room, and a copy was inserted into Student’s bag along with rescue medications. *Id.* School Nurse wrote that she created “a medical flag as well for staff to access in PowerSchool.” *Id.* District-employed educators, to include Varsity Coach and certain other athletic staff, can access PowerSchool, and thus the Current IHP, at any time. *Interview with School Nurse.*
28. Parent, a dedicated advocate, undertook efforts prior to implementation of the Current IHP to ensure School’s athletic staff understood Student’s medical needs. *Exhibit 5*, p. 11. This includes a conversation with Varsity Coach and Athletic Trainer, and a conversation with Freshman Coach in late May, as detailed at FF #8. *Exhibit 2*, p. 1. Additionally, as reflected at FF #9, Parent explained Student’s medical needs to Principal, Assistant Principal, and School Nurse in mid-July. *Id.* at p. 2. Football coaches and Athletic Director then met with Parent twice on July 24, 2018 to address additional concerns. *Id.*
29. Parent continued to work collaboratively with School Nurse to complete a health questionnaire as part of the Current IHP’s creation. *Exhibit A*, p. 9; *Interview with School Nurse.* The Record also demonstrates that Parent attended the majority of Student’s football practices and games, while at the same time participating in Student’s reevaluation. *Exhibit 2; Interviews with School Nurse, Varsity Coach, and Military Consultant.*

#### **F. Reevaluation Results**

30. On September 26, 2018, School convened a multidisciplinary team (“MDT”), including Parent, to discuss Student’s reevaluation results and determine his eligibility for special education. *Exhibit E*, pp. 14-15. Although no written documentation, including the *Prior Written Notice & Consent for Evaluation* form, indicated what disability category was under consideration, the SCO finds that Student was primarily reevaluated for eligibility as a child with serious emotional disability (“SED”), with an emphasis on suspected anxiety. *Exhibit 10.* Special Education Case Manager, Math Teacher, District Psychologist, and School Nurse each reviewed the results of their respective assessments with Parent at the meeting. *Exhibit 10; Exhibit A*, pp. 40-41.
31. The reevaluation consisted of the following formal assessments: (a) a vision screening, (b) a hearing screening, (c) in the area of “Academic Performance Assessments” the Woodcock-Johnson Test of Achievement IV (“Woodcock-Johnson”), the Gray Oral Reading Tests, Fifth Edition (“GORT-5”), the Test of Written Language, Fourth Edition (“TOWL-4”), and teacher

reports, (d) in the area of “Social and Emotional Assessments” the Behavior Assessment System for Children, Third Edition (“BASC-3”) and the Revised Children’s Manifest Anxiety Scale, Second Edition (“RCMAS-2”), and (e) a health assessment. *Exhibit E*, pp. 1-13.

32. The Record shows that Parent provided School, for its consideration, the Out-of-State IEP, a 2015 out-of-state psychological evaluation and previous IEPs in effect for Student. *Exhibit 9*, pp. 12-13. In early October, after the reevaluation, Parent sent School an assortment of fifteen evaluation and medical documents ranging in date from 2013-2018, including the April 2018 out-of-state independent educational evaluation. *Exhibit K*, pp. 9-15.
33. Special Education Case Manager administered the Woodcock-Johnson to formally measure Student’s level of attainment in reading, writing, mathematics, and overall achievement, on which Student obtained “average range” standard scores across all categories examined. *Exhibit E*, p. 1. This included standard scores of 96 in reading, 95 in broad reading, 108 in basic reading skills, 94 in reading fluency, 101 in mathematics, 100 in broad mathematics, 94 in math calculation skills, 100 in written language, 98 in academic skills, 101 in academic applications, and 107 in brief achievement. *Id.* at p. 2. Student’s lowest standard score of 83 in passage comprehension, still within the “average range” of performance, prompted Special Education Case Manager to conduct the GORT-5 and the TOWL-4. *Id.*; *Exhibit 10*.
34. Student scored in the “average” range for rate, accuracy, fluency and comprehension on the GORT-5. *Exhibit E*, pp. 2-4. Student’s overall reading quotient was also described as “within the average range.” *Id.* at p. 4. Student completed the TOWL-4, and on its subtests earned an “average” scaled score of 9 at the 37th percentile in contextual conventions, an “average” scaled score of 11 at the 63rd percentile in story composition, and an “average” scaled score of 20 at the 58th percentile in spontaneous writing. *Id.* at pp. 4-5.
35. Teacher reports demonstrate that Student, as of September 25, 2018, earned a grade of “100” in functional life skills, “76” in geography, “91” in English 1, and “93” in physical science. *Id.* at pp. 5-6. There was no grade report for Algebra I because Student had recently been “moved up” to the class from Applied Algebra. *Id.* at p. 5. The anecdotal reports, provided for Geography, Algebra I, English 1, and Physical Science, consistently reflect that Student participated and was on task in class, and that Student has not needed any accommodations or had issues self-advocating. *Id.* at p. 6.
36. The SCO finds that Special Education Case Manager, given his credibility and detailed descriptions, conducted classroom-based observations. *Interview with Special Education Director and Special Education Case Manager*. Although he omitted this documented information from the Evaluation Report, he recounted the results with specificity and consistency, as corroborated by the written report provided to the SCO upon request. *Id.* He observed Student in English class in two-minute intervals, for a total of twenty minutes, during the ninety-minute class. *Exhibit N*. Student appeared on task 100% of the time observed, while a randomly selected comparison peer seated near Student was on task eighty percent of the time and three fourths of the class as a whole was on task seventy

percent of the time. *Id.* Special Education Case Manager also conducted self-advocacy mock trials, where he hid Student’s journal on separate occasions, resulting in Student on one instance indicating to him that he could not find his journal, and on another instance approaching him to ask “Do you have my journal?” *Id.* He also purposely failed to hand papers to Student, while his peers received the paperwork, and on each of these three occasions Student almost immediately said to him “you forgot me.” *Id.*

37. Student’s grade report from the first quarter of the 2018-2019 school year is consistent with the academic performance assessments. *Exhibit I*, p. 1. The grade report reflects that Student earned an “A-” in American Sign Language, a “B-” in Geography, a “B” in Algebra I, an “A-” in Health, an “A-” in English I, and an “A-” in Physical Science. *Id.* The grade report is also consistent with a statement in the Out-of-State IEP indicating Student maintained an “A/B” average in all classes during the 2017-2018 academic year. *Exhibit C*, p. 4.
38. To formally assess any behavioral, emotional, and adaptive concerns, District Psychologist, a licensed school psychologist, administered the BASC-3 through rating scales provided to Parent, general education Geography Teacher, Mentor Coach, and Student. *Exhibit E*, pp. 6-10. Only Parent had rating scores fall in the “Clinically Significant” range, specifically for internalizing problems (anxiety, depression, somatization and internal problems index), and for behavioral symptoms (withdrawal). *Id.* at pp. 8-9. Parent also had rating scores fall in the “At-Risk” range for adaptability and functional communication. *Id.* at p. 9.
39. Ratings for Geography Teacher and Mentor Coach, which were consistent in terms of T-Score value, landed within the “Average” range for all categories. *Id.* at pp. 8-9. Geography Teacher reported that, “[Student’s] behaviors, as measured by the BASC-3, in the school setting are consistent with typical students in the school setting.” *Id.* at p. 9. Results from Student’s self-report also fell in the “Average” range for all domains, apart from “At-Risk” scores on the anxiety, somatization and social stress scales. *Id.* at p. 8. District Psychologist noted that while “At-Risk” scores may be an indication that a particular category may warrant monitoring, it does not necessarily require immediate intervention. *Id.* at p. 9.
40. To measure the level and nature of anxiety in Student, District Psychologist conducted the RCMAS-2. *Id.* at pp. 10-12. Student completed the forty-nine item self-report instrument, with the results not revealing any scores within the “Extremely Problematic” range. *Id.* Student’s responses indicated that his overall anxiety and social anxiety is no more problematic than for most students, that his physiological anxiety is less problematic than for most students, and that his level of worry is moderately problematic. *Id.* at p. 12. Student’s responses, District Psychologist opined, “strongly indicate he was forthright” and demonstrate that he did not “portray himself in a[n] artificially positive fashion.” *Id.*
41. Finally, as detailed at FF #15-16, School Nurse formally evaluated Student’s known or unknown health and medical conditions in an effort to determine whether any such conditions impacted Student’s ability to learn or participate in athletics. *Id.* at p. 7. School Nurse considered a *Tri-Annual Health Assessment* completed by Parent as part of the

evaluation. *Exhibit B*, pp. 9-10. Parent reported that since August 1, 2018, Student has missed class time only on four separate occasions for scheduled medical appointments, but added that he returned to School after each appointment. *Interview with Parent*.

42. Parent raised concerns during the September 26, 2018 meeting with Student “struggling” in Geography and with Geography Teacher causing Student anxiety on account of being “too serious.” *Exhibit 10*. Parent also argued that Mentor Coach’s BASC-3 ratings were not valid both because he is not a teacher and he had been assigned to the “go to” role for only a few weeks prior to the assessment. *Id.* Parent, when asked for input by Special Education Director following each individual report, did not raise other concerns or ask questions. *Id.*

### **G. The Eligibility Determination**

43. On September 26, 2018, the MDT determined that Student did not continue to be eligible for special education and related services under the IDEA. *Exhibit 10*. Special Education Director stated that, under IDEA’s thirteen categories of disability, the reevaluation fell within the SED variety with a focus on suspected anxiety. *Id.* After reviewing the reevaluation results and gathering input from participants, including Parent, the MDT concluded that the reevaluation was sufficiently comprehensive to appropriately identify Student’s special education and related service needs, and determined that Student was not eligible under IDEA because he could receive reasonable educational benefit from general education alone. *Id.*
44. CDE recommends as a best practice that an MDT “should summarize findings in the relevant areas identified on the appropriate Determination of Eligibility form.” *CDE IEP Procedural Guidance*, p. 23. The *Determination of Eligibility* form here does not summarize findings with respect to a specific disability, though based on the body of evidence derived from the reevaluation, indicates that “[n]o disabilities were suspected by the team.” *Exhibit E*, p. 14.
45. Special Education Director stated that Student’s eligibility for accommodations under a Section 504 Plan could be considered, and asked Parent if she had any questions regarding the eligibility decision. *Exhibit 10*. In response to the ineligible determination, Parent simply stated, “I don’t agree with it.” *Id.* Special Education Director noted Parent’s objection, and acknowledged the parties’ mediation scheduled for October 25, 2018. *Id.* The MDT prepared a copy of the Evaluation Report for Parent, and the meeting ended. *Id.*
46. Parent did not receive *Prior Written Notice of Special Education Action* of the eligibility decision until October 29, 2018. *Exhibit M*, pp. 1-2. Special Education Director independently informed the SCO of this fact, and that same day Special Education Case Manager e-mailed the notification to both Parent and the SCO. *Id.* Despite District’s fall break from October 8, 2018 - October 21, 2018, it is clear the notification was not received by Parent within a reasonable time of the September 26, 2018 meeting. Still, the evidence shows that District’s failure to provide prior written notice did not impede Parent’s access to procedural safeguards in order to challenge the eligibility determination. Parent’s filing

of the instant Complaint on October 3, 2018 establishes that she understood the basis for her disagreement with the determination, and thus the SCO finds this to be a procedural, and not a substantive, violation.

#### **H. The August 20, 2018 and September 10, 2018 Meetings**

47. On August 20, 2018, Military Consultant met with Principal and Athletic Director at School to discuss football-related concerns previously relayed to her by Parent. *Exhibit K*, p. 103; *Interview with Military Consultant*. Parent consented to this meeting, which involved a conversation about concerns linked not solely to Student, but rather to the entire freshman football team. *Exhibit K*, p. 102; *Exhibit 5*, p. 6; *Interview with Military Consultant*. The matters discussed included improving avenues of communication between coaches and parents, obtaining Athletic Trainer's office hours, and football practice time. *Interview with Military Consultant*. The SCO finds that neither the August 20 Meeting, nor any updates Military Consultant obtained directly thereafter from School Nurse and Assistant Principal regarding the status of the Interim Plan and the Current IHP, involved the identification, evaluation, and educational placement of Student, or the provision of FAPE to Student. Thus, the August 20 Meeting did not constitute an IEP meeting.
48. The September 10 Meeting stems from a call Parent received from District Psychologist inquiring as to whether Parent was going to attend an appointment that afternoon. *Exhibit K*, pp. 74, 85. Based on a review of the credible correspondence in the Record, this meeting did not actually take place but pertained to Parent completing an in-person BASC-3 assessment with District Psychologist. *Id.* at pp. 69-70, 72, 74. Parent ultimately completed the BASC-3 assessment eight days prior to the eligibility determination. *Exhibit E*, p. 7. Accordingly, the SCO does not find the September 10 Meeting constituted an IEP meeting.

#### **V. CONCLUSIONS OF LAW**

Based on the FINDINGS OF FACT set forth above, the SCO enters the following CONCLUSIONS OF LAW:

**Conclusion to Allegation No. 1: District provided Student with appropriate and necessary supplementary aids and services to participate in athletics, and ensured that School's athletic personnel had access to Student's Current IHP.**

Parent first asserts that District did not provide Student with services comparable to those described in the Out-of-State IEP, principally in the area of athletics. *Complaint*, p. 3.

If a child with an IEP that was in effect at a previous school district enrolls in a new school district in a different state within the same school year, the new school district must provide services comparable to those services the child received in the previous school district until the receiving school district (1) conducts an evaluation and (2) develops, adopts, and implements a new IEP, if appropriate. 34 C.F.R. § 300.323(f) (emphasis added); *See also Ute Pass Bd. of Coop.*

*Educ. Servs., 114 LRP 31981 (SEA CO 06/11/14); 20 U.S.C. § 1414(d)(2)(C)(i)(II) (supporting applicability only to children "with a disability who transfer[] school districts within the same academic year...").*

Student's interstate transfer here did not trigger District's obligations under 34 C.F.R. § 300.323(f). While Parent registered Student for School on April 27, 2018, it is undisputed that Student completed the entire 2017-2018 academic year at Out-of-State District. Accordingly, as it is uncontested under the facts of this case that Student transferred to District during the summer of 2018, 34 C.F.R. § 300.323(f) is not applicable in this matter.

Although silent regarding a district's duties during similar summertime transfer scenarios, the IDEA "contains other provisions designed to ensure continuity of services for students with disabilities moving from one jurisdiction to another." *El Paso County School District 11*, 118 LRP 28093 (SEA CO 05/15/18). For instance, districts "need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year." *71 Fed. Reg. 46682 (August 14, 2006)*. Where, as in this case, an IEP from a prior district was developed at the end of a school year for implementation during the next school year, the receiving district may adopt and implement an existing IEP unless it decides an evaluation is necessary. *Id.* Even so, "the previous IEP carries no imprimatur of correctness in the new state and therefore an initial evaluation must be conducted, even if, as here, the previous IEP was created for a forthcoming school year." *Mr. and Mrs. A ex rel. Z.A. v. Greenwich Bd. of Educ.*, 68 IDELR 39 (D. Conn. 2016).

School did not adopt the Out-of-State IEP and instead developed the Interim Plan, as fully detailed at FF #11-16. School adhered to District's Transfer Guidelines in creating the Interim Plan even though its applicability is limited to transfers "[w]ithin the current school year." The Interim Plan went into effect from August 1, 2018 through September 26, 2018 to provide comparable services to the Out-of-State IEP, during which time School reevaluated Student's continuing IDEA eligibility. Based on a review of the Interim Plan, and assuming 34 C.F.R. § 300.323(f) was applicable here, the SCO concludes that District provided "comparable" or in the plain meaning of the word, "similar" or "equivalent," services to Student. *71 Fed. Reg. 46681 (August 14, 2006)*; *See also Sterling A. by Andrews v. Washoe County Sch. Dist.*, 108 LRP 67501 (D. Nev. 2008) (ruling that a receiving district "had no duty to replicate" in an interim IEP those services identified in a transfer student's prior IEP).

Relevant to Parent's allegation here, school districts must provide students with an equal opportunity to participate in extracurricular activities and nonacademic services, such as athletics, and ensure the provision of supplementary aids and services determined by an IEP team to be appropriate and necessary for the child to participate in such nonacademic settings. 34 C.F.R. §§ 300.107 and 300.117.

A comparison of the Out-of-State IEP to the Interim Plan with respect to athletics reveals that each document emphasizes Student's asthma, anxiety, and severe allergy needs. Student had access to his rescue medication bag both within school and nonacademic settings, and School

undertook efforts to comprehensively train educators and athletic staff regarding his medical needs. The Interim Plan incorporated most facets of the Out-of-State IEP, and School implemented its accommodations. The Interim Plan also integrates extracurricular activity accommodations beyond those of the Out-of-State IEP. The Record reveals further, at FF #19, that Parent's refusal to initially sign the Interim Plan derived in part from a lack of only these specific football-related accommodations. Overall, District designed an Interim Plan with Parent's input to ensure Student had comparable supplementary aids and services to those determined by Out-of-State District to be appropriate and necessary for Student to participate in athletics, and therefore District did not violate 34 C.F.R. § 300.117.

Parent next alleges that District failed to ensure School's athletic personnel had access to the Current IHP. *Complaint*, pp. 3-4. The SCO, based on a review of the Record, disagrees. The regulations require that a child's IEP be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. 34 C.F.R. § 300.323(d)(1). Each teacher and service provider must be informed of their specific responsibilities related to implementing that IEP, as well as the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. *Id.* at §300.323(d)(2).

In this instance, as thoroughly illustrated at FF #25-29, educators and football coaches had access to the Current IHP, and were informed about the accommodations to be provided through the Interim Plan. School Nurse completed the Current IHP by July 25, 2018 in collaboration with Parent and Student's healthcare provider. District demonstrated through documentation that School Nurse comprehensively trained multiple athletic personnel on the Current IHP. The Record is also replete with Parent's accounts of her ongoing efforts to educate Athletic Director and numerous football coaches on Student's medical needs.

Moreover, School Nurse provided Athletic Director and Varsity Coach with a copy of the Current IHP, placed the original version in School's health room, and inserted a copy into Student's rescue medication bag, which educators and athletic staff were aware that Student carried at all times. School Nurse also uploaded the Current IHP to PowerSchool, a web-based student information management system, so educators and certain athletic personnel, including Varsity Coach, had electronic access to the medical information. Thus, because those responsible for the Current IHP's implementation had access to it and were informed of their responsibilities, District acted in accordance with 34 C.F.R. § 300.323(d).

**Conclusion to Allegations No. 2 and No. 3: Although District conducted a sufficiently comprehensive reevaluation and its eligibility determination was consistent with Student-specific data in the record, information obtained from all sources was not documented in the Evaluation Report and Parent did not receive prior written notice within a reasonable time of the September 26, 2018 eligibility meeting, resulting in procedural violations.**

Parent next argues that the reevaluation was not sufficiently comprehensive because the District neither assessed Student in all areas related to the suspected disability, nor considered

Student's relevant functional information or existing evaluation data, including information provided by Parent. *Complaint*, pp. 3-4. Parent further asserts that District failed to properly consider Student's special education eligibility under the OHI category of disability. *Id.*

Eligibility for special education and related services under the IDEA requires that a child have one of thirteen qualifying impairments, and "by reason thereof, need[] special education and related services." 34 C.F.R. § 300.8(a)(1); ECEA Rule 2.08. Thus, one of the thirteen qualifying disabilities alone is insufficient as the child must also require "specially designed instruction . . . to meet the unique needs of a child with a disability . . ." 34 C.F.R. § 300.39(a)(1).

To resolve a challenge to a school district's eligibility determination, the SCO should first ascertain whether a school district followed the relevant IDEA procedures and standards required to reach its determination, and if so, whether the resulting determination is consistent with and supported by child-specific facts, such as evaluation data and other data in the record. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). CDE as a matter of policy will not declare a student IDEA eligible through a state complaint decision as eligibility is best determined by a qualified MDT, including parents, who best understand a student's educational needs. *Id.* If a state complaint investigation concludes that a district's eligibility determination is inconsistent with IDEA's evaluation procedures, or that a district otherwise improperly determined eligibility, CDE may instruct the school district to conduct an evaluation that remedies the deficiencies and concerns noted in the state complaint decision, and to then reconsider eligibility consistent with specific guidance provided in such decision. *Id.*

In analyzing whether School properly determined that Student was not IDEA eligible here, the SCO first considers whether School followed the relevant IDEA procedures and standards for conducting an evaluation. *Id.* The purpose of an evaluation under IDEA is twofold: (1) to determine whether the child has a disability, and because of the disability needs special education and related services, and (2) to help the IEP team determine the child's specific needs. 34 C.F.R. § 300.304(b)(1)(i)-(ii). The IDEA has specific and extensive procedural requirements governing how school districts are to evaluate students to determine eligibility. 34 C.F.R. §§ 300.304 - 300.306.

Pertinent here, "a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent" must be used. 34 C.F.R. § 300.304(b)(1). Student must also be "assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities," and School must review "existing evaluation data on the child, including (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related service providers." *Id.* at § 300.304(c)(4); 34 C.F.R. § 300.305(a).

As fully detailed at FF #30-42, the reevaluation adequately assessed Student through a variety of formal tools and strategies, including information provided by Parent, to obtain relevant data

in the areas of health, vision, hearing, social and emotional status, and academic performance. Experienced professionals on the MDT employed technically sound testing instruments, including the Woodcock-Johnson, the GORT-5, the TOWL-4, the BASC-3, and the RCMAS-2. The MDT obtained relevant and meaningful functional information to directly inform a determination of Student's educational needs, to include teacher reports as well as observations and interventions with respect to suspected areas of concern. These reports are consistent with credible information gathered from interviews with School Nurse, Special Education Case Manager, Varsity Coach, and Parent in that Student's health needs have not impacted his ability to attend school or football during the 2018-2019 academic year.

Special Education Case Manager reviewed the Out-of-State IEP, a 2015 out-of-state psychological evaluation and IEPs from Student's previous enrollment in District for grades three through five, all of which were provided to School by Parent. Even though it is unclear to the SCO as to why District did not receive the April 2018 out-of-state independent educational evaluation from Parent until October of 2018, District nonetheless did not adopt the Out-of-State IEP, which referenced this out-of-state independent educational evaluation. School met with Parent on August 1, 2018, and based on its review of the Out-of-State IEP, determined that additional data would be needed, through a reevaluation, to decide whether Student remained eligible for special education services under Colorado's conflicting standards. District considered additional existing information provided by Parent, who met in-person with various District and School personnel at least fifteen times between May 22, 2018 and the eligibility determination, to include the BASC-3 assessment and a health questionnaire.

In light of *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017), reevaluations should be sufficiently comprehensive to allow a school district to develop an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Denver Public School District*, 118 LRP 28084 (SEA CO 4/6/18). The SCO finds and concludes that District conducted a sufficiently comprehensive reevaluation here. It was reasonable and appropriate for the MDT, given District's review of existing data, information provided by Parent, and the *Prior Written Notice & Consent for Evaluation* form signed by Parent, to focus the reevaluation on Student's suspected areas of concern, particularly health and social emotional status. Notably, Parent neither asserted at the September 26, 2018 eligibility meeting that District failed to assess Student in other areas of suspected disability, nor specifically maintained that Student should have been assessed under the OHI category. Plus, the Record is devoid of any evidence that Student has limited strength, vitality, or alertness due to a chronic or acute health problem.

Still, District failed to document the classroom-based observations obtained by Special Education Case Manager within the Evaluation Report. As the IDEA requires that such information obtained as part of an evaluation be documented and carefully considered, this results in a procedural violation of 34 C.F.R. § 300.306(c)(1)(ii). The United States Supreme Court stressed the importance of compliance with the IDEA's procedural safeguards. *Board of Education v. Rowley*, 458 U.S. 176, 205-206 (1982). However, failure to comply with procedural safeguards amounts to a violation of FAPE only if the procedural violation either (1) impeded

the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

The evidence here, at FF #36, demonstrates that classroom-based observations and mock trials were part of the reevaluation and considered by the MDT. Moreover, based on the teacher reports indicating that Student has presented no behavioral, health, self-advocacy, social emotional, or academic concerns, the absence of this information in the Evaluation Report does not compromise the comprehensiveness of the reevaluation. Thus, this procedural violation did not result in a denial of FAPE for Student under 34 C.F.R. § 300.513(a)(2).

The SCO now considers whether the eligibility determination that Student could receive reasonable educational benefit from general education alone was consistent with Student-specific data in the Record. To be eligible under the category of SED, a child must have emotional or social functioning which prevents the child from receiving reasonable educational benefit from general education. ECEA Rule 2.08(3).

One of four qualifiers that must be documented by the MDT include “[i]ndicators of social/emotional dysfunction [that] are pervasive, and are observable in at least two different settings within the child’s environment. For children who are attending school, one of the environments shall be the school.” *Id.* at 2.08(3)(c)(iii). To be considered pervasive, “at least one of these indicators must be present in school and in one other setting, such as home or community, and must be documented in the body of evidence.” *CDE Guidelines for Determining Eligibility for Special Education Students with SED*, pp. 42-43.

The Student-specific data in the record, primarily the body of BASC-3 evidence documented by District Psychologist and detailed by the SCO at FF #38-39, demonstrates indicators are present within just one setting. Only some of Parent’s rating scores, within the home environment, fell in the “Clinically Significant” range. This contrasts rating scores obtained within the school environment from Geography Teacher, Mentor Coach, and Student. All of their rating scores, apart from Student’s “At-Risk” scores in anxiety, somatization and social stress, fell within the “Average” range for all categories. The SCO does not find Parent’s position that Mentor Coach’s ratings are invalid simply because he is not one of Student’s teachers to be persuasive. The Records supports a conclusion that it was both appropriate and reasonable to select Mentor Coach as a BASC-3 rater because he is familiar with Student both through football and study hall from early on in the season.

The Student-specific data in the record also supports a finding that Student can receive reasonable educational benefit from general education alone. Consistent with the BASC-3, which did not reveal any concerns in Student’s social-emotional functioning, Student’s teachers reported that, in addition to being organized, on task, and self-motivated, Student socializes well with others, participates, and has not needed any accommodations. The reports further reflect that Student is able to understand instruction and complete assignments. Additionally, Student’s performance on the Woodcock-Johnson, the GORT-5, and the TOWL-4 did not reveal

deficits in cognitive and academic functioning. The Record indicates that Student has demonstrated the ability to build and maintain positive relationships with both peers and educators during his first semester at School, bolstered in part by Student's continuous and successful participation on both the freshman and junior varsity football teams.

The Student-specific data in the record further supports the determination that Student does not need special education and related services as a result of documented health conditions. Special Education Case Manager and School Nurse reported that Student carries his rescue medication bag at all times, and that he has not had to visit School's health room for medical attention at all this semester. School Nurse performed a comprehensive health assessment, and District developed the Current IHP in conjunction with additional medical expertise from Student's healthcare provider and input from Parent.

Based on the foregoing, the SCO concludes the eligibility determination was consistent with Student-specific data and that it did not violate the IDEA. And although the MDT did not follow CDE suggested best practice guidance with respect to the *Determination of Eligibility* form, noted at FF #44, this is not an IDEA violation where the reevaluation considered all suspected areas of concern, included reliable data from a number of sources, and was sufficiently comprehensive. Moreover, the MDT indicated that no disabilities were suspected, and the valid body of reevaluation evidence supports its determination that Student can receive reasonable educational benefit from general education alone.

Finally, while Special Education Director is to be credited for apprising the SCO on her own accord that District did not provide Parent with prior written notice following the eligibility determination, thirty-three days passed between the September 26, 2018 meeting and its issuance. The IDEA requires that a school district send prior written notice to a parent within "a reasonable time" before it proposes or refuses to initiate or change a child's identification, evaluation, educational placement, or provision of FAPE. 34 C.F.R. § 300.503(a). Verbal notice, even if substantively proper, does not satisfy the requirement of prior written notice under IDEA. *El Paso County School District 2*, 113 LRP 44602 (SEA CO 8/15/13).

In this case, even accounting for District's two-week fall break and the fact that the IDEA does not provide a specific timeline within which a school district must provide prior written notice, the SCO concludes that Parent did not receive the *Prior Written Notice of Special Education Action* within "a reasonable time." The District's failure here to provide prior written notice within a reasonable time before discontinuing Student's special education and related services therefore constitutes a procedural violation of 34 C.F.R. § 300.503(a).

Again, it is well-settled that procedural violations of the IDEA are only actionable to the extent they impede a child's right to a FAPE, significantly impede a parent's opportunity to participate in the decision-making process, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy School District No. 20*, 538 F.3d 1306 (10th Cir. 2008). In analyzing whether Parent's opportunity to participate in the decision-making process was significantly impeded here, the SCO notes that the "primary purpose of prior written notice is

to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards.” *Douglas County School District*, 118 LRP 35788 (SEA CO 7/6/18); *See also Letter to Boswell*, 49 IDELR 196 (OSEP 2007).

In this instance, Parent attended and participated in the September 26, 2018 eligibility meeting, and filed the instant Complaint on October 3, 2018. Despite lack of a timely prior written notice, the timing and the content of the Complaint demonstrate that Parent understood the basis for the disagreement with respect to the eligibility determination, and that she could seek a resolution through the state-level complaint process. District directed the SCO to this violation, and candidly conceded that it “dropped the ball.” The findings therefore do not support a conclusion that this was a systemic issue. Consequently, the SCO concludes that District’s failure to timely provide prior written notice did not result in substantive harm to Student or Parent that would entitle Student to individualized relief.

**Conclusion to Allegation No. 4: The August 20, 2018 and September 10, 2018 meetings did not involve the identification, evaluation, and educational placement of Student, or the provision of FAPE to Student. Thus, they did not constitute IEP meetings.**

Last, Parent asserts that District did not provide her with notice of two IEP meetings, specifically the August 20 Meeting and the September 10 Meeting. *Complaint*, p. 4.

With the intent of developing an IEP that is tailored to the unique needs of the child, the IDEA places particular emphasis on collaboration among parents and school districts, requiring that parents be afforded the opportunity to participate and that their participation be meaningful, including giving careful consideration to their concerns about their child. 34 C.F.R. §§ 300.321(a)(1) and 300.322. Therefore, the IDEA enumerates numerous procedural safeguards designed to protect the rights of parents and children with disabilities. 34 C.F.R. § 300.121(b). For instance, Parents of a child with a disability are guaranteed the right to participate in and receive notice of meetings with regard to the identification, evaluation and educational placement of the child, and the provision of FAPE to the child. 34 C.F.R. § 300.501(b).

The IDEA distinguishes an IEP meeting from “informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision.” *Id.* § 300.501(b)(3). Moreover, an IEP meeting “does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.” *Id.*

The SCO concludes that neither of the at-issue meetings, fully described at FF #47-48, constituted an IEP meeting as defined under IDEA. The August 20 Meeting occurred with Parent’s consent and concerned non-IDEA, football-related issues impacting the entire team. Military Consultant’s impromptu conversations with School Nurse and Assistant Principal immediately following the August 20 Meeting, to receive updates on the Interim Plan and Current IHP, amount to nothing more than coordination of service provision, especially since no changes were made to any of Student’s documents at that time. The September 10 Meeting,

which did not transpire, was an appointment for Parent to complete a BASC-3 assessment. This was not an IEP meeting, but rather an effort to ensure Parent's meaningful participation in the reevaluation process. The District ensured Parent's completion of her portion of the BASC-3 prior to the September 26, 2018 meeting. In view of the foregoing, District acted in accordance with 34 C.F.R. § 300.501(b).

## **VI. REMEDIES**

The SCO concludes that the District has violated the following IDEA requirements:

- a. Failing to document and describe reevaluation information, specifically classroom observations and self-advocacy mock trials, within the Evaluation Report, consistent with 34 C.F.R. § 300.306(c)(1).
- b. Failing to provide prior written notice within a reasonable time before discontinuing Student's special education and related services, consistent with 34 C.F.R. § 300.503(a).

To remedy these violations, the District is ORDERED to take the following actions:

1. By December 14, 2018, the District must submit to CDE a proposed corrective action plan ("CAP") that effectively addresses the two (2) violations noted in this Decision.
2. By December 28, 2018, Special Education Director shall review the following IDEA requirements with Special Education Case Manager, consistent with this Decision and 34 C.F.R. §§ 300.306(c)(1) and 300.503(a): ensuring that all assessments conducted as part of an evaluation are documented, and that prior written notice is provided within a reasonable time before a school district proposes or refuses to initiate or change a child's identification, evaluation, educational placement, or provision of FAPE. To document that this review occurred, the District must submit a sign-in sheet and notes from the meeting to CDE by December 28, 2018.

CDE will approve or request revisions to the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Beth Nelson  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by CDE.

## VII. CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *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.

Dated this 30th day of November, 2018.

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Brandon Edelman, Esq.  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-13

- Exhibit 1: Parent's Colorado Civil Rights Complaint
- Exhibit 2: Parent-Produced Timeline
- Exhibit 3: Evaluation Report
- Exhibit 4: Interim Plan/Out-of-State IEP
- Exhibit 5: E-Mail Correspondence
- Exhibit 6: Medical Documentation
- Exhibit 7: Out-of-State Evaluations, Eligibility Determination, HealthCare Plan and IEP
- Exhibit 8: Exceptional Family Member Program Letters

### Response, pages 1-17

- Exhibit A: Interim Transfer Plans (July 2018 to present) and Meeting Notes
- Exhibit B: Individualized Healthcare Plan (July 2018 to present)
- Exhibit C: Out-of-State IEP
- Exhibit D: Documents Delivered by Parent to School on October 1, 2018
- Exhibit E: Eligibility Determination/Evaluation Report (July 2018 to present)
- Exhibit F: Prior Written Notice
- Exhibit G: Prior Written Notice and Consent for Evaluation

- Exhibit H: Notices of Meetings (July 2018 to present)
- Exhibit I: Grades and Progress Reports (July 2018 to present)
- Exhibit J: District Policies and Procedures
- Exhibit K: Timeline of Communications/E-Mail Correspondence
- Exhibit L: District Staff Contact List/Stakeholder Grievance
- Exhibit M: E-Mail with attached Prior Written Notice dated October 29, 2018
- Exhibit N: Special Education Case Manager Classroom Observation Notes

#### **Reply, pages 1-24**

- Exhibit 9: E-Mail Correspondence
- Exhibit 10: Audio Recording of September 26, 2018 Meeting
- Exhibit 11: Football-Related Documents
- Exhibit 12: Dear Colleague Letter (Students with Disabilities in Extracurricular Athletics)
- Exhibit 13: Football Practice Calendar
- Exhibit 14: Evaluation Report/Eligibility Determination for Student's Sibling
- Exhibit 15: Blank
- Exhibit 16: Exceptional Family Member Program Assignments
- Exhibit 17: KRDO News Article
- Exhibit 18: Parent E-Mail Response to Prior Written Notice dated October 29, 2018

#### **Telephonic Interviews**

- School Nurse: October 30, 2018
- Military Consultant: October 31, 2018
- Varsity Coach: October 31, 2018
- Special Education Director and Special Education Case Manager: November 2, 2018
- Parent: November 2, 2018