

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

**State-Level Complaint 2022:505
Poudre School District**

DECISION

INTRODUCTION

On February 9, 2022, the parent (“Parent”) of two students (collectively, “Students”) not currently identified as children with disabilities under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Poudre School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two 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. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 9, 2021 through February 9, 2022 for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to conduct comprehensive evaluations of Students between September 24, 2021 and present, specifically by:
 - a. Failing to evaluate Students in all areas of suspected disability, in violation of 34 C.F.R. § 300.304(c)(4); and

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.

- b. Failing to consider existing evaluation data, information provided by Parent, and current classroom observations, in violation of 34 C.F.R. § 300.305(a)(1).
2. Failed to include Parent in any determinations of Students' eligibility between September 24, 2021 and present, in violation of 34 C.F.R. § 300.306.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Both Students attend a District school that serves students in kindergarten through twelfth grade ("School"). *Interview with Parent*. Parent filed this Complaint on behalf of both Students, who are siblings. *Id.*
2. Student A is 14 years old and enrolled in seventh grade at School. *Id.* He enjoys playing video games and sports. *Id.* Student A makes friends easily and is a kind, respectful young man. *Interviews with Parent and Special Education Teacher*. He is thoughtful and thorough in his schoolwork. *Interview with Special Education Teacher*. Though Student A is a strong reader, he struggles with writing. *Id.*
3. Student B is 13 years old and enrolled in sixth grade at School. *Interview with Parent*. He loves to learn and likes being independent. *Id.* Student B enjoys cars and treats his teachers with respect. *Interview with Special Education Teacher*. He struggles to take his time on assignments and, instead, rushes through his work to get it done. *Id.*

B. Educational History

4. For part of the 2018-2019 school year, Students attended an elementary school in a school district in another state ("Other District"). *Interview with Parent; Exhibit Q*, p. 11; *Exhibit R*, p. 11. That year, Student A was in fifth grade, and Student B was in fourth grade. *Interview with Parent*. The 2018-2019 school year was Students' first year in Other District. *Id.*
5. In late 2018, Other District evaluated Students for special education and related services. *See Exhibit Q*, pp. 11-21; *Exhibit R*, pp. 11-20. Based on the evaluations, Other District determined that both Students qualified for special education and related services. *Exhibit Q*, p. 22; *Exhibit R*, p. 23. Specifically, Student A was eligible under the disability categories of Emotional Disturbance and Specific Learning Disability ("SLD"). *Exhibit Q*, p.

² The appendix, attached and incorporated by reference, details the entire Record.

22. Student B qualified under the disability categories of Emotional Disturbance and Speech Language Impairment. *Exhibit R*, p. 23.
6. In February 2019, Other District developed and implemented IEPs for both Students. See *Exhibit Q*, pp. 22-31; *Exhibit R*, pp. 23-30. However, in April 2019, Students left Other District. *Exhibit N*, p. 2.
7. From April 2019 until September 2022, Parent homeschooled Students. *Interview with Parent*. During homeschool, Students did not adhere to a specific curriculum, and no data evidenced Students' progress during homeschool. *Id.*

C. 2021-2022 School Year

8. On August 25, 2021, Parent enrolled Students in School's virtual program. *Exhibit Q*, p. 2; *Exhibit R*, p. 8. The registration forms asked for each Student's "current grade." *Exhibit Q*, p. 2; *Exhibit R*, p. 8. Parent listed Student A's current grade as seventh grade and Student B's current grade as sixth grade. *Exhibit Q*, p. 2; *Exhibit R*, p. 8. The District subsequently enrolled Students in the grades listed on the registration forms. *Response*, p. 4.
9. Shortly after Students were enrolled, Parent informed District staff that Students previously had IEPs in Other District. *Interview with Parent*. In response, the District requested Students' records from Other District. *Exhibit N*, p. 1. Other District provided Students' prior IEPs and evaluation records to the District on September 29. *Id.* at p. 2.
10. Students began School's virtual program on September 24. *Interview with Parent*. In this program, students receive synchronous, or live, instruction from teachers five days a week. *Interview with Principal*. On Mondays and Wednesdays, students have two blocks of math and two blocks of language arts. *Id.* On Tuesdays and Thursdays, students have one block of science and one block of social studies. *Id.* On Fridays, students have one advisory class where the teacher fosters connections between students and teaches social-emotional skills. *Id.* Students have the option of attending Learning Lab on Fridays. *Id.* During this time, their teachers are available for additional support. *Id.* The remainder of the week, students have asynchronous learning, where they are expected to work on assignments independently. *Id.*
11. School does not require students to turn on their cameras or use their microphones during live classes. *Id.* Instead, students can participate by answering questions using the chat feature. *Id.*
12. School tracks attendance at live classes. *Id.* Additionally, students must "attend" asynchronous learning by completing and submitting assignments. *Id.* Attendance at School is roughly 40% live classes and 60% asynchronous learning. *Id.*

13. At School, students have live class in each subject only two days per week. *Id.* So missing two days of a subject is akin to missing an entire week of instruction in that subject. *Id.*
14. Throughout the 2021-2022 school year, Students have missed a significant number of live classes. *Id.* Specifically, Student A missed at least 21 live classes between September 24 and December 17. *Exhibit F*, pp. 4-5. Through March 22, 2022, Student A was absent from 58 out of 280 live classes, amounting to a 20% absence rate. *Id.*; *Interview with Principal.*
15. Similarly, Student B missed at least 38 live classes between September 24 and December 17. *Exhibit L*, pp. 1-2. Through March 22, 2022, Student B was absent from 57 out of 280 live classes, amounting to a 20% absence rate. *Id.*; *Interview with Principal.*
16. Parent disagreed with the number of absences recorded by School but acknowledged that Students have, at times, missed live instruction. *Interview with Parent.* Parent attributed these absences to medical appointments, either hers or Students. *Id.* The District has not ever asked Parent to provide any doctor's notes supporting Students' absences. *Interview with Principal.*
17. At the same time, Students have struggled to complete their work during asynchronous learning. *Id.* Through March 22, Student A's teachers indicated 22 times that Student A did not adequately participate in asynchronous learning for the week. *Exhibit E*, p. 6; *Interview with Principal.* Student B's teachers reported the same on 32 occasions this school year. *Exhibit L*, p. 2; *Interview with Principal.*

D. Initiation of Evaluations

18. Based on their prior eligibility in Other District, the District referred both Students for an initial evaluation for special education and related services in late September. *Interviews with Assistant Director of Integrated Services ("Assistant Director"), School Psychologist, and Special Education Teacher; see also Exhibit D*, p. 5; *Exhibit R*, p. 10.
19. On or around October 6, the District provided Parent consent to evaluate forms, requesting Parent's permission to evaluate Students in the areas of General Intelligence, Communicative Status, Academic Performance, and Social Emotional Status. *Exhibit D*, pp. 1-2; *Exhibit J*, pp. 1-2. The areas of evaluation were based on Students' prior eligibility and concerns noted in the records from Other District. *Interview with Special Education Teacher.*
20. Parent provided the District consent to evaluate both Students on October 6. *Exhibit D*, pp. 1-2; *Exhibit J*, pp. 1-2.
21. On October 29, Parent revoked consent for the evaluations. *Exhibit N*, p. 7. The District and Parent struggled to find mutually agreeable dates and times for Students'

assessments. *Interview with Parent*. Parent indicated Students had a lot of medical appointments “on top of not feeling good frequently.” *Exhibit N*, p. 7. Parent worried the evaluations would be too rushed and, therefore, inaccurate, prompting her to revoke consent. *Id.*; *Interview with Parent*.

22. After Parent revoked consent, the District issued Prior Written Notice (“PWN”) for Student A and Student B, indicating that the District stopped the evaluation processes at Parent’s request. *Exhibit D*, p. 4; *Exhibit J*, p. 4.
23. On November 11, Parent once again provided the District consent to evaluate Student B. *Exhibit J*, pp. 5-7. Parent similarly renewed her consent to evaluate Student A on November 12. *Exhibit D*, pp. 6-7. The District then resumed the evaluations. *Interview with Special Education Teacher*.

E. Student A’s Evaluation

24. School Psychologist evaluated Student A’s cognitive functioning abilities using the Wechsler Intelligence Scales for Children-Fifth Edition (“WISC-V”). *Exhibit E*, pp. 9-11. Though School Psychologist considered using other tools that are less culturally biased, she ultimately selected the WISC-V so she could compare his score to the WISC-V score from Other District’s evaluation in 2019. *Interview with School Psychologist*.
25. The WISC-V assesses a student’s cognitive abilities in a variety of areas, including verbal, spatial, fluid reasoning, working memory, and processing speed. *Exhibit E*, p. 9. Student A obtained a full-scale IQ score of 73, falling within the very low range compared to same-age peers. *Id.* This full-scale IQ placed Student A in the fourth percentile. *Id.* For reference, in 2019, Student A’s full-scale IQ score was 72. *Id.* at p. 4.
26. Student A scored in the average range on the visual spatial composite and in the low average range on the processing speed and verbal comprehension composites. *Id.* at p. 11. However, he scored very low on the fluid reasoning and working memory composites. *Id.* School Psychologist noted some inconsistencies between Student A’s composite scores in 2019 and 2021. *Id.* at p. 10; *Interview with School Psychologist*. However, for the most part, those inconsistencies fell within the standard error of measurement and did not undermine School Psychologist’s confidence in the WISC-V results. *Interview with School Psychologist*.
27. Special Education Teacher administered the Wechsler Individual Assessment Test-Fourth Edition (“WIAT-4”) to measure Student A’s academic achievement. *Exhibit E*, pp. 4-7. Student A’s overall standard score was a 72, placing him in the third percentile compared to same-age peers. *Id.* at p. 5. Though Student A scored average on reading, he received an extremely low overall score in written expression and a very low overall score in math. *Id.* at p. 5.

28. School Psychologist evaluated Student A's social and emotional wellness using the Behavior Assessment System for Children—Third Edition (“BASC-3”) and the Adaptive Behavior Assessment System—Third Edition (“ABAS-3”). *Id.* at pp. 11-15. The BASC-3 is “a norm referenced rating of the emotions and behaviors of children, based on the perceptions of those who know them well.” *Id.* at p. 11.
29. Two of Student A's teachers and Parent completed the BASC-3 ratings scales. *Id.* Student A did not complete his self-rating scales. *Id.* Given Student A's age, School Psychologist did not believe the BASC-3 results were negatively impacted by the missing self-rating scales. *Interview with School Psychologist.*
30. Overall, none of the three raters indicated any clinically significant social-emotional, behavioral, or adaptive skill concerns. *Id.* All of the three raters identified Student A as having some moderate concerns related to adaptive skills, such as making decisions and getting others to work together effectively. *Id.* In general, the teachers' responses were consistent with the rating scales completing during Student A's 2019 evaluation in Other District. *Id.*
31. The ABAS-3 evaluates whether a student “displays various functional skills necessary for daily living without the assistance of others, at an age appropriate level.” *Id.* at p. 14. The same two teachers and Parent completed the ABAS-3 ratings scales. *Id.* Both teachers marked a high number of the ratings as guesses, resulting in a majority of their responses being invalidated. *Id.*; *Interview with School Psychologist.* The nature of virtual instruction did not provide Student A's teachers with the information needed to rate him in some of the areas (for example, self-care and leisure). *Interview with School Psychologist.*
32. Nonetheless, Parent's ratings on the ABAS-3 were valid. *Id.* Overall, Parent's ratings indicated a composite score in the low range compared to same-age peers. *Exhibit E*, p. 14. Student received a low score on the conceptual composite, a below average score on the social composite, and an average score on the practical composite. *Id.* In general, Student A's scores on the ABAS-3 were similar to or higher than the scores from his 2019 evaluation. *Id.*
33. School Psychologist also observed Student A during two live classes, once in a large group setting and once in a small group setting. *Interview with School Psychologist.* Student A did not verbally participate in either class, and his camera and microphone were off. *Id.*; *Exhibit E*, p. 15. In the large group, Student A “responded as requested at the end of class but did not otherwise respond to whole group or individual questions and directions.” *Exhibit E*, p. 15. In the small group setting, Student A participated in the class by showing his work on shared slides. *Id.* Student A did not use his camera or his microphone but still “showed good engagement and participation.” *Id.*

34. Speech Language Pathologist (“SLP”) administered the Clinical Evaluation of Language Fundamentals-Fifth Edition (“CELF-5”) to evaluate Student A’s language skills. *Id.* at pp. 8-9. Student A received an overall core language score of 83, placing him just below the average range when compared to other students his age. *Id.* at p. 8. His index scores in all areas fell within the average range, with the exception of receptive language. *Id.* at pp. 8-9. Student A’s scores on receptive language were below average. *Id.*
35. The results of the CELF-5 did not give SLP any concerns about Student A’s language skills. *Interview with SLP.* Indeed, a comparison of Student A’s 2019 and 2021 CELF-5 scores showed growth. *Id.*; *Exhibit E*, p. 4.
36. SLP also engaged Student A in conversation to assess how his language presented conversationally. *Interview with SLP.* SLP similarly did not have any concerns about Student A’s language skills based on the conversation. *Id.*
37. All of the assessments used in Student A’s evaluation—the WISC-V, WIAT-4, BASC-3, ABAS-3, and the CELF-5—are norm referenced based on a student’s chronological age. *Interview with CDE Specialist*; see also *Exhibit E*, pp. 1-16. These assessments rank and compare students of the same age, not necessarily students of the same grade level. *Interview with CDE Specialist.*

F. Student A’s Eligibility Determination

38. On January 10, 2022, a multidisciplinary team (“MDT”) met to review Student A’s evaluation and complete his eligibility determination. *Exhibit B*, p. 1. Assistant Director, Principal, School Psychologist, Special Education Teacher, SLP, and Parent attended the meeting. *Exhibit C*, p. 4.
39. The MDT considered Student A’s eligibility under three disability categories: Serious Emotional Disability (“SED”), Intellectual Disability, and Specific Learning Disability (“SLD”). *Interviews with Assistant Director, School Psychologist, and Special Education Teacher.* Based on the results of the CELF-5, the MDT did not consider Student A’s eligibility under Speech or Language Impairment. *Interview with SLP.*
40. The MDT determined that Student A did not qualify for special education and related services under SED. *Exhibit C*, pp. 1-2. The MDT agreed that, based on the outcome of the BASC-3 and the ABAS-3, Student A’s social-emotional functioning did not amount to SED. *Interviews with Assistant Director, School Psychologist, and Special Education Teacher.*
41. Next, the MDT concluded that Student A did not qualify under the Intellectual Disability category. *Id.* Though Student A’s full-scale IQ fell within the very low range, his IQ was not two or more standard deviations below the mean. *Interview with School Psychologist.*

42. Finally, the MDT discussed Student A's eligibility under SLD. *Interviews with Assistant Director, School Psychologist, and Special Education Teacher*. District members of the MDT were concerned that Student A's academic deficits could be caused by a lack of consistent education, especially given that Student A had been homeschooled since April 2019 and had a significant number of absences at School. *Id.* Though Parent disagreed, the District members of the MDT asserted that Student A's attendance and participation in intervention needed to be consistent before the MDT could determine whether Student A qualified under SLD. *Id.*
43. The MDT agreed to gather more data on Student A's "response to intervention and educational impact." *Exhibit D*, p. 9. The team planned to reconvene in April 2022 to review the data and determine whether it should reconsider Student A's eligibility for SLD. *Id.*
44. As noted above, Parent attended Student A's eligibility meeting. *Exhibit C*, p. 4; *Interviews with Assistant Director, School Psychologist, SLP, and Special Education Teacher*. District members of the MDT recalled Parent being an active participant in the discussions around Student A's eligibility. *Id.* Parent shared her concerns regarding Student A and provided input on behaviors she saw while Student A was attending School virtually. *Interview with Assistant Director*. School Psychologist recalled the MDT discussing each step of the eligibility form and the relevant evaluation results. *Interview with School Psychologist*. Parent agreed with each checkmark on the form until she realized that Student A was not eligible for special education and related services. *Id.*

G. Student B's Evaluation

45. School Psychologist used the WISC-V to evaluate Student B's cognitive abilities. *Exhibit K*, pp. 8-9. As with Student A, School Psychologist considered using a different assessment that is less culturally biased but selected the WISC-V to compare Student B's score to his prior WISC-V score from Other District's 2019 evaluation. *Interview with School Psychologist*.
46. Student B obtained a full-scale IQ score of 67, falling within the extremely low range compared to same-age peers. *Exhibit K*, p. 8. Student B's full-scale IQ was in the first percentile and was more than two standard deviations below the mean. *Id.*; *Interview with School Psychologist*. For reference, in 2019, Student B received a full-scale IQ score of 73. *Exhibit K*, p. 4.
47. Student B scored in the extremely low range for all of the composite scores, except verbal comprehension. *Id.* at p. 9. On verbal comprehension, Student B's score fell within the very low range. *Id.* According to School Psychologist, a student's verbal processing score is most closely tied to overall IQ. *Interview with School Psychologist*. Student B's higher

verbal score indicated that his full-scale IQ score was not as low as it appeared on this administration of the WISC-V. *Id.* Four of his five composite scores were lower than when Student B completed the WISC-V in 2019. *Exhibit K*, p. 9.

48. During the WISC-V, Student B worked for a few minutes on a problem and then said it was “good enough.” *Id.* at p. 8; *Interview with School Psychologist*. School Psychologist reminded Student B to try his best. *Interview with School Psychologist*. Student B did not subsequently indicate that he was giving reduced effort, though the incident caused School Psychologist to wonder whether the WISC-V underestimated Student B’s abilities. *Id.*; *Exhibit K*, p. 8. School Psychologist pointed to Student B’s higher cognitive scores from 2019 as an indicator of his cognitive functioning, noting that a person does not become intellectually disabled over time. *Interview with School Psychologist*.
49. School Psychologist did not consider readministering the WISC-V. *Id.* According to School Psychologist, the WISC-V should not be readministered sooner than 12 to 18 months after the earlier administration. *Id.* School Psychologist considered six months to be the absolute bare minimum. *Id.* Frequent administration can result in a “practice effect.” *Id.*
50. Special Education Teacher administered the WIAT-4 to measure Student B’s academic achievement. *Exhibit K*, pp. 4-6. Student B’s standard overall score was a 74, placing him in the fourth percentile compared to same-age peers. *Id.* at p. 5. Student B scored average on reading, very low on mathematics, and extremely low on written expression. *Id.*
51. School Psychologist evaluated Student B’s social and emotional wellness using the BASC-3 and the ABAS-3. *Id.* at pp. 10-13. Student B’s math and language arts teachers completed the BASC-3 ratings scales. *Id.* at p. 10. Parent did not complete the ratings scales. *Id.* School Psychologist provided Parent electronic copies of the ratings scales on November 28 and December 8. *Id.* During a follow-up call, Parent said she would complete the ratings scales in person on December 9 while Student B was completing the WISC-V. *Id.*; *Interview with School Psychologist*. Parent was given a computer and offered assistance in completing the scales on December 9 but, ultimately, did not complete the scales. *Interview with School Psychologist*. Student B did not complete the self-rating scales either. *Id.*
52. Given Student B’s age, School Psychologist did not find the results of the BASC-3 to be negatively impacted by Student B’s missing self-rating scales. *Id.* However, Parent’s missing scales undoubtedly impacted the outcome, because scales from different settings (inside school and outside school) are necessary. *Id.*
53. Overall, the ratings from Student B’s two teachers differed significantly, indicating that Student B “demonstrates differing social-emotional and behavioral responses across school settings.” *Exhibit K*, pp. 10-12. The ratings from Student B’s language arts teacher—whom he had conflicts with earlier in the school year—more often fell in the elevated

category than the ratings from Student B's math teacher. *Id.* None of Student B's composite scores fell within the clinically significant range. *Id.* The difference between raters indicated to School Psychologist that Student was not having social-emotional issues across settings in the school environment, suggesting that something external (such as his conflict with his language arts teacher) resulted in the differing behaviors. *Interview with School Psychologist.*

54. Student B's same two teachers completed the ABAS-3 ratings scales. *Exhibit K*, p. 12. Again, even though Parent was offered the ratings scales on November 28, December 8, and December 9, Parent did not complete the ratings scales. *Id.* pp. 12-13. The nature of virtual instruction—and Student B's limited participation via video and microphone—did not provide Student B's teachers with the information needed to rate him in some of the areas (for example, communication and community use). *Interview with School Psychologist.*
55. School Psychologist also observed Student B during two live classes. *Id.* During the language arts class, Student B responded in the chat feature to yes or no questions posed by the teacher but did not respond to an open-ended question that was used as a participation assignment. *Exhibit K*, p. 13. In his science class, Student B did not respond to whole group questions. *Id.* He did, however, use his microphone to answer direct questions from the teacher regarding whether he was able to access the assignment. *Id.* Otherwise, Student B had his microphone and video off during both classes. *Id.*
56. SLP administered the CELF-5 to evaluate Student B's language skills. *Id.* at pp. 6-8. Student B received an overall core language score of 93, placing him in the average range compared to same-age peers. *Id.* at p. 7. His index scores in all areas fell within the average range, with the exception of language content index. *Id.* at pp. 8-9. Student B scored slightly below average on the language content index. *Id.*
57. The results of the CELF-5 did not give SLP any concerns about Student B's language skills. *Interview with SLP.* Indeed, a comparison of Student B's 2019 and 2021 CELF-5 scores showed growth. *Id.*; *Exhibit K*, p. 4.
58. SLP also engaged Student B in conversation to assess how his language presented conversationally. *Interview with SLP.* SLP similarly did not have any concerns about Student B's language skills based on the conversation. *Id.* Student B did not demonstrate any stuttering during the conversation. *Id.*
59. As noted above, all of the assessments used in Student B's evaluation—the WISC-V, WIAT-4, BASC-3, ABAS-3, and the CELF-5—are norm referenced based on a student's chronological age. *Interview with CDE Specialist; see also Exhibit K*, pp. 1-14.

H. Student B's Eligibility Determination

60. On January 12, 2022, an MDT met to review Student B's evaluation and complete his eligibility determination. *Exhibit H*, p. 1. Assistant Director, Principal, School Psychologist, Special Education Teacher, SLP, Student B's math teacher, and Parent attended the meeting. *Exhibit I*, p. 4.
61. The MDT considered Student B's eligibility under three disability categories: SED, Intellectual Disability, and SLD. *Interviews with Assistant Director, School Psychologist, and Special Education Teacher*. Based on the results of the CELF-5, the MDT did not consider Student B's eligibility under Speech or Language Impairment. *Interview with SLP*. Parent raised concerns about Student B's stuttering during the eligibility meeting; however, SLP did not observe any stuttering during Student B's evaluation and his teachers did not recall Student B stuttering during class. *Id.*
62. The MDT determined that Student B did not qualify for special education and related services under SED. *Exhibit I*, pp. 1-2. Though the MDT determined that Student B displayed inappropriate types of behaviors or feelings under normal circumstances, the MDT found that the dysfunction was not observable in at least two settings within the child's environment. *Id.*; *Interview with School Psychologist*. As a result, the MDT concluded that Student B was not eligible under SED. *Exhibit I*, pp. 1-2.
63. Next, the MDT considered Student B's eligibility under the Intellectual Disability category. *Id.* Even though Student B's full-scale IQ fell more than two standard deviations below the mean, the MDT did not check this on the eligibility form. *Id.* School Psychologist indicated this box was not checked because the MDT felt that the WISC-V likely underrepresented Student B's cognitive functioning, especially given his verbal comprehension score and his 2019 scores. *Interview with School Psychologist*. The data available to the MDT did not "fit an intellectual disability." *Id.* The MDT concluded that Student B was not eligible under Intellectual Disability. *Exhibit I*, p. 2.
64. Finally, the MDT discussed Student B's eligibility under SLD. *Interviews with Assistant Director, School Psychologist, and Special Education Teacher*. As with Student A, District members of the MDT were concerned that Student B's academic deficits could be caused by a lack of consistent education, especially given that Student B had been homeschooled since April 2019 and had a significant number of absences at School. *Id.* Though Parent disagreed, the District members of the MDT asserted that Student B's attendance and participation in intervention needed to be consistent before the MDT could determine whether Student B qualified under SLD. *Id.*
65. The MDT agreed to gather more data on Student B's "response to intervention and educational impact." *Exhibit J*, p. 8. The team planned to reconvene in April 2022 to

review the data and determine whether it should reconsider Student B's eligibility for SLD. *Id.*

66. As noted above, Parent attended Student B's eligibility meeting. *Exhibit I*, p. 4; *Exhibit S*. The video recording of the eligibility meeting details Parent's active participation in the discussions around Student B's eligibility. *Exhibit S*. School Psychologist led the MDT through the eligibility checklist, and the MDT worked through each item on the checklist as a team. *Id.* Parent offered her perspective on the behaviors Student B demonstrates at home during virtual learning. *Id.* School Psychologist asked follow-up questions about the behaviors and the team discussed how those behaviors should be documented on the eligibility form. *Id.* Parent's concerns even prompted the MDT to change one checkmark on the eligibility form regarding Student B displaying inappropriate behavior under normal circumstances. *Id.*

I. Development of Support Plans

67. On January 18, the District began providing additional instructional support to Students. *Interview with Special Education Teacher*. This support was in response to concerns by the MDTs about Students' instruction during homeschool and their poor attendance. *Id.* The District also started gathering data on Students' response to intervention. *Id.*
68. At the time of this decision, Students' MDTs planned to meet on April 11 to discuss Students' progress with the additional instructional support and any other data collected during this time period. *Id.*

J. Wrong Grade Level

69. In January 2022, Parent realized that Students were enrolled in the wrong grade level. *Interview with Parent*. According to Parent, Student A should be in eighth grade, and Student B should be in seventh grade. *Id.*
70. As noted above, during the 2018-2019 school year, Student A attended fifth grade, while Student B attended fourth grade. *Id.* If Students advanced one grade level per school year since their enrollment in Other District, Student A should have been an eighth grader this year, and Student B should have been a seventh grader. *Id.*
71. Parent admittedly wrote the wrong grade level on Students' registration forms but faulted the District for not realizing the mistake. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District conducted comprehensive evaluations of both Students, consistent with 34 C.F.R. §§ 300.304(c)(4) and 300.305(a)(1).

In her first allegation, Parent contends the District failed to comprehensively evaluate Students. Specifically, Parent alleges the District did not evaluate Students in all areas of suspected disability and failed to consider existing evaluation data, information provided by Parent, and current classroom observations.

Evaluation in All Areas of Suspected Disability

The IDEA requires an evaluation to assess students “in all areas related to the suspected disability.” 34 C.F.R. § 300.304(c)(4). Here, the District chose to evaluate Students’ general intelligence, communicative status, academic performance, and social emotional status. (FF # 19.) The District selected these areas of evaluation based on Students’ prior eligibility in Other District and the concerns noted in Students’ prior evaluations and IEPs. (*Id.*) Indeed, Student A was previously eligible under the disability categories of Emotional Disturbance and SLD. (FF # 5.) Student B was eligible under Emotional Disturbance and Speech Language Impairment. (*Id.*) The SCO finds and concludes that the District’s areas of evaluation targeted these same areas of disability. Nothing in the record indicates any other areas of suspected disability for either Student A or Student B.

Parent has suggested that the District could not have evaluated Students in all areas of suspected disability because the MDTs lacked adequate data to determine Students’ eligibility under SLD. (See FF #s 42, 43, 64, 65.) In Colorado, eligibility for SLD requires “a body of evidence” demonstrating that:

- (i) The child does not achieve adequately for the child’s age and exhibits significant academic deficits when provided with instruction appropriate for the child’s age; and
- (ii) The child does not make sufficient progress when using scientific, research-based intervention.

ECEA Rule 2.08(8)(b); *see also* 34 § C.F.R. 300.309. The IDEA does not allow students to be identified as a child with a disability where the determinant factor for the decision is a lack of appropriate instruction in reading or math. 34 C.F.R. § 300.306(b)(1)(i)-(ii). Indeed, “[t]o ensure that underachievement in a child suspected of having [SLD] is not due to lack of appropriate instruction,” the MDT must consider data demonstrating that the child “was provided appropriate instruction in regular education settings, delivered by qualified personnel” and

documentation of formal assessment of student progress during instruction. *Id.* § 300.309(b)(1)-(2).

Here, both Students' MDTs concluded that they lacked sufficient data to determine whether Students met either of the criteria for SLD. (FF #s 42, 43, 64, 65.) As to the first requirement, Students were new to the District at the time of their evaluations. (FF #s 8, 10.) Due to Students' inconsistent attendance and participation, District staff could not, yet, evaluate whether Students would exhibit significant academic deficits when provided with age-appropriate instruction. (FF #s 14, 15, 17.) Moreover, this requirement was further complicated by Students' recent homeschooling.

Because Students had been homeschooled since April 2019, the District did not have any data regarding the type of instruction Students had received or any formal assessment of their progress for more nearly two and one-half years. (FF # 7.) This is a significant length of time in Students' educational careers. Put simply, the District could not determine whether Students had received age-appropriate instruction during homeschooling.

As for the second requirement, Students had not yet been provided intervention and, therefore, the District could not assess whether Students would make appropriate progress in response to intervention. Any suggestion that the District should have delayed Students' evaluations to gather data on their response to intervention runs contrary to guidance from the U.S. Department of Education Office of Special Education Programs. That guidance specifically states that school districts "must ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of a [response to intervention] strategy." OSEP, Memo 11-07 (Jan. 21, 2011).

Additionally, Parent has implied that Students were not evaluated in all areas of suspected disability because they are currently one grade level below where they should be. (See FF #s 69-71.) Parent suggests that Students' academic deficits would be even greater if Student A was evaluated as an eighth grader and Student B was evaluated as a seventh grader. However, this is not true. The assessments used in both Students' evaluations are norm-referenced based on a student's chronological age. (FF #s 37, 59.) This means that the assessment ranks and compares students of the same age. (*Id.*) Even if Students were in a higher grade, their ages would not change. Therefore, their outcomes on the assessments used in the evaluations would not change either.

For these reasons, the SCO finds and concludes that the District evaluated Students in all areas of suspected disability, as required by 34 C.F.R. § 300.304(c)(4).

Review of Existing Data

As part of an evaluation, the MDT must review existing evaluation data on the child, including (i) evaluations and information provided by the parent of the child; (ii) current assessments and

classroom observations; and (iii) observations by teachers and related service providers. 34 C.F.R. § 300.305(a)(1).

Here, Parent has alleged that the District failed to consider existing evaluation data, information provided by Parent, and current classroom observations. The Findings of Fact indicate otherwise. Both Students' evaluation reports contain detailed summaries of Students' educational backgrounds and prior evaluations. (See FF #s 24-37, 45-59.) Indeed, School Psychologist and SLP selected assessments to allow them to compare the results of Students' current evaluations to Students' evaluations in Other District. (FF #s 24, 30, 32, 35, 45, 57.)

The MDTs considered Students' current evaluations (which included classroom observations). (FF #s 38-44, 60-66.) During Students' eligibility determination meetings, the MDTs discussed the evaluation as they worked through each section of the eligibility forms. (*Id.*) Students' evaluations support the decisions made by the MDTs. (See *id.*) Of note, though Student B's full-scale IQ was technically two standard deviations below the norm—which would qualify him for Intellectual Disability—the MDT found Student B's prior WISC-V score to be a more reliable indicator of his intelligence, especially in light of proven cultural bias in the WISC-V. (FF #s 62, 63.)

During the eligibility meetings, the MDTs sought input from Parent on her concerns for Students and behaviors she witnessed at home. (FF #s 44, 66.) Assistant Director recalled the conversations with Parent during the eligibility meetings to be constructive and insightful for the other members of the MDTs. (*Id.*) Students' teachers provided input during the evaluation process both informally and by completing ratings scales for the BASC-3 and WIAT-4. (FF #s 29, 51.)

Nothing in the record indicates that the MDT failed to consider any available information about the Students in the course of Students' evaluations or eligibility determinations. Therefore, the SCO finds and concludes that the District appropriately reviewed existing evaluation data, as required by 34 C.F.R. § 300.305(a).

Conclusion to Allegation No. 2: The District included Parent in the determinations of Students' eligibility for special education and related services, consistent with 34 C.F.R. § 300.306.

With her second allegation, Parent asserts that the District failed to include her in the determinations of Students' eligibility for special education and related services, in violation of 34 C.F.R. § 300.306.

Following completion of a student's evaluation, "a group of qualified professionals and the parent" determine whether the student is a child with a disability, as defined in 34 C.F.R. § 300.8. 34 C.F.R. § 300.306. Thus, a student's parent must be included in any determinations of the student's eligibility for special education and related services. *Id.*

Here, the Findings of Fact evidence that the District included Parent in the MDT that determined Students' eligibility for special education and related services. Though the meetings were held

virtually, Parent attended the MDT meetings for both Student A and Student B. (FF #s 38, 60.) District staff recalled Parent being an active participant in the discussion at the meetings. (FF #s 44, 65.) With regard to Student A, School Psychologist noted that Parent agreed with each checkmark on the eligibility form until she realized that those checkmarks indicated Student A was not eligible. (FF # 44.) Parent was frustrated that Student B did not qualify for SED, though there was extensive discussion about Parent's concerns and Student B's behaviors. (FF # 66.) District staff even changed the team's decision regarding one checkmark on the eligibility form in response to Parent's concerns. (FF #s 62, 66.) For these reasons, the SCO finds and concludes that the District included Parent in Students' eligibility determinations, consistent with 34 C.F.R. § 300.306.

REMEDIES

The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

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. *CDE State-Level Complaint Procedures*, ¶13; 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 SCO.

Dated this 10th day of April, 2022.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint A, pages 1-4

- Exhibit 1A: Transcript from Other District
- Exhibit 2A: Evaluation Report from Other District
- Exhibit 3A: Email Correspondence

Complaint B, pages 1-11

- Exhibit 1B: Evaluation Report from Other District
- Exhibit 2B: Evaluation Report
- Exhibit 3B: Transcript from Other District
- Exhibit 4B: Email Correspondence

Response, pages 1-13

- Exhibit A: Blank
- Exhibit B: Notices of Meeting for Student A
- Exhibit C: Determination of Eligibility for Student A
- Exhibit D: Prior Written Notices for Student A
- Exhibit E: Evaluation Reports for Student A
- Exhibit F: Grade and Attendance Reports for Student A
- Exhibit G: Blank
- Exhibit H: Notices of Meeting for Student B
- Exhibit I: Determination of Eligibility for Student B
- Exhibit J: Prior Written Notices for Student B
- Exhibit K: Evaluation Reports for Student B
- Exhibit L: Grade and Attendance Reports for Student B
- Exhibit M: Relevant District Policies and Procedures
- Exhibit N: Email Correspondence
- Exhibit O: Blank
- Exhibit P: Verification of Delivery to Parent
- Exhibit Q: Additional Documents related to Student A
- Exhibit R: Additional Documents related to Student B
- Exhibit S: Video of Student B's Eligibility Determination Meeting

Reply, pages 1-3

- Exhibit 4A: Correspondence
- Exhibit 5A: Homeschool Forms

Telephone Interviews

- Assistant Director of Integrated Services: March 22, 2022
- Parent: March 24, 2022
- Principal: March 22, 2022
- School Psychologist: March 22, 2022
- Special Education Teacher: March 22, 2022
- Speech Language Pathologist: March 22, 2022