

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

State-Level Complaint 2022:518
Boulder Valley School District

DECISION

INTRODUCTION

On April 21, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against the Boulder Valley School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one (1) allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 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 (“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 April 21, 2021 through April 21, 2022 for the purpose of determining if a violation of 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 District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to develop, review, and revise an IEP that was tailored to Student’s individualized needs, on or about April 4, 2022, in violation of 34 C.F.R. § 300.324, specifically by:
 - a. Failing to consider the concerns of Parent for enhancing the education of Student, in violation of 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

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.

FINDINGS OF FACT

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

A. Background

1. Student is thirteen years old and qualifies for special education and related services under the specific learning disability category, with a secondary disability in hearing impairment (including deafness). *See Exhibit O*, p. 13.
2. This investigation concerns the 2021-2022 academic year, when Student was in 7th grade. *See id.* Although Student lives within District’s geographical boundaries, Student did not attend a District school during the 2021-2022 academic year. *Interviews with Director of Special Education, Parent, and Instructional Specialist.* Instead, Student attended Private School for half the day and received homeschooling for the remainder of the day. *Id.*
3. Parent enrolled Student at a District middle school (“School”) for the 2022-2023 academic year and requested a reevaluation from District in the Spring of 2022. *See Exhibit Q*, p. 34. Although District recommended conducting the reevaluation in the Fall of 2022, District agreed to reevaluate Student in the Spring of 2022 at Parent’s request. *Id.*
4. An evaluation planning meeting was held on February 3, 2022. *Exhibit Q*, p. 39; *Interview with Director of Special Education.* At the meeting, District members of Student’s IEP Team, Parent, and staff from Private School discussed Student’s needs and decided to reevaluate Student in the areas of communicative status and academic performance. *Exhibit Q*, p. 29; *Interviews with Director of Special Education and Parent.*
5. On March 10, 2022, Speech Language Pathologist assessed Student’s speech using the Clinical Evaluation of Language Fundamentals – Fifth Edition (“CELF-5”). *Exhibit B*, pp. 2-5. District also reviewed records and reports from an independent educational evaluation (“IEE”) in language and literacy skills that occurred in December of 2020. *Id.* at p. 2.
6. District assessed Student’s hearing through a records review, classroom observation at Private School, the Hearing Education Advocacy Rubric (“HEAR”), the Listening Inventory for Education-Revised (“LIFE-R”), and a parent/student survey. *Id.* at pp. 17-21.
7. To assess academic performance, Student completed the Kaufman Test of Educational Achievement – Third Edition (“KTEA-3”) over three days in February of 2022. *Id.* at pp. 5-10. Instructional Specialist also observed Student at Private School, and staff from Private School shared results of academic assessments administered at Private School during the 2021-2022 academic year. *Id.* at pp. 10-17.

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

8. An IEP meeting was scheduled for April 4, 2022 to review the results of the reevaluation, discuss Student’s continued eligibility, and develop a new IEP (“2022 IEP”). *Exhibit F*, p. 2. The Complaint suggests that Parent was denied meaningful participation in the development of the 2022 IEP. *See Complaint*, pp. 1-16.³

B. The April 4, 2022 IEP Meeting

Eligibility Determination

9. A properly composed multidisciplinary team (“MDT”) met virtually on April 4, 2022. *Exhibit I*. In addition to the required team members, Parent’s educational advocate and a special education teacher from Private School (“Private Teacher”), who were invited by District at Parent’s request, attended the meeting. *Id.*; *Exhibit H*, p. 49.
10. Speech Language Pathologist reviewed the results of the communicative status assessments and indicated Student’s scores were in the “high average” range for speech, and she did not note any speech related concerns. *Id.* Parent and the District members of the MDT agreed that there were no concerns with Student’s speech and Student did not qualify for services as a child with a speech/language impairment. *Id.*; *Exhibit G*, p. 4.
11. Teacher of the Deaf reviewed the results of the hearing assessment and reported that they demonstrated Student met the criteria for unilateral hearing loss. *Exhibit I*. Teacher of the Deaf further reported that the data showed Student was unable to demonstrate self-advocacy skills and use specialized technology to access instruction. *Id.*; *Exhibit G*, p. 3-4. Based on this report, the MDT found Student qualified for services as a child with a hearing impairment. *Exhibit G*, pp. 3-4.
12. Instructional Specialist reviewed the results of the academic assessments, which demonstrated that Student struggles with reading and math. *Exhibit I*. Private Teacher reported that this corroborates data obtained about Student’s academic needs at Private School, which similarly show Student is behind grade level in reading and math. *Id.* Based on these reports, and a review of records, the MDT determined Student qualified for services as a child with a specific learning disability in reading and math. *Id.*; *Exhibit G*, p. 2.

³ Parent also suggests she was denied meaningful participation in the decision to retain Student. *See Complaint*, pp. 1-16; *Reply*, pp. 1-2. To bring a claim concerning a district’s wrongful retention of a student with a disability, the parent must be able to frame the complaint as a dispute about identification, evaluation, educational placement, or denial of FAPE. 34 C.F.R. § 300.507 (a)(1); and 34 C.F.R. § 300.507 (a)(2).

On February 18, 2022, Parent requested that Student be retained in 7th grade for the 2022-2023 academic year. *Interviews with Director of Special Education and Parent; Reply*, p. 1. District ultimately agreed to retain Student consistent with Parent’s request. *Interviews with Director of Special Education and Parent*. Parent argues that this retention decision is subject to IDEA only because Director of Special Education was involved in the decision. *Reply*, p. 1; *Interview with Parent*. However, Parent does not assert that Student’s identification, evaluation, or educational placement, or the provision of FAPE, had a direct impact on the retention decision. *See Reply*, pp. 1-2; *Interview with Parent*. For these reasons, the investigation will only address parent participation in the context of the development of the 2022 IEP. *See Letter to Anonymous*, 35 IDELR 35 (OSEP 2000) (noting that a retention decision is not synonymous with a placement decision for IDEA purposes).

13. Instructional Specialist indicated that Student's KTEA-5 assessment scores did not demonstrate that Student qualified for services as a child with a specific learning disability in written expression. *Exhibit I*. Although Student's score in the spelling subtest was comparatively low (8th percentile), her overall composite score in written expression was at the 34th percentile, which is in the "average" range. *Id.*; *Exhibit B*, p. 7.
14. Parent expressed concern about Student's written expression skills, citing the results of the IEE, which showed written expression as an area of need for Student. *Exhibit I*; *Interview with Parent*. Parent reported that Student cannot write a five-paragraph essay and expressed disagreement with the results of the academic assessment (specifically the KTEA-5). *Exhibit I*; *Exhibit H*, p. 46.
15. Instructional Specialist conceded that the KTEA-5 data was obtained in a one-on-one setting and that Student may have more trouble in a small group setting. *Exhibit I*. Private Teacher indicated that Student struggles with content specific writing, such as social studies, and organization within written expression. *Id.* Based on this input from Parent, Private Teacher, and Instructional Specialist, the MDT found Student eligible for services as a child with a specific learning disability in written expression. *Id.* Instructional Specialist met with Parent on April 7, 2022 to answer questions and go over the KTEA-5 results, including the written expression section. *Id.*; *Interviews with Parent and Instructional Specialist*.
16. The MDT, including Parent, unanimously agreed that the reevaluation was comprehensive, and that specific learning disability was Student's primary disability. *Exhibit I*. A properly composed IEP Team then discussed development of the 2022 IEP. *Id.*

Development of the 2022 IEP

17. At the April 4, 2022 IEP meeting, Parent indicated there were discrepancies about the frequency of progress monitoring in the draft IEP, and asked how progress monitoring would work for the 2022-2023 academic year, particularly with Student attending Private School part-time. *Exhibit I*.
18. Private Teacher indicated the Private School staff would collaborate with District staff about progress monitoring, and Instructional Specialist indicated she would inquire about the frequency of progress monitoring at School and get an answer for Parent (there was uncertainty about the frequency of progress monitoring at the meeting due to a recent District-wide change to the semester system for the 2022-2023 academic year). *Id.*
19. The IEP Team reviewed draft annual goals, starting with reading. *Id.* Parent expressed concern that the draft reading goal was not sufficiently ambitious, because the goal was for Student to decode words with 90 percent accuracy over three trials. *Id.* Parent asked if the goal could be adjusted to "something like 98 percent" to be more ambitious. *Id.* The IEP Team agreed to adjust the goal to 95 percent accuracy. *Id.*; *Exhibit A*, pp. 19-20.

20. Parent requested a spelling annual goal, specifically to include unfamiliar multisyllabic words, as Parent wanted to ensure that Student would receive instruction in spelling (and the spelling words provided to Student would not be overly simple and/or repetitive). *Exhibit I*. The IEP Team agreed to develop a spelling (encoding) goal for Student, to be built around unfamiliar multisyllabic words to address Parent’s concerns. *Id.*; *Exhibit A*, p. 21.
21. The draft 2022 IEP contained an annual goal for Student to complete multi-step math problems or word problems requiring multiple math operations with 80 percent accuracy over three trials. *Exhibit I*. Parent expressed concern that this goal was also insufficiently ambitious, as 80 percent accuracy “isn’t that great,” and asked for clarity about how the goal was written. *Id.*
22. Instructional Specialist explained that the 80 percent refers to a total score over 10 problems, and making the goal higher, such as for 100 percent, would not be a good gauge of Student’s progress as she was currently at a baseline of around 50 percent accuracy on the first step of math problems. *Id.* Principal further explained that 80 percent is also a typical threshold for measuring success in the general education setting. *Id.*
23. Parent requested an annual goal in hearing and suggested developing one around success on assignments, with a goal of 80 percent accuracy like the draft annual goal in math. *Id.* Teacher of the Deaf suggested developing a hearing annual goal around self-advocacy instead, since the reevaluation identified self-advocacy as an area of need, and Parent indicated this was a good suggestion. *Id.* The IEP Team subsequently agreed to develop an annual goal in hearing to target self-advocacy. *Id.*
24. District members of the IEP Team indicated the discussed changes would be made to the annual goals in the draft 2022 IEP and proposed scheduling another meeting to review the changes with Parent. *Id.* Parent agreed to this proposal, and the IEP Team moved into discussions around accommodations and modifications. *Id.*
25. Parent indicated she agreed with most of the accommodations and modifications contained in the draft 2022 IEP, but she requested two additional accommodations. *Id.* Specifically, Parent requested that test questions and answers be read aloud to Student and asked for Student to be provided the use of a predictive text spell-checker. *Id.* Parent also requested that Student be allowed math manipulatives during state assessments. *Id.*
26. The IEP Team agreed to add the requested accommodations and discussed various devices/software that might be used by Student as a spelling tool per Parent’s request. *Id.* The IEP Team also agreed to add a math manipulative as a modification on state and general assessments, although a District staff member explained to Parent that the modification must be approved by the state for these assessments (but District would start the process of requesting approval for the modification). *Id.*

27. The IEP Team scheduled an IEP meeting for May 12, 2022. *Id.*

C. Additional Revisions to Draft 2022 IEP (April 5 – May 11)

28. District updated the draft 2022 IEP to incorporate the changes that were discussed with Parent at the April 4, 2022 IEP meeting. *Interviews with Parent and Instructional Specialist.* Parent requested several other changes via email. *See Exhibit H*, pp. 2-3, 8, 16, 39, 44-45.

29. Parent requested removal of language about Student being “average/below average” on various assessments from the evaluation report, the addition of language about Student’s writing ability to the evaluation report, the inclusion of information provided to Parent by Private Teacher regarding Student’s writing abilities in the 2022 IEP, the addition of baseline scores provided to Parent by Private Teacher concerning Student’s reading fluency in various academic subjects (e.g., science, literature, social studies) to Student’s reading goal, the addition of an accommodation to allow Student to provide verbal answers to quiz/test questions, and changes to the writing goal language around encoding (to specifically include the language “unfamiliar multisyllabic words that use all syllable types”). *Id.*

30. Based on Parent’s requests, and in collaboration with Private Teacher, additional changes were made to the draft 2022 IEP, which Parent received via email on April 28, 2022. *Interviews with Parent and Instructional Specialist; Exhibit H*, p. 13.

D. The May 12, 2022 IEP Meeting

31. On May 12, 2022, a properly constituted IEP Team met virtually to review the changes and finalize the 2022 IEP. *Interviews with Parent and Instructional Specialist.* Private Teacher attended and participated in the meeting. *Exhibit P; Interviews with Instructional Specialist and Director of Special Education.*

32. Instructional Specialist reviewed the draft of the 2022 IEP and addressed the changes made after April 4. *Exhibit P.* Consistent with Parent’s request, language was added to the present levels section of the 2022 IEP, including the information provided by Private Teacher. *Id.* Instructional Specialist similarly added information about the IEE and baseline reading fluency scores to the 2022 IEP at Parent’s request, as well as the “unfamiliar multisyllabic” language to the spelling annual goal. *Id.*

33. The IEP Team reviewed the annual goals, and Instructional Specialist reported that she adjusted the goals based on collaboration with Private Teacher after April 4. *Id.* Parent raised a concern with one of the annual goals in writing and asked that language about obtaining a baseline for Student be removed, since a baseline for that goal had already been established at Private School. *Id.* Instructional Specialist removed the language at Parent’s request and

added in information about Student's baseline scores from Private School. *Id.* The IEP Team (including Parent) then agreed the annual goals were satisfactory. *Id.*

34. The IEP Team reviewed the accommodations and modifications, and Instructional Specialist indicated she added in the new accommodations that Parent requested, including encouraging Student to think about problems in different ways, giving Student the option to pass if called on to read aloud (grade will not be negatively impacted), and alternate assignments in lieu of public speaking. *Id.* Parent indicated she agreed with the accommodations and modifications as written. *Id.* Parent likewise indicated she had no concerns with District's proposed service delivery. *Id.*
35. Parent raised a concern with the prior written notice ("PWN") section and asked about clarity regarding progress monitoring. *Id.* Instructional Specialist responded that District would provide report cards each semester, two parent/teacher conferences each year, and a progress check during the annual IEP review meeting. *Id.* Specifics on how progress would be monitored for each annual goal would be dependent on when Student would be at School as opposed to Private School, and the final breakdown would need to wait until creation of the master schedule at School. *Id.*
36. Parent asked to have the 2022 IEP reflect the service minutes Student is/will be receiving at Private School in addition to the service minutes Student will receive at School during the 2022-2023 academic year. *Id.* Instructional Specialist explained that the 2022 IEP would be written as if Student were attending School full-time, and thus, the service grid would reflect District's offer of FAPE, and not the minutes offered through Private School, since Student was attending Private School part-time based on Parent's decision. *Id.*
37. Parent asked instead to have the service minutes from Private School added to either the PWN or parent/student input section of the 2022 IEP. *Id.* She also asked to have this language added: "[w]hile [District] offers a full day at [School], the district has not proposed an intervention or SPED minutes equivalent to those at [Private School] or minutes sufficient enough for [Student] to close the achievement gap or make meaningful progress." *Id.* Parent chose for Student to receive more minutes of specialized instruction through Private School than was to be offered through District, and Parent wanted this reflected in the 2022 IEP. *Id.*; *Interview with Parent.*
38. District agreed to add the language to both the PWN and parent/student input sections of the 2022 IEP, but not the service delivery grid. *Exhibit P.* Parent also asked to have specifics on the types of interventions that would be used at School with Student added to the 2022 IEP, and the IEP Team agreed to add specifics to the service delivery. *Id.*
39. At the end of the meeting, all the members of the IEP Team, including Parent, agreed with the changes and that the 2022 IEP was complete. *Id.*

E. The 2022 IEP

40. The 2022 IEP documents Student's strengths, preferences, and interests, including that she is a great storyteller with a great sense of humor, who likes to make connections to real life when in academic settings. *Exhibit O*, p. 15.
41. The 2022 IEP reviews Student's present levels of performance, documenting the results of the reevaluation, observations from teachers and service providers (including the reports from Private Teacher that Parent requested), the results of the IEE, and Student's progress toward annual goals. *Id.* at pp. 15-29.
42. The Student Needs and Impact of Disability section indicates Student has a hearing impairment and a specific learning disability in reading, written expression, and math that impacts her ability to access general education, grade level curriculum, and perform at grade level expectations without the support of specialized instruction. *Id.* at p. 30.
43. The Parent/Student Input section includes both a parent and student survey, as well as the language proposed by Parent regarding the services Student is receiving/will receive from Private School. *Id.* at p. 31.
44. The 2022 IEP contains the following annual goals:
 - a. Goal 1 – Reading: “By April 2023, [w]hile reading a passage at her instructional level (5th grade), [Student] will use knowledge of consonants, consonant blends, and common vowel patterns in multi-syllabic words to decode unfamiliar words with 95% accuracy in three trials as measure by the special educator using formal and informal measures.” *Id.* at pp. 31-32.
 - b. Goal 2 – Reading: “By April 2023, [g]iven a passage at her instructional level (5th grade), [Student] will increase her fluency by reading 70 word[s] correct per minute to 121 words correct per minute as measured by formal and informal progress monitoring over three timed trials.” *Id.* at p. 32.
 - c. Goal 3 – Writing: “By April 2023, when given a story started and one minute to think about what to write[,] [Student] will produce 30 (27th percentile for 6th-grade students) correct writing sequences from a baseline of producing an average of 11 (4th percentile for 6th-grade students) correct writing sequences in 3 minutes as measured by the special education teacher using a written expression curriculum-based measurement 6 times per year (BOY, before/after winter break, before/after spring break, EOY).” *Id.* at p. 32-33.
 - d. Goal 4 – Writing: “By April 2023, [Student] will be able to spell (encode) a list of 20 unfamiliar multisyllabic words that incorporate all syllable types with 95%

accuracy of three trials as measured by the special education teacher.” *Id.* at pp. 33-34.

- e. Goal 5 – Mathematics: “By April 2023, [a]fter direct instruction, when presented with 10 multi-step math problems or word problems requiring multiple math operations, [Student] will work through each step of the problem, solving for the answer with 80% accuracy [for] each step as measured by the special educator using formal and informal measures consistently over three trials.” *Id.* at p. 34.
- f. Goal 6 – Hearing: “By April 2023, [Student] will improve her self advocacy skills by increasing her HEAR scores on a rubric from 27/65 to 37/65 or one proficiency band.” *Id.* at pp. 34-35.

45. The 2022 IEP contains accommodations to help Student access the general education curriculum. *Id.* at p. 36. These include the accommodations proposed by Parent, such as allowing Student to provide verbal answers to quiz/test questions and giving Student the option to pass if called on to read aloud (and grade will not be negatively impacted). *Id.*

46. The Service Delivery provides for:

- a. 480 minutes of weekly direct specialized instruction outside the general education classroom (240 minutes/week in reading and 240 minutes in math/writing in the academic support class);
- b. 60 minutes of weekly direct specialized instruction inside the general education classroom;
- c. 30 minutes of monthly indirect specialized instruction;
- d. 60 minutes of monthly direct specialized instruction in hearing/self-advocacy; and
- e. 45 minutes of monthly indirect specialized instruction in hearing/self-advocacy.

Id. at pp. 39-40.

47. The IEP Team determined it was appropriate for Student to be placed in the general education class 40 to 79 percent of the time. *Id.* at p. 41.

48. The PWN section documents Parent’s requests for the Private School minutes to be added to the service grid and for clarity around progress monitoring. *Id.* The PWN section also documents the concerns raised by Parent during the development of the 2022 IEP (e.g., about Student’s written expression) and includes Parent’s proposed language regarding the services Student is currently receiving/will receive during the 2022-2023 academic year at Private School. *Id.* at pp. 41-42.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District considered the concerns of Parent for enhancing the education of Student during the development of the 2022 IEP, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Systema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering a parent's concerns for enhancing the education of his or her child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, the 2022 IEP was developed at IEP meetings held on April 4 and May 11, 2022. (FF #s 8, 27). The allegation accepted for investigation suggests that District denied Parent of meaningful participation in the development of the 2022 IEP because District failed to consider Parent's concerns for enhancing Student's education. (FF # 8).

A. The April 4, 2022 IEP meeting

Development of the 2022 IEP began at the April 4, 2022 IEP meeting, following the MDT's determination of eligibility. (FF # 16). Leading up to and during the IEP meeting, Parent expressed several concerns about enhancing Student's education, and made requests regarding the development of the 2022 IEP. (FF #s 9, 14, 17, 19-21, 23, 25). Most of these requests were accepted by District. (FF #s 3, 15, 18-20, 23, 26).

First, at Parent's request, District agreed to reevaluate Student in the Spring of 2022, rather than the Fall. (FF # 3). Second, at Parent's request, District agreed to (and did) collaborate with Private Teacher throughout the IEP development process. (FF #s 4, 9, 15, 18, 30, 33).

Third, at Parent's request, District found Student eligible for a specific learning disability in written expression. (FF #s 13-15). Although Student's composite score in written expression did not support finding Student eligible, District considered Student's sub score in spelling and found Student eligible based on Parent's concerns. *Id.* Instructional Specialist also met with Parent to address Parent's concerns about the accuracy of the KTEA-5. (FF # 15).

Fourth, at Parent's request, District made multiple changes to the annual goals contained in the 2022 IEP. (FF #s 19-24). Parent also asked for clarity regarding an annual goal in math, as she felt the goal was insufficiently ambitious as written. (FF # 21). The IEP Team was receptive to Parent's questions and engaged with Parent to explain why it would not be more appropriate to write the math goal for Student to achieve 100 percent accuracy. (FF #s 21-22). Finally, at Parent's request, District added additional accommodations and a modification to the 2022 IEP. (FF # 25-26).

B. Parent's Additional Concerns/Requests (April 5 – May 11)

An additional IEP meeting was scheduled for May 12, 2022 because the 2022 IEP was not finalized on April 4. (FF # 27). Leading up to this meeting, District agreed to further revise the 2022 IEP based on multiple requests received from Parent via email after the April 4 meeting. (FF #s 28-30). For example, information about Student's writing skills (data from the December 2020 IEE and information from Private Teacher) was added to the 2022 IEP, and several accommodations were added at Parent's request. (FF # 30, 32).

C. The May 12, 2022 IEP Meeting

On May 12, 2022, the IEP Team met to finalize the 2022 IEP. (FF # 31). At the meeting, Parent raised additional concerns about enhancing Student's education, and District made further changes to the 2022 IEP upon Parent's request. (FF #s 31-39). For example, additional information about Student's baseline scores at Private School was added to the 2022 IEP, along with two additional accommodations proposed by Parent. (FF #s 33-34).

At the May 12 meeting, Parent also asked to have the service minutes Student was receiving/would receive at Private School added to the service grid of the 2022 IEP. (FF # 36). This request was denied by District, as the 2022 IEP was written as if Student would attend School full time. *Id.* Nevertheless, to address Parent's concerns, the IEP Team agreed to add the language Parent proposed in both the PWN and Parent/Student Input sections of the 2022 IEP instead. (FF #s 37-38).

Each concern that was raised by Parent at the May 12 IEP meeting was addressed by the IEP Team, and the IEP Team likewise sought Parent's agreement for each section of the 2022 IEP before moving forward to other sections. *See* (FF #s 31-39). Most of Parent's requests at the meeting resulted in changes to the 2022 IEP, and the 2022 IEP was not finalized until all members of the IEP Team, including Parent, expressed satisfaction with the document. *See id.*

Again, meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require a school district to accept every request made by a parent, and indeed, not every request made by Parent was accepted here. (FF #s 21-22, 36). However, most of Parent's requests did result in changes to the 2022 IEP, and for the requests that were not accepted, District nevertheless remained receptive and responsive to Parent's concerns, even when Parent's proposal was ultimately rejected.

For these reasons, the SCO accordingly finds and concludes that District considered the concerns of Parent for enhancing the education of Student during the development of the 2022 IEP, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

REMEDIES

The SCO concludes that District did not violate the requirements of 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 20th day of June 2022.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-16

- Exhibit 1: Policies and Procedures

Response, pages 1-4

- Exhibit A: IEPs
- Exhibit B: Evaluation Reports
- Exhibit C: none
- Exhibit D: none
- Exhibit E: Parent Consent
- Exhibit F: NOM
- Exhibit G: Determination of Eligibility
- Exhibit H: Correspondence
- Exhibit I: Recording of 4/4/22 IEP Meeting
- Exhibit J: Policies and Procedures
- Exhibit K: List of Staff
- Exhibit L: Verification of Delivery to Parent
- Exhibit M: Settlement Agreement/Miscellaneous Other Documents
- Exhibit N: Supplement to District's Response
- Exhibit O: Supplemental Documentation
- Exhibit P: Recording of May 12, 2022 IEP Meeting (linked on last page of Exhibit O)
- Exhibit Q: Supplemental Correspondence

Reply, pages 1-2

- Exhibit 2: Additional Correspondence

Telephone Interviews

- Director of Special Education: May 18, 2022
- Instructional Specialist: May 19, 2022
- Parent: May 24, 2022