

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

State-Level Complaint 2023:548
Boulder Valley School District RE-2

DECISION

INTRODUCTION

On May 12, 2023, 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 Boulder Valley School District RE-2 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations 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.

On May 19, 2023, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. On June 8, 2023, by agreement of the parties, the SCO again extended the investigation timeline to allow mediation to occur at a mutually agreeable date and time. However, mediation resulted in an impasse, and, on June 30, 2023, the SCO resumed the investigation.

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 May 12, 2022 to the present 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 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.

1. Amended Student's IEP in or around May 2023 without agreement of the Parent and outside of an IEP team meeting, in violation of 34 C.F.R. § 300.324(a)(6);
2. Changed Student's placement and/or the location of Student's services in or around May 2023 without including Parent or considering the impact on his total education program, in violation of 34 C.F.R. §§ 300.116, 300.327 and 300.501(c) and ECEA Rule 4.03(8)(b)(iii); and
3. Failed to convene an IEP team meeting at Parent's request on or around May 2, 2023, to address Student's anticipated needs, in violation of 34 C.F.R. § 300.324(b)(1).

FINDINGS OF FACT

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

A. Background

1. Student is 17 years old and, during the 2022-2023 school year, attended high school at a District school ("School"), which is not his neighborhood school. *Exhibit A*, p. 32. Student and his family currently reside within the boundaries of District. *Id.*
2. Student is eligible for special education services as a student with multiple disabilities ("MD") including autism spectrum disorder ("ASD"), intellectual disability ("ID"), other health impairment, and speech or language impairment. *Id.*
3. Student is sweet and funny and loves to make others laugh. *Interviews with Parent and assistant principal in charge of special education programming at School ("Assistant Principal")*. Student loves watching his favorite movies. *Id.*
4. As a result of his disabilities, Student needs consistency and routine and struggles with disruptions to his routine. *Id.; Exhibit A*, p. 34. He is slow to warm up to new people. *Interview with Assistant Principal*. When his schedule is disrupted, Student may engage in physical aggression. *Exhibit A*, p. 54.

B. District's Intensive Learning Centers

5. District has intensive learning centers ("ILCs") for IDEA-eligible students who need a more specialized program. *Interview with District's Executive Director of Special Education ("Executive Director")*. District only runs ILCs in some elementary and middle schools. *Id.*

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

6. When students enrolled in ILCs are in fifth grade, District sends their parents a letter in the fall. *Id*; *Exhibit M*. The letter explains that if the student continues to require an ILC, the District will place them at a middle school with an appropriate program. *Exhibit M*. District's process takes into consideration the student's needs and geographic location. *Id*.
7. Based on needs, many IDEA-eligible students in District are placed at a middle school other than their neighborhood school. *Interview with District's Director of Special Education for School's region ("Director 1")*.
8. District has five comprehensive high schools, each of which offers the same ILC programming. *Interviews with Director 1 and Executive Director*. Each of those high schools offers an ILC for students with autism (with and without ID), one for students with MD, and one for affective needs. *Interview with Director 1*.
9. Structurally, the programs at each high school are the same, with one special education teacher for every 10 students, four paraeducators, and the necessary ratios of related service providers. *Interview with Executive Director*. Each high school is assigned at least a part-time board-certified behavior analyst ("BCBA") and, starting next year, a BCBA will be based at each high school. *Interviews with Assistant Principal and Director 1*.
10. Because each of District's comprehensive high schools offer the same special education programming, most students return to their neighborhood school for high school. *Interviews with Executive Director and Director 1*. The letter families receive in fifth grade also states that their student will return to their neighborhood high school. *Exhibit M*.
11. Student's neighborhood high school ("Home School") offers the same programming as School. *Interviews with Executive Director, Director 1, and Assistant Principal*.

C. District's Open Enrollment Policies

12. According to District Policy JECC, students in District attend their neighborhood school unless they are relocated due to overcrowding, the principal arranges another assignment, or they get permission to enroll elsewhere in the District. *Exhibit H*, p. 5. The policy specifies that unless they are moved due to overcrowding, parents will be responsible for transportation. *Id*. However, transportation on a regular bus may be available if there is an existing route that is not already at capacity. *Id*.
13. District policy JECC-R governs the process for open enrollment. *Id*. p. 6. Students who enroll elsewhere through open enrollment are responsible for transportation. *Id*. After the school year begins, parents may petition the transportation office for space on an existing route, but they must re-apply every year. *Id*.

14. Students with disabilities have the same open enrollment options as their peers. *Id.* at p. 8. The open enrollment process does not consider a student’s disability status. *Id.* If the family completes the enrollment process to claim the student’s open enrollment spot, then District reviews the IEP. *Interview with Executive Director.*
15. The special education department reviews all open enrollments for IDEA-eligible students. *Id.* It reviews to confirm that the school selected can implement the student’s IEP and has space in the necessary program. *Id.* If the selected school cannot implement the student’s IEP, then it convenes the IEP team to determine how to proceed. *Id.*
16. When reviewing the IEPs of students who are open enrolling, District does not check whether they are eligible for special transportation because families have already acknowledged that they will not get transportation. *Id.* Changing schools through the open enrollment process does not change services and District does not revise IEPs to remove special transportation or note that it will not be provided. *Id.* If they know a student is open-enrolled, IEP teams will say in the meeting that the student does not qualify for special transportation, but it is not noted in the IEP anywhere. *Interview with Director 1.*
17. If a student’s IEP requires that they attend a school other than their neighborhood school, District provides special transportation. *Interview with Executive Director.* If the student is enrolled elsewhere through the open enrollment process, District does not provide special transportation. *Id.* If parents have questions after open enrollment, District regularly convenes IEP teams. *Id.* District has a shortage of bus drivers and does not have the staff to provide transportation to students who, by parental choice, are not attending their neighborhood school. *Id.*

D. Student’s Enrollment

18. For middle school, Student was placed in an ILC for students with MD at a District middle school (“Middle School”) that was not his neighborhood school. *Exhibit A, p. 3; Interview with Parent.* For the first semester of the 2021-2022 school year, when Student was an eighth grader at Middle School, Assistant Principal was his teacher and case manager. *Interviews with Parent and Assistant Principal.*
19. At Student’s IEP meeting in October 2021, they considered moving him to an ASD ILC but decided not to move him as he was successful at that time. *Exhibit A, p. 31.* However, they determined that Student would benefit from an ASD ILC in high school. *Id.*
20. Parent applied for Student to open enroll at School in December 2021. *Exhibit I, p. 1.* In so doing, she indicated she understood that “students who Open Enroll to a school other than their designated neighborhood school are responsible for their own transportation.” *Id.*

21. District never placed Student in his neighborhood schools. *Interview with Parents*. Parent felt it was important to keep Student with his friends who would be transitioning to School. *Id.* She also felt he would benefit from Assistant Principal's presence because he had done so well with her. *Id.* At the time, Parent said she liked School because Student could participate on the [sports] team and attend school close to his sibling. *Exhibit 1*, p. 2.
22. Student interacted more with peer mentors and adults than with the other students in his class at Middle School. *Exhibit A*, p. 15. Although he has friends at School, he does not have any goals or services in his IEPs targeted towards developing peer relationships. *Exhibit A*.
23. Parent asked for an IEP meeting to share her reasons and prepare for Student's new case manager after Assistant Principal left. *Exhibit 1*. at pp. 2-4. District's Director of Special Education over Middle School ("Director 2") explained that the IEP team had no control over the open enrollment process but agreed to meet about the change in teachers. *Id.* at p. 3.
24. At that meeting in January 2022, Director 2 told Parent that District would not provide transportation if Student was open enrolled at School. *Interview with Director 2*. She has that conversation with families any time open enrollment comes up. *Id.*
25. Student was granted a spot at School, which was able to implement his IEP, so no changes were made to his IEP and no further IEP team meetings were required. *Interview with Executive Director*. In February 2022, after his open enrollment was accepted, Director 2 asked Student's providers to remind Parent that he would not get transportation with a choice enrollment. *Exhibit L*, p. 22. Home School would also be able to implement Student's IEP. *Interview with Director 1*.

E. Student's Transportation Needs

26. Student's IEPs from October 2021 and October 2022 both indicate that he requires special transportation. *Exhibit A*, pp. 20, 40. Student requires door-to-door transport due to safety and elopement concerns. *Exhibit D*, p. 14.
27. District does not dispute his need for transportation or that it is still included as a related service in his IEP. *Response*, p. 3. If Student enrolls at Home School, District will provide him with special transportation, as required by his IEP. *Id.* at p. 4.
28. When parents have trouble getting students to school because they cannot get them out of the house or on the bus or in the car, District sends out a BCBA to observe and develop a plan to get the student to school. *Interview with Director 1*.
29. Student has had difficulties getting on and off the bus since at least fall 2021. *Exhibit L*, pp. 13, 18, 21, 154. Student's speech pathologist at Middle School thought it would be important for him to attend a high school closer to home because the commute "takes a lot out of him,

so he arrives dysregulated and exhausted.” *Id.* at p. 154. He was often dysregulated because of triggers on the way to school and it could take a few hours before he was regulated enough to work. *Exhibit A*, p. 15. In spring 2022 a District BCBA did some observations to develop strategies to get him off the bus and into Middle School. *Exhibit L*, p. 18.

30. In September 2022, Student’s special education teacher and case manager at School (“Case Manager”), contacted Director 1 for help because they were having trouble getting Student to School because he would not get on, or sometimes off, the bus. *Id.* at p. 13.

F. District’s Transportation Error

31. Three different people are supposed to review special transportation requests in District. *Interview with Executive Director*. First, case managers should only complete transportation requests for qualified students. *Id.* Then, Executive Director’s administrator reviews all requests before submitting them to transportation. *Id.* Finally, the transportation department reviews the request as well. *Id.* None of those individuals should approve a transportation request for a student who is open-enrolled. *Id.*
32. However, in fall 2022, all three were transitioning to new positions or dealing with personal issues. *Id.* As a result, Student’s special transportation request was made and approved in error. *Id.* Parent was notified August 1, 2022 that Student would be able to receive special transportation to School. *Exhibit I*, p. 140.
33. On May 1, 2023, after realizing the error, District notified Parent that Student would not be eligible for special transportation during the 2023-2024 school year. *Id.* at p. 24.
34. Parent works full time and has to get another child to school at the same time. *Interview with Parent*. She says she would never have enrolled Student at School if she had understood that District would not provide transportation. *Id.* She did not think the statement about transportation on the open enrollment form applied to Student because transportation was part of his IEP. *Id.*
35. However, on July 29, 2022, Parent emailed District’s transportation office and said Student did not qualify for the bus because School was not his home school. *Exhibit I*, p. 140. She asked if there was any alternative way for him to get a bus in the mornings. *Id.*

G. Parent’s IEP Team Meeting Request

36. On May 2, 2023, Parent emailed several people at District, including Case Manager and Director 2. *Id.* at p. 21. She asked for an IEP team meeting to discuss the best choice for Student for the next year because she could not drive him daily. *Id.* at pp. 21-22.

37. Case Manager contacted Director 1 for help and asked if they needed to set up the requested IEP team meeting. *Id.* at p. 21. He said there was no need for a meeting “because that is not the platform to change the location.” *Id.* Director 1 called Parent to explain her options and left her a message. *Id.* District did not convene an IEP team meeting because it understood Parent’s only desire was to ask if Student could continue to receive transportation to School. *Response*, p. 4.
38. On May 12, 2023, Parent filed this Complaint requesting that Student continue to get transportation to School because she cannot drive him and changing schools would not be in his best interest. *Complaint*, pp. 1-5.
39. On May 16, 2023, after receiving this Complaint, District issued a prior written notice (“PWN”) refusing to implement the transportation services in Student’s IEP because he was enrolled at a school of choice. *Exhibit C*, p. 1. The PWN notes that this decision aligned with District’s open enrollment policy. *Id.* District does not transport any other students to School from Student’s residential area, so District is unable to offer Student transportation. *Id.*
40. The PWN offers Parent the options of driving Student to School for the 2023-2024 school year herself or enrolling him at Home School where he would receive transportation. *Id.* District offered to help navigate the enrollment process at Home School if that was what Student required to access school. *Id.* at p. 2. The PWN does not acknowledge Parent’s request for an IEP team meeting. *Id.* at pp. 102.
41. No IEP meetings have been held since Parent made her request on May 2, 2023. *Interview with Director 1.* District is planning for Student’s return to School in the fall. *Id.* However, it remains willing and able to help enroll him at Home School and provide transportation if that is what Parent needs. *Interview with Executive Director.*
42. Due to his disabilities, Student struggles with transitions and any changes in his routine. *Interviews with Parent and Assistant Principal.* His October 2022 IEP contains related accommodations including “a visual schedule to clearly see his day and especially transition times,” extended time to learn routines, and preparation for transitions. *Exhibit A*, pp. 16-17. One of the targetted behaviors in his behavior support plan from October 2021 is aggression in response to new tasks or disruptions in his schedule. *Exhibit L*, p. 48.
43. Even if she can arrange her schedule to drive him, Parent is concerned that, having always ridden a bus to school, Student will not easily adjust to riding in her car to go to school. *Interview with Parent.* If she has to transfer him to Home School so he can take the bus, she is concerned he will refuse to go because it is unfamiliar, and he does not know anyone there. *Id.* She requested an IEP team meeting to get more information about Home School and its ability to meet his needs and to get help planning for any transitions. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to amend Student’s IEP to reflect its decision not to provide transportation, in violation of 34 C.F.R. § 300.324(a)(4), (a)(6) and (b)(1)(ii)(E). This procedural violation did not result in a denial of FAPE.

Parent’s concern is that by discontinuing Student’s transportation for the 2023-2024 school year, District amended Student’s IEP.

A. Legal Obligation to Provide Transportation

The IDEA guarantees all children with disabilities access to a FAPE. 20 U.S.C. § 1400(c); *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017). To provide a FAPE, a school district must offer an IEP “reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Id.* at 999. That IEP may include related services, such as transportation, where appropriate. 34 C.F.R. § 300.320(a)(4). As a related service, transportation may include: (a) travel to and from school and between schools; (b) travel in and around school buildings; and (c) specialized equipment required to provide special transportation for a child with a disability. *Id.* § 300.34(c)(16).

A child’s IEP team determines whether the child requires transportation to receive a FAPE. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46576 (Aug. 14, 2006). A school district must implement a student’s IEP in its entirety. 34 C.F.R. § 300.323(c). Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of a FAPE. *Id.* § 300.17.

However, where a student with a disability chooses—based on personal preference and not on a disability-related education need—to attend another school in the district other than his neighborhood school, the district is not obligated to provide transportation to that school. *El Paso County School District #11*, 120 LRP 8085 (SEA CO 12/23/2019); *See also, Fick v. Sioux Falls Sch. Dist.*, 337 F.3d 968 (8th Cir. 2003); *Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999); *Baltimore County Pub. Sch.*, 61 IDELR 210, 113 LRP 14987 (SEA MD 12/21/12). If the disability-related educational needs of a child with a disability can be met by a neighborhood school and the parents or child select a school outside the neighborhood for “reasons of personal preference,” then a school district may refuse to provide special transportation. *Fick*, 334 F.3d at 970. “[A] school district may apply a facially neutral transportation policy to a disabled child without violating the law when the request for a deviation from policy is not based on the child’s educational needs, but on the parents’ convenience or preference.” *Id.*

In this case, Parent applied to enroll Student at School in December 2021. (FF # 20.) Parent wanted Student to attend School because of the golf team and because it was close to his sibling's anticipated school. (FF # 21.) She also wanted him to stay with his friends from Middle School and with Assistant Principal. (*Id.*) While the SCO understands Parent's desire to keep Student with the peers he knows, nothing in the IDEA or Student's IEP requires such continuity. (FF # 22.)

Parent may prefer School, but even if School is a better choice for Student, that does not mean he cannot receive a FAPE at Home School. Indeed, a FAPE requires only that Student's educational programming be "reasonably calculated to enable a child to make progress in light of the child's circumstances." *Andrew*, 137 S. Ct. 988, 994. The ILC programs at School and Home School are the same. (FF #s 10-11.) Parent did not suggest, and the Record does not support, that Home School could not implement Student's IEP. Thus, the SCO finds that Parent chose School based on personal preference.

District's facially neutral policy, which applies to all students regardless of disability status, is to not provide transportation to students who, through the open enrollment process, enroll somewhere other than their neighborhood school. (FF #s 12 and 13.) A shortage of bus drivers has further hindered its ability to provide such transportation. (FF # 17.) Consistent with that policy, District is not willing to transport him to School for the 2023-2024 school year. (FF # 33.)

District's policy JECC-R further states that parents can apply for transportation to a school of choice, but they must reapply every year. (FF # 13.) Thus, the SCO finds that District is not obligated to continue providing transportation, even if it did so for one year, intentionally or by mistake. For all these reasons, the SCO finds that District is not required to provide Student with special transportation to School for the 2023-2024 school year.

B. IEP Amendment Requirements

After an annual IEP team meeting, a student's IEP can be amended either by an IEP team at an IEP team meeting or by agreement of the parent and the district to amend the IEP in writing without an IEP team meeting. 34 C.F.R. § 300.324(a)(6).

An IEP "embodies a binding commitment and provides notice to both parties as to what services will be provided to the student during the period covered by the IEP." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1197 (9th Cir. 2017). To comply with the IDEA, when a district determines it is no longer obligated to provide transportation to a student because of participation in open enrollment, it must amend the student's IEP, consistent with the requirements of 34 C.F.R. § 300.324(a)(4), (a)(6), and (b)(1)(ii)(E). *El Paso County School District #11*, 120 LRP 8085 (SEA CO 12/23/2019).

There is no question in this case that Student's IEP requires District to provide Student with special transportation. (FF # 26.) The decision to stop providing transportation was based on District's board policies JECC and JECC-R and nothing in the Record suggests that District

amended Student's IEP. (FF # 33.) District stands ready to provide special transportation if Student attends Home School. (FF #s 27, 40-41.) Thus, the SCO finds and concludes that District did not amend Student's IEP in May 2023. No violation of 34 C.F.R. § 300.324(a)(6) occurred.

The confusion here seems to stem from the fact that District has not amended Student's IEP. Student's IEP from October 2021 was not changed to remove special transportation when he enrolled at School. (FF # 25.) The IEP from October 2022, after Student was enrolled at School, continues to require special transportation. (FF # 26.) Nevertheless, District refuses to provide special transportation, citing policy. (FF # 39.) This confusion could have been avoided had District issued a PWN documenting this decision, amended Student's IEP in accordance with 34 C.F.R. § 300.324(a)(6), or accurately reflected its decision about transportation in Student's IEP from October 2022. For instance, District could have indicated in the special transportation section or the embedded PWN that Student would not receive transportation so long as he was enrolled in a school of Parent's choosing. Parent's confusion was exacerbated by District's admitted error in providing transportation for one year. (FF # 32.)

In relying on Board Policy JECC, District essentially removed related services from Student because of his participation in open enrollment. As was the case in *El Paso County School District #11*, District did so without amending Student's IEP. *El Paso County School District #11*, 120 LRP 8085 (SEA CO 12/23/2019). Therefore, the SCO finds and concludes that District failed to comply with 34 C.F.R. § 300.324(a)(4), (a)(6), and (b)(ii)(E). This is a procedural violation of the IDEA.

C. Procedural Violation

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

In this case, District intends to deny transportation for a school year that has not yet started, so the failure to amend Student's IEP could not have resulted in a denial of FAPE or a deprivation of educational benefit. Further, because District is not obligated to provide Student with transportation, failing to do so next year will not result in a denial of FAPE or deprivation of educational benefit for Student. District also did not significantly impede Parent's opportunity to participate in the decision-making process for Student. Although District did not accurately reflect the decision about transportation in Student's IEP, Parent was notified by the open enrollment form that Student would not be eligible for transportation. (FF # 20.) She was then reminded by Director 2 and Student's providers. (FF #s 24-25.) In fact, when she contacted the transportation office in July 2022, she asked if there was any chance Student could receive transportation even though he did not qualify based on his enrollment at School. (FF # 35.) Thus, the SCO finds and concludes that this procedural violation did not result in a denial of FAPE.

Conclusion to Allegation No. 2: District did not change Student’s placement or the location of his services. No violation of the IDEA or ECEA Rules occurred.

Parent’s concern is that by requiring Student to attend Home School to access transportation, District changed the location of his services without considering the impact on his education.

Placement decisions must be made by a group of persons, including the parents. 34 C.F.R. §§ 300.116(a)(1) and 300.327. Placement must be determined annually, be based on the child’s IEP and be as close as possible to the child’s home. *Id.* at § 300.116(b). Although the IDEA creates a preference for educating students in their neighborhood school, students may need to be placed elsewhere if the neighborhood school is not properly suited to meet their educational needs. *H.D. v. Central Bucks Sch. Dist.*, 59 IDELR 275 (E.D. Pa. 2012). Placement means the “provision of special education and related services and [does] not mean a specific place, such as a specific classroom or specific school.” ECEA Rule 4.03(8)(a).

When a student’s IEP cannot be implemented in his neighborhood school, federal regulations are not clear on how the location is determined. Nonbinding federal guidance indicates school districts should have flexibility to assign students to a particular school or classroom where they have two equally appropriate locations. *Letter to Trigg*, 50 IDELR 48 (OSEP 2007). However, federal guidance also indicates parents must be included in discussions about location because “the placement team, which includes the child’s parents, must consider the proximity of the placement option(s) to the child’s home.” *Letter to Breeskin*, 75 IDELR 256 (OSEP 2019). Colorado rules formerly stated “[d]ecisions regarding the physical location in which a child’s IEP will be implemented . . . shall be made by the Director of Special Education or designee.” ECEA Rule 4.03(8)(a). However, effective June 30, 2022, Colorado rules now require parent participation in discussions about a “change in building or location.” ECEA Rule 4.03(8)(b)(iii).

This dispute here is specifically about whether District must continue to provide Student with special transportation to attend School. (FF # 38.) Parent does not suggest, and the Record does not support, that District changed the special education and related services in Student’s October 2022 IEP. Both School and Home School have the same programming and can implement Student’s IEP. (FF #s 9 and 11.) Again, District did not amend Student’s IEP, which still requires special transportation if Student attends Home School. (FF # 26-27.) Student can continue to attend School if Parent provides transportation or District will provide transportation if he attends Home School. (FF # 39.)

For these reasons, the SCO finds and concludes that District did not change Student’s placement or the location of his services and no violation of the IDEA or ECEA Rules occurred.

Conclusion to Allegation No. 3: District failed to convene an IEP team meeting after Parent’s request on May 2, 2023, in violation of 34 C.F.R. § 300.324(b)(1). This violation resulted in a denial of FAPE.

Parent’s concern is that she requested an IEP meeting on May 2, 2023 and never heard back from District about her request.

A. IEP Meeting Requirements

The IDEA contemplates that a student’s IEP may need to be reviewed and revised more frequently than once a year to address changing needs or an unexpected lack of progress. See 34 C.F.R. § 300.324(a)(4)-(6), (b); *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (U.S. 2017). IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; *the child’s anticipated needs*; or other matters. 34 C.F.R. § 300.324(b)(1)(ii) (emphasis added). “Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time.” Questions and Answers on *U. S. Supreme Court Case Decision Andrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017). Consequently, a school district must carefully consider and appropriately respond to a parent’s request to convene the IEP team. *Westminster Public Schools*, 118 LRP 50551 (SEA CO 11/14/2018).

In this case, Parent requested an IEP meeting on May 2, 2023 to address Student’s anticipated needs related to the upcoming change in either mode of transportation or school location. (FF # 36.) She was concerned about the appropriateness of Home School and Student’s ability to adjust to the impending change. (FF # 43.) While a district need not grant every parental request for an IEP team meeting, the district must carefully consider the request. Here, to date, District has not convened an IEP team meeting. (FF # 41.) Although District issued a PWN in May 2023, it does not reference Parent’s request for an IEP team meeting in any way. (FF # 40.) Thus, the SCO finds that District did not carefully consider or respond to Parent’s request for an IEP team meeting.

In addition, Student is routine oriented and struggles with transitions and changes. (FF #s 4, 42.) The transition to school, both getting on and off the bus, has consistently been a challenging time for Student. (FF # 29.) At times, the related dysregulation has caused him to miss hours of work time at school. (*Id.*) Parent is concerned that whether she drives him to School or he transfers to Home School to take the bus, this will be a disruptive change for him. (FF # 43.) The SCO agrees.

In this case, District did not carefully consider and respond to Parents request for an IEP team meeting, and an IEP meeting was necessary to address Student’s anticipated needs in relation to the change. Therefore, the SCO finds and concludes District’s failure to convene an IEP team meeting was a violation of 34 C.F.R. § 300.324(b).

B. Procedural Violation

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

Here, District's refusal to meet has significantly impeded Parent's opportunity to participate in the decision-making process around where Student will go to school and how he will get there. The IDEA does not require District to provide special transportation to School because Student was open enrolled based on Parent preference. At the same time, though, District is obligated to address Student's needs, including his difficulty with change and transitions. (FF #s 4, 43.) District should have convened an IEP team meeting to address Student's anticipated needs and included Parent in that decision-making process.

Because it significantly impeded Parent's ability to participate in the decision-making process regarding the provision of a FAPE to Student, the SCO finds and concludes that District's failure to convene an IEP team meeting resulted in a denial of FAPE. As such, the SCO will order remedies to ensure Parent is included in relevant decision-making conversations as soon as possible.

School has not yet resumed, so this failure did not result in a deprivation of educational benefit for Student, and thus the SCO finds that no order of compensatory services is required. However, the SCO cautions District that if Student struggles with the change and exhibits school refusal behaviors or difficulty engaging in work, District has an obligation to respond promptly to those challenges. 34 C.F.R. § 300.324(b)(1)(ii).

Systemic IDEA Violations: This investigation demonstrates a violation that is systemic and will likely impact the future provision of services for all children with disabilities if not corrected.

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

A. IEP Amendments

The SCO finds that the violation of 34 C.F.R. § 300.324(a)(4), (a)(6), and (b)(ii)(E) is systemic in nature. IEPs must be implemented as written. However, District consistently denies special

transportation to students whose parents choose to enroll them in a different school. (FF # 17.) In so doing, they do not revise those students' IEPs to remove special transportation as a service or clarify the conditions under which it will be provided. (FF # 16.) In this case, when District developed a new IEP for Student in October of 2022, it still indicated that he qualified for special transportation with no discussion of the impact of his open enrollment. (FF # 26.) The concern for the SCO is that District has failed to amend other IEPs to accurately reflect the services that are being offered to students. Thus, the SCO will order remedies designed to prevent this issue from continuing.

B. Convening IEP Team Meetings

Nothing in the Record suggests that District is routinely refusing to convene IEP teams. District regularly convenes IEP team meetings if parents have questions after open enrollment, including about transportation. (FF # 17.) Instead, the issue here appears to have stemmed from Director 1's misunderstanding about what Parent was asking. (FF #s 36-37.) Thus, the SCO finds that this violation is not systemic in nature.

REMEDIES

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

- a. Failing to amend Student's IEP in violation of 34 C.F.R. § 300.324(a)(4), (a)(6), and (b)(ii)(E);
- b. Failing to convene an IEP team meeting at Parent's request, in violation of 34 C.F.R. § 300.324(b).

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

1. Corrective Action Plan

- a. By **Wednesday, September 13, 2023**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Executive Director, Director 1, Director 2, and all other directors of special education in District must review this decision, as well as the requirements of 34

C.F.R. § 300.324(a) and (b). If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Friday, September 29, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, October 6, 2023**.

3. Procedures

- a. As soon as possible, but no later than **Wednesday, September 20, 2023**, District must submit a written procedure or guidance document to ensure compliance with 34 C.F.R. § 300.324(a)(4), (a)(6) and (b)(ii)(E).
- b. At a minimum, the procedure must offer clear guidance on issuing PWN or amending the IEP when District determines it is no longer responsible for providing special transportation.
- c. The written guidance must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. District must ensure that all special education providers in District receive a copy of the procedure **no later than two weeks after CDE approves a final version** of the document. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE.

4. Review of IEP

- a. As soon as possible, but no later than **3:00 PM on Tuesday, August 15, 2023**, District must consult with Parent to determine where Student will attend school for the 2023-2024 school year and what preparations, if any, need to be made for a smooth transition. An IEP team meeting is not required for this conversation and the parties may confer for instance through telephone or video conferencing.
 - i. Proof that this conversation occurred, in the form of detailed meeting notes, to include a list of participants, must be provided to CDE by **Thursday, August 17, 2023**.
 - ii. If Parent refuses to collaborate with District, District will be excused from doing so, provided that District diligently attempts to coordinate with Parent and documents such efforts. A determination that District diligently attempted to consult with Parent, and should thus be excused from doing so, rests solely with CDE.

- b. By **Friday, September 15, 2023**, District must convene Student’s IEP team at a mutually agreeable date and time. In consideration of the new guidance required by Remedy No. 3 and Student’s current performance, Student’s IEP Team must review and, as necessary, revise Student’s current IEP and/or behavior support plan to address Student’s unique needs and the concerns identified in this Decision.

- c. By **Friday, September 29, 2023**, District must provide copies of the notice of the IEP meeting, finalized IEP and behavior support plan and any standalone PWN to the CDE Special Education Monitoring and Technical Assistance Consultant.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: 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 the CDE.

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 11 day of August, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-6

Response, pages 1-5

Supplemental Response, page 1

- Exhibit A: IEPs
- Exhibit B: Evaluation
- Exhibit C: PWN
- Exhibit D: Meeting Documents
- Exhibit E: Attendance Records
- Exhibit F: Progress Reports
- Exhibit G: District Calendar
- Exhibit H: District Policies
- Exhibit I: Correspondence
- Exhibit J: Staff Contacts
- Exhibit K: Proof of Delivery to Parent
- Exhibit L: Additional Correspondence
- Exhibit M: Letter

Reply, pages 1-4

- Exhibit 1: Correspondence

Telephone Interviews

- Parent: July 24, 2023
- Assistant Principal: July 25, 2023
- Director 1: July 27, 2023
- Executive Director: July 27, 2023
- Director 2: July 27, 2023