

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

**State-Level Complaint 2023:620
El Paso School District 20 (Academy)**

DECISION

INTRODUCTION

On December 14, 2023, the parents (“Parents”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso School District 20 (Academy) (“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 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 (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 December 14, 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. Failed to conduct a comprehensive evaluation of Student between February 7, 2023 and May 4, 2023, specifically by:
 - a. Failing to ensure that Student’s evaluation was conducted by a properly licensed special education teacher, in violation of ECEA Rule 4.02(4)(c);

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 properly evaluate Student in all areas of suspected disability, specifically Autism Spectrum Disorder, in violation of 34 C.F.R. § 300.304(c)(4);
 - c. Failing to consider information provided by Parents, specifically a private evaluation in audiology, in violation of 34 C.F.R. § 300.305(a)(1); and
 - d. Failing to conduct the evaluation, specifically in the area of communication, within 60 days of receiving Parents' consent for the evaluation, in violation of 34 C.F.R. § 300.301(c)(1).
2. Failing to ensure a group of qualified professionals and Parents, specifically including a reading specialist, determined whether Student is a child with disability at an eligibility meeting between April 20, 2023 and May 4, 2023, in violation of 34 C.F.R. § 300.306(a)(1) and ECEA Rule 4.02(6)(b).

FINDINGS OF FACT

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

A. Background

1. Student is ten years old and attended a District K-8 charter school ("School") during the 2022-2023 academic year. *Exhibit H*, p. 1. She has not, at the time of this decision, been found eligible for special education and related services. *Interview with Parents*.
2. Student is a sweet, outgoing child who is eager to learn. *Interviews with Parents, Reading Interventionist, Special Education Teacher, and Speech Language Pathologist ("SLP")*. She is good at math and loves music, art, and horses. *Interview with Parents*.
3. This investigation involves the conduct of evaluations and eligibility meetings to determine whether Student qualifies for special education and related services which took place between February and May 2023. *Complaint; Response*.

B. District's Policies, Practices and Procedures

4. District's Special Education Director ("Director") stated that District staff, including staff at charter schools within the District, should seek consent to evaluate a student when they suspect that a student may be impacted by a disability. *Interview with Director*.
5. Director stated that when a parent provides information from an outside evaluator, the multidisciplinary team should review and summarize the information contained in such a

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

report, and carefully consider the information provided in making their eligibility determination. *Id.* However, a multidisciplinary team should not simply accept the recommendations of any report without consideration of whether the student's ability to access education is impacted by the disability. *Id.*

6. Director explained that when information arises during the course of an evaluation process that causes a team member to suspect that a student may be impacted by a disability in an area not currently being considered by the multidisciplinary team, she expects the multidisciplinary team to seek consent to perform additional evaluations as needed. *Id.*
7. Director stated that a multidisciplinary team should include members able to knowledgeably discuss and answer questions regarding the data to be presented during the eligibility determination. *Id.* With respect to reading data, all elementary-level general and special education teachers are trained to collect and interpret information about a student's literacy. *Id.*

C. Student's Educational History

8. Student enrolled in School as a kindergartner during the 2019-2020 academic year. *Interview with Parents; Exhibit O*, p. 4.
9. Beginning in September 2022, Student worked with Reading Interventionist on a READ Plan, a non-special-education program of literacy intervention offered as part of District's multi-tiered system of supports ("MTSS"). *Exhibit H*, p. 4; *Interview with Reading Interventionist*. Student participated in reading intervention services 5 days per week for 45 minutes per day. *Exhibit H*, p. 5.
10. In October 2022, Parents received the results of a private neuropsychological evaluation which diagnosed Student with ADHD and a specific learning disorder with impairment in written expression. *Interview with Parents; Exhibit H*, pp. 54-63.
11. In November 2022, Parents requested an evaluation for special education eligibility. *Interview with Parents*. A multidisciplinary team reviewed the neuropsychological report as well as Student's academic records and concluded that because Student was exhibiting substantial progress in response to MTSS and READ Plan interventions, it was not appropriate to initiate an evaluation. *Exhibit C*, p. 3. On December 7, 2022³, District issued a Prior Written Notice ("PWN") detailing that decision. *Id.* at pp. 3-4.
12. On February 7, 2023, Parents again requested an evaluation for special education eligibility based on continued concerns with Student's performance. *Interview with Parents; Exhibit H*, p. 1.

³ This refusal was not accepted as part of the Complaint's allegations as it took place more than one year prior to the filing of the Complaint. 34 C.F.R. § 300.153(c). Therefore, the SCO will not consider the propriety of this refusal.

13. On February 9, 2023, District issued a Prior Written Notice and Consent for Evaluation (“PWN-C”) proposing to evaluate Student in “Academics, executive functioning/ADHD and social emotional skills, adaptive skills, full occupational performance/motor/sensory, speech and language, health history, parent input, teacher input, classroom observations, summary of academic progress/MTSS data, consideration/summary of private [neuropsychological] evaluation.” *Exhibit C*, p. 1. Parent signed the PWN-C the same day. *Id.* at p. 2.
14. At the time the PWN-C was issued, neither Parents nor School staff suspected that Student might be affected by Autism Spectrum Disorder. *Interviews with Parents, Special Education Teacher, Reading Interventionist, and SLP.*

D. Evaluations

15. District issued an Evaluation Report on April 6, 2023, 56 days after the date of the February 9 PWN-C. *Exhibit H*, p. 1. The Evaluation Report included information responsive to all areas listed in the PWN-C. *Id.* at pp. 1-24.
16. On March 15, 2023, while evaluations were being conducted, Parents provided School with three additional private evaluation reports: an audiology report, a speech and language evaluation, and a private occupational therapy evaluation. *Exhibit H*, p. 2. The Evaluation Report summarizes these five documents as well as Student’s October 2022 neuropsychological report. *Id.* at pp. 2-3.
17. The audiology report stated that Student “has a mild auditory processing disorder.” *Exhibit H*, p. 51. This report was reviewed by SLP during the evaluation process, although SLP reports that her evaluations did not indicate any impact on Student’s ability to access the general education environment. *Interview with SLP.*
18. The academic evaluation component of the Evaluation Report was performed by Special Education Teacher. *Interview with Special Education Teacher; Exhibit H*, pp. 6-8.
19. From August 29, 2022 to August 29, 2023, Special Education Teacher possessed a Temporary Educator Eligibility Authorization with an endorsement in “Special Education Generalist (5-21).” *Exhibit I*, p. 18. This Authorization is sufficient to qualify her as a special education teacher under IDEA and ECEA. *Consultation with CDE Specialist.*
20. The communication component of the Evaluation Report was performed by SLP. *Interview with SLP.* One assessment administered by SLP was the Comprehensive Assessment of Spoken Language – 2 (“CASL-2”). *Exhibit H*, p. 9.
21. This assessment found that Student’s overall language ability was at the 50th percentile and within normal ranges. *Id.* However, on two of the fourteen subtests—double meaning and

pragmatic language—Student scored at the 2nd and 6th percentile, respectively. *Id.* These scores indicated to SLP that further testing might be necessary to determine whether Student’s pragmatic and figurative language skills might impact her academic performance. *Interview with SLP.*

22. Based on this, the final sentence of the Evaluation Report states that “Further testing would be needed to determine the impact of pragmatic language skills on [Student’s] ability to access and participate in the general education classroom.” *Exhibit H*, p. 24.
23. These pragmatic language skills results, as well as some concerns noted in the evaluation regarding sensory issues and social skills, indicated to the members of the multidisciplinary team that it might be appropriate to evaluate Student in the area of Autism Spectrum Disorder. *Exhibit C*, p. 11.

E. Eligibility Determination

24. On March 9, 2023, District issued a Notice of Meeting indicating that the eligibility determination meeting was scheduled for April 6, 2023. *Exhibit D*, p. 1.
25. On April 4, 2023, District sent Parents a draft of the Evaluation Report via email. *Exhibit K*, p. 115.
26. On the day scheduled for the meeting, a winter storm caused a two-hour delay, forcing the meeting to be rescheduled to the next date on which the participants could attend, April 20, 2023. *Exhibit B*, p. 1. On April 7, 2023, District sent a Notice of Meeting for that rescheduled date. *Exhibit D*, p. 2.
27. On April 19, 2023, District sent an updated draft of the Evaluation Report via email, noting that a classroom observation had been added since the draft sent on April 4, 2023. *Exhibit 15*, p. 1. That observation was conducted by Special Education Teacher on April 5, 2023. *Exhibit H*, p. 23.
28. Parents’ Complaint alleges that Student’s evaluation was not completed within 60 days because of the Evaluation Report’s stated need for additional pragmatic language testing. *Complaint*, p. 3. When asked about this allegation in an interview, Parents stated that the concern regarding the pragmatic language testing was suggested to them by their advocate, and that their true concern was that the provision of this updated draft on April 19, 2023 caused them to believe that the evaluation was not completed within the 60-day window. *Interview with Parents.*
29. On April 20, 2023, a multidisciplinary team (“MDT”) including Parents, Parents’ educational advocate, Special Education Teacher, SLP, Student’s general education teacher, a school counselor, a school psychologist, an occupational therapist, and a school nurse convened to

review Student's evaluations and determine her eligibility for special education and related services. *Exhibit D*, p. 2. The meeting was continued on April 26, 2023 and May 4, 2023. *Id.* at pp. 3, 6.

30. During that meeting, the MDT reviewed Student's evaluations and answered questions regarding the results. *Interviews with Special Education Teacher and SLP; Exhibits 16 and 17.*
31. During the April 20, 2023 portion of the eligibility determination meeting, Special Education Teacher presented Student's reading data to the MDT. *Exhibit 16*, 19:40. Parents requested that Reading Interventionist, who was not in attendance, join the meeting to discuss Student's reading. *Id.* at 21:13. Special Education Teacher clarified that the reading data being presented was not collected by Reading Interventionist, but by General Education Teacher. *Id.* at 22:07.
32. At Parents' request, Reading Interventionist joined the eligibility determination meeting and answered questions posed by Parents' advocate regarding Student's reading. *Id.* at 28:39. Reading Interventionist attended the remainder of the meeting and the subsequent meetings. *Interview with Reading Interventionist.*
33. During the April 26, 2023 portion of the eligibility determination meeting, the team considered Student's eligibility under the category of Speech or Language Impairment. *Exhibit N*, p. 8; *Exhibit 17*, 1:31:50. The MDT determined that because of the concerns regarding Student's pragmatic language skills, more testing would need to be done to appropriately determine Student's eligibility. *Id.*
34. SLP discussed the auditory processing disorder diagnosed in the audiology report, stating that because there is not an observed impact on Student's ability to access the general education environment, that diagnosis alone is not enough to qualify Student for special education. *Exhibit 17*, 1:33:55.
35. Parent stated that she did not want Student to receive services for auditory processing at school, but instead wanted to ensure that Student has access to an assistive auditory device at school. *Id.* at 1:37:33. SLP explained that Student would be able to access such a device even without an IEP. *Id.* at 1:38:00.
36. In response to Parent continuing to express concern regarding auditory processing, SLP proposed that the team request Parents' consent for an additional evaluation in the area of audiology. *Id.* at 1:38:45.
37. Later in the meeting, Special Education Teacher proposed, based upon the concerns with pragmatic language, sensory issues and social interaction, that an additional evaluation in the area of Autism Spectrum Disorder be conducted. *Exhibit 18*, 4:35.

38. On May 1, 2023, District issued a PWN-C proposing to evaluate Student in the areas of autism and audiology. *Exhibit C*, p. 11. Parents have not consented to these additional evaluations. *Interview with Parents*.
39. During the portion of the meeting which took place on May 4, 2023, the MDT determined that Student was not eligible for special education and related services under the categories of Significant Learning Disability or Other Health Impaired due to her strong academic growth and the fact that she does not demonstrate limited strength, vitality, or alertness within the educational setting. *Exhibit C*, p. 13. That day, District issued a PWN explaining that decision. *Id.*
40. Following the 2022-2023 academic year, Student enrolled in a new school in her new district of residence, and Parents have not yet pursued special education eligibility at the new district. *Interview with Parents*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District conducted a comprehensive evaluation of Student. No IDEA violation occurred.

Parents allege four deficiencies in Student’s evaluation process. First, they allege that Special Education Teacher lacked proper licensure to conduct Student’s academic evaluations. Second, they allege that District failed to properly evaluate Student in all areas of suspected disability, specifically by failing to evaluate Student under the category Autism Spectrum Disorder. Third, they allege that District failed to consider a private audiology report in evaluating Student. Finally, they allege that District failed to conduct the evaluation within 60 days of receiving consent to evaluate Student. The SCO will consider each in turn.

A. Appropriate Licensure

Parents allege that because Special Education Teacher possessed a Temporary Educator Eligibility Authorization, she lacked proper licensure to perform Student’s evaluations.

ECEA Rule 4.02(4)(c) holds that “personnel evaluating children for the purpose of determining eligibility for special education services shall be appropriately licensed and endorsed.” Here, at the time of the evaluation and eligibility meeting, Special Education Teacher possessed a Temporary Educator Eligibility Authorization with an endorsement in special education. (FF # 19). The SCO finds, in consultation with a CDE Content Specialist, that this authorization is sufficient to qualify Special Education Teacher for the purposes of IDEA and ECEA. *Id.* Accordingly, the SCO

finds and concludes that Special Education Teacher was appropriately licensed and endorsed to conduct Student's evaluation, consistent with ECEA Rule 4.02(4)(c).

B. Evaluation in All Areas of Suspected Disability

Parents allege that District failed to evaluate Student in the area of Autism Spectrum Disorder, and thus failed to evaluate Student in all areas of suspected disability.

IDEA requires an evaluation to assess students "in all areas related to the suspected disability." 34 C.F.R. § 300.304(c)(4). However, Districts must obtain parental consent prior to conducting any evaluation of a child with a disability. 34 C.F.R. § 300.300(a)(1)(i).

Here, neither Parents nor School staff suspected that Student might be affected by Autism Spectrum Disorder at the time the consent to evaluate was signed. (FF # 14). Therefore, although the evaluation included assessments in areas such as social emotional skills, speech and language, and sensory response, which might produce evidence of autism, the consent to evaluate did not include autism assessments. (FF # 13).

In performing and interpreting the evaluation, members of the MDT noted several data points which caused them to newly suspect that Student might be affected by autism. (FF #s 21, 23). Based on those findings, the MDT proposed that Student be evaluated for autism, and issued PWN-C seeking Parents' consent to evaluate in that area of suspected disability. (FF #s 37-38). Parents did not consent to the further evaluation. (FF #38).

District conducted an evaluation in all areas of disability suspected at the time of the consent to evaluate. When the evaluation itself uncovered a new suspicion, District sought consent to evaluate further but Parents did not consent. Accordingly, the SCO finds and concludes that District evaluated Student in all areas of suspected disability, consistent with 34 C.F.R. § 300.304(c)(4).

C. Consideration of Information Provided by Parents

Parents allege that District failed to consider a private audiology report provided by Parents in determining Student's eligibility for special education and related services.

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, although the audiology report was provided to District on March 15, while Student's evaluation was already ongoing, the MDT included a summary of the report's conclusions within

the Evaluation Report. (FF # 16). The report was reviewed by SLP and discussed at length at the eligibility meeting. (FF #s 17, 34-36). Although District did not find that the report's diagnosis of a mild auditory processing disorder was reflected by an impact on Student's ability to access the general education environment, it sought consent to evaluate Student in the area of audiology. (FF #s 34, 36, 38). Parents did not consent to this further evaluation. (FF # 38).

Accordingly, the SCO finds and concludes that District carefully considered the private audiology report in determining Student's eligibility for special education and related services, consistent with 34 C.F.R. § 300.305(a)(1).

D. Completion of Evaluation Within 60 Days

Parents allege that District failed to conduct its evaluation of Student within 60 days of the consent to evaluate. Specifically, Parents' Complaint alleges that because the Evaluation Report stated that further pragmatic language testing should be performed, the evaluation was not completed within 60 days. (FF # 28.) When interviewed, Parents stated that this allegation was suggested to them by an advocate, and that their true concern was that an additional classroom observation was added to the Evaluation Report after they had received a draft. *Id.* In the interest of completeness, the SCO will consider both concerns.

Once a school district has received parental consent for an initial evaluation, the school district must complete the evaluation within 60 days. 34 C.F.R. § 300.301(c)(1)(i).

Here, as an initial matter, Student's evaluation was completed on April 6, 2023, 56 days after the consent to evaluate was signed. (FF # 15). Although the Evaluation Report noted a need for further speech-language testing specific to pragmatics, this need was identified in response to the results of the evaluation itself and was connected to the MDT's newly discovered concerns regarding autism. (FF #s 21-23). Notably, Student's overall language score was within normal ranges. (FF # 21).

On April 4, 2023, District provided Parents a draft of the Evaluation Report for review prior to a meeting scheduled April 6, 2023. (FF # 25). On April 5, 2023, Special Education Teacher conducted an additional classroom observation of Student, which was then incorporated into the Evaluation Report. (FF # 27).

Both the speech-language component of the Evaluation Report and the classroom observation were conducted before the Report's issue date of April 6, 2023, which was within the 60-day evaluation window. That the MDT identified a need for additional testing related to a suspicion of autism did not render the initial evaluation, which did not contemplate autism as an area of suspected disability, incomplete. Likewise, the issuance of a draft on April 4, 2023 did not preclude the MDT from including information collected subsequent to that draft but prior to the end of the 60-day evaluation window. Accordingly, the SCO finds and concludes that District

conducted the evaluation within 60 days of receiving the consent to evaluate, consistent with 34 C.F.R. § 300.301(c)(1)(i).

Conclusion to Allegation No. 2: District ensured that a group of qualified professionals and Parents determined whether Student was a child with a disability. No IDEA violation occurred.

Parents' concern is that the MDT was insufficient because Reading Interventionist was not present for the entirety of the eligibility meeting.

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability. 34 C.F.R. § 300.306(a)(1). That multidisciplinary team must include at least one teacher or other specialist with knowledge in the area of the child's suspected disability, other qualified professionals as necessary, and the parent of the child. ECEA Rule 4.02(6)(b)(i).

Here, from the outset, the MDT included Parents, Parents' educational advocate, Special Education Teacher, SLP, Student's general education teacher, a school counselor, a school psychologist, an occupational therapist, and a school nurse. (FF # 29). About 20 minutes into the meeting, Parent requested the presence of Reading Interventionist, who joined the meeting about 7 minutes later, and attended the remaining hour of that meeting and the two subsequent meetings. (FF #s 31-32). When Reading Interventionist joined the meeting, she discussed Student's reading progress and answered questions from Parents' advocate. (FF # 32). Although the reading data being discussed was not collected by Reading Interventionist and Special Education Teacher was able to speak about the data, Reading Interventionist was able to fully participate in the eligibility meeting at Parent's request. (FF #s 7, 31-32).

Accordingly, the SCO finds and concludes that Student's eligibility was determined by a properly constituted MDT consisting of Parents and a group of qualified professionals, consistent with 34 C.F.R. § 300.306(a)(1) and ECEA Rule 4.02(6)(b)(i).

REMEDIES

The SCO concludes that District has not violated the IDEA or ECEA. 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 9th day of February, 2024.

A handwritten signature in blue ink, appearing to read "Nick Butler", with a horizontal line underneath it.

Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Exhibit 1: Student reading data
- Exhibit 2: Email regarding participants in eligibility meeting
- Exhibit 3: Consent to Evaluate and Audiology Report
- Exhibit 4: Excerpt from Evaluation Report- Communication
- Exhibit 5: Email from School Psychologist
- Exhibit 6: Excerpt from Evaluation Report - Academics
- Exhibit 7: Information regarding Special Education Teacher
- Exhibit 8: Email regarding Evaluation Report draft
- Exhibit 9: Student assignments
- Exhibit 10: Prior Written Notices
- Exhibit 11: Student's READ Plan and progress data
- Exhibit 12: Private evaluations

Response, pages 1-23

- Exhibit A: IEPs
- Exhibit B: Meeting Documentation
- Exhibit C: Prior Written Notices
- Exhibit D: Notices of Meeting
- Exhibit E: Report cards and progress monitoring
- Exhibit F: Grade and attendance records
- Exhibit G: District Calendar
- Exhibit H: Evaluations
- Exhibit I: Certification and licensure of MDT members
- Exhibit J: Policies
- Exhibit K: Correspondence
- Exhibit L: Staff with Knowledge
- Exhibit M: Verification of Delivery
- Exhibit N: Eligibility Determination
- Exhibit O: Miscellaneous Student Information
- Exhibit P: Documentation of Complaint

Reply, pages 1-2

- Exhibit 13: Second Grade Teacher's Behavior Ratings
- Exhibit 14: Office of Special Education Programs Memo 22-01
- Exhibit 15: Emails regarding Evaluation Report Drafts
- Exhibit 16: Recording of April 20, 2023 Eligibility Meeting
- Exhibit 17: Recording of April 26, 2023 Eligibility Meeting – Part 1

- Exhibit 18: Recording of April 26, 2023 Eligibility Meeting – Part 2
- Exhibit 19: Recording of May 4, 2023 Eligibility Meeting

Telephone Interviews

- Parents: January 9, 2024
- Speech-Language Pathologist: January 11, 2024
- Reading Interventionist: January 11, 2024
- Special Education Teacher: January 11, 2024
- Special Education Director: January 11, 2024