

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

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**State Complaint SC2025-578**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On June 10, 2025, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 10, 2024. Information prior to June 10, 2024, may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)<sup>2</sup> of the IDEA:

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<sup>1</sup> 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.

<sup>2</sup> The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. District did not conduct an initial evaluation to determine whether Student qualified as a child with a disability under the IDEA—as requested by Parent on or around October 2, 2024—or provide Parent with prior written notice explaining its decision not to evaluate Student, as required by 34 C.F.R. §§ 300.301 and 300.503(a).
2. District did not identify and evaluate Student—between October 2, 2024, and May 20, 2025—when it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. Student is seven years old and completed first grade at a District elementary school (“School”) during the 2024-2025 school year. *Complaint*, p. 2.
2. Student is joyful, playful, and social, but he has struggled at School with literacy, math, and self-determination since kindergarten. *Interviews with Parent and Student’s Math Teacher (“General Education Teacher”)*.
3. Parent’s Complaint addresses District’s handling of Parent’s October 2024 written request for an initial evaluation for special education, as well as District’s knowledge of any suspected disability that would have obligated District to complete an initial evaluation for Student between October 2024 and May 2025. *Complaint*, pp. 11-16.

#### **B. District’s Policies, Practices, and Procedures**

4. District’s Senior Manager of Special Education (“District Senior Manager”) described District’s practices and procedures as it relates to evaluations, referrals to special education, and child-find obligations. *Interview with District Senior Manager*. District maintains procedural guidance, updated in 2018, detailing District’s special education policies and procedures. *Exhibit I*, pp. 3-19. Among other topics, this guidance covers District’s responsibilities for the identification and evaluation of students and outlines when and how to provide Prior Written Notice (“PWN”). *Id.*
5. If a parent requests an initial evaluation, the appropriate school staff member—usually a member of the special education team—should schedule a referral meeting with the

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

student's family and a multi-disciplinary school team selected based on the nature of the parent's concern. *Interview with District Senior Manager*. At this meeting, the team should review a comprehensive body of evidence, including information from parents and teachers, data, academic and behavioral information, current interventions, and attendance records, to determine if the school should proceed with an evaluation. *Id.*; *Exhibit I*, pp. 6, 8-9.

6. Following the referral meeting, District should issue a PWN either requesting parent's consent to perform an evaluation or explaining District's decision not to initiate an evaluation. *Interview with District Senior Manager; Exhibit I*, pp. 9, 12.
7. District does not have established guidance specifying how staff should respond when a parent withdraws a request for evaluation. *Interview with District Senior Manager*.
8. If District staff suspect that a student might have a disability, District is required to initiate the referral process. *Id.* District provides annual training to all administrators and new special education staff on this requirement, including how to conduct appropriate referral meetings and evaluations if a disability is suspected. *Id.*
9. School has a "robust" Multi-Tiered System of Support program ("MTSS") that it uses to identify students who might have disabilities. *Interview with Assistant Principal of Special Services ("Assistant Principal")*. School's MTSS process features five components: (1) a universal screener completed three times per year for all students to determine needed support; (2) tiered intervention strategies for literacy, math, behavior, social-emotional, health, and attendance; (3) progress monitoring; (4) dedicated MTSS team members; and (5) data review and meetings. *Exhibit B*, pp. 7-17. If a student receives MTSS support and does not show growth despite interventions, then School might suspect a disability and move forward with an evaluation. *Interview with Assistant Principal*.
10. District training emphasizes that schools should not use MTSS or "a student's interventions as a substitute or a reason to delay considering an evaluation." *Interview with District Senior Manager*. Instead, even where a student is responding well to MTSS and current interventions, a team should still have a formal referral meeting in response to a request for an evaluation and should consider MTSS data during the referral meeting. *Id.*
11. Aside from identification through the MTSS process, suspicion of a disability may be triggered by, among other factors: data indicating that the student cannot receive a reasonable educational benefit from general education alone; a lack of expected academic progress; extreme or new behavior patterns; mention of previous special education eligibility; or, a referral to special education from a student's parent, teacher, or other referral source, such as a medical provider. *Interviews with District Senior Manager and School Managing Director for Special Services ("Managing Director")*.

### C. Parent's Request for an Evaluation

12. On October 2, 2024, Parent emailed School's Principal and Assistant Principal to "formally request a comprehensive evaluation" for Student for either an Individualized Education Plan ("IEP") or Section 504 Plan ("504"). *Exhibit A*, pp. 1-2; *Interviews with Parent and Assistant Principal*.
13. Parent requested an evaluation because she thought that Student was exhibiting behaviors "consistent with [Attention-Deficit/Hyperactivity Disorder ("ADHD")], learning disabilities, or other developmental concerns." *Exhibit A*, p. 2. Student struggled with self-determination, literacy, and math in kindergarten. *Interview with Parent*. From Parent's perspective, Student had a "rough" start to first grade—including falling asleep in class, shutting down when confused, and refusing to go into School—so Parent wanted to "get at the root cause" of Student's struggles at the beginning of the school year. *Id.*
14. Parent also requested this evaluation based on a recommendation from Student's pediatrician. *Exhibit D*, p. 1. At Student's routine well-child exam on October 1, 2024, Parent expressed concern that Student was: "[falling] asleep in class at the end of the day consistently," "unable to finish work at school," "[complaining] that it [was] too noisy," providing an "automatic response" of not being able to do a task, and not completing math problems unless broken up "into smaller pieces" by math teacher. *Id.* at pp. 1-2. Student's pediatrician recommended a Vanderbilt screening test for ADHD and for Parent to request an evaluation from School. *Id.* at p. 1.
15. After receiving Parent's request for evaluation, Assistant Principal set up a "hybrid" MTSS and referral meeting for October 17, 2024. *Interview with Assistant Principal; Response*, pp. 4-5; *Exhibit B*, pp. 1-2. Meeting attendees included: Parent, Co-Parent, Assistant Principal, Managing Director, General Education Teacher, Dean of School Culture, and School Social Worker. *Interview with Assistant Principal; Exhibit K*.
16. The purpose of the meeting was to gather key individuals, understand Parent's concerns, review Student's MTSS supports, and evaluate a "robust body of evidence" to determine if a referral to special education for Student was warranted. *Interview with Assistant Principal*.
17. At the time, Student was receiving tier 2 MTSS supports for academics and tier 1 social-emotional supports for behavior. *Interviews with Assistant Principal, Parent, and General Education Teacher; Response*, p. 5. Tier 2 supports for academics included: small-group literacy instruction inside the general education classroom, extended time as needed, and scaffolded assignments. *Response*, p. 5; *Exhibit B*, pp. 6-16. Tier 1 supports for social-emotional learning and behavior involved, for example, use of positive behavior systems in the classroom. *Exhibit B*, pp. 6-16.
18. At the meeting, General Education Teacher presented data on Student's academic and behavioral performance, including his positive response to MTSS interventions. *Interviews*

*with Assistant Principal and General Education Teacher; Exhibit B, p. 1. While recognizing that Student performed below grade level in literacy and math and struggled with self-determination, the meeting celebrated Student’s growth and strong start to first grade. Interviews with Assistant Principal, Managing Director, and General Education Teacher.*

19. By the end of the meeting, Parent, Co-Parent, and School agreed to continue Student’s MTSS interventions, place Student in a smaller literacy group as an additional intervention, and reconvene later in the year to assess Student’s progress. *Interviews with Assistant Principal, Managing Director, General Education Teacher, Parent, and Co-Parent; Exhibit 1, p. 58.*
20. Parent did not affirmatively state that she still wanted to move forward with an evaluation for special education. *Interviews with Parent, Co-Parent, Assistant Principal, Managing Director, and General Education Teacher.* However, at the meeting, Parent also never expressly stated that she wanted to withdraw her request for an evaluation. *Id.* Instead, School staff interpreted Parent’s agreement to continue with MTSS as an effective withdrawal of her request. *Interviews with Assistant Principal and General Education Teacher.*
21. After the meeting, Parent remained concerned with Student’s behaviors and his below-grade-level proficiency in literacy and math. *Id.* She “was thinking that evaluation was still on the table.” *Interview with Parent.* Following the meeting, she did not verbally or in writing withdraw her October 2, 2024, request for an evaluation. *Id.*
22. Aside from an agenda, there is no written or recorded documentation from the October 17, 2024 meeting, including any agreement by Parent to withdraw her request for an evaluation. *See Exhibit B, pp. 1-2; Interviews with Parent, Co-Parent, Assistant Principal, Managing Director, and General Education Teacher.*
23. Believing that Parent “withdrew” her request for an evaluation, School did not evaluate Student in response to Parent’s October 2, 2024 request and it did not issue PWN to Parent explaining its decision not to proceed with an evaluation. *Interviews with Parent, Assistant Principal, and General Education Teacher.* Without documentation from School, Parent was confused about the status of Student’s evaluation and would have sought a private evaluation had she known School was not planning to proceed with an evaluation. *Interview with Parent.*

#### **D. The 2024-2025 School Year: October through May**

24. When Parent requested an evaluation on October 2, 2024, Parent had concerns with Student’s behavior and academics: she theorized that underlying learning difficulties were leading to Student’s behavioral struggles. *Interview with Parent.* Parent worried most that Student’s challenges from kindergarten—specifically task refusal, shutting down when facing a difficult problem, and falling asleep—would continue through first grade. *Id.*
25. Regarding behavior, School administers the Behavioral Assessment System for Children, Third Edition (“BASC-3”) Behavioral and Emotional Screening System (“BESS”) universal screener

for all students three times per year. *Exhibit B*, p. 7; *Interview with Assistant Principal*. BESS uses three risk classifications: (1) normal, from 0-60, (2) elevated, from 61-70, and (3) extremely elevated, from 71 and above. *CDE Exhibit 1*. Only “extremely elevated” scores are considered clinically significant. *Id.* Assessed risk categories include: overall behavioral and emotional (“BERI”); external, such as hyperactivity, aggression, and conduct (“ERI”); internal, such as anxiety and depression (“IRI”); and, adaptive skills, such as social skills and leadership (“ARI”). *Id.*

26. Student’s BASC-3 and BESS data from the end of kindergarten identified him as having elevated risk for BERI and ERI but normal risk for IRI and ARI. *Exhibit B*, p. 1. Based on this data, School placed Student in a “BESS Group” as an MTSS intervention to work on self-determination, behavior, and social-emotional skills with a group of peers. *Interview with Assistant Principal*.

27. From August to November 2024, Student had 16 recorded behavior incidents:

- Four reports of “unsafe body,” defined as “stacking chairs, purposefully falling off chairs, inappropriate bathroom behavior, play fighting;”
- Five reports of “prolonged off-task behavior,” defined as “difficulty getting started on classwork, difficulty transitioning;”
- Two reports of “physical harm to peer,” involving hitting; and,
- Five reports of “elopement,” consisting of “refusal to join class – dance, lunch, recess, arrival.”

*Exhibit C*, pp. 1-2.

28. Staff addressed these behaviors through Student’s BESS Group and with in-class support, such as positive affirmation. *Interviews with Assistant Principal and General Education Teacher*. Student had zero recorded behavior incidents between December 2024 and May 2025, compared to his 16 behavior incidents in the Fall. *Exhibit C*, pp. 1-2.

29. General Education Teacher described Student’s behavior from October 2024 to May 2025 as positive and age-appropriate: she did not have any behavioral issues with him requiring disciplinary action, he responded well to redirection, and the self-determination struggles with self-doubt and task-initiation that Student exhibited in kindergarten and at the beginning of the school year improved drastically with positive reinforcement. *Interview with General Education Teacher*.

30. Managing Director and Assistant Principal echoed that Student’s behavior did not trigger any concerns from his general education teachers or School administration from October 2024 through May 2025. *Interviews with Managing Director and Assistant Principal*. Unlike other

students who would be on Assistant Principal and Managing Director’s radar—such as those exhibiting extreme, new, or worsening behavior patterns or needing frequent behavioral support—Student showed age-appropriate and improving behavior. *Id.*

31. Between December 2024 and May 2025, the only behavioral challenge that School identified was Student’s tendency to fall asleep in class after lunch. *Exhibit C*, p. 2; *Interview with Co-Parent*. School did not suspect that this behavior was caused by an underlying disability because it could be explained by other factors, such as Student’s sleep routines at home and his age. *Interviews with Assistant Principal, Managing Director, and Co-Parent*.
32. Student’s pediatrician evaluated Student for ADHD in December 2024 using a Vanderbilt assessment, and he did not meet the diagnostic criteria. *Exhibit D*, p. 7; *Exhibit 1*, pp. 34-41. The pediatrician recommended “to watch how [Student] is doing academically, behaviorally, and socially as he progresses” given that symptoms consistent with ADHD might be due to other learning problems. *Exhibit D*, p. 7.
33. Regarding academics, Parent and School both recognized that Student performed below grade level in literacy and math from October 2024 to May 2025. *Interviews with Parent, Assistant Principal, General Education Teacher, and Managing Director*.
34. Curriculum-based assessment data reflected Student’s academic progress in basic classroom skills. *Exhibit C*, p. 12; *Interview with Assistant Principal*. Based on student scores, School categorizes students’ performance as either significantly below, below, meeting, or above grade-level expectations. *Exhibit C*, p. 12. In the first trimester of the 2024-2025 school year, Student only met grade-level expectations in music but otherwise scored below grade level in “Core Knowledge Language Arts” and math and significantly below grade level in English language development. *Id.*
35. District assessment data measured Student’s academic abilities compared to peers and grade-level standards and set a baseline to assess growth. *Id.* School assesses reading proficiency by administering iReady and Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”) assessments three times per year in the Fall, Winter, and Spring. *Id.*; *Interview with Assistant Principal*. School measures math proficiency using three iReady diagnostics. *Exhibit C*, p. 17.
36. In reading, Student scored 347 overall on his first iReady diagnostic, administered on September 3, 2024, where first-grade level is between 434 and 536. *Id.* at p. 15. Student placed at a kindergarten level in overall reading, phonological awareness, and literacy comprehension, and at an “emerging kindergarten” level in phonics, high-frequency words, vocabulary, and informational text comprehension. *Id.* On his second diagnostic, administered December 9, 2024, Student scored 372 overall and placed at a kindergarten level overall and in all reading domains. *Id.* He jumped 25 points between his first and second diagnostics, showed improvement in phonics, high-frequency words, vocabulary, and information text comprehension, and did not depreciate in any reading domains. *Id.* Finally,

on his third iReady diagnostic, administered May 13, 2025, Student jumped another 16 points—a 41-point overall improvement—to a score of 388 and placed at the kindergarten level overall and for all domains. *Id.* Student’s scores placed him at the 11th percentile in overall reading compared to the national norm. *Id.*

37. On DIBELS, Student scored a 330 overall on his beginning-of-year diagnostic which is “well below” grade level. *Id.* at p. 16. He scored “well below” grade level in all specific reading domains, including: letter names, phonemic awareness, letter sounds, decoding, word reading, reading accuracy, and reading fluency. *Id.* at pp. 16-17. On his mid-year DIBELS assessment, Student scored a 389 overall and continued to score “well below” on all specific reading domains except “phonemic awareness,” where he improved to “below.” *Id.* Finally, on his end-of-year test, Student scored 416 overall and improved to “benchmark” in phonemic awareness and to “below” in decoding and word reading. *Id.* Overall, on DIBELS, Student was performing “well below grade level in the area of reading in English.” *Id.*
38. In math, Student scored a 300 overall on his first iReady diagnostic, administered on September 4, 2024, where first-grade level is between 402 and 472. *Id.* at p. 17. This score placed Student at the “emerging kindergarten” level in overall math and all domains, including: number and operations, algebra and algebraic thinking, measurement and data, and geometry. *Id.* On his second iReady math diagnostic, administered December 10, 2024, Student improved by 41 points but still placed in the “emerging kindergarten” level overall and in all domains except geometry where he improved to kindergarten level. *Id.* Finally, on his third iReady diagnostic, administered May 14, 2025, Student improved by another 33 points—a 74-point overall improvement—and reached kindergarten level overall and in all domains. *Id.*
39. School interpreted this data as showing that Student was one grade level behind in literacy and math, meeting typical growth goals, and responding well to necessary intervention. *Interviews with Assistant Principal, Managing Director, and General Education Teacher.* This data was “exciting” to School because it reflected a significant amount of growth, especially in math, and the acquisition of foundational skills. *Id.* While School would ultimately want Student meeting “stretch goals” to close gaps in literacy and math, this progress was positive for a first-grade student given that “literacy is not innate. It is typical for students at this age to come in without natural reading skills.” *Interviews with Managing Director and Assistant Principal.* School did not suspect that Student had a disability from reviewing this data and instead celebrated Student’s growth. *Id.* School might have suspected a disability if Student was stalling or regressing even with interventions. *Id.*
40. From October 2024 to May 2025, none of Student’s teachers suspected that he had a disability based on his behavior or academics. *Interviews with General Education Teacher and Assistant Principal.*

41. Parent, however, remained concerned that Student performed below grade level in literacy and math, especially given the long-term risks associated with lack of literacy in early elementary school. *Interview with Parent; Complaint*, pp. 14-16.
42. On March 6, 2025, School held a follow-up meeting with Parent and Co-Parent to discuss Student's response to intervention and academic progress. *Interviews with Parent, Assistant Principal, and Managing Director; Exhibit B*, pp. 3-5.
43. At this meeting, Parent expressed her concerns that Student was still not performing at grade level for literacy and math and that she was considering retention. *Interviews with Parent, Assistant Principal, and Managing Director*. District presented Student's data and stated that a special education evaluation for Student was unnecessary given Student's age and significant growth. *Id.; Exhibit B*, p. 3. However, Parent disagreed with School's focus on growth and worried that it would take at least two years at Student's rate of growth—until third grade—for him to reach first-grade reading proficiency. *Interview with Parent*. Although School believed an evaluation was not merited, School nonetheless told Parent she had the option of requesting a special education evaluation. *Interview with Managing Director*.
44. On April 16, 2025, Parent provided School a letter from Student's pediatrician recommending that Parent "talk to school again about IEP evaluation." *Exhibit D*, pp. 5-9; *Exhibit J*, p. 4. The next day, Assistant Principal set up a special education referral meeting for April 22, 2025, to discuss next steps for Student. *Exhibit J*, pp. 4-6; *Exhibit G*, p. 1.
45. On April 24, 2025, following the April 22 referral meeting, Parent submitted a formal written request to move forward with evaluation. *Exhibit J*, p. 7. On April 25, 2025, Parent provided consent for an initial evaluation in the areas of "academic performance" and "health" to School. *Exhibit E*.
46. School completed an initial evaluation by May 20, 2025, and determined that Student did not meet eligibility criteria for special education services under the categories of Specific Learning Disability and Developmental Delay. *Exhibit C; Exhibit G*, pp. 3-4.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District did not conduct an initial evaluation or provide Parent with PWN explaining its decision not to evaluate Student after Parent's October 2, 2024, request, as required by 34 C.F.R. §§ 300.301 and 300.503(a). This noncompliance did not result in denial of FAPE.**

Parent's concern is that District did not conduct an initial evaluation following her request October 2, 2024, and did not provide Parent PWN of its decision not to evaluate Student. (FF # 3).

## **A. Legal Requirements**

An initial special education evaluation seeks to determine whether a child has a disability within the scope of the IDEA and, if so, aids the IEP Team in the development of the child's IEP. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). School districts must complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a).

A school district may initiate a special education evaluation on its own reasonable suspicion, or a parent may request an initial special education evaluation. *Id.* § 300.301(b); ECEA Rule 4.02(3)(a). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with PWN explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 05/17/19); 34 C.F.R. § 300.503(a).

If a district agrees with a parent's request for an initial evaluation, it must seek parental consent for the evaluation and, within 60 days of receiving parental consent, conduct the evaluation. 34 C.F.R. § 300.301(c); ECEA Rule 4.02(3)(c). If a school district does not suspect a child has a disability and denies a parent's request for an initial evaluation, the district must provide PWN to the parent explaining why the district refuses to conduct an initial evaluation and the information that was used as the basis for that decision. 34 C.F.R. § 300.503(a)-(b); *see also Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011). Further, "[a] district cannot escape its obligation to provide [PWN] by failing to appropriately respond to a parent's request. A school district's decision to take no action qualifies as affirmative refusal." *W. Linn-Wilsonville Sch. Dist.*, 121 LRP 40626 (SEA OR 06/11/21); *see also Athens City Schs.*, 123 LRP 36938 (SEA OH 07/18/23) (following a parent's request for evaluation, "[d]istrict did not obtain consent, complete an evaluation, nor did it send the [p]arent [PWN] to say it did not suspect a disability and would not be conducting an evaluation," resulting in non-compliance with IDEA); *Bay Cnty. Sch. Bd.*, 81 IDELR 172 (SEA FL 07/12/22) (finding district did not comply with IDEA when it "did not, . . . prior to filing of [parent's] Complaint, obtain consent from [parent] to conduct the evaluation or provide [PWN] explaining the refusal to conduct the evaluation").

For a parent to withdraw a request for evaluation, there must be evidence—such as written documentation—establishing the parent's intent to withdraw the evaluation request. *Denver Pub. Schs.*, 125 LRP 2519 (SEA CO 2024) (finding that parent did not withdraw an evaluation request where district and parent had different understandings following a call to discuss whether to proceed with a special education evaluation, and there was no "direct written documentation" regarding the substance of the call). Without written documentation or other evidence of an agreement not to pursue an evaluation, a district's unilateral belief that a discussion resulted in a "shared understanding" of an "appropriate path forward" does not establish withdrawal of an evaluation request or negate the need to provide PWN. *Id.* (finding procedural noncompliance where district did not provide PWN to parent because district thought that parties had agreed to move forward with the 504 process rather than IEP evaluation but had no documentation of such an agreement).

## **B. District's Response to Parent's Request**

Here, Parent requested an initial IEP evaluation on October 2, 2024. (FF # 12). District asserts that it reached a shared understanding with Parent following an October 17, 2024, meeting that the appropriate path forward consisted of continued MTSS support rather than an IEP evaluation. (FF #s 3, 19, 23). District did not take any action to confirm the accuracy of this assumption. (FF #s 20-23). Indeed, Parent thought that an IEP evaluation was still on the table and that her support of continued MTSS intervention did not negate her evaluation request. (FF # 21). Parent did not state, in writing or orally, that she wished to withdraw her evaluation request. (FF #s 20-22). Instead, School interpreted Parent's agreement to continue with MTSS as her "essentially withdrawing" her request. (FF # 23). But School's belief that the October 17, 2024, meeting resulted in an agreement to continue with MTSS in lieu of an evaluation is not enough to establish withdrawal of Parent's request. (FF #s 20-23). Without any documentation showing that Parent intended to withdraw her evaluation request by agreeing to continue with MTSS, there is no indication from the Record that Parent withdrew her request. (FF #s 19-23).

As such, following Parent's October 2, 2024, request for an initial evaluation, District was required to either: (1) obtain parental consent and conduct the evaluation within 60 days of receiving consent; or (2) issue PWN to Parent explaining why it refused to conduct an initial evaluation and the information that was used as the basis for that decision. See 34 C.F.R. §§ 300.301, 300.503(a). Here, the District did neither. (FF #s 5-6, 23).

Therefore, the CDE finds and concludes that District did not conduct an initial evaluation in response to Parent's October 2, 2024, request and did not provide PWN to Parent explaining its decision to not evaluate Student, as required by 34 C.F.R. §§ 300.301 and 300.503(a).

## **C. Procedural Noncompliance**

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, noncompliance with a procedural requirement results in a denial of FAPE only if the noncompliance: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding that procedural noncompliance can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process). For a district to be liable for a denial of FAPE, the student must be a student with a disability. *D.G. v. Flour Bluff Indep. Sch. Dist.*, 59 IDELR 2 (5th Cir. 2012) (holding that a district cannot be liable for child-find noncompliance unless the student has a need for special education).

Here, Parent requested an evaluation on October 2, 2024, yet School did not seek consent for an evaluation or provide PWN explaining its denial of Parent's request. (FF #s 12, 23). For the next six months, Parent worried about Student's performance, wondered about the status of her referral, and lacked the documentation she needed to advocate for herself or Student. (FF #s 23-

24, 41). If she had known that School was not proceeding with an evaluation, Parent would have sought a private evaluation. (FF # 23). By not providing PWN to Parent, District impeded Parent's opportunity to advocate for Student. (FF # 23). Still, District evaluated Student on May 20, 2025, and determined that Student did not qualify for special education. (FF # 46). Because Student is not a child with a disability, District's noncompliance with 34 C.F.R. §§ 300.301 and 300.503(a) did not impede Student's right to a FAPE or cause a deprivation of educational benefit. (FF #s 23, 46). See *D.G. v. Flour Bluff Indep. Sch. Dist.*, 59 IDELR 2 (5th Cir. 2012). For this reason, the CDE finds and concludes that the procedural noncompliance here did not result in a denial of FAPE.

**Conclusion to Allegation No. 2: District satisfied its child-find obligation between October 2, 2024, and May 20, 2025, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3). District complied with IDEA.**

Parent's concern is that District failed to identify and evaluate Student after District was on notice that Student might have a disability and need special education services between October 2, 2024, and May 20, 2025. (FF # 3).

#### **A. The Child Identification Process under the IDEA**

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process "shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education." ECEA Rule 4.02(1)(a)(ii).

Under the "special education referral" component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(a); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a).

The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is "whether the child should be referred for an evaluation, not whether the child actually qualifies for the services." *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion "may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and

wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe Cnty. Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

However, “child find does not demand that schools conduct a formal evaluation of every struggling student,” and “schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities,” especially at a time when students are acclimating to a new school environment. *D.K. ex rel. Stephen K. v. Abington Sch. Dist.*, 696 F.3d 233, 254 (3d Cir. 2012) (finding no child find violation where student was exhibiting behaviors typical of his age and district responded by implementing general education interventions with parents’ cooperation); *Cherry Creek Sch. Dist. No. 5*, 125 LRP 10301 (SEA CO 01/11/23) (“[T]he child find obligation does not extend to testing every student who is not successful when factors other than a disability would also explain the failure to progress.” (citing *J.N. v. Jefferson Cnty. Bd. of Educ.*, 421 F. Supp. 3d 1288 (N.D. Ala. 2019))). And “mixed academic success does not—in itself—trigger a school district’s obligation to evaluate.” *Leigh Ann H. ex rel. K.S. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 797 (5th Cir. 2021) (finding no child find violation where neither parent or school staff expressed academic or behavioral concerns before parent requested an evaluation, and student was “an average student”); *Brighton 27J Sch. Dist.*, 119 LRP 37633 (SEA CO 06/24/19) (finding no child find violation where student’s performance was average and his behavior and academic performance were not sufficient to put the district on notice that student may have an IDEA-qualifying disability).

A school district may attempt pre-referral interventions before initiating an IDEA evaluation. *See, e.g., M.G. v. Williamson Cnty. Schs.*, 720 F. App’x 280, 285 (6th Cir. 2018) (finding district “effectively utilized general intervention strategies” before evaluating student); *Denver Pub. Schs.*, 123 LRP 33002 (SEA CO 03/10/23) (finding no child find violation where district did not have reasonable suspicion that student may be a student with a disability, even given certain behaviors, which district addressed via general education interventions). However, a response to intervention or MTSS process cannot be used to delay or deny an evaluation. *Letter to Ferrara*, 60 IDELR 46 (OSEP 2012). School districts must act within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. *D.T.*, 55 F.4th at 1274.

Although the threshold for reasonable suspicion of a disability is lower than that for finding a student eligible for special education services, the criteria used for an eligibility determination may also act as a guide for determining whether a school had adequate suspicion to evaluate. *D.T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1275 (10th Cir. 2022).

To meet the eligibility criteria for “Specific Learning Disability” under the ECEA, a body of evidence must demonstrate that student:

- (1) “does not achieve adequately for the child’s age or to meet state-approved grade-level standards and exhibits significant academic skill deficits in [specified] areas” when provided appropriate learning experiences and instruction; **and**
- (2) does not make sufficient progress to meet age or state-approved grade-level standards in one of the specified areas, such as basic reading skills, reading fluency skills, reading comprehension, mathematical calculation, and mathematical calculation.

ECEA Rule 2.09(8)(b)(i)-(ii).

To qualify under the disability category of “Developmental Delay” under state law—which should be avoided if a student can qualify under another disability category—multiple sources of information must show: a score in the seventh percentile or below on a diagnostic test in an area such as cognitive or social-emotional development; data showing a condition associated with significant developmental delays; or, a body of evidence reflecting that “patterns of learning are significantly different from age expectations across settings” with written documentation. ECEA Rule 2.09(13)(a).

To decide whether District fulfilled its child find obligations here, the CDE considers the individual circumstances of this case to determine whether District had a reason to suspect that Student needed to be evaluated for special education. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); *Weld RE-4 Sch. Dist.*, 119 LRP 5662 (SEA CO 1/2/19) (citing *Clark Cnty. Sch. Dist.*, 114 LRP 45477 (SEA NV 8/28/14)).

### **B. District’s Child-Find Obligation to Student**

Here, the CDE finds and concludes that the evidence in the Record demonstrates that District did not have a reasonable suspicion that Student may have a disability and need for special education and related services between October 2, 2024, and May 20, 2025. (FF #s 24-46).

Parent requested an evaluation for Student on October 2, 2024, because she wanted to determine the cause of Student’s behavioral and academic struggles and to ensure that Student’s struggles from kindergarten did not continue into first grade. (FF #s 12, 24). Parent expressed these concerns to Student’s pediatrician, who in turn suggested that Parent should work with School to request an evaluation either for an IEP or 504 plan. (FF # 13). A parental request for an evaluation can raise suspicion of a suspected disability; however, here, Parent’s underlying concerns were not shared by others with knowledge of Student’s needs and were not supported by Student’s data. (FF #s 18, 25-40).

None of Student’s teachers or School staff suspected that he had a disability. (FF #s 29-30, 40). Moreover, the medical notes from Student’s pediatrician mirrored Parent’s concerns, which she relayed to pediatrician, rather than pediatrician’s own concerns about Student (FF # 14). Thus,

the Record shows that none of the other individuals involved in Student’s education shared Parent’s opinion that Student needed an evaluation. (FF #s 14, 18, 29-30, 40).

Student’s first-grade behavioral and academic data also did not raise any suspicion that Student might have a disability and need for special education. (FF #s 25-39). Instead, Student’s data reflected that Student benefitted from general education with appropriate interventions. (FF # 39). School considered Student’s data, among other factors, at meetings with Parent in October 2024 and March 2025 to support its stance that Student did not require a referral to special education. (FF #s 18, 43). While School was required to issue PWN to document its reasoning for denying an evaluation after Parent’s October 2024 request, the data nonetheless supported that School did not have reason to suspect a disability. (See Section 1.B above; FF #s 25-39).

Regarding behavior, Student did not score in the clinically significant range for any risk category on his BESS screener. (FF #s 25-26). He received interventions based on his BESS screener results, including small-group social-emotional instruction and positive behavior systems in general education, to which he responded remarkably. (FF #s 26-28). Student did not exhibit intense, new, or escalated patterns of behavior, which might have put School on notice of disability (FF #s 27-30). Instead, Student exhibited typical misbehavior at the beginning of the school year when he had 16 recorded incidents of minor behaviors. (FF # 27). From December 2024 through the end of the year, Student had *zero* recorded behavior incidents. (FF # 28). This data reflected significant improvement in behaviors—which were minor in the first place—such that School had no reason to suspect a disability (FF #s 27-31). Moreover, Student did not qualify for the medical diagnosis of ADHD, which further supported that he did not exhibit behavior that put School on notice of a disability. (FF # 32).

Student’s academic data also did not raise red flags that Student had a disability. (FF #s 33-40). While Student tested below grade level in reading and math, his diagnostics showed growth throughout the school year and indicated that he was able to access the general education curriculum with appropriate support. (FF #s 33-40). Student jumped 41 points overall between his first and last iReady reading diagnostic, improved from the “emerging kindergarten” to “kindergarten” level in four domains, and scored at the 11th percentile in overall reading. (FF # 36). He also improved his DIBELS score 116 points and improved in three specific domains, though still scored “well below” grade level overall. (FF # 37). In math, Student improved by 74 points overall and notably grew from the “emerging kindergarten” to “kindergarten” level in all math domains. (FF # 38). This data reflected typical growth and improvement in response to intervention and thus did not raise concerns that Student had a disability (FF # 39).

Regarding disability factors, Student’s behavior and performance did not put School on notice of a suspected disability. (FF #s 25-40). Student’s growth indicated that he was not a candidate for “specific learning disability,” which requires under-achievement *and* lack of sufficient progress. (FF #s 27-28, 36-39; see ECEA Rule 2.09(8)(b)(i)-(ii)). Additionally, while Student’s diagnostic scores were relatively low—including scoring in the 11th percentile for reading overall on iReady—it takes scores of 7th percentile or lower to flag a student as potentially having a

developmental disability. (FF # 36; *see* ECEA Rule 2.09(13)(a)). Student did not score below the 7th percentile on any diagnostic and thus School had no reason to suspect a developmental delay. (FF #s 35-38).

This is not to say that Parent did not have legitimate concerns about Student's behavioral and academic performance from October 2024 to May 2025. (FF #s 24, 41). Indeed, all those with knowledge of Student's needs identified that Student struggled with certain self-determination behaviors and was behind grade level in literacy and math to the point of requiring tier 1 and tier 2 intervention. (FF #s 17-18, 33). However, Student's struggles—especially considering his growth—were age-appropriate and did not raise red flags for a suspected disability. (FF #s 41-43).

The Record thus reflects that School had no reason to suspect that Student may have a disability between October 2, 2024 and May 20, 2025. (FF #s 25-40). District nonetheless completed an evaluation on May 20, 2025, in response to Parent's request for evaluation and associated medical referral, and found that Student was not eligible in the categories of specific learning disability and developmental delay. (FF #s 43-46).

The CDE thus finds and concludes that District fulfilled its child-find obligation to Student between October 2, 2024, and May 20, 2025, consistent with 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature and likely to impact the future provision of services for all children with disabilities in District if not corrected. 34 C.F.R. § 300.151(b)(2).**

Under its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the 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 State Enforcement Agency’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).

Here, nothing in the Findings of Fact indicates that District's noncompliance is systemic in nature. District's noncompliance arose from a misunderstanding over whether Parent intended to proceed with her request for evaluation following the October 17, 2024, meeting, rather than from a systemic breakdown. (FF # 23). District Senior Manager described policies, practices, and procedures consistent with the requirements of IDEA. (FF #s 4-11). Moreover, District provides detailed special education procedural guidance to staff to coach them through issuing PWN in response to evaluation requests (FF # 6). Accordingly, the CDE finds and concludes that the noncompliance in this case was not systemic and is unlikely to affect the future provision of services to children with disabilities.

## REMEDIES

The CDE concludes that District did not comply with the following IDEA requirements:

1. Providing prior written notice explaining its decision not to evaluate Student following a parental request, as required by 34 C.F.R. §§ 300.301 and 300.503(a).

To demonstrate compliance, District is ORDERED to take the following actions:

### **1. Final Decision Review**

- a. District Director, School Administration, School special education staff, and all other special education administrators in District must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.301 and 300.503(a), by **September 22, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **September 29, 2025**.

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  
201 E. Colfax Avenue  
Denver, CO 80203

**NOTE:** If District does not meet the timelines set forth above, it may adversely affect District annual determination under the IDEA and subject District to enforcement action by the CDE.

## CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *Id.*; see also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer ("SCO").

Dated this 8th day of August, 2025.

A handwritten signature in blue ink that reads "Elizabeth Stonehill". The signature is written in a cursive style with a large initial 'E'.

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Elizabeth "EP" Stonehill  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-18**

- Exhibit 1: Academic Performance and Assessment Data; Communications; Medical Documentation

### **Response, pages 1-5**

- Exhibit A: Written Requests to Evaluate
- Exhibit B: MTSS Documentation
- Exhibit C: SPED Evaluation Report
- Exhibit D: Health Information
- Exhibit E: Requests for Parental Consent
- Exhibit F: Documentation from Eligibility Meeting
- Exhibit G: SPED Meetings
- Exhibit H: District Calendar 2024-2025
- Exhibit I: District Policies and Procedures
- Exhibit J: Parent Correspondence
- Exhibit K: October 17th Meeting Invitation

### **Supplemental Response, pages 1-3**

### **Reply, pages 1-3**

### **Supplemental Reply, pages 1-4**

- Exhibit 2: Preschool and Kindergarten Communications

### **CDE Exhibits**

- CDE Exhibit 1: Pearson BASC-3 BESS Guide

### **Telephone Interviews**

- Parent: July 8, 2025
- Co-Parent: July 9, 2025
- Assistant Principal: July 10, 2025
- Managing Director: July 10, 2025
- General Education Teacher: July 10, 2025
- District Senior Director: July 11, 2025