

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

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**State Complaint SC2025-586**  
**Elizabeth School District**

**DECISION**

**INTRODUCTION**

On June 24, 2025, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state complaint (“Complaint”) against Elizabeth School District (“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 final written 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 properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 24, 2024. Information prior to June 24, 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:

1. District did not review and, as appropriate, revise Student’s Individualized Education Program (“IEP”) from November 2024 to present to address information about Student

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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.

provided by Parent, specifically related to a private diagnosis, as required by 34 C.F.R. § 300.324(b)(1)(ii)(C).

2. District did not provide Parents with proper written notice of its proposed or refused action within a reasonable time following a March 11, 2025 IEP meeting, as required by 34 C.F.R. § 300.503(a)-(b).

### **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 a four-year-old who attended preschool at an elementary school (“School”) in District during the 2024-2025 school year. *Response*, p. 1. He qualifies for special education and related services under the disability categories Autism Spectrum Disorder (“ASD”) and Speech or Language Impairment. *Id.*; *Exhibit A*, p. 39.
2. Student is happy, funny, and empathetic. *Interview with Parents*. Student “loves a deep stomach laugh.” *Id.* Student enjoys learning in a one-on-one setting. *Id.* He is described as having “strong opinions.” *Interview with School’s physical therapist (“PT”).*
3. This investigation involves the review and revision of an IEP dated May 3, 2024 (“May 2024 IEP”), and a prior written notice concerning an eligibility meeting on March 11, 2025. *Response*, pp. 1-15; *Supplemental Response*, pp. 1-9.

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

4. District’s director of special education (“Director”), who started in this role in June 2025, described District’s responsibilities under the IDEA to review and revise IEPs, stating that District staff and teachers, when provided outside information, must consider that information and determine whether the current IEP is meeting the child’s individual needs in the educational setting. *Interview with Director*. To accomplish this, District has a handbook that is reviewed with staff at the beginning of each school year. *Id.*; *Exhibit K*, pp. 1-15.
5. District has a responsibility to review and revise a student’s IEP both on a periodic basis and in response to any new concerns that may arise between annual IEP meetings. *Interview with Director*. Relevant to this investigation, the handbook states a “reevaluation, followed by a re-eligibility and IEP meeting, is required: [i]f the student’s parent, teacher, or provider requests a reevaluation to consider the addition or removal of a disability.” *Exhibit K*, p. 4.

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

6. Director described District’s responsibilities under the IDEA to provide prior written notice, stating it must be provided within a reasonable timeframe when there is a change, refusal, or initiation of special education services. *Interview with Director*. This includes “when the public agency proposes to initiate or change . . . the identification of a student.” *Id.* The handbook explains what information must be provided within each prior written notice consistent with the IDEA. *Exhibit K*, p. 13.
7. The handbook provides that at the conclusion of an eligibility meeting, the “case manager/team leader must provide the parent(s) a copy of the Prior Written Notice.” *Id.* at p. 8. It adds “[i]f possible parent(s) will be provided with a final copy of all documents at the conclusion of the meeting.” *Id.* If this is not possible, parent(s) will be notified that final copies will be sent via US mail within 5 school days.” *Id.*

### C. May 2024 IEP

8. The May 2024 IEP was in effect to begin the 2024-2025 school year. *Response*, p. 1; *Exhibit A*, pp. 1-12. Under this IEP, Student was eligible under IDEA as a student with a Speech or Language Impairment. *Exhibit A*, p. 1.
9. The IEP documents Student’s then-present levels of educational performance, noting he scored in the average range in fine and gross motor skills and did not demonstrate a need for pre-academic support. *Id.* at p. 3. The IEP indicates Student would benefit from physical therapy assistance. *Id.* He partially met his physical therapy goals from the 2023-2024 school year. *Id.* Student also met his speech and language goals from that school year.
10. The IEP describes Student’s needs and the impact of his disability, noting that his “speech and language and gross motor delay is impacting his ability to participate within the preschool classroom as well as engage with adults and peers.” *Id.* at p. 5.
11. The IEP contains the following annual goals:
  - a. Communication: By May 2025, during a structured activity, Student will expand his expressive language skills by verbally labeling 25 common objects/pictures and use them in a sentence with 80% accuracy across three consecutive data reporting sessions.
  - b. Communication: By May 2025, Student will be able to demonstrate appropriate turn-taking skills during a group activity by waiting patiently for his turn and allowing others to participate in 4 out of 5 opportunities across three consecutive data reporting sessions.
  - c. Communication: By May 2025, in order to eliminate the phonological process of final consonant deletion, Student will be able to independently articulate all appropriate consonants in the final position of a word at the word level and the phrase level with 80% accuracy across three consecutive data reporting sessions.

- d. Communication: By May 2025 during a structured therapy activity, [Student] will increase his overall expressive language skills by engaging in 4 conversational interactions with a peer or an adult during a therapy session across 3 consecutive data reporting sessions.
- e. Physical Motor: Student will meet 2/2 of the following gross motor objectives by the next IEP meeting to build access to his playground environment:
  - i. Student will ascend a set of 4 steps without the railing using an alternating stepping pattern with verbal cues on 2/3 attempts.
  - ii. Student will step up onto a large curb independently leading with his left and his right foot on 2/3 attempts.
  - iii. Student will descend a set of 4 steps with 1 hand on the railing using an alternating stepping pattern with verbal cues on 2/3 attempts.

*Id.* at pp. 5-8.

- 12. The IEP identifies accommodations as necessary for Student to access general education, which include “sensory items to help increase participation, which may include alternative seating, opportunities for movement and items to squeeze and fidget with.” *Id.* at p. 8.
- 13. The IEP requires the following services inside the general education classroom: 120 minutes per month of direct speech and language therapy, 60 minutes per month of indirect speech and language therapy, and 60 minutes per month of direct physical therapy. *Id.* at p. 10.
- 14. Student’s LRE is 100% of the time in the general education. *Id.* at p. 11.

#### **D. Private Evaluation**

- 15. Parents had been considering having Student privately assessed for learning disabilities since the fall of 2023. *Interview with Parents*. They had noticed Student had developmental delays, dysregulation at times, and would sometimes hit and bite others. *Id.*
- 16. Prior to September 2024, Parents did not have concerns about Student’s supports at School. *Id.* However, some concerns first arose on September 30, 2024 when Student came home from school with an injury to his head. *Exhibit 4*, p. 2. Neither of Student’s general education teachers (“General Education Teacher 1” and “General Education Teacher 2”) knew how this occurred, but when asked by Parents if Student had bit a peer, they confirmed he had. *Id.* This type of behavior from Student had not been observed at School previously. *Id.* On October 3, he had another incident at School where he poked and then pushed a peer. *Exhibit E*, p. 2.

17. Parents then referred Student for a private neuropsychological evaluation (“Private Evaluation”) to assess cognitive and psychological functioning, determine neurobehavioral contributors to presenting concerns, and facilitate treatment planning. *Exhibit G*, p. 1. Student was evaluated on October 7, 2024; October 15, 2024; and November 1, 2024. *Id.*
18. The Peabody Picture Vocabulary Test, 5th Edition was administered to Student. *Id.* at pp. 14-15. This assessment tests receptive vocabulary and provides an estimate of verbal ability. *Id.* Student performed in the very low range on this assessment. *Id.* at p. 4.
19. Parent completed the Behavior Rating Inventory of Executive Function, Preschool Edition (“BRIEF-P”), which assesses a child’s executive functioning (planning, organizing, self-monitoring, etc.) and emotion/behavior regulation in a day-to-day context. *Id.* at p. 14. Based on parent ratings, Student’s attentional processes and executive functioning ratings revealed significant concerns for inhibition and working memory. *Id.* at p. 4.
20. Parent and General Education Teacher 1 completed the Behavioral Assessment Scale for Children, 3rd Edition. *Id.* at p. 4. This assessment provides ratings of a child’s behavior, emotional functioning, and adaptive skills across settings. *Id.* at p. 14. Parent ratings did not reveal clinically significant concerns, while teacher ratings revealed clinically significant concerns in functional communication. *Id.* at p. 4. Parent ratings reflected mild concerns for aggression, social skills, functional communication, and activities of daily living. *Id.* General Education Teacher 1 ratings showed mild concerns for hyperactivity, aggression, anxiety, depression, and adaptability. *Id.*
21. Parent completed the Social Responsiveness Scale, 2nd Edition (“SRS-2”), assessing social communication weaknesses and restricted/repetitive behaviors. *Id.* at p. 15. Parent ratings indicate clinically significant concerns for restricted and repetitive behaviors. *Id.* at p. 5.
22. The Autism Diagnostic Observation Schedule, 2nd Edition is an observational measure that assesses a child’s ability to engage in social interactions and use social pragmatics, as well as understand and describe social situations and emotions. *Id.* at p. 14. On this assessment, a standardized measure of social communication, Student demonstrated reduced social reciprocity, nonverbal communication, and emotional functioning. *Id.* at p. 5. Social functioning, or understanding of social relationships, was below expectations for age. *Id.*
23. The Adaptive Behavior Assessment System, 3rd Edition is a behavior rating scale that assesses adaptive behavior/independent daily living skills in individuals. *Id.* at p. 14. Student’s overall adaptive functioning is estimated to be in an extremely low range. *Id.* at p. 5.
24. The Private Evaluation diagnosed Student with ASD, Level 2, with Accompanying Language Impairment, and Language Disorder. *Id.* at p. 8. It included recommendations for Student’s treatment, including Applied Behavior Analysis (“ABA”) Therapy that offers speech/language and occupational therapies, continued engagement in private and school-based speech/language services, and continued engagement in private and school-based

occupational therapy to address fine motor challenges, support the development of activities of daily living, and build strategies for managing his sensory environment. *Id.* at pp. 8-11.

25. The Private Evaluation provided strategies to promote language development such as encouraging play and social interactions, imitating Student, focusing on nonverbal communication, leaving “space” for Student to talk, simplifying language, following Student’s interest, and considering assistive devices and visual supports. *Id.* at pp. 9-10.
26. The Private Evaluation also provided recommendations for managing difficult behaviors and to increase attention/regulation such as relationship building and praise, consistent and persistent implementation of consequences, increased structure, behavioral contracting, the use of token boards, management of non-compliant behavior, and de-escalating to avoid power struggles. *Id.* at pp. 10-11.

#### **E. District’s Response to the Private Evaluation**

27. Parents provided District with the preliminary report from the Private Evaluation, including information on Student’s diagnosis, via e-mail on November 3, 2024. *Exhibit L*, p. 17; *Exhibit G*, pp. 17-19.
28. Within this initial email, Parents informed School they were “working with insurance and providers to try and get [Student] into more therapy services and they have also requested that he continue to get the services he is getting with you guys there at the school.” *Id.*
29. In response to the email, on November 4, School’s special education teacher (“Special Education Teacher”) spoke with members of Student’s IEP team, including General Education Teachers 1 and 2, District’s Speech Language Pathologist (“SLP”), and PT. *Interview with Special Education Teacher*. General Education Teachers 1 and 2 shared their biggest concern is Student’s inability to communicate but also mentioned that he has made a lot of progress since the prior school year and is more verbal. *Id.* They reported Student still prefers to tap them rather than use words to communicate his wants and needs. *Exhibit L*, p. 19.
30. SLP shared that Student was making great progress. *Id.* at p. 16; *Interview with SLP*. For instance, his “engagement during structured therapy activities ha[d] really improved as well as his production of final consonants.” *Exhibit L*, p. 16. “He has improved his engagement with peers during activities as well, including staying with an activity for longer, having good interactions with a peer, verbalizing his friend’s name and passing a “my turn/your turn stick’ for turn taking.” *Id.* PT shared that Student was making “really amazing progress” towards his physical motor goal. *Interview with PT*. PT did not have any concerns at that time with his gross motor progress and success as Student had shown he was gaining skills, specifically toward his goal in navigating the playground stairs. *Id.*
31. Considering the preliminary report provided by Parents, Special Education Teacher observed Student in the classroom during recess and circle time. *Interview with Special Education*

*Teacher; Exhibit L*, p. 19. During recess, she sat and played magna-tiles with him. *Exhibit L*, p. 19. He showed her his rocket ship, which broke at one point and he became upset. *Id.* After being shown how to fix it, he quickly regulated his emotions and continued playing. *Id.* Student helped clean up toys and transitioned with the class to circle time. *Id.* During circle time, Special Education Teacher asked questions and the students passed “a little stuffy” around as they answered a question. *Interview with Special Education Teacher*. Student waited for his turn, and when he had the “stuffy” he tried to answer to the best of his ability. *Id.* After circle time, the class lined up to go to the bathroom and Student got up, got in line, and waited for the teacher. *Id.*

32. After observing Student and speaking with other members of the School team, Special Education Teacher determined Student could follow the routine of the classroom, self-regulate, interact with peers, and was making progress on his goals. *Id.* Student was meeting preschool expectations and she did not observe anything that would warrant him needing more support at that time. *Id.* She shared this information with Parents. *Exhibit L*, p. 19. Parents responded “[t]hank you everyone! We so appreciate it and will keep the team updated.” *Id.*
33. Special Education Teacher then met with School’s psychologist (“Psychologist”) and School’s occupational therapist (“OT”). *Interview with Special Education Teacher*. Neither Psychologist nor OT had any concerns after reviewing the Private Evaluation’s preliminary report. *Id.*
34. District also reviewed Student’s progress on his five annual IEP goals in December 2024. *Exhibit I*, pp. 1-4. Student had made progress on all his goals. *Id.* This progress was measured, thoroughly documented, and provided to Parents. *Id.*

#### **F. District’s Response to Additional Parent Concerns**

35. Parents did not raise additional concerns until January 2025. *Interviews with Special Education Teacher and Parents*. On January 17, Parent informed School he wanted to “explore opportunities to include therapy in [Student’s] regular school day.” *Exhibit L*, p. 21. Special Education Teacher and Parent discussed this over the phone on January 22. *Id.* Special Education Teacher informed Parent that District’s special education director at the time (“Former Director”) would receive this specific request for private ABA therapy in the school setting. *Id.* Parent e-mailed Former Director that day. *Id.* at p. 22.
36. On January 30, Parents sent a follow up email sharing they intended for Student to do private ABA therapy for half the day and universal preschool for half the day. *Id.* at p. 24. Former Director responded she was checking into their request and would schedule a time to meet and discuss plans. *Id.* at p. 28. Parents checked in with School on February 10. *Id.* at p. 31.
37. Due to this request from Parents for a change in Student’s offer of FAPE, District decided to conduct a reevaluation of Student. *Interview with Special Education Teacher; Exhibit L*, p. 35. This reevaluation was scheduled in advance of Student’s required triennial reevaluation,

which was due by May 2026. *Exhibit A*, p. 17. On February 26, District provided Parent with a prior written notice and consent for the evaluation. *Exhibit F*, pp. 22-24. On the same day, Parent signed consent to evaluate Student in the areas of communicative status, academic performance, social and emotional status, health, and motor abilities. *Id.* at p. 22.

**G. 2025 Reevaluation and March 11 Eligibility Determination**

38. District completed Student's reevaluation and issued an ensuing report ("Reevaluation") on March 11, 2025. *Id.* at pp. 1-21. The reevaluation assessed Student in all areas identified in the consent to evaluate. *Id.*
39. On March 11, 2025, a properly convened multidisciplinary team ("MDT"), including Parents, met to review the Reevaluation and consider Student's eligibility for special education and related services under the categories of ASD and Speech or Language Impairment. *Id.*
40. The MDT reviewed and considered the Private Evaluation. *Id.* at p. 5. The Reevaluation noted Student demonstrated "concerns across the three core characteristics of an Autism Spectrum Disorder." *Id.* These include social interaction concerns, social communication concerns, and restricted and repetitive behaviors. *Id.*
41. Psychologist administered the Vineland Adaptive Behavior Scales, Third Edition. *Id.* at p. 6. This assessment evaluates overall daily living skills by asking those familiar with a child to provide information about the child's strengths and development in three different areas: Communication, Daily Living Skills, and Socialization. *Id.* General Education Teacher 1 rated Student in the moderately low range in all three areas. *Id.* at p. 7. Student's overall adaptive behavior score was in the moderately low range. *Id.*
42. SLP administered the Preschool Language Scales-5 to assess language ability. *Id.* The score had two subtests: Auditory Comprehension and Expressive Communication. *Id.* at p. 8. Student scored in the below average range in both categories. *Id.* The "scores indicate that [he] exhibits a significant expressive language and receptive language delay at this time." *Id.*
43. The TransDisciplinary Play-Based Assessment: 2nd Edition ("TPBA-2") is a play-based method of obtaining qualitative developmental information from children across six areas of development: communication, cognitive, conceptual, sensorimotor, and social/emotional. *Id.* at p. 6. SLP administered the communication domain. *Id.* at p. 11. The Reevaluation noted that "in terms of Language Production, [Student] demonstrates significant progress in his abilities." *Id.* at p. 12. Student's communication developmental skills range from 15 months to 36 months, clustering around 18 months. *Id.* at p. 13.
44. Psychologist administered the cognitive, conceptual, and social/emotional domains. *Id.* Student's cognitive and conceptual developmental skills range from 24-36 months, clustering around 30 months. *Id.* Student's social and emotional developmental skills range from 21-30 months, clustering around 24 months. *Id.* at p. 14. The sensorimotor domain provides

information in four areas of development: gross motor skills, fine motor skills, daily living skills, and responses to sensory input. *Id.* at p. 19. Student’s sensorimotor developmental skills range from the 18-24 months, clustering around 18 months. *Id.* at p. 20.

45. General Education Teacher 1 completed some assessments that Parent had completed during the Private Evaluation. *Id.* at pp. 15-16. Her ratings of Student on the SRS-2 “suggested that there is not a high level of impact of [Student’s] Autism diagnosis within his school setting. *Id.* at p. 15. On the BRIEF-P, she scored Student’s overall executive functioning as average compared to others his same age. *Id.* at p. 16. Student’s emotional control was mildly elevated, but all other scales were within the average range. *Id.* She also completed the Sensory Processing Measure, 2nd Edition to assess whether sensory difficulties might be interfering with Student’s ability to meet classroom expectations. *Id.* at p. 17. General Education Teacher 1 scored Student in the typical range for his sensory composite score, moderate difficulty for planning and ideas, and typical for social participation. *Id.* at p. 18.
46. The Reevaluation also documented classroom observations of Student. *Id.* at p. 19. One observation included play time, during which Student was observed to “initiate interactions with several peers by going over to them and attempting to speak and touch them . . . [Student] did not demonstrate any negative responses to the stimulation around him.” *Id.* Fine motor/sensori-motor skills observed by staff included: “hold[ing] markers with a functional grasp to trace over letters”; “us[ing] regular child safe scissor to snip at paper”; “stack[ing] blocks 8 high”; and “pick[ing] up and manipul[at]ing small objects and toys.” *Id.* Student also “changes positions well” and was “observed to imitate [a] fist bump, high five, and waving.” *Id.*
47. The MDT determined Student qualified as a child with ASD and Speech or Language Impairment. *Id.* at pp. 1-3. The MDT established eligibility and scheduled an IEP meeting to develop Student’s 2025 IEP. *Supplemental Reply*, p. 2. After the meeting ended, a few MDT members remained to answer other questions from Parents. *Id.* The discussion involved matriculation—Parents indicated a preference that Student complete a third year of preschool rather than move to kindergarten—and certain health-related concerns related to toileting. *Id.*; *Interviews with SLP and Parents*. MDT members informed Parents they would discuss these concerns with the IEP team at the next meeting. *Supplemental Response*, p. 2. At this time, no decision was made related to these concerns. *Id.*
48. On March 12, Parent e-mailed District requesting District place information on how they determine whether Student is prepared for kindergarten into the “IEP document.” *Exhibit L*, p. 46. Parent also requested that the supporting documentation related to the stated risks of retention—particularly how they apply to children with ASD—be provided as well. *Id.* On March 14, Special Education Teacher let Parent know District was “gathering all of the information.” *Id.* at p. 47.

#### H. The 2025 IEP

49. On April 1, 2025, a properly convened IEP Team, including Parents, met to revise the 2024 IEP (“2025 IEP”) based on the results of the Reevaluation, the Private Evaluation, and the change in eligibility category *Exhibit A*, pp. 13-36. The 2025 IEP incorporated results from the Reevaluation and the Private Evaluation, which were aligned. *Id.* at pp. 18-19; *Interviews with SLP, PT, and Special Education Teacher.*
50. The IEP documents Student’s present levels of educational performance, noting his medical diagnosis of ASD and the Private Evaluation’s summary of Student’s social interaction and social communication concerns such as having “difficulty understanding personal space and respecting personal boundaries.” *Exhibit A*, at p. 17. Parents’ concerns are reflected in the IEP, including with elopement, distractibility, hyperactivity, and difficulty regulating emotions. *Id.* at p. 17, 25. The IEP documents restricted and repetitive behaviors such as taking toys apart, playing with a part of a toy rather than the full toy, and repetitively sniffing his blanket and walking on his toes. *Id.* Student made progress on three of his communication goals and met the fourth. *Id.* at pp. 20-22. The physical therapy update provides that, “on the playground, he requires minimal assistance for gross motor skills such as stair navigation and ladder climbing.” *Id.* at p. 22.
51. The student needs and impact of disability section indicates Student qualifies for special education services as a student with ASD. *Id.* at p. 25. He is showing delays in social interaction and communication skills and specifically needs support in engaging in back-and-forth interactions with peers. *Id.* at p. 25. His expressive and receptive language delays and articulation difficulties impact his ability to participate within the preschool classroom and engage with adults and peers. *Id.* Despite Student’s progress in gross motor skills, his delays still prevent him from engaging fully in some activities on the playground and during PE. *Id.* Student is demonstrating delays in fine motor skills that will impact his ability to participate in his educational environment. *Id.*
52. The IEP contains annual goals in communication (five), physical motor (two), pre-academics (one), and social-emotional wellness (one). *Id.* at pp. 25-29. All the 2024 IEP goals were reviewed and revised, reflecting Student’s progress. *Id.* The IEP includes one additional physical motor goal, one additional communication goal, and new goals in pre-academics and social-emotional wellness. *Id.* The new physical motor goal addresses his identified fine motor needs and targets the skill of copying shapes. *Id.* at p. 26. One of the new communication goals focuses on two step directions and the new social-emotional wellness goal focuses on turn taking. *Id.* at p. 26. The CDE finds that these annual goals address Student’s individual, identified needs, focusing on typical thinking processes and social awareness. *Consultation with CDE Specialist.*
53. The IEP identifies accommodations as necessary for Student to access general education, which include sensory items to help increase participation, visual supports as needed, visual calm down strategies, a calm down spot in the classroom, access to adaptive pencils and adaptive tools such as loop scissors, and a movement break. *Exhibit A*, p. 30. The CDE finds

that these accommodations address Student's individual, identified needs, specifically regarding behavioral regulation. *Consultation with CDE Specialist.*

54. The IEP requires the following services inside the general education classroom: 60 minutes per month of direct physical therapy and 80 minutes per month of direct occupational therapy. *Exhibit A*, p. 33. The IEP requires the following services outside the general education classroom: 180 minutes per month of direct speech and language therapy, 60 minutes per month of direct mental health services, and 80 minutes per month of direct specialized preschool instruction. *Id.*
55. Student's LRE is 91.8% of time in the general education environment. *Id.* at p. 34.
56. On April 30, Parents requested an IEP meeting based on recent Student behavior. *Exhibit L*, p. 101. The IEP team met on May 19 to address these concerns and ultimately revised the 2025 IEP. *Exhibit A*, pp. 59-83.
57. The IEP team, in part, revised the present levels of academic achievement and functional performance section to include Student's progress on his newly developed goals, added information from an outside private evaluation in the parent input section, and added an accommodation to provide adult support throughout the learning day. *Id.* at pp. 59-83.
58. The updated service delivery statement requires the following services inside the general education classroom: 60 minutes per month of direct physical therapy and 15 minutes per month of indirect occupational therapy. *Id.* at p. 76. The IEP requires the following services outside the general education classroom: 240 minutes per month of direct speech and language therapy, 60 minutes per month of direct mental health services, 80 minutes per month of direct specialized preschool instruction, 80 minutes weekly of direct specialized instruction in math, 80 minutes weekly of direct specialized instruction, and 120 minutes monthly of direct occupational therapy. *Id.* The CDE finds that the special education services target Student's individualized needs as reflected in the Reevaluation and the Private Evaluation. *Consultation with CDE Specialist.*
59. Student's LRE is 85.5% of the time in the general education environment. *Exhibit A*, p. 77.

#### **I. The Prior Written Notice**

60. On April 16, District e-mail a prior written notice (the "PWN") and a copy of the Procedural Safeguards to Parents. *Exhibit L*, p. 74; *Exhibit C*, p. 1-2. The PWN was provided because there was "a proposal to initiate Student's Identification, Placement (other than initial placement), [and] provision of a free, appropriate public education." *Exhibit C*, p. 1. Special Education Teacher said this the PWN was written and issued due to the change in Student's eligibility. *Interview with Special Education Teacher.*
61. The action refused concerns Parents' request that Student repeat preschool. *Exhibit C*, p. 1. The PWN provides the "IEP team convened on March 11, 2025, to review the reevaluation

results and determine [Student's] eligibility." *Id.* It continues "[o]n April 1, 2025, as further explained below, the IEP team, including the parents, reviewed the draft IEP." *Id.* It concludes that the "school-based team determined that it is appropriate for [him] to matriculate to kindergarten during the 2025-2026 school year. Parents have objected, sharing that they believe [Student] should repeat preschool. The IEP team has rejected this request." *Id.*

62. The PWN provides an explanation for why District refused to take the action requested. *Id.* The IEP team "determined that [Student] has the requisite skills to transition from preschool to kindergarten. The results of the most recent evaluation demonstrate that [Student] is performing similarly, though sometimes below, the same level as his same-aged peers." *Id.* The PWN summarizes in detail Student's scores from the reevaluation and how the IEP team took this into consideration, noting in part that Student's "behavioral regulation is similar to that of others of his same age" and that Student "consistently demonstrated strong pre-academic skills on the pre-academic checklist." *Id.* Overall, the IEP team "determined that "[Student] is ready to transition to kindergarten, where he will continue to receive the supports and services required by his IEP in his least restrictive environment." *Id.*
63. The PWN includes a description of the evaluation procedures, assessments, records, and reports used as a basis for the decision including: teacher reports, parent reports, outside private evaluation, Parents' private providers' recommendations, SRS Rating Scales, BRIEF, Vineland, Preschool Language Scale, TPBA-2, and IEP Progress Monitoring Reports. *Id.*
64. The PWN includes a note that Parents have protection under the procedural safeguards and contact information for the staff person to contact for a copy of the procedural safeguards or assistance in understanding this information. *Id.* at p. 2.
65. The PWN identifies the other options considered were "not identifying [Student] as having a disability outlined under the category of Autism Spectrum Disorder and Speech Language Impairment" and "whether [Student] should be retained in preschool." *Id.* at p. 1. The former "was rejected because [Student] met the criteria to become eligible to receive special education services under Autism Spectrum Disorder and Speech Language Impairment . . . [which] expanded the services that [Student] will receive moving forward" and the latter was rejected for the reasons outlined previously in the PWN. *Id.* at pp. 1-2.
66. The PWN described other factors considered by the IEP team as:

Parents have requested that the District issue a prior written notice regarding "clarification on how funding, age eligibility, and policy influence[d]" the IEP team's decision. The IEP team's decision was based on [Student's] unique educational needs and was unrelated to funding issues, age requirements, or the District's board policies. Parents have further requested that the team "document methodologies, decision, and reasoning." The IEP team has shared their decision and the reasons underlying that decision, with parents. Additionally, parents request is unrelated to the proposal or refusal to change the student's

identification, evaluation, or educational placement of the child or provision of FAPE to the child.

*Id.* at p. 2.

#### **J. Student's Progress on Annual IEP Goals**

68. Student met or made progress on all his 2024 IEP goals. *Id.* at pp. 20-22. He met his goal related to turn-taking skills. *Id.* at p. 20. He made progress on labeling 25 common objects/pictures, improving from 5 in May 2024 to 19 in April 2025. *Id.* Student met his goal to eliminate final consonant deletion for six sounds and made progress on three other sounds. *Id.* at p. 20-21. Additionally, Student made progress on his goal to increase overall expressive language skills, demonstrating the ability to initiate conversations and increasing his mean length utterance. *Id.* at p. 21. Finally, Student made progress on his physical motor goal and requires minimal assistance in stair navigation and ladder climbing. *Id.*

69. The 2025 IEP included progress reports on Student's new goals. *Id.* at pp. 62-67. By this date, Student had made progress on each of his goals besides one communication goal. *Id.*

#### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District reviewed and revised, as appropriate, the 2024 IEP from November 2024 to present to address information about Student provided by Parents, as required by 34 C.F.R. § 300.324(b)(1)(ii)(C). District complied with the IDEA.**

#### **A. Legal Obligation to Review and Revise IEPs**

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* at 400. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address any lack of expected progress toward the annual goals, the results of any reevaluation, "[i]nformation about the child provided to, or by, the parents," "[t]he child's anticipated needs," or other matters. *Id.*; see *Endrew F.*, 580 U.S. at 400. The U.S. Department of Education confirmed that an "IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it." *Questions and Answers on Endrew F.*, 71 IDELR 68 (EDU 2017). This includes monitoring and revising an IEP as necessary, particularly if

appropriate progress is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.*

### **B. Review and Revision of the 2024 IEP**

Here, Parents' concern is District did not review and revise the 2024 IEP following receipt of the Private Evaluation's preliminary report on November 3, 2024, in which Student was diagnosed with ASD, Level 2. (FF # 3, 27). The Private Evaluation recommended, in part, that Student continue engaging in speech/language services and occupational therapy services. (FF # 24).

The 2024 IEP, in effect at the time, identified and targeted Student's needs with respect to speech and language and gross motor delays. (FF # 10). For instance, the 2024 IEP provided Student with speech and language and physical therapy services and included five annual goals targeting communication and physical, specifically gross, motor needs. (FF # 10-11, 13). Nevertheless, District responded to receipt of the Private Evaluation's preliminary report with discussions between teachers and providers and classroom observations of Student to determine whether data warranted additional support at that time. (FF # 29 - 31). SLP and PT both reported Student was making progress on all his goals, including staying with an activity longer, verbalizing his friend's names, taking turns, and alternating his feet when using the playground stairs. (FF # 30). Parents responded to staff reports with "[t]hank you everyone! We so appreciate it and will keep the team updated." (FF # 32). Psychologist and OT also reviewed the Private Evaluation's preliminary report and did not recommend changes to the 2024 IEP. (FF # 33). Indeed, Student made progress on all five annual IEP goals by December 2024 (and he ultimately met or made progress on all goals by the end of the year). (FF # 34, 50). As a result, District determined that the 2024 IEP continued to enable Student to make progress appropriate in light of his circumstances. (FF # 32).

In January 2025, Parents provided additional information to District, including a request that Student receive private ABA therapy at School and that Student be retained in preschool. (FF # 35 - 36). Considering this information, along with the Private Evaluation, District reevaluated Student in March 2025. (FF # 37 - 38). The Reevaluation assessed Student in communicative status, academic performance, social and emotional status, health, and motor abilities. (FF # 37). Thereafter, an MDT carefully considered the Private Evaluation and the Reevaluation, determining District's tests reflected similar delays as the Private Evaluation in social interaction and communication skills, as well as with gross and fine motor skills. (FF # 39 - 46). For example, in the Private Evaluation, Student tested in the very low range for receptive vocabulary, social functioning, and independent/daily living skills. (FF # 18, 22-23). In the Reevaluation, Student tested in the moderately low range for receptive vocabulary, and showed significant delays in expressive and receptive language, social and emotional development, and daily living skills. (FF # 41 - 44). The MDT ultimately concluded that Student qualified as a child with ASD and Speech or Language Impairment. (FF # 47).

On April 1, an IEP team reviewed and revised the 2024 IEP. (FF # 49). The resulting 2025 IEP incorporated details of Student's medical diagnosis of ASD, the summary of the Private Evaluation, and specific Parent concerns. (FF # 50). The 2025 IEP included nine annual goals (two for physical motor, five for communication, one for social-emotional wellness, and one for preacademics). (FF # 52). As the Private Evaluation recommended, the 2025 IEP included and increased Student's SLP goals and service minutes, added a new goal related to fine motor skills, and added 135 minutes per month of direct and indirect occupational therapy (FF # 24, 58). In addition to revising Student's communication goals, the additional social-emotional wellness goal was added to address Student's delays in social interaction and communication skills that were reflected in both the Reevaluation and Private Evaluation. (FF # 52). Specifically, the communication goal focused on two-step directions and the social-emotional wellness goal focused on turn-taking. The Private Evaluation recommended building strategies for managing Student's sensory environment and considering assistive devices and visual supports, which the 2025 IEP incorporated as accommodations. (FF # 24-25, 52). At Parents' request, the IEP Team convened again in May to address additional concerns with behavior. (FF # 56). As a result, the 2025 IEP was amended to include, in part, adult support throughout the learning day, as well as additional service minutes each month. (FF # 57 - 58). These total service minutes reflect a substantial increase from the 2024 IEP to address Student's needs. (FF # 13, 58).

For these reasons, the CDE finds and concludes that District reviewed and revised, as appropriate, the 2024 IEP to address information about Student provided by Parents, as required by 34 C.F.R. § 300.324(b)(1)(ii)(C).

**Conclusion to Allegation No. 2: District did not issue a proper PWN of its proposed action within a reasonable time following a March 11, 2025 eligibility determination as required by 34 C.F.R. § 300.503. District did not comply with IDEA. This did not result in a denial of FAPE.**

#### **A. Prior Written Notice Legal Requirements**

PWN must be issued a reasonable time before a district proposes or refuses to change "the identification, evaluation, educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). PWN must be provided so that parents have enough time to fully consider and respond to the proposed action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). While the IDEA and its implementing regulations do not provide a specific timeline within which a school district must provide PWN, a school district must provide the notice a reasonable time before it implements the proposed change. 34 C.F.R. § 300.503(a); 71 Fed. Reg. 46691 (Comments to the 2006 federal IDEA regulations); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012); *see, e.g.*, SEA CO 2013:509. "This provides parents, in the case of a proposal or refusal to take action, a reasonable time to fully consider the change and respond the action before it is implemented." *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). The CDE concluded in a prior investigation that PWNs issued 22 and 35 calendar days after a district's proposal and refusal were not timely. *Denver Public Schools*, 121 LRP 43006 (SEA CO 12/3/21).

PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district's proposal or refusal. *Id.* 34 C.F.R § 300.503(b)(1)-(7). Adequately identifying and explaining the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 07/06/18).

### **B. The PWN following a March 11, 2025, Eligibility Determination**

Here, Parents' concern is twofold: (1) the PWN they received on April 16, 2025, was not provided within a reasonable time following the March 11, 2025, eligibility meeting and (2) the PWN did not provide all the details of their concerns related to matriculation and Student's health plan, including toileting and eloping. (FF # 3, 47-48).

With respect to the first concern about timing, during the March 11 eligibility meeting, the MDT determined Student was eligible for services under an additional disability category, ASD. (FF # 47). District issued the PWN notifying Parents of this change on April 16, 36 calendar days later, and fifteen days after the IEP Team met to review and revise the 2024 IEP. (FF # 60). The CDE finds that the PWN was not issued so that Parents had enough time to fully consider and respond to the proposed action before it was implemented. Accordingly, the CDE finds and concludes that the PWN was not issued within a reasonable time, as required by 34 C.F.R. § 300.503(a).

With respect to the second concern about substance, the MDT did not make any decisions about matriculation or Student's health plan, including toileting and eloping, at the March 11 eligibility meeting. (FF # 47). Thus, the CDE finds and concludes that District was not obligated to provide PWN to Parents in this respect following the March 11 eligibility meeting. The CDE reminds Parents that a "retention or promotion decision is not synonymous with a placement decision for IDEA purposes." *Letter to Anonymous*, 35 IDELR 35 (OSEP 2000). The IDEA "specifically does not address standards for retention or promotion of students with disabilities. Rather, the establishment of standards for promotion and retention for all students, including students with disabilities, is a State and/or local function. Generally, the IDEA would not require that the IEP team make decisions regarding promotion or retention of a child with a disability." *Id.*

However, District was obligated to provide PWN of its proposal and ultimate decision to change Student's identification at the March 11 eligibility meeting. (FF # 47). The CDE finds that the PWN provided on April 16 met the requirements of 34 C.F.R. § 300.503(b)(1, 3-7). (FF # 60-61, 63-66). However, the PWN did not meet the requirements of 34 C.F.R. § 300.503(b)(2) because the

explanation of why District proposed the change focused entirely on the rejection of Parents' request that Student not matriculate from preschool to kindergarten—a decision made at an April 1 IEP Team meeting and properly documented in the PWN—rather than the reason for changing Student's eligibility. (FF # 62). Thus, the CDE finds and concludes that the PWN did not include an explanation of why District proposed to change Student's eligibility category, as required by 34 C.F.R. § 300.503.

### **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, procedural noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impede the parent's 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. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, the CDE finds that District's procedural noncompliance did not significantly impede Parent's ability to participate in the decision-making process. Parents attended and participated in the eligibility meeting on March 11 and agreed with the determination that Student was eligible as a child with ASD. (FF # 47). Additionally, Parents continued to meaningfully participate in the decision-making process by attending the April 1 IEP Team meeting in which the 2025 IEP was developed in contemplation of the March 11 eligibility determination. (FF #s 49-50, 56-58). For these reasons, the CDE finds and concludes there was no denial of FAPE.

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in the District 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 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 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 Disability and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the Record does not indicate that District's noncompliance with the PWN requirement is systemic in nature. District's practices and procedures regarding PWN are consistent with IDEA's requirements. (FF #s). District's noncompliance here is an instance of District staff not following District's procedures as it relates to one component of the PWN in one instance. (*Id.*). Therefore, the CDE finds and concludes that District's noncompliance is not systemic and is not likely to impact the future provision of services for all IDEA-eligible students in District.

### **REMEDIES**

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

1. Providing proper PWN of Student's change in identification following a March 11, 2025 eligibility meeting, as required by 34 C.F.R. § 300.503.

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

**1. Final Decision Review**

- a. Director and Special Education Teacher must read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.503, by **September 19, 2025**. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **September 26, 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's 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 22nd day of August, 2025.



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Tara Carone  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-10**

- Exhibit 1: Private Evaluation
- Exhibit 2: IEP Meeting Transcripts
- Exhibit 3: IEP Documentation
- Exhibit 4: Behavioral Reports, Injuries, Related Correspondence
- Exhibit 5: Correspondence
- Exhibit 6: Private Evaluation
- Exhibit 7: Correspondence

### **Response, pages 1-15**

#### **Supplemental Response, pages 1-9**

- Exhibit A: IEPs
- Exhibit B: Notices of Meetings
- Exhibit C: Prior Written Notices
- Exhibit D: Meeting Documentation
- Exhibit E: Disciplinary Records
- Exhibit F: Evaluations and Assessments
- Exhibit G: Documentation Provided by Parents
- Exhibit H: Schedule, Grade Reports, Attendance
- Exhibit I: Progress Monitoring
- Exhibit J: District Calendar
- Exhibit K: Policies and Procedures
- Exhibit L: Correspondence
- Exhibit O: Verification of Delivery
- Exhibit P: Additional Documents
- Exhibit P, Part 2: Additional Documents

### **Reply, pages 1-11**

#### **Telephone Interviews**

- Special Education Teacher: August 5, 2025
- Director: July 22, 2025
- Physical Therapist: July 22, 2025
- SLP: July 23, 2025
- Parents: July 24, 2025