

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

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**State-Level Complaint 2020:512  
Denver Public Schools District 1**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on February 24, 2020 by the parents (Parents) of a child (Student) identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the SCO determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 24, 2019 through February 24, 2020 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether Student has been denied a Free Appropriate Public Education (FAPE) because Denver Public Schools District 1 (District):

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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.*

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

1. Failed to make reasonable efforts to obtain parental consent for an initial evaluation of Student, from August 2019 to October 2019, consistent with 34 C.F.R. §§ 300.300(a) and 300.301.
2. Failed to conduct an initial evaluation of Student within 60 days of receiving parental consent for the evaluation in October 2019, consistent with 34 C.F.R. § 300.301.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is a five-year-old eligible for special education and related services under the disability category of Other Health Impairment (OHI). *Exhibit A*, pp. 5, 8. Student was found IDEA-eligible on January 21, 2020. *Id.* at p. 8. Student attends kindergarten at an elementary school (School) located in District. *Id.* at p. 5.
2. This dispute started as Student began his kindergarten year at School in August of 2019. *Interview with Mother*. Student exhibited escalating behaviors during his transition into kindergarten, and Mother alleges that District failed to timely respond to her requests for an initial evaluation of Student. *Id.* Mother also alleges that District failed to complete an initial evaluation of Student within 60 days after obtaining her consent. *Id.*

#### **B. The Beginning of Student's Kindergarten Year**

3. Student's kindergarten year at School began on August 15, 2019. *Interviews with General Education Teacher 1 and Principal*. Prior to the first day of school, Parents and Student met with School's kindergarten teaching staff for orientation. *Interviews with General Education Teacher 1 and Mother*.
4. Mother shared with the kindergarten staff that Student had not attended a formal preschool prior to his enrollment at School, but Parents did not express any concerns about Student or request a special education evaluation at this time. *Interviews with Mother, General Education Teacher 1, and General Education Teacher 2*. School staff did not have any concerns about Student during orientation. *Id.*
5. During the first two weeks of school, Student was observed to be happy, energetic, and bright. *Interview with General Education Teacher 1*. Student knew his letters and numbers, and he was able to write his name and answer questions. *Id.* He had difficulty

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

sitting in one place for an extended period of time and exhibited behaviors including running around the class, climbing on furniture, and opening cabinets. *Id.*

6. General Education Teacher 1 described these behaviors as consistent with those typically exhibited by students transitioning into kindergarten with no previous experience in formal preschool. *Id.*
7. Toward the end of August, Student began running out of class if he did not like the snack options presented to him or if he was asked to complete a non-preferred task. *Interview with General Education Teacher 1; Exhibit B, p. 1; Exhibit D, pp. 7, 24.* When Student left class, he would often seek out other adults. *Interview with General Education Teacher 1.*
8. Student's behavior escalated during the first two weeks of September. *Interviews with Principal, General Education Teacher 1, and Mother.* He refused to comply with requests, crawled on his peers, threw or damaged items, used profane language, exhibited aggressive behaviors toward adults, and ran out of class more frequently, occasionally leaving the school building. *Id.; Exhibit C, p. 27; Exhibit D, p. 24.*

### **C. Mother's Request for a Special Education Evaluation**

9. Mother reports that during the third week of school, she spoke to Principal and Assistant Principal over the phone regarding Student's behavior. *Interview with Mother.* According to Mother, she requested that Student be assessed for special education services, and Principal declined, explaining that they needed to collect data and monitor how Student responded to interventions. *Id.*
10. Principal and Assistant Principal track their phone calls and meetings with parents in an electronic contact log, and the contact log does not reflect any calls with Parents during the third week of school. *Exhibit C, p. 27.* The first contact recorded in the log is a voicemail left for Mother on September 9, 2019. *Id.* Principal and Assistant Principal do not recall any phone conversations with Mother during the third week of school. *Interviews with Principal and Assistant Principal.* The SCO finds that the evidence does not support Mother's claim that she made a request for a special education evaluation during the third week of school.
11. On the morning of September 10, 2019, Parents met with Assistant Principal to discuss Student's behavior and the expectations for Student. *Interview with Principal, Assistant Principal, and Mother; Exhibit C, p. 27.* Following their meeting, Student exhibited escalated behaviors in class, including throwing and damaging items and engaging in aggressive behaviors toward adults. *Id.*
12. Later that same day, Assistant Principal, Principal, and Guidance Counselor met with Mother to discuss Student's behavior, and they also discussed the need to create a

safety plan and work on emotional regulation strategies. *Id.* According to Principal, this was the first time she met with Mother. *Interview with Principal.*

13. Mother reports that during this meeting, she asked whether Student could be assessed for an IEP or 504 Plan, but that Principal and Assistant Principal advised her that they had interventions in place and would need to collect data. *Interview with Mother.*
14. Assistant Principal confirmed that Mother asked about a special education evaluation during this meeting. *Interview with Assistant Principal.* However, Assistant Principal recalls that Mother asked whether she and the other staff present thought that Student needed special education services. *Id.* Assistant Principal interpreted Mother's question as a request for their professional opinion and responded by explaining that they follow a process to determine whether a student should be evaluated, including implementing interventions through a multi-tiered system of supports. *Id.*
15. Assistant Principal indicated that Mother was in agreement with following this intervention process and collecting data prior to making a determination about whether Student should be evaluated for special education services. *Id.*
16. School staff began implementing interventions for Student during the first week of September, including but not limited to a star chart for on-task behavior; increased positive reinforcement; and extra snacks upon request. *Interviews with General Education Teacher 1, General Education Teacher 2, Assistant Principal, Principal, and Guidance Counselor; Exhibit F, p. 1; Exhibit N, p. 1.* As Student's behavior escalated, additional interventions included clearly defined limits with preferable choice options; a change in Student's classroom; changed seating position; personal classroom supplies; movement breaks; check-ins; and emotional regulation support using the zones of regulation. *Id.* The interventions were not consistently effective. *Id.; Exhibit E, p. 1.*
17. In mid-September, School staff began providing Student with additional adult support throughout the day, including a paraprofessional. *Interview with General Education Teacher 2.* School staff also began collecting data regarding the percentage of the day that Student maintained a safe body, as well as the percentage of the day that Student remained in class. *Interviews with General Education Teacher 1, General Education Teacher 2, Principal, Guidance Counselor, and Social Worker; Exhibit D, p. 1.*
18. On September 17, 2019, Mother left a message with Principal's administrative staff, stating that she had questions regarding the "personalized services" offered by School, including whether School offered psychological services. *Exhibit P.* Mother wanted to know "what resources [were] available for [Student's] behavior," and she also wanted to "inquire about an IEP for [Student]." *Id.*

19. Principal reports that she spoke with Mother over the phone on September 19, 2019, during which time Mother asked Principal if Student should be evaluated and whether Principal thought Student needed an IEP. *Interview with Principal*. Principal did not interpret Mother’s question as a request for an evaluation, and Principal reports that she advised Mother that it would be appropriate to wait and see how he responded to interventions before initiating an evaluation. *Id.* Principal told Mother that if Student was not making progress when they met at the beginning of October, then they could reach out to Special Education Coordinator and start the evaluation process. *Id.*
20. On September 24, 2019, Mother and Principal exchanged emails regarding a meeting to discuss Student’s interventions, and they scheduled a meeting for October 4, 2019. *Exhibit 1*, pp. 5-7.
21. On September 30, 2019, Mother emailed Principal and explicitly requested a special education evaluation. *Interviews with Mother and Principal; Exhibit K*, p. 3. Mother wrote that she “would like [Student] tested for special education classes” and an IEP “sooner than later.” *Id.* She expressed that she understood data needed to be collected, but she wanted to make sure they were moving toward testing for an IEP or 504 Plan. *Id.* Mother also asked if there was a special education class that Student could participate in while they waited to initiate the evaluation, which Mother said she requested during a previous meeting. *Exhibit K*, p. 9. Mother did not specify in her email when that previous meeting occurred, but she explained that it could have been on September 10, 2019. *Interview with Mother; Exhibit K*, p. 9.
22. On October 2, 2019, District prepared a special education referral, and Principal emailed Mother to inform her that a request for consent for an initial evaluation had been prepared and would be sent home the following day. *Exhibit 1*, p. 17; *Exhibit F*, pp. 1-2. The documents were sent home with Student’s grandfather on October 3, 2019, but Mother did not receive them. *Interview with Assistant Principal; Exhibit 1*, pp. 16-17; *Exhibit E*, pp. 1-3.
23. Mother was provided with a request for consent for an initial evaluation and prior written notice on October 4, 2019, and she signed the consent on that same date. *Interviews with Mother and Principal*.

#### **D. Student’s Initial Special Education Evaluation**

24. On October 4, 2019, Mother met with Principal, Special Education Coordinator, Guidance Counselor, and Special Education Support Partner to discuss the initial evaluation and select the specific assessments to be completed. *Interviews with Mother, Principal, Special Education Coordinator, and Special Education Support Partner*.

25. Student's initial evaluation included academic performance assessments, such as the Comprehensive Test of Phonological Processing, Second Edition; iReady diagnostic testing in reading and math; and EasyCBM progress monitoring, as well as a social emotional assessment using the Behavior Assessment System for Children, Third Edition. *Exhibit D*, pp. 8-16. School Nurse also completed a health assessment. *Id.* In addition, District completed a functional behavioral assessment (FBA). *Id.* at pp. 1-7.
26. On November 21, 2019, District convened a properly constituted multidisciplinary team (MDT) to discuss the initial evaluation data and determine whether Student was eligible for special education and related services. *Exhibit A*, p. 1; *Exhibit F*, p. 7; *Exhibit G*, p. 1.
27. The MDT reviewed the results of the evaluation and found that, based on the available data, Student did not meet the eligibility criteria for OHI or Serious Emotional Disability. *Interviews with Special Education Coordinator, Principal, Guidance Counselor, and Mother; Exhibit F*, p. 8.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District requested parental consent for an initial evaluation within a reasonable time after Mother requested an evaluation on September 19, 2019, consistent with 34 C.F.R. §§ 300.300(a) and 300.301.**

Parents allege that District failed to timely request parental consent after they requested that District evaluate Student for special education and related services.

The parent of a child may request an initial IDEA evaluation, the purpose of which is: (1) to determine whether the child has a disability, and because of the disability needs special education and related services, and (2) to help the IEP team determine the child's specific needs. 34 C.F.R. §§ 300.301(b) and 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(3)(a). If a parent requests an evaluation, the school district has two options: (1) agree to evaluate the child and obtain parental consent to conduct the evaluation, or (2) deny the request to evaluate and provide parent with written notice explaining its decision. *Poudre School District*, 118 LRP 28104 (SEA CO 2/5/18).

The IDEA "does not require parents to use specific language when requesting an evaluation." *Renaissance Acad.*, 115 LRP 9496 (SEA OH 2/11/15). However, "school districts should not be expected to recognize and respond to any parental request for testing as a request for a special education evaluation." *El Paso County Sch. Dist. 3, Widefield*, 60 IDELR 117 (CO SEA 11/1/12).

In this case, Mother asserts that she first requested an evaluation on a phone call with Principle and Assistant Principal during the third week of School, followed by a second request during a

meeting on September 10, 2019. The SCO finds and concludes that Mother first requested an evaluation on September 19, 2019.

The findings do not support Mother's claim that she first requested an evaluation during the third week of school. As discussed in FF #9-10, the contact log used by Principal and Assistant Principal does not reflect any phone calls made to Parents during this time period. The first recorded contact was on September 9, 2019. Thus, the SCO finds and concludes that Mother did not request an evaluation during the third week of School.

The findings also do not support Mother's claim that she requested an evaluation during a September 10, 2019 meeting. (FF #13). As discussed in FF #14-15, Assistant Principal confirmed that Mother asked about an evaluation on September 10, 2019, but Assistant Principal reports that Mother asked for her opinion about whether an evaluation should be done. Assistant Principal reviewed the intervention and evaluation process and indicated that Mother was in agreement with following the intervention process. Accordingly, the SCO finds and concludes that Mother did not request an evaluation on September 10, 2019.

However, the findings do support that Mother first requested an evaluation during her phone call with Principal on September 19, 2019. First, FF #14-15 and 18 show that Mother left a message for Principal on September 17, 2019 indicating her intent to inquire about an IEP for Student, and this was at least the second time that Mother had raised the issue. Second, Principal confirmed that when she returned Mother's phone call on September 19, 2019, Mother again asked about an evaluation. (FF #19). During this time period, Student's behavior was escalating, and Mother asked whether he should be evaluated for special education.

A parent may request an initial evaluation at any time to determine if a child is a child with a disability, and the use of response to intervention strategies cannot be used to delay or deny a timely initial evaluation. *Memorandum to State Dir. of Special Educ.*, 56 IDELR 50 (OSEP 2011). Accordingly, although it may be District's practice to implement interventions and collect data before initiating an evaluation, the SCO finds and concludes that Principal should have treated Mother's repeated questions as a request for a special education evaluation by September 19, 2019.

The IDEA does not require that parents use specific language when requesting an evaluation. Here, the factual circumstances, including Mother's repeated requests, demonstrate that Mother requested an evaluation of Student on September 19, 2019. Nevertheless, in her September 30, 2019 email to Principal, Mother explicitly requested an evaluation and expressed that she had previously made this request during a meeting with Principal. (FF #21).

The SCO now considers whether District sought parental consent in a timely manner following Mother's September 19, 2019 request for an initial evaluation.

The IDEA does not require school districts to seek parental consent within a specific timeframe; however, the U.S. Department of Education cautions that “delays of several months are generally unacceptable.” *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008); *see also* 71 Fed. Reg. 156, 46637 (August 14, 2006) (noting “it would generally not be acceptable for an LEA to wait several months to . . . seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability”). Thus, school districts “would be well-advised to request parental consent for evaluations as soon as possible.” *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

In this case, as outlined in FF #22-23, District prepared a special education referral on October 2, 2019 and notified Mother that the paperwork would be sent home the next day. Mother signed a request for consent on October 4, 2019, only 15 calendar days and nine school days after her September 19, 2019 phone call with Principal, and just four calendar days after she explicitly requested an evaluation via email on September 30, 2019. Even if the SCO found that Mother requested an evaluation on September 10, 2019, only 24 calendar days would have passed before District obtained consent.

Although some time passed between Mother’s request on September 19, 2019 and the date District obtained consent, the delay was just over two weeks. During that time period, School staff were implementing interventions to address Student’s behavior and collecting data to measure the success of those interventions. (FF #16-17). Additionally, FF #19-20 show that on September 24, 2019, Principal reached out to Mother to schedule a meeting to discuss Student’s interventions and behavior, and this meeting was also intended to serve as follow-up on Mother’s questions about an evaluation of Student.

For these reasons, the SCO finds and concludes that District requested parental consent for an initial evaluation within a reasonable time after Mother requested an evaluation on September 19, 2019, consistent with 34 C.F.R. §§ 300.300(a) and 300.301.

**Conclusion to Allegation No. 2: District conducted an initial evaluation of Student within 60 days of receiving parental consent for the evaluation on October 4, 2019, consistent with 34 C.F.R. § 300.301.**

Parents assert that District failed to complete an initial evaluation of Student within 60 days of receiving their consent on October 4, 2019.

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

Here, the evidence shows that District completed an initial evaluation of Student within the required time period. Mother provided consent for an initial evaluation of Student at a meeting with School staff on October 4, 2019. (FF #23-24). As discussed in FF #24-27, District completed



an evaluation after obtaining consent and convened an MDT for a meeting to discuss the results of the evaluation on November 21, 2019, 48 calendar days after Mother signed consent. The MDT determined that, based on the available data, Student was not IDEA-eligible.

The evidence is clear that District completed an initial evaluation within the required time frame. Accordingly, the SCO finds and concludes that District conducted an initial evaluation of Student within 60 days of receiving parental consent for the evaluation on October 4, 2019, consistent with 34 C.F.R. § 300.301.

### **REMEDIES**

The SCO finds and concludes that District did not violate any requirements of the IDEA. Thus, there are no remedies ordered pursuant to the IDEA and my authority as an SCO.

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 24th day of April, 2020.



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Lindsey Watson  
State Complaints Officer

## Appendix

### **Complaint, pages 1-8**

- Exhibit 1: Email correspondence

### **Response, pages 1-8**

- Exhibit A: IEPs in effect during the 2019-2020 academic year and meeting notes
- Exhibit B: BIPs in effect during the 2019-2020 academic year
- Exhibit C: Behavior logs and data, and documentation of behavior incidents
- Exhibit D: Assessments, evaluations, and eligibility determinations
- Exhibit E: Prior written notices and requests for consent
- Exhibit F: Prior written notices, signed consent, and special education referrals
- Exhibit G: Notices of meeting issued from August 12, 2019 to present
- Exhibit H: Grade reports and IEP progress reports for the 2019-2020 academic year
- Exhibit I: No documentation provided
- Exhibit J: Documentation contained in Exhibit C
- Exhibit K: Email correspondence
- Exhibit L: Contact information for District and School staff
- Exhibit M: District policies and procedures relevant to Complaint allegations
- Exhibit N: Documentation of pre-referral interventions and academic calendar
- Exhibit O: Crisis plans in effect during the 2019-2020 academic year
- Exhibit P: Voicemail documentation from September 17, 2019
- Exhibit Q: ABC Tracker and related documentation
- Exhibit R: Safety plan in effect during the 2019-2020 academic year

### **Telephonic Interviews with:**

- General Education Teacher 1: March 19, 2020
- Special Education Coordinator: March 19, 2020
- Special Education Support Partner: March 24, 2020
- Guidance Counselor: March 26, 2020
- Senior Manager of Special Education: March 26, 2020
- Social Worker: March 27, 2020
- General Education Teacher 2: March 27, 2020
- Principal: April 2, 2020 and April 9, 2020
- Mother: April 6, 2020
- Assistant Principal: April 9, 2020