

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

State-Level Complaint 2021:509
Adams-Arapahoe School District 28J

DECISION

INTRODUCTION

On April 13, 2021, the parent (“Parents”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Adams-Arapahoe School District 28J (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from April 13, 2020 through April 13, 2021 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 the District violated the IDEA and denied Student a free appropriate public education (“FAPE”) because the District:

1. Improperly determined that Student was no longer eligible for special education and related services on or around April 24, 2020 because the District failed to conduct a comprehensive reevaluation in all areas of suspected disability, in violation of 34 C.F.R. §§ 300.304-305, specifically by:

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

- a. Failing to consider Parents' input, in violation of 34 C.F.R. § 300.305(a);
 - b. Failing to consider observations by teachers and related service providers, in violation of 34 C.F.R. § 300.305(a); and
 - c. Failing to consider the independent education evaluation, in violation of 34 C.F.R. § 300.304(b) and 305(a).
2. Convened IEP team meetings between April 13, 2020 and April 24, 2020 without all required IEP team members, in violation of 34 C.F.R. § 300.321.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS OF FACT ("FF"):

A. Background

1. Student attends fourth grade at a District elementary school ("School"). *Interview with Parents.*
2. Student was previously eligible for special education and related services under the disability categories of Autism Spectrum Disorder ("ASD"), Other Health Impairment ("OHI"), and Speech or Language Impairment. *Exhibit A, pp. 1-15.*
3. Student is described as a kind, polite boy with a great personality. *Interviews with Parents, Second Grade Teacher, and Third Grade Teacher.* Student excels at reading and mathematics. *Id.* Student has difficulty staying focused at School and struggles with writing. *Id.*
4. This investigation concerns the termination of Student's eligibility for special education in April 2020.

B. Student's 2018 IEP

5. Student was in third grade during the 2019-2020 academic year. At the beginning of the academic year, Student's IEP dated October 10, 2018 was in effect ("2018 IEP"). *Interview with Exceptional Student Services Program Director ("Program Director"); Exhibit A, pp. 1-15.*
6. The section of the 2018 IEP regarding present levels of performance commented on Student's improving academic performance, noting that "the amount of growth seen this last year [was] fantastic." *Id.* at p. 3. Early in his second-grade year—when the 2018 IEP was

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

written—Student was reading at grade level and performing well in math and writing (though he had some room for improvement in those areas). *Id.* at pp. 3-4.

7. The 2018 IEP indicated that Student’s ASD “impact[ed] his social skills and impair[ed] his ability to consistently interact with classroom peers as well as manage his emotions to utilize coping skills on a consistent basis across all school environments.” *Id.* at p. 5. The 2018 IEP did not identify how Student’s other disabilities impacted him. *Id.*

8. The 2018 IEP contained five annual goals in the areas of social-emotional wellness, reading, writing, mathematics, and communication. *Id.* at pp. 5-8.

9. The 2018 IEP contained numerous accommodations and modifications, which included, in part:

- Adult escort when transitioning or outside the classroom;
- Additional time to complete assignments;
- Increased monitoring for safety when Student was upset; and
- Extra wait time for Student to process questions and formulate responses.

Id. at pp. 8-9.

10. Under the 2018 IEP, Student received the following special education and related services:

- Special Education:
 - 150 minutes per week of direct special education instruction in reading and math outside the general education classroom;
 - 30 minutes per week of direct special education instruction in writing inside the general education classroom;
- Mental Health Services: 120 minutes per month of direct mental health services outside the general education classroom in a small group targeting emotional identification and coping skills;
- Speech: 15 minutes per month of indirect speech language services.

Id. at p. 11.

11. Per the 2018 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at p. 12. Based on Student’s ASD, he “need[ed] specialized instruction in order to

understand abstract material and use diligence in his academic work. This require[d] some time outside of the general education setting. However, [Student] is on grade level academically and benefits from grade level standards based instruction and peer models.” *Id.*

C. Student’s Reevaluation

12. Student’s next eligibility meeting was due by October 27, 2019. *Id.* at p. 1. As a result, the District obtained consent to evaluate from Parents on August 13, 2019. *Exhibit C*, pp. 4-5. The District subsequently reevaluated Student in the areas of communicative status, general intelligence, academic performance, social emotional status, health, and motor abilities. *Id.* at p. 4.

Communicative Status

13. Speech Language Pathologist (“SLP”) evaluated Student’s communicative status using the Clinical Evaluation of Language Fundamentals-5th Edition (“CELF-5”), the Colorado Communication Rating Scale, and observations. *Interview with SLP; Exhibit F*, pp. 1-6.

14. Overall, on the CELF-5, Student scored within average range. *Interview with SLP; Exhibit F*, pp. 1-4. As part of the CELF-5, Third Grade Teacher and Special Education Teacher #1 completed the CELF-5 Pragmatics Profile (“Pragmatics Profile”), which specifically assessed Student’s social communications. *Interview with SLP; Exhibit F*, pp. 3-4. Student’s scores on the Pragmatics Profile also fell within the average range. *Exhibit F*, p. 4.

15. SLP did not ask Parents to complete the Pragmatics Profile. *Interview with SLP*. Typically, SLP has Parents complete the Pragmatics Profile for initial evaluations and not reevaluations where she has adequate data to rely on. *Id.*

16. The Colorado Communication Rating Scale ranks a student’s skills in speech and language using a scale with a range of no impairment to severe impairment. *Exhibit F*, p. 4. The tool identified a mild impairment in Student’s pragmatics but found no impairment in the other areas of speech and language. *Id.*

17. SLP also observed Student in both a structured setting and an unstructured setting. *Interview with SLP; Exhibit F*, pp. 5-6. The observation in a structured setting occurred while Student was in his third-grade classroom with a substitute teacher. *Exhibit F*, pp. 5-6. During the observation, Student struggled to stay on task while working independently on his laptop computer. *Id.* at p. 5. He returned to his work once redirected or prompted by the substitute, though he did not maintain that focus long. *Id.*

18. During the unstructured observation, SLP observed Student during recess. *Id.* at p. 6. Student was playing with a group of boys on the playground and engaged in brief conversation with his classmates while playing. *Id.*

General Intelligence and Academic Performance

19. The District evaluated Student's general intelligence and academic performance using the Weschler Individual Achievement Test-3rd edition ("WIAT-III"), several diagnostic tests, and a recent writing assignment. *Id.* at pp. 6-12.

20. The WIAT-III measured Student's educational achievement as compared to his same grade peers. *Id.* at p. 8. Student's composite scores in the assessed areas—basic reading, written expression, mathematics, and math fluency—fell within the average or above average ranges. *Id.* at p. 10.

21. The diagnostic tests, which were administered in the first weeks of third grade, placed Student's performance at the beginning of third grade. *Id.* at pp. 6-7. Special Education Teacher #1 scored Student's writing assignment as partially proficient using a third-grade writing rubric. *Id.* at p. 8.

Social Emotional Status

22. The District evaluated Student's social emotional status using formal assessments, a District tool, and observations. *Id.* at pp. 13-22. School Psychologist #2 administered the Behavior Rating Inventory of Executive Function 2 ("BRIEF-2"), the Behavior Assessment Scales for Children 3 ("BASC-3"), the Social Responsiveness Scale 2 ("SRS-2"), and the Vineland Adaptive Behavior Scales 3 ("Vineland-3"). *Id.* at pp. 18-28.

23. The BRIEF-2 evaluates a student's executive function abilities in the home and school environments. *Id.* at p. 18. The scales completed by Parents and Third Grade Teacher respectively placed Student within the Clinically Elevated and Potentially Clinical Elevated ranges. *Id.* at pp. 18-19.

24. The BASC-3 measures externalizing behaviors, internalizing behaviors, adaptive skills, and behavior symptoms. *Id.* at p. 44. Once again, Parents and Third Grade Teacher completed the ratings. *Id.* On both Parents' and Third Grade Teacher's ratings, Student fell within the at risk or clinically significant ranges. *Id.*

25. The SRS-2 evaluates the severity of social deficits in students with ASD. *Id.* at p. 44. Again, Parents and Third Grade Teacher completed the ratings. *Id.* Parents rated Student in the severe range, expressing concerns about Student's social abilities across all domains. *Id.* Third Grade Teacher, however, rated Student in the average range, noting that Student did have some difficulty navigating social situations. *Id.*

26. The Vineland-3 rates a student's ability to function independently in certain areas of life. *Id.* at p. 45. Third Grade Teacher and Parent completed the Vineland-3 ratings scales. *Id.* at pp. 45-47. Third Grade Teacher's ratings placed Student in the moderately low range. *Id.* at pp. 46-

47. Parent rated Student significantly lower in all areas of functioning when compared to Third Grade Teacher and, overall, placed Student in the low range. *Id.* at pp. 45-47.

27. The District developed an Educational Impact Interview (“Interview”) to be used when determining eligibility for students with ASD. *See Exhibit F*, pp. 1-6; *Interview with Program Director*. The Interview is an informal, internal tool designed to help IEP teams identify whether ASD is interfering with a student’s education. *Interview with Program Director*. A student’s special education teacher should “complete the interview with each licensed staff member currently working with the child in the school setting who can speak to the child’s functioning in the areas of social interaction, communication, and behavior.” *Exhibit F*, p. 1.

28. Between Student’s second- and third-grade years, School experienced significant turnover, which resulted in Student having a new speech language pathologist, psychologist, and special education teacher for third grade. *Interview with School Psychologist #1*. As a result, School Psychologist #1 asked Second Grade Teacher and Third Grade Teacher to complete the Interview because they were most familiar with Student’s behavior. *Id.*

29. The Interview asks participants to identify whether a student exhibits certain characteristics of ASD in the classroom. *Exhibit F*, pp. 1-6. Second Grade Teacher and Third Grade Teacher each indicated that Student demonstrated only two of the 18 listed characteristics of ASD. *Id.* Based on the language used in the Interview, it is unclear specifically which characteristics the teachers identified. *Id.* And, during this investigation, District staff were unable to recall specifically which characteristics they identified. *Interviews with School Psychologist #1, Second Grade Teacher, and Third Grade Teacher*.

30. Regardless, neither Second Grade Teacher nor Third Grade Teacher felt that Student demonstrated significant behaviors associated with ASD or that any of those behaviors interfered with his learning in the classroom. *Interviews with Second Grade Teacher and Third Grade Teacher*.

31. School Psychologist #1 also assessed Student’s social-emotional status using observations in structured and unstructured settings. *Interview with School Psychologist #1*. The observation in a structured setting occurred in Student’s third-grade classroom. *Exhibit F*, pp. 36-37. During these two fifteen-minute observations, School Psychologist #1 focused on Student’s time on task. *Id.* School Psychologist #1 compared Student’s time on task to another male classmate. *Id.*; *Interview with School Psychologist #1*. On one occasion, Student was on task less than the male peer (55% versus 100%). *Exhibit F*, p. 37. But on the second occasion, Student and the male classmate were both on task 80% of the time. *Id.*

32. The observation in an unstructured setting occurred during recess and lunch. *Id.* at p. 32. That day, Student played with several peers on the playground; he ate lunch with several of the same peers, indicating they may have been his friends. *Id.* at p. 33. During lunch and recess, Student responded to verbal and nonverbal communication from classmates. *Id.* On two

occasions, Student appeared to annoy his classmates but, in general, followed procedures and instructions without prompting. *Id.*

D. October 2019 IEP Team Meeting

33. Student's IEP team met in September and October 2019 to review the Evaluation and discuss Student's eligibility. *Exhibit C*, p. 8. During the October meeting, Parents expressed disagreement with the Evaluation and requested an independent education evaluation ("IEE"). *Id.*; *Interview with Parents*. The IEP Team then ended the meeting to allow the District to consider Parents' request. *Exhibit C*, p. 8; *Interview with Parents*.

34. The District approved Parents' request and authorized a private psychologist ("Private Evaluator") to conduct the IEE. *Interview with Program Director*. While the IEE was in process, the District continued to implement the 2018 IEP. *Id.*

E. Fall 2019

35. At the beginning of third grade, Student received specialized instruction from Special Education Teacher #1 in reading, math, and writing consistent with his IEP. *Interviews with Program Director and Third Grade Teacher*. This instruction occurred in small groups with other second- and third-grade students. *Interview with Program Director*. However, Special Education Teacher #1 quickly determined that Student was too advanced for these groups. *Id.*

36. So, in September 2019, Student began receiving specialized reading and math instruction from Special Education Teacher #2 in small groups with fourth- and fifth-grade students. *Id.* Special Education Teacher #1 continued to provide Student's writing instruction. *Id.* Student's writing instruction was at grade level and, as of March 2020, Student was partially proficient in grade-level writing. *Exhibit G*, p. 22.

37. Additionally, Student continued to participate in a social skills group with Social Worker. *Id.* at p. 1. Student "was always an active participant in discussions" and "laugh[ed] and join[ed] in" when the group had time to play a game. *Id.*

F. Student's IEE

38. Private Evaluator completed the IEE on February 13, 2020. *Exhibit F*, p. 60. The IEE took longer than anticipated because Private Evaluator had a personal emergency. *Complaint*, p. 7. Private Evaluator provided the IEE that same day. *Exhibit I*, p. 644.

39. Private Evaluator assessed Student using formal assessments, observations, and interviews. *Id.* at pp. 68-77. Formal assessments included the ADHD Rating Scale 5 ("ADHD RS-5") and the Spence Children's Anxiety Scale ("SCAS"). *Id.* at pp. 68-69.

40. The ADHD RS-5 obtains ratings from a child's caregiver regarding the frequency of a child's ADHD symptoms. *Id.* at p. 68. Parents indicated Student had the most impairment in the areas of peer relationships and academic functioning and, even then, Student's impairment was rated as moderate. *Id.* Overall, Student scored in the 93rd percentile. *Id.*
41. The SCAS evaluates whether a child has elevated anxiety. *Id.* at p. 69. When rated by Parents, Student received a clinically significant overall score on the SCAS, with clinically significant scores on the subscales of social phobia and generalized anxiety disorder. *Id.*
42. In December 2019, Private Evaluator observed Student at School in several settings, including in his third-grade classroom, at lunch, transitioning from lunch to art, and in art class. *Id.* at p. 69. In sum, Private Evaluator found Student inattentive in class, requiring multiple prompts from Third Grade Teacher to stay on task. During free play, Private Evaluator did not observe Student engaging in any conversation that he considered to be reciprocal.
43. Private Evaluator also interviewed SLP, Third Grade Teacher, Special Education Teacher #2, School Psychologist #2, Parents, and Student. *Id.* at pp. 72-77. The District interviewees expressed "unanimity that [Student] has made significant progress socially and academically since his initial determination of eligibility for ASD services three years ago." *Id.* at p. 75. Staff acknowledged Student's ongoing issues with attention and task initiation. *Id.*
44. During his interview, Special Education Teacher #2 indicated that Student was "working above grade level" and that he was "unsure as to whether [Student] actually requires the extra help. In the small group, he describe[d] [Student] as friendly, engaged, participating well, and as being 'mostly' on task." *Id.* at p. 73.
45. Finally, Private Evaluator interviewed Student at home. While being interviewed, Student was "much more talkative and animated than he was during [Private Evaluator's] school observations." *Id.* at p. 75. Student's "[s]ocial-conversational pragmatics were assessed as generally within the normal range." *Id.* During the interview, Student was easily distracted and had trouble maintaining focus. *Id.* Student stated that he has two friends. *Id.* at p. 77.
46. Ultimately, Private Evaluator concluded that Student qualified for special education and related services under ASD. *Id.* at pp. 77-84. As part of his analysis, Private Evaluator indicated that Student's performance was significantly impacted by his ASD, citing Student's deficits in social reciprocity and executive functioning. *Id.* at pp. 85-86.

G. April 2020 IEP Team Meetings

47. After receiving the IEE, the District scheduled an IEP Team meeting for March 12, 2020, to review the IEE and consider Student's eligibility. *Interview with Program Director; Exhibit C,*

p. 9. On March 9, Parents requested to reschedule the meeting due to Student being hospitalized. *Interview with Parents*.

48. The District rescheduled the meeting for April 6 from 11:00 to 2:00 and issued a proper notice of meeting. *Exhibit D*, p. 4. Even though three hours were allocated on April 6, the IEP Team was unable to finish. Ultimately, the IEP Team convened on three additional dates—April 15, April 16, and April 24—for an additional six hours. *Response* at p. 5. The District issued proper notices of meeting for each subsequent IEP Team meeting. *See Exhibit D*, pp. 6-11.

49. During this investigation, the District produced video recordings of all four IEP Team meetings held in April 2020 (collectively, “April 2020 IEP Team meetings”), as well as extensive notes taken by the District. *See Exhibit E*, pp. 4-21.

50. Special Education Teacher #1 was not invited to and did not attend any of the April 2020 IEP Team meetings. *Interview with Program Director*. At that time, Special Education Teacher #1 was only providing Student writing instruction, while Special Education Teacher #2 provided Student’s math and reading instruction. *Id.* Special Education Teacher #2 attended all the April 2020 IEP Team meetings and shared feedback from Special Education Teacher #1. *Id.*

51. During the meetings, the IEP Team reviewed all evaluation results in depth, including the Evaluation and the IEE. *Exhibit E*, pp. 5-9. District staff indicated areas where they agreed with Private Evaluator and areas where they disagreed with Private Evaluator. *Id.*

52. Special Education Teacher #2 provided updated information on Student’s academics, indicating that Student was proficient or partially proficient in all areas on his report cards. *Id.* at pp. 6-7. Interim District assessments in reading and math indicated Student was performing at grade level. *Id.*

53. After a comprehensive review of the Evaluation and IEE, the IEP Team began to consider Student’s eligibility. *Id.* at p. 13. Student’s IEP Team did not dispute that Student had disabilities, namely ASD and ADHD (as well as other medical conditions). *Exhibit C*, pp. 7-9; *Interviews with Program Director and Third Grade Teacher*. And no one disputed that those disabilities affected Student’s executive functioning and social skills. *Exhibit C*, pp. 7-9; *Interviews with Program Director and Third Grade Teacher*. However, District staff questioned whether Student needed special education because of those disabilities. *Exhibit C*, pp. 7-9; *Interviews with Program Director and Third Grade Teacher*.

54. Throughout the meetings, Student’s Parents freely shared their concerns. *See Exhibit E*, pp. 4-21. For example, even though Student was performing well academically, Parents felt that Student still needed an adult escort to prevent eloping, prompting to stay on task, and services to improve his social skills. *Id.* at pp. 10, 14.

55. The District members of the IEP Team heard and considered Parents' concerns but did not agree. *Id.* at p. 15. For instance, regarding elopement, the District members indicated they had not witnessed this behavior at School. *Id.* at p. 13; *Interviews with Second Grade Teacher and Third Grade Teacher*. The District members felt that Student could receive the accommodations he needed—such as an adult escort during transitions—under a 504 plan. *Exhibit E*, at p. 15. In their view, Student did not require specialized instruction under the IDEA because he was performing at or above grade level and his other deficits (such as in pragmatic language) were not impeding his ability to perform at School. *Id.* at pp. 4-21; *Interviews with Program Director, Second Grade Teacher, and Third Grade Teacher*.

56. The IEP Team agreed that the Evaluation and IEE—taken together—were sufficiently comprehensive and noted that on the eligibility checklist. *Exhibit F*, p. 7. Ultimately, the IEP Team determined that Student satisfied only one of the three requirements for eligibility under ASD (for lack of friendships) and, as a result, found Student ineligible under ASD. *Exhibit E*, pp. 13-14, 17-18. The IEP Team also found Student ineligible under OHI and SLD. *Id.*; *Exhibit F*, pp. 7-10.

57. Student's IEP Team recognized that Student's disabilities—particularly autism and ADHD—affected Student's executive functioning and social skills, yet the IEP Team concluded that Student was not eligible because he could receive reasonable educational benefit from general education without specialized instruction. *Interviews with Program Director and Third Grade Teacher*. At that time, Student was performing at or above grade level. *Id.*

58. Following the meeting, the District issued a prior written notice ("PWN"). With extensive detail, the PWN explained that the IEP Team determined that Student "[could] receive reasonable educational benefit from general education, with accommodations and mental health support, but that his needs [did] not rise to the level of requiring specially designed instruction or preventing him from receiving reasonable educational benefit from general education." *Exhibit C*, p. 7. "[Student] [was] meeting or exceeding all grade level expectations, and while he [did] have some inconsistencies in his social communication and social interactions, he [was] largely successful and generally able to problem solve through these nuances without adult intervention." *Id.* at p. 8.

CONCLUSIONS OF LAW

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

Conclusion to Allegation 1: The District properly determined that Student was no longer eligible for special education and related services.

In the Complaint, Parents have asserted that the District erred when it determined that Student was no longer eligible for special education and related services.

To be eligible for special education under the IDEA, a child must: (1) have one of the listed disabilities, and (2) need special education and related services because of that disability. 34 C.F.R. § 300.8; *see also* ECEA Rule 2.08 (“*Children with Disabilities* shall mean those . . . persons who, by reason of one or more of the following conditions, are unable to receive reasonable benefit from general education.”) Thus, a qualifying disability alone does not make a child eligible for special education. 34 C.F.R. § 300.8; ECEA Rule 2.08. As a matter of policy, the CDE will not declare a student to be IDEA-eligible through a state complaint decision. Instead, if a state complaint investigation were to conclude that a school district’s eligibility determination was inconsistent with the IDEA, the CDE would instruct the school district to remedy the deficiencies and concerns noted in the decision and then reconsider the student’s eligibility.

The parties in this investigation do not dispute that Student has diagnoses of ASD and ADHD that are qualifying disabilities under the IDEA. The question, however, is whether Student needs special education because of those disabilities.

An analysis of the appropriateness of an eligibility determination involves two steps. First, the SCO examines whether the school district followed relevant standards and procedures in making the determination. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-6 (OSERS 2013). Under the second step, the SCO determines whether the eligibility decision was consistent with the data in the record. *Id.*

Adherence to Standards and Procedures

Accordingly, the SCO will begin by examining whether the District adhered to applicable IDEA procedures regarding reevaluations and eligibility determinations. The IDEA has specific and extensive procedural requirements governing how school districts reevaluate students and determining ongoing eligibility. *See* 34 C.F.R. §§ 300.304-306. The procedures detailing the scope of a reevaluation are relevant here.

As part of a reevaluation, an IEP team must:

- (1) Review existing evaluation data on the child, including—
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or state assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related service providers.

34 C.F.R. § 300.305(a)(1).

In this investigation, Parents have specifically alleged the District failed to consider Parents' input, the IEE, and observations by teachers and related service providers. The SCO will address each of these in turn.

Throughout the April 2020 IEP Team meetings, Parents expressed their concerns about Student's needs. (FF # 55.) For example, Parents expressed concerns over Student's deficits in pragmatic language, his need for prompting, his risk of elopement, and his lack of friendships during the meetings. (*Id.*) The District members of the IEP Team considered and responded to each of these concerns. (FF #s 55, 56) With regard to elopement, Student's teachers had not witnessed any elopement (or, even, attempted elopement) at School. (FF # 55.) Nonetheless, the District members acknowledged that an adult escort could be provided to Student as an accommodation under a 504 plan. (*Id.*)

Next, Parents alleged that the IEP Team failed to consider the IEE and, instead, relied upon the District's Evaluation. Though a school district must consider the results of an IEE, the district is not obligated to accept the evaluator's recommendations or conclusions. *T.S. v. Bd. of Educ. of the Town of Ridgefield*, 10 F.3d (2d Cir. 1993); *G.D. v. Westmoreland Sch. Dist.*, 17 IDELR 751 (1st Cir. 1991). The evidence in the record makes clear that the IEP Team considered the IEE in conjunction with the District's Evaluation. (FF # 51.) The IEE was discussed in depth across several days of the meeting. (*Id.*) That the IEP Team ultimately chose not to follow all of Private Evaluator's recommendations has no bearing on whether or not the IEP Team considered the IEE.

Finally, Parents argued the IEP Team failed to consider input from Special Education Teacher #1 during the April 2020 IEP Team meetings. Special Education Teacher #1 was not invited to attend the meetings. (FF # 50.) At that time, Special Education Teacher #1 was providing Student with 30 minutes of direct writing instruction per week. (FF #s 35, 36, 50.) Special Education Teacher #2—who did attend the meetings—had been providing Student's reading and math instruction since September 2019. (*Id.*) Regardless, the record (which includes video recordings of the meetings and notes from the District) demonstrates that Special Education Teacher #2 shared information from Special Education Teacher #1 during the meetings. (*Id.*) The IEP Team considered this information in determining Student's eligibility, even if Special Education Teacher #1 was not present.

Comprehensiveness of Evaluation and IEE

Additionally, the IDEA requires a reevaluation to be sufficiently comprehensive to determine whether a student needs specialized instruction as a result of his disabilities. 34 C.F.R. § 300.304(c)(6). For students with autism, school districts should use multiple methods of collecting information (such as interviews, observations, and formal assessments) and collect information from multiple sources (such as family members, teachers, and childcare providers). *Guidelines for the Educational Evaluation of Autism Spectrum Disorder* at p. 20 (CDE Aug. 2020)

(hereinafter “Guidelines”), *available at* https://www.cde.state.co.us/cdesped/asd_guidelines. “Which assessments and the amount of information collected will be determined on a case-by-case basis.” *Id.* at p. 21. The Guidelines identify assessments and tools that may be used to collect information. *See id.* at pp. 44-50.

Here, the IEP Team determined Student’s eligibility for special education using both the Evaluation and the IEE. (FF # 51.) As a whole, the SCO finds that these two evaluations were sufficiently comprehensive. Student was evaluated in the areas of communicative status, general intelligence, academic performance, social emotional status, health, and motor abilities. (FF # 12.) The Evaluation and the IEE used a combination of formal assessments, informal assessments, interviews, and observations to identify Student’s needs. (FF #s 13-32, 38-46.) Many of the tools used in the Evaluation—such as the CELF-5, BASC-3, BRIEF-2, and SRS-2—are recommended by the Guidelines. (FF #s 13-32.) Additionally, the IEP Team itself determined that the evaluations were sufficiently comprehensive, noting as much on the eligibility checklist. (FF # 56.)

Overall, the SCO finds and concludes that the District adhered to IDEA procedural requirements regarding the scope of a reevaluation.

Consistent with Student-Specific Data

The SCO next considers whether the eligibility determination was consistent with the data in the record. The disagreement over Student’s eligibility centered on Student’s ability to access general education without specialized instruction. In determining whether ASD impacts a student’s educational performance, the Guidelines direct IEP teams to ask:

Are there academic challenges, such as reading comprehension or in the area of writing?

Do the social/emotional challenges interfere with working in small groups, participating in classroom activities, or healthy relationships?

Are rigid patterns of thinking and/or behavior affecting learning or the school environment?

Guidelines, p. 22.

Based on Student’s academic performance, the IEP Team determined that Student could receive reasonable educational benefit from general education alone. (FF #s 54-57.) At the time, Student was performing at grade level in all areas. (*Id.*) Writing presented the greatest challenge for Student, but, even then, Student was partially proficient at grade-level writing. (FF # 36.) During his specialized reading and math instruction, Student was performing above grade

level and working with fourth and fifth grade students. (FF #s 36, 43.) Special Education Teacher #2 questioned whether Student even needed the instruction. (FF # 43.) Additionally, Student's results on the WIAT-III, measuring his educational achievement, indicated he fell within the average or above average range compared to his same grade peers. (FF # 20.) Diagnostic tests confirmed this result. (FF # 21.)

However, the IEP Team acknowledged that Student had some deficiencies. Specifically, Student had some deficiencies in his executive functioning skills and his social skills. (FF # 52.) However, Student's social-emotional challenges did not interfere with him working in small groups or participating in classroom activities. Indeed, his teachers and service providers reported that Student engaged in small groups and joined in classroom activities. (FF #s 36, 37.) These deficiencies did not prevent Student from receiving a reasonable benefit from general education. (*Id.*) All members of the IEP Team agreed that, at times, Student needed prompting to stay on task. (*Id.*) Similarly, they agreed that Student would benefit from ongoing mental health services to develop social skills. (*Id.*) Prompting and social skills groups, however, are not specialized instruction and can be offered to Student under a 504 plan instead of an IEP.

Because the District properly determined that Student was ineligible for special education and related services, no IEP was required. Consequently, Student has not been denied FAPE under the IDEA, and no violation of the IDEA has occurred.

Conclusion to Allegation 2: The IEP Team meetings held on April 15, April 16, and April 24 contained all required IEP Team members, consistent with 34 C.F.R. § 300.321.

In their Complaint, Parents contend the District convened IEP Team meetings on April 15, April 16, and April 24 without all required IEP Team members. Specifically, Parents assert that Special Education Teacher #1 was a required team member, even though Special Education Teacher #1 was not invited to and did not attend the April 2020 IEP Team meetings.

The IDEA requires an IEP team to include:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) at least one special education teacher of the child;
- (4) a representative of the school district who:
 - i. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

- ii. is knowledgeable about the general education curriculum; and
 - iii. is knowledgeable about the availability of resources of the public agency;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6); and
- (6) At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (7) whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a). The IDEA, therefore, differentiates between mandatory and discretionary members of an IEP team. *See Pikes Peak BOCES, 68 IDELR 149 (SEA CO 4/19/16).*

The SCO finds and concludes that the IEP Team meetings held on April 15, April 16, and April 24 contained all required members of an IEP Team, consistent with 34 C.F.R. § 300.321(a). The IDEA only requires “not less than one special education teacher of the child.” 34 C.F.R. § 300.321(a). At the time of the meetings, Special Education Teacher #2 was providing the majority of Student’s specialized instruction. (FF # 49.) Special Education Teacher #2 attended all of the meetings (and even shared feedback from Special Education Teacher #1). (*Id.*) Because at least one of Student’s special education teachers attended the meetings, Special Education Teacher #1’s attendance was not required. All required IEP Team members were present at the meetings on April 15, April 16, and April 24. As a result, no violation of the IDEA occurred.

REMEDIES

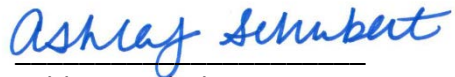
The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

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 CFR § 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 11th day of June 2021.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-11

- Exhibit 1: Prior written notice
- Exhibit 2: 2018 IEP
- Exhibit 3: IEE

Response, pages 1-14

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Prior written notices
- Exhibit D: Notices of meeting
- Exhibit E: Meeting notes
- Exhibit F: Evaluations and assessment results
- Exhibit G: Progress monitoring reports and data
- Exhibit H: Grade and attendance reports
- Exhibit I: Email correspondence
- Exhibit J: District calendar
- Exhibit K: District policies
- Exhibit L: Blank
- Exhibit M: Verification of delivery

Reply, pages 1-4

- Exhibit 4: Email correspondence
- Exhibit 5: Email correspondence
- Exhibit 6: Email correspondence
- Exhibit 7: Email correspondence
- Exhibit 8: Email correspondence
- Exhibit 9: Email correspondence
- Exhibit 10: Email correspondence
- Exhibit 11: Email correspondence
- Exhibit 12: Email correspondence
- Exhibit 13: Email correspondence
- Exhibit 14: District ASD Interview
- Exhibit 15: Hospital Assessment

Telephonic Interviews:

- Second Grade Teacher: May 21, 2021
- Third Grade Teacher: May 21, 2021
- Exceptional Student Services Program Director: May 19, 2021
- Speech Language Pathologist: May 21, 2021

- School Psychologist #1: May 19, 2021
- Parents: May 25, 2021