

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 2022:528**  
**Boulder RE-1J, St. Vrain**

**AMENDED DECISION**

**INTRODUCTION**

On June 23, 2022, the Parent (“Parent”) 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-level complaint (“Complaint”) against Boulder RE-1J, St. Vrain (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from June 23, 2021 through June 23, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. After determining that Student’s behavior was not a manifestation of his disability, failed to continue providing educational services to enable Student to progress toward meeting his IEP goals, and failed to conduct a functional behavioral assessment (“FBA”) or provide behavior intervention services so that the behavior would not recur, in violation of 34 C.F.R. § 300.530(d).

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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.

2. Failed to permit Parent to inspect and review education records relating to Student, in violation of 34 C.F.R. § 300.613.
3. Failed to provide Parent with an IEE without undue delay or inappropriate conditions, in violation of 34 C.F.R. § 300.502.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is thirteen years old and, during the 2021-2022 school year, attended seventh grade at a District school ("School"). *Interview with Parent; Exhibit A*, p. 1. Student and his family currently reside within the boundaries of District. *Exhibit A*, p. 1. Next year, he will attend a charter school in District. *Interview with Parent and Special Education Director ("Director")*.
2. Student is a friendly, popular, active child who enjoys skating and playing outside with friends. *Interviews with Parent and Special Education Teacher/Case Manager ("Case Manager")*. He is a hard worker with a relative strength in math. *Interviews with Parent and Case Manager; Exhibit A*, p. 3.
3. Student is identified as a child with a primary disability of Other Health Impairment ("OHI") and a secondary disability of Specific Learning Disability ("SLD") in written expression. *Exhibit A*, p. 1; *Exhibit D*, pp. 1-3. Student struggles with many areas of executive functioning, including impulsivity, distractibility, organization, and prioritization. *Exhibit A*, p. 12. Throughout the 2021-2022 school year, Student was involved in several smaller and larger behavioral incidents that resulted in various consequences, including removals from the classroom setting. *See Exhibit F*, p. 2 and *Exhibit D*, pp. 14-15.

#### **B. September 2021 Suspension**

4. During in-school suspension ("ISS") in the District, students are provided a separate place to work and teachers and other staff members will check in with them periodically. *Interview with Executive Director of Special Education ("Executive Director")*. For students with IEPs, services are provided based on individual needs and what is in their IEPs. *Id.* Service providers check on them during ISS and may provide additional services after school; in some cases, students may go to special education classes to access services and then return to ISS. *Id.* Students with and without disabilities serve ISS in the same place. *Interview with Director*.
5. During ISS at School, Students work at a carrel in an open room in the main office. *Interview with Principal of School ("Principal")*. Along with carrels, the space contains a bathroom and

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

an exercise bicycle, which students are free to use. *Id.* Office staff check on students as they come and go, and they usually try to take students outside. *Id.* Special Education teachers check on their students during ISS. *Id.*

6. When Case Manager's students are serving ISS, he brings them their work and makes sure they have a plan to follow when completing that work, especially for students who struggle with executive functioning. *Interview with Case Manager.* He makes sure students have access to any necessary accommodations like a calculator or voice to text and communicates with all the students' teachers to make sure work provided is accommodated as necessary. *Id.* The time he spends with students in ISS is determined by the needs in their IEP and the time he has left after meeting the needs of his other students. *Id.*
7. On September 14, 2021, Student was assigned one day of ISS and two and a half hours of community service for vandalizing School property. *Exhibit G*, p. 2. School assigned a second day of ISS because of Student's behavior during the first day of ISS. *Id.*
8. Student's then-current IEP was from February 2021 ("February IEP") and identified him as a student with a SLD impacting reading and writing. *Exhibit A*, pp. 19-21. The February IEP included 13 accommodations, including "sentence stems," "opportunities for movement," "multiple breaks," "audio books or audio read when available," "voice-to-text for assignments" and "use of Math Manipulatives when available." *Id.* at p. 24.
9. To support Student in executive functioning and writing, Student received a mix of direct, small group instruction outside of the general education classroom and indirect, push-in support inside the general education classroom as follows: 225 minutes per week ("MPW") of direct special education instruction outside the general education classroom and 100 MPW of indirect special education instruction inside the general education classroom. *Id.* at p. 26. Service minutes are written in weekly increments so that daily services can be adjusted to compensate for schedule changes or fluctuations in need. *Interview with Case Manager.*
10. During ISS, Student worked at a carrel in the main office, where Principal and other front office staff could check on him as they walked through. *Interview with Principal.* Student was given coursework to complete, and Case Manager checked on him. *Interview with Principal.* Each check-in lasted 10-15 minutes. *Id.*
11. During ISS, Student was allowed to keep his iPad so that he would have access to accommodations like voice to text. *Interview with Case Manager.* Case Manager made sure he had access to all general education course work and checked on him at least three times a day, during both planning periods and his lunch break. *Id.* Combined, the daily check-ins lasted 20-25 minutes and Student was encouraged to email Case Manager if any questions came up. *Id.* During one of the two days, Student went to his special education class with Case Manager. *Id.*

### **C. October 2021 Suspension**

12. On Wednesday, October 13, 2021, Student was suspended for five days. *Exhibit G*, p. 2. During this suspension, Student did not receive any special education services. *Exhibit 4*, p. 1.
13. Parent was having a hard time understanding what transpired and requested copies of the witness statements, but Principal told her they were confidential. *Id.*

### **D. Fall 2021 Reevaluation and IEP**

14. During the periods of remote learning due to the COVID-19 global pandemic, Parent observed how much Student was struggling to sit still and focus, follow directions and read aloud. *Interview with Parent*. In the spring of 2021, she began talking to Case Manager about moving up Student’s triennial reevaluation that was due the following spring. *Id.* A week before the October 13, 2021 incident, Case Manager reached out to Parent about their plan to move up the reevaluation. *Exhibit I*, p. 11. In addition to the September and October suspensions, Case Manager told Parent that Student had been struggling with some behaviors in September. *Id.*
15. District agreed to evaluate general intelligence, communicative status, academic performance, and social and emotional status, and sent Parent Prior Notice & Consent for Reevaluation (“October Consent”) on October 20, 2021. *Exhibit C*, p. 10. Both Parents signed the October Consent the day it was sent. *Exhibit L*, p. 11. District conducted several formal evaluations over the following weeks (“The Evaluation”). *Exhibit E*, p. 16.
16. Evaluations of Student’s behavior and executive functioning revealed concerns with executive functioning, behavioral functioning, and impulsivity in multiple settings. *Exhibit E*, pp. 23-25. A District Instructional Coach (“Instructional Coach”) completed brief observations of Student in structured class settings and found Student was frequently off task, more so than the comparison peer. *Id.* at pp. 20-21. Despite identifying seeking attention from peers as the antecedent for all behaviors, Instructional Coach concluded that because there were “no recurring behaviors in the four classes observed, there are no targeted behaviors” to work on through a Behavior Intervention Plan (“BIP”). *Id.*
17. The eligibility determination meeting (“Eligibility Meeting”) was held virtually on December 6, 2021. *Exhibit D*, p. 1. Parents, a family friend who happens to be a school psychologist (“Advocate”), Case Manager, School’s psychologist (“School Psychologist”), a Speech Language Pathologist, a general education teacher, Coordinator and Instructional Coach—collectively the multidisciplinary team (“MDT”)—attended the Eligibility Meeting. *Exhibit L*, p. 3. After reviewing the evaluations, the MDT found Student eligible under the categories of OHI and SLD in written expression, with the former being primary. *Exhibit D*, pp. 1-3.
18. Student’s IEP (“December IEP”) was drafted throughout the December 6, 2021 meeting. *Interview with Case Manager*. The December IEP included all 13 accommodations from the

February IEP, including “front-loaded, content vocabulary at start of each unit,” “graphic organizers (transitioning more to checklist formats),” “opportunities for movement,” “ruler or index card to support tracking when reading,” and “use of Math Manipulatives when available.” *Id.* at p. 14. The December IEP included one new accommodation to support Student’s newly identified difficulties with executive functioning, “chunking assignments to complete in stages.” *Id.*

19. Under the December IEP, to support self-determination and written expression, Student received a mix of direct, small group instruction outside of the general education classroom and direct, push-in support inside the general education classroom as follows: 120 minutes per week (“MPW”) of direct special education instruction outside the general education classroom and 100 MPW of direct special education instruction inside the general education classroom. *Id.* at p. 16.

#### **E. The Independent Educational Evaluation (“IEE”) Request**

20. When parents request an IEE, someone from the administrative office, usually Director, responds. *Interviews with Executive Director and Director*. Parents are sent an IEE request form (“Request Form”), a list of potential providers, District’s IEE procedures and a blank release of information (“ROI”) so District will be able to secure a contract with the selected evaluator. *See Exhibit M; Interview with Director*.
21. The email template tells parents District will consider an IEE request if the parent completes the Request Form. *Exhibit M*, p. 1. The procedures require parents to submit a written request that includes the “components of the District’s evaluation with which they disagree and the reasons for their disagreement.” *Id.* at p. 2. They also require that the IEE be completed and made available to District within 45 days of District’s agreement to provide an IEE. *Id.* at p. 3.
22. The Request Form asks parents to say which evaluation they disagree with, what kind of IEE they want, the name of the evaluator they have selected (along with examiner’s qualifications if they are not using a provider on District’s approved list), an estimated cost of the evaluation and any justification for deviating from District’s IEE criteria. *Id.* at p. 5. The purpose of the Request Form is to help identify the right evaluator, as not all evaluators conduct assessments in all areas. *Interview with Executive Director*. If parents have trouble completing the request form or leave sections blank, District works with them to get it filled out. *Interview with Director*.
23. District does not generally follow up with Parents after sending the IEE paperwork. *Interviews with Executive Director and Director*. Although there can be delays related to difficulties identifying a provider, parents have ultimately always submitted necessary paperwork. *Id.*
24. Immediately after the Eligibility Meeting, School Psychologist sent Parent the eligibility documents to sign via Adobe Sign and followed up three days later, on December 9, 2021,

when Parents still had not signed. *Exhibit I*, pp. 92-93. Parent declined to sign, explaining that she “left the meeting on Monday very unsettled,” and feeling that the team dismissed Student’s academic difficulties because of ADHD. *Id.* She asked about assessments in dyslexia and phonological processing. *Id.* School Psychologist copied in Coordinator and Instructional Coach to answer Parent’s questions and asked Parent what specifically she thought Student still needed. *Id.* Parent never got a response to her concerns about the Evaluation. *Interview with Parent.*

25. Almost a month later, on January 5, 2022, Parent followed up with District and requested an IEE as no one had responded to her concerns. *Exhibit I*, pp. 91-92. She requested testing for dyslexia and phonological processing deficits. *Id.* She raised concerns about the thoroughness of the communication testing and requested assessment of his psychological processing, language processing and central auditory processing. *Id.*
26. District responded on January 6, 2022 by sending Parent the paperwork to formally request an IEE. *Id.* at p. 94. Director sent Parent the Request Form, a blank ROI and a list of approved evaluators and directed Parent to submit the paperwork to Director once it was completed. *Id.* Director also issued a standalone PWN telling Parent she had to complete the attached forms before District would “consider and approve [her] IEE request.” *Exhibit C*, p. 2.
27. Parent immediately started calling providers, but waitlists were long, with openings in March or April. *Interview with Parent.* Parent’s father died [in January]
28. and she thus put her search for an evaluator on hold. *Id.* Parent resumed calling potential evaluators in February and completed and signed the Request Form on February 23, 2022. *Exhibit E*, p. 43. Parent recalled initially trying to submit the request form at the end of February, but neither District nor Parent provided evidence of such a communication. *Interview with Parent.* Director did not receive anything from Parent before March. *Interview with Director.* The SCO finds that Parent did not submit the signed request in February.
29. No one from the District followed up with Parent about the IEE in January or February. *Interviews with Parent and Director.*

#### **E. March 2022 Manifestation Determination Review**

30. If a student will be removed for disciplinary reasons for more than 10 days in a school year, District decides what services the student needs to continue making progress in general education and on their IEP goals at a Manifestation Determination Review (“MDR”) meeting. *Interview with Director.* Students at School cannot return from suspension until reentry meetings and any required MDRs have been held. *Interview with Principal.*
31. On Monday, March 7, 2022, Student was suspended for three days. *Exhibit G*, p. 1. At that point, Student had already served two days of ISS and five days of OSS. *Id.* at p. 2. With the

additional three days of OSS, District determined that Student had reached ten days of removal from his educational setting, triggering a “manifestation hearing” (“March MDR”). *Exhibit I*, p. 27. Although the suspension was over, Student was “out of school one additional day due to the scheduling of the MDR/re entry meeting.” *Exhibit D*, p. 12; *Interview with Parent*.

32. During this four-day suspension, Case Manager provided assignments to work on and prioritized what most needed to be completed. *Interview with Case Manager*. He also told Student to email with questions. *Id.*
33. Although Parents disagreed, indicating the behavior was impulsive, the MDR determined that the behavior was not a manifestation of Student’s disability or a result of a failure to implement the IEP. *Exhibit D*, p. 11. Although the behavior was determined not to be a manifestation of Student’s disability, he was returned to his placement at School. *Id.* at p. 12.
34. During the meeting, Parents reiterated their request for an IEE and requested additional social emotional testing, including an FBA and Behavior Assessment System for Children, Third Edition. *Id.* at p. 11. District had not yet received a response to the IEE paperwork that was sent to Parent on January 6, 2022. *Id.* District agreed to review and approve the IEE paperwork, once completed, and to send a consent for re-evaluation to consider Student’s social emotional needs. *Id.* at p. 12.

#### **F. First Records Request**

35. If parents ask for a limited number of specific records, like attendance records or copies of IEPs, school staff will provide those themselves. *Interviews with Executive Director and Director*. If parents submit a more comprehensive request for a student’s complete record, they are directed to make that request through District’s website. *Interview with Director*. If parents are requesting IEPs or evaluation reports before a special education meeting, that is generally something school staff can provide quickly. *Interviews with Executive Director and Director*. School staff are trained to forward any other records requests to someone in the special education office. *Interview with Director*.
36. Principal aims to provide requested records as quickly as possible, usually within 24-48 hours. *Interview with Principal*. Although protocol is for records requests to go through the registrar, Principal aims to provide the records quickly and directly. *Id.* If the records require redaction, then they must be sent to the General Counsel’s office before they can be provided. *Id.*
37. District does not have any policies or procedures specific to records requests for special education students because District has information about records requests on its website and special education staff have been told that parents get access to IEPs and any related records whenever they ask. *Interview with Executive Director*. District’s policy on records requests, JRA/JRC (Revised March 10, 2021), and the related regulation, JRA/JRC-R, do not

contain directives regarding providing requested records in advance of IEP meetings or hearings. *See Exhibit H*, p. 150. According to District regulations, a parent seeking to review student records should submit their request to the school principal, who shall provide an opportunity to inspect and review the records within 45 days of the request. *Id.* at p. 156.

38. On March 9, 2022, before the March MDR, Parent emailed Principal to request documentation of the current suspension, along with “copy’s [sic] of all of [Student’s] educational records including attendance, cumulative records, health records, IEP records, disciplinary records, counseling records, and testing.” *Exhibit I*, pp. 28. She also requested Progress Reports and “a detailed behavior report of what led to this current suspension and all suspension documents from this school year.” *Id.* In response, that same day, Principal provided notice of the March MDR, a record of Student’s disciplinary incidents, attendance records, a copy of Student’s IEP and a copy of the procedural safeguards, and Principal also offered to talk at the meeting about any additional records Parent wanted. *Id.*
39. During the MDR the next day, no one followed up with Parent about the other records she had requested. *Interview with Parent*. District indicated it had fulfilled Parent’s request because she did not reiterate it during the MDR meeting. *Interviews with Principal and Director*. No one asked her if she had all the records she wanted. *Id.* The SCO finds that Parent was not provided with Student’s health records, IEP records besides the most recent IEP, disciplinary records beyond the behavior detail report, counseling records, testing, Progress Reports or anything else contained in “all educational records.”

#### **G. IEE Approval**

40. On the evening of Friday, March 11, 2022, after the March MDR, Parent emailed Principal, Case Manager, Director and Coordinator to request the documentation from the March MDR and reiterated her request for District to conduct social emotional assessments. *Exhibit I*, p. 55. First thing in the morning on Monday, March 14, Director sent Parent the March MDR, Consent for Reevaluation (“March Consent”), procedural safeguards, Request Form, a blank ROI and District’s list of approved IEE providers. *Id.* at pp. 56-57.
41. On Friday, March 18, 2022, Parent sent back a blank email and then another blank email with “Blank Release of Information” attached. *Id.* at pp. 57-58. Parent resent the ROI on Sunday, March 20, adding “[h]ope this sent completed this time.” *Id.* at p. 66. Director confirmed that she received a completed ROI and told Parent she also needed the Request Form, or specifically the areas Parent wanted the evaluator (“Evaluator 1”) to consider. *Id.*
42. The next day, Parent sent the Request Form, along with a screenshot of the Request Form as she was unsure why District kept getting blank forms. *Id.* at p. 67. She explained that Evaluator 1 was the only office of eight she called who could get Student in quickly and that she had also found an appointment one week later at an evaluator who was not on District’s list. *Id.* When Parent asked if there was anything else District needed, Director did not follow up



about the unsigned March Consent. *Id.* at pp. 55-73. Parent thought she had signed everything District sent because they had historically followed up about any unsigned documents. *Interview with Parent.*

43. On Thursday, March 24, two days later, Parent told Director she was concerned about using Evaluator 1 because she previously worked for District and mentioned using another evaluator (“Evaluator 2”) instead. *Exhibit I*, p. 68. On Friday, March 25, Director told Parent Evaluator 1 does not work for the District and that Evaluator 2 “does not meet our criteria and has not signed our contract when presented to him in the past.” *Id.* at p. 70. She told Parent District would have to review and approve any evaluators not on the approved list before making an appointment. *Id.* Parent asked, that same day, what criteria Evaluator 2 did not meet so that she could understand how to screen the people she was calling. *Id.*
44. On Monday, March 28, Director sent Parent District’s blank IEE Contract and told Parent she could review it with Evaluator 2, but he had previously been unwilling to sign it. *Id.* at p. 71. She did not mention criteria he did not meet or provide Parent with District’s criteria. *Id.* Later that evening, Parent confirmed that a psychologist at Evaluator 2’s office (“Evaluator 3”) would be willing to sign the contract and complete the evaluation and listed Evaluator 3’s credentials. *Id.* at p. 72. On Tuesday, March 29, Director agreed to work on completing a contract with Evaluator 3 as soon as Parent submitted an ROI for the new office. *Id.* Parent submitted the new ROI the next day and followed up the day after asking how long it would take to approve the IEE. *Id.* at p. 60. On March 31, 2022, Director told Parent the IEE was already approved. *Id.* at p. 61.
45. Parent and District received the IEE on May 23, 2022. *Interview with Director.* The parties were scheduled to meet August 8, 2022 to discuss the IEE results. *Id.*

#### **H. April MDR**

46. As Parents were leaving an unrelated meeting on April 14, 2022, Principal told them that School was investigating an allegation that Student had harassed a peer. *Interview with Parent.* Confused, Parent asked to see the report but was told it was confidential. *Id.* Because the record was not redacted, Principal could not give it to Parent and instead read it to her. *Interview with Principal.* Having since received the statements, Parent indicated that Principal did not read it to her, but just gave her a brief summary that did not contain all the relevant information. *Interview with Parent.*
47. On April 19, 2022, School completed its investigation and Principal imposed a one-day OSS on April 22, 2022, bringing Student to a total of 10 days of OSS. *Exhibit I*, p. 77. During this one-day suspension, Case Manager met with Student virtually in the afternoon to go over the assignments Student would need to complete. *Interviews with Parent and Case Manager.*

48. The MDR (“April MDR”) was held on April 25, 2022, although the paperwork is dated April 21, 2022. *See Exhibit D*, p. 14; *Interview with Coordinator*. Parents, Principal, Coordinator, Case Manager, and a School Psychologist from the high school attended in person while Advocate participated virtually. *Interviews with Parent, Case Manager and Coordinator*.
49. Although Parents disagreed, the April MDR concluded that the behavior was not a manifestation of Student’s disability or a failure to implement the IEP. *Exhibit D*, pp. 15-16. Nevertheless, Student was returned to his placement at School with the services as outlined in the December IEP. *Exhibit D*, p. 16.
50. During the April MDR, Parent asked Case Manager why he had not spoken with Student about the behavior that resulted in his suspension. *Interview with Parent*. Case Manager told Parent he did not work on Student’s behavior goal during the suspension because he was directed to only provide Student with support around academics and his other goals. *Interview with Case Manager*. Coordinator told Parents and Advocate that she told Case Manager not to work on that goal. *Interview with Parents*. Based on follow up questions, Parent understood that to mean Case Manager was not implementing that goal. *Id.* Case Manager continued implementing Student’s behavior goal at all times except during the one day of suspension. *Interview with Case Manager*.
51. The April MDR considered that an IEE was underway. *Exhibit D*, p. 16. Student participated in IEE testing the day he was suspended. *Interviews with Parent and Case Manager*. Parents also reiterated their request for social emotional testing, including an FBA. *Exhibit D*, p. 16. District agreed to resend the March Consent. *Id.*
52. Coordinator resent Parent the March Consent on April 25, 2022. *Exhibit I*, p. 31. Parent responded on April 26, 2022 that she had received the March Consent after the last MDR but she was unsure where to sign it, as she only saw a signature line to confirm that she had been provided a copy of the procedural safeguards. *Id.* In the same email, Parent requested a copy of the FBA that the April MDR said was conducted in December and a copy of the “signed Assessment Plan” that includes consent for the FBA. *Id.* at p. 32. Coordinator confirmed receipt of that email but did not clarify how or where to sign or send any records. *Id.*

### **I. Additional Records Requests**

53. On May 14, 2022, after Parent followed up on her April 26 email to Coordinator, Executive Director told Parent “a majority of this information can be found in the State Complaint information” that was shared on May 3, 2022. *Id.* at p. 40. She did not tell parent where or how to sign the March Consent, instead telling Parent that District could not move forward with an FBA. *Id.* Parent pointed out that District’s Response to the state complaint was missing several of her emails and that other information appeared to be left out. *Id.* at p. 41. She also asked for clarification on whether District was willing to conduct an FBA given conflicting responses she received. *Id.* at p. 42.

54. In a May 21, 2022 email, Parent again requested all of Student's educational records as well as progress monitoring data from the current school year, documents showing how Student's Progress Reports were delivered, and documents showing how all of Student's teachers were given a copy of his IEP. *Exhibit 4*, p. 3.
55. On May 24, 2022, Director told Parent she had requested discipline, attendance and IEP records in March and received those at that time and that all of Student's special education records were provided to Parent on May 2, 2022 in response to a state complaint she filed. *Exhibit 1*, p. 52. She also sent Parent a new consent for reevaluation ("May Consent") so they could consider the IEE results but stated they would not be conducting additional testing. *Id.* She provided Parent information about how Student's progress is tracked and shared some data. *Id.* at pp. 52-53.
56. Parent responded on June 9, 2022 that she had requested "all educational records" and still had not received them. *Id.* at p. 47. She then specifically requested:
- all records, reports, IEPs, forms related to the IEP (meeting notifications, assessment plans, and other related forms), copies of communication emails, protocols, and any other records related to the IEP, dating back 3 years
  - all cumulative records and any and all paperwork in his cumulative [sic] including registration forms, proof of residency, birth certificate
  - any and all health records
  - any and all discipline files and related paperwork including communications sent to staff and family
  - any and all electronically transmitted communication to staff and parents
  - all electronic records including test records, discipline files, and any other electronic records.

*Id.*

57. She reiterated her request for all investigations regarding Student's disciplinary incidents and specifically requested several types of records related to an enumerated list of incidents. *Id.* at pp. 48-50. She repeated her requests for copies of the email sending the December and March progress reports to Parent and copies of consent for the FBA that was conducted in November along with all data from that FBA. *Id.* at p. 51.
58. She also requested copies of the CDE code that put Student's IEP in stay put as well as all communications to or from Coordinator about that issue. *Id.* at p. 50. She asked for documentation as to why Psychologist was included in one meeting notice and removed from another. *Id.* at p. 51. Finally, she requested internal emails regarding the credentials of the individual whom Parent hired to conduct a BRIEF she submitted and regarding consideration of conducting an FBA or creating a BIP after the March and April MDRs. *Id.*

59. An attorney for the District (“District Counsel”) responded on June 17, 2022. *Id.* at p. 45. Like Director, he told Parent that Principal provided the records she requested in March and that she received Student’s entire special education record in response to her state complaint. *Id.* District Counsel treated Parent’s request as a new one, and said District had 45 days to respond. *Exhibit I*, p. 45. He told Parent any additional records related to the incidents she listed would be provided once redacted. *Id.* He told Parent she had already received Student’s complete special education record, so nothing more would be produced. *Id.* Finally, he declined to produce any emails or explanations requested by Parent as they were not “educational records as defined by FERPA.” *Id.* A March Progress Report exists but he told Parent there was not one (although he was correct that there is no transmittal email as it was not shared with Parent until District responded to her initial state complaint). *Compare Id.* at p. 45 and *Exhibit F*, pp. 1-2.
60. Parent received additional records from the District on July 11, 2022, in Response to this Complaint, including disciplinary records such as witness statements. *See Exhibit G.* In response to her records request, Parent received a link to additional records from District on July 22, 2022. *Interview with Parent.* However, she has been unable to open the records as she is notified that she lacks the necessary permissions, which she has requested several times. *Id.* As of August 9, District has not responded to emails from Parent regarding her difficulties opening the records sent on July 22, 2022. *Id.*
61. The SCO finds that additional records provided to the SCO and Parent on May 3, 2022, in response to a prior state complaint, did not contain Student’s complete educational record or his complete special education record from District (for instance, copies of IEPs from before 2021 were not included). They did however contain The Evaluation and the October Consent Parent requested after the April MDR. The SCO also finds that none of the records Parent had received as of August 9, 2022, included Student’s complete special education record, health records, testing data, investigatory reports, or investigation closure letters.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District did not fail to provide educational services because Student was not removed from his placement for more than 10 cumulative school days and District was willing to conduct an FBA. Thus, District did not violate 34 C.F.R. § 300.530(d).**

Parent’s first concern is that after removing Student from his current placement for more than 10 cumulative school days, District did not provide him with educational services designed to enable him to continue to participate in the general education curriculum and progress towards meeting his goals. Parent’s second concern is that Student did not receive an FBA.

### **A. Provision of Educational Services**

If a child with a disability has been removed from his placement for 10 school days during the same school year, “during any subsequent days of removal the public agency must provide services” to “enable the child to continue to participate in the general education curriculum” and to progress toward meeting the goals in his IEP. 34 C.F.R. §§ 300.530(b)(2), (d).

The SCO must determine if Student was removed from his placement for more than 10 school days during the 2021-2022 school year. An ISS is not considered to be a removal contemplated under 34 C.F.R. § 300.530 “as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child’s IEP, and continue to participate with nondisabled children to the extent they would have in their current placement.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,715 (2006); *See also Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). Generally, if a student receives the services and supports required in his IEP and continues to participate in the general curriculum, ISS is not considered a day of removal. *See, e.g. Jefferson County Bd. of Educ.*, 75 IDELR 178 (SEA AL 2019) (holding that transition placement did not count toward total removal for purposes of IDEA’s disciplinary safeguards where student could participate in the curriculum and with typical peers and received the services in his IEP) and *China Spring Independent School District*, 110 LRP 36343 (SEA TX 04/30/10) (determining that a school district met its FAPE obligations to a student in ISS who received appropriate assignments and accommodations during ISS).

Here, Student served two days of ISS followed by a five-day OSS, a four-day OSS and a one-day OSS, amounting to a total of 10 days of OSS. (FF #s 7, 12, 30 and 46.) During ISS, Student had access to many of his accommodations through his iPad, received 20-25 minutes per day of direct, one-on-one support from Case Manager and attended his special education class with Case Manager on one day. (FF #s 8 and 11.) At that time, Student’s IEP called for 225 MPW of specialized instruction outside the general education classroom, approximately 45 minutes per day, and 100 MPW of specialized instruction inside the general education. (FF # 9.) Although Student did not attend his special education class on one day, 20-25 minutes of one-on-one services from Case Manager likely equates to or exceeds 45 minutes of group services and Case Manager would have been able to provide Student’s push-in supports during other days that week.

For these reasons, the SCO finds that the two days of ISS did not count as a removal for purposes of 34 C.F.R. § 300.530(b)(2). This means Student was removed from his current placement for exactly 10 school days during the 2021-2022 school year. The SCO thus finds and concludes that he was not entitled to services during any of his days of OSS and there was no violation of 34 C.F.R. §§ 300.530(b)(2), (d).

## **B. Receipt of an FBA**

If a student is removed from his or her placement pursuant to 34 C.F.R. §§ 300.530(c), (g), the student must “[r]eceive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.” 34 C.F.R. §§ 300.530(d). The FBA must be conducted “as appropriate,” which means it is not required in every case.

Here, at Parent’s request, after both the March MDR and the April MDR, District sent Parent the March Consent to conduct social emotional testing, including an FBA. (FF #s 39, 50 and 51.) Parent never signed the March Consent and no FBA was conducted. (FF #s 41 and 51.) While the SCO understands Parent’s confusion about where to sign the document or which of the many documents needed to be signed, District cannot conduct evaluations without parental consent. 34 C.F.R. § 300.300(c)(1)(i). The SCO thus finds and concludes that District did not violate 34 C.F.R. § 300.530(d).

**Conclusion to Allegation No. 2: District failed to provide Parent with access to all of Student’s records she requested before MDRs and within 45 days of her request, in violation of 34 C.F.R. § 300.613. This violation resulted in a denial of FAPE.**

Parent’s concern is that District failed to allow her to access and review Student’s educational records in advance of relevant meetings or within 45 days of her request.

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). Accordingly, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” *Id.* A district must comply with a parent’s request to review his or her child’s education records “without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510 and in no case more than 45 days after the request.” *Id.*

Education records are “those records that are: (1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 34 C.F.R. §§ 99.3 and 300.611(b). A record means “any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.” *Id.* Education records include “email communications maintained as part of [student’s] record. *Mountain Bd. Of Coop. Educ. Serv.*, 120 LRP 29269 (SEA CO 2020) (citing *Brownsburg Community School Corporation*, 59 IDELR 146 (SEA IN 2012)). The right to review records includes the “right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.” 34 C.F.R. § 300.613(b)(1).

### **A. First Records Request**

Here, Parent requested all of Student's education records, including attendance, health records, IEP records, disciplinary records, counseling records, testing, and Progress Reports the day before the March MDR, on March 9, 2022. (FF # 37.) That day, Principal provided only a record of Student's disciplinary incidents, attendance records and a copy of Student's IEP. *Id.* Principal thought he satisfied Parent's request because she did not repeat it. (FF # 38.) However, school districts must comply with a parent's request to review records without "unnecessary delay" and not after repeated requests. 34 C.F.R. § 300.613. Thus, District was required to provide Student's records before the March MDR and in no case later than April 23, 2022. For these reasons, the SCO finds and concludes that District's failure to provide a complete and timely response to Parent's request resulted in a procedural violation of 34 C.F.R. § 300.613(a).

### **B. Additional Records Requests**

Parent also verbally requested witness statements related to disciplinary incidents in October and on April 14, 2022. (FF #s 13 and 45.) Witness statements were not provided until July 11, 2022, well over 45 days later. (FF # 59.)

On April 25, Parent requested a copy of Student's FBA and the consent form she had signed granting District permission to conduct an FBA. (FF # 51.) District never responded to this request, although those records (The Evaluation and the October Consent) were provided within 45 days, in response to Parent's prior state complaint on May 3, 2022. (FF # 60.)

Parent reiterated her request for all of Student's educational records on May 21, 2022 and specifically requested additional records, including progress monitoring data from the current school year, documents showing how Student's Progress Reports were delivered, and documents showing how all of Student's teachers were given a copy of his IEP. (FF # 53.) District provided Parent with additional progress monitoring data but no other records. (FF # 54.) District misrepresented what Parent has requested in March and incorrectly concluded that Parent had received everything she requested at that time. (FF #s 37, 54 and 60.) District also incorrectly asserted that the remaining records she had requested were provided in a Response to a state complaint on May 3, 2022, which did not include Student's complete special education record. *Id.* When Parent pointed out these errors and reiterated her request for all of Student's educational records, it was not a new request just because she enumerated more of what she meant by "all."

Although District may have provided Parent a link to additional records on July 22, 2022, District has effectively prevented her from exercising her right to inspect and review the records by failing to give her the necessary permissions to view what was shared. (FF # 59.) As of August 9, 2022, 153 days after Parent's initial request and two MDRs, one mediation, one IEP meeting and two state complaints later, Parent still had not received all of Student's educational records. For these

reasons, the SCO finds and concludes that District failed to provide Parent with access to Student's education records before relevant meetings or within 45 days of her request, in a procedural violation of 34 C.F.R. § 300.613.

### **C. Procedural Violations**

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996).

Here, Parent lacked access to records describing Student's behavioral needs at School at a time when Parent was advocating for additional social emotional services and participating in MDRs, significantly impeding her opportunity to participate in the decision-making process. Thus, the SCO finds and concludes that the violation of 34 C.F.R. § 300.613 resulted in a denial of FAPE. However, the educational impact on Student was adequately addressed by the remedies ordered in Parent's prior state complaint. The SCO has crafted remedies intended to ensure Parent receives the educational records requested and to ensure this violation is not repeated.

**Conclusion to Allegation No. 3: District failed to provide Parent with an IEE without unnecessary delay or inappropriate conditions, in violation of 34 C.F.R. § 300.502. This violation did not result in a denial of FAPE.**

Parent's concern is that District failed to provide an IEE without undue delay and imposed inappropriate conditions.

### **A. Timing of District's Response**

Parents have a right to seek an IEE at public expense if they disagree with an evaluation conducted by the school district. 34 C.F.R. § 300.502(b)(1). An IEE is an "evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 C.F.R. § 300.502(a)(3)(i). After a parent requests an IEE at public expense, the district "must without unnecessary delay, either –(i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria." 34 C.F.R. § 300.502(b)(2).

A parent does not need to use a specific word or phrase to express her disagreement with a district evaluation. *Genn v. New Haven Board of Education*, 69 IDELR 35 (D. Conn. 2016) (holding that a parent's verbal disagreement with testing during an IEP meeting was sufficient to trigger District's obligation to respond to her IEE request.)



Federal regulations are silent as to what constitutes a “reasonable” time limit for responding to an IEE request, so whether a delay is reasonable will turn on the facts of the case. *See, e.g., Santa Monica-Malibu Unified Sch. Dist.*, 62 IDELR 279 (SEA CA 2013) (finding that a two-month delay in filing for due process was not unreasonable where the district sent parents PWN of its disagreement within 10 days of the IEE request); *Los Angeles Unified Sch. Dist.*, 111 LRP 48178 (SEA CA 07/07/11) (concluding that a 90-day delay in denying parents' request for a publicly funded IEE was unreasonable given the district's failure to communicate with the parents during that time or explain the reason for the delay).

Here, Parent requested an IEE on January 5, 2022 and District immediately sent paperwork on January 6, 2022. (FF #s 25 and 26.) However, the paperwork sent on January 6 indicated District would not formally consider Parent’s January 5 IEE request until the paperwork was completed. (FF # 26.) Parent’s IEE request on January 5 was clear about her concerns with the testing District completed. (FF # 25.) The SCO finds that this was sufficient to trigger District’s obligation to respond because parents are not required to use specific words or phrases or complete specific forms to disagree with a district evaluation. *Genn v. New Haven Board of Education*, 69 IDELR 35 (D. Conn. 2016). Because District required Parent to complete the Request Form before District would consider her IEE request, the SCO finds and concludes that this resulted in a procedural violation of 34 C.F.R. § 300.502.

District also did not communicate with Parent about her request between January 6, 2022 and the March MDR on March 10, 2022. (FF #s 28 and 33.) Because District allowed 63 days to pass without communicating with Parent about her request for an IEE or approving or denying it, the SCO finds that there was an unreasonable delay in responding to Parent’s request for an IEE. District’s January 6 PWN did not ensure that an IEE was provided at public expense, and District did not file for due process to show that its evaluation was appropriate. For these reasons, the SCO finds and concludes that District did not respond to Parent’s request for an IEE within a reasonable period, resulting in a procedural violation of 34 C.F.R. 300.502(b)(2).

## **B. Content of District’s Response**

School districts “must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations.” 34 C.F.R. § 300.502(a)(2).

Here, in response to an IEE request, District generally sends parents written IEE procedures, including criteria for evaluators. (FF # 20.) However, Director did not include District’s procedures in the information she sent to Parent on January 6 or March 11. (FF #s 26 and 39.) District also failed to provide those procedures after Parent asked on March 25 what the criteria was so she could understand what criteria Evaluator 2 did not meet. (FF #s 42 and 43.) For these reasons, the SCO finds and concludes that this resulted in a procedural violation of 34 C.F.R. § 300.502(a)(2).

Additionally, although District's IEE procedures were never sent to Parent, the SCO cautions District that if they had been, this might have resulted in additional violations. A district may ask for a parent's reasons for disagreeing with an assessment, but it may not require, and may not wait for, the statement of reason by parents. 34 C.F.R. § 300.502(b)(4). Here, District's IEE procedures require parents to submit the date of the District evaluation they disagree with and "the reasons for their disagreement." (FF # 21.) If District conditions provision of an IEE on Parent's providing reasons for their disagreement, that would constitute a procedural violation of 34 C.F.R. § 300.502(b)(4).

Finally, a district may not impose conditions or timelines on an IEE request. 34 C.F.R. § 300.502(e)(2). The IEE procedures also require that the IEE report be provided to the District within 45 days of when District approved the IEE request. (FF # 21.) If District uses that timeline to limit the scope of IEEs or to disqualify otherwise qualified evaluators with longer waitlists, that would constitute a procedural violation of 34 C.F.R. § 300.502(e)(2).

### **C. Procedural Violations**

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' 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); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, Parent began calling potential evaluators as soon as she received District's IEE paperwork on January 6, 2022. (FF # 27.) She did not return District's paperwork until late March because she was dealing with a death in the family and having difficulty identifying an evaluator who could do the desired testing without an extraordinarily long waitlist. *Id.* Had District immediately approved her request, instead of conditioning approval on receipt of its form, Parent would still have had to identify an evaluator. For this reason, the SCO finds that Parent could not have identified an evaluator more quickly, even if District had already approved the IEE request. Despite the failure to provide the IEE criteria, Parent was ultimately able to move forward with her preferred evaluator after a brief, one-week delay to resubmit paperwork for the new evaluator. (FF #s 42 and 43.)

For all these reasons, the SCO finds and concludes that these procedural violations did not impede Student's right to a FAPE, significantly impede Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit.

**Systemic IDEA Violations: This investigation demonstrates violations that are systemic and will likely impact the future provision of services for all children with disabilities 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 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 Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46601 (Aug. 14, 2006).

#### **A. Allegation No. 2: Records Requests**

The SCO finds and concludes that the violation of 34 C.F.R. § 300.613 is systemic in nature.

First, District’s policies governing access to education records are not consistent with IDEA because they do not consider the additional obligations required by 34 C.F.R. § 300.613(a) and (b). (FF # 36.) Board policy JRA/JRC-R identifies a 45-day time frame to respond to a request for education records. *Id.* It does not identify any circumstances in which a District must produce records before the 45-day timeline. *Id.* For an IDEA eligible student, those circumstances would include an IEP meeting, an MDR or a due process hearing.

Second, District does not offer written procedures or guidance on responding to records requests for IDEA eligible students. (FF # 36.) Written procedures are essential to ensuring school staff understand their responsibilities and provide special education services consistent with ECEA Rules, the IDEA, and school district policy. This investigation shows that District staff appear to be confused about the exact process for requesting records, with some indicating Parents must go through District’s website and others unaware of any such electronic request. (FF #s 34 and 35.) Although District staff appeared aware that IEPs or evaluations need to be provided before IEP meetings when requested, the right to records before an IEP meeting or MDR is not limited to IEPs. (FF # 34.); *See Washoe County Sch. Dist.*, 60 IDELR 299 (SEA NV 2013) (finding that a district's decision to send a parent copies of a ninth-grader's education records did not excuse its failure to permit access to those records before a series of IEP meetings).

Finally, in addition to failing to provide records before relevant meetings, multiple staff members received Parent’s request and failed to provide all the records requested. No one at District relied on or appeared aware of a checklist created by District in 2019 to remedy a similar violation. *See St. Vrain Valley Sch. Distr. RE-1J*, 119 LRP 30200 (CO SEA 2019) (ordering District to train staff and submit a checklist for records requests to include the events that require access earlier than 45 days.) The concern is that without written procedures, District may continue to provide late and/or incomplete responses to records requests, which would impact the future provision of appropriate services to IDEA-eligible students in District. Accordingly, the SCO will set forth specific remedies consistent with IDEA to ensure procedures are in place and designed for appropriate responses to records requests.

## **B. Allegation No. 3: IEE Requests**

First, the SCO finds and concludes that the violation of § 300.502(a)(2) is not systemic in nature. District failed to provide Parent with a copy of its IEE criteria, in violation of 34 C.F.R. § 300.502(a)(2). However, District's IEE procedures are commonly included in its response to IEE requests. (FF # 20.) The failure in this case appears to have resulted from District's deviation from its standard procedures. There is nothing in the record to suggest that this problem is systemic.

Second, the SCO finds and concludes that the violation of 34 C.F.R. § 300.502(b)(2) is systemic in nature. District did not respond to Parent's request for an IEE within a reasonable period, resulting in violation of 34 C.F.R. 300.502(b)(2). District's standard response to IEE requests, as it was to Parent in this case, is to tell parents District will consider the request once they submit paperwork. (FF # 21.) Once parents are sent District's IEE paperwork, District does not follow up. (FF # 23.) The SCO's concern is that if a parent does not or cannot submit the paperwork for any reason, District will never reply to the request for an IEE. This could impact the future provision of appropriate services to IDEA-eligible students in District when parents disagree with District evaluations. Thus, the SCO finds that the violation of 34 C.F.R. § 300.502(b)(2) is systemic in nature and likely to impact the future provision of appropriate services to IDEA-eligible students in District. Accordingly, the SCO will set forth specific remedies consistent with IDEA to ensure procedures are in place and designed for timely responding to IEE requests.

### **REMEDIES**

The SCO concludes that District has violated the following IDEA requirements:

- a. Failing to provide Parent with an IEE without undue delay or inappropriate conditions, in violation of 34 C.F.R. § 300.502;
- b. Failing to permit Parent to inspect and review education records relating to Student, in violation of 34 C.F.R. § 300.613.

To remedy these violations, District is ORDERED to take the following actions:

#### **1. Corrective Action Plan**

- a. By **September 26, 2022**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CAP must, at a minimum, provide for the following:
  - i. Executive Director, Director and Principal must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.502 and 300.613. This review

must occur no later than **Monday, October 24, 2022**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, October 31, 2022**.

ii. Attendance and completion of training provided by CDE on responding to IEE requests. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.502 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Director and all District Special Education Coordinators. Such training shall be completed no later than **Wednesday, December 21, 2022**.

a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, January 6, 2023**.

iii. Attendance and completion of training provided by CDE on responding to records requests. This training will address, at a minimum, the requirements of 34 C.F.R. 300.613 and the related concerns noted in this decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Director, all District Special Education Coordinators, Principals and all others who regularly respond to record requests. Such training shall be completed no later than **Wednesday, December 21, 2022**.

a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, January 6, 2023**.

b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

## 2. District Procedures

- a. By **Wednesday, March 8, 2023**, District must develop and submit written procedures to ensure compliance with 34 C.F.R. §§ 300.502 and 300.613. These procedures must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
  - i. District must revise their process for replying to parent requests for IEEs, including responding to requests without unnecessary delay and without the requirement of a specific form;
  - ii. District must develop written procedures regarding responding to records requests, in accordance with 34 C.F.R. § 300.613. Such procedures must clarify that parents have an opportunity to inspect and review the requested records without unnecessary delay and prior to any upcoming IEP meeting, MDR, due process hearing or resolution meeting, in accordance with 34 C.F.R. § 300.613(a). It must also outline a process to ensure parents have an opportunity to inspect all of the education records they request which are maintained by District. As part of their procedures, District can include use of a checklist like the one developed in response to 2019:509.

## 3. File Review

- a. Following the required training on records requests, District will cooperate with a student file review by CDE to evaluate whether this area of noncompliance has been addressed and to inform further corrective action and available technical assistance and support from CDE. By **Wednesday, March 15, 2023**, District shall provide CDE with a complete list of all record requests received for IDEA-eligible students between September 1, 2022 and March 1, 2023. For each student, the list must include, at a minimum, a) the student's name, b) the student's grade, c) who made the request, d) when the request was made, e) who received the request, and f) when the requested records were provided. The list should include student's whose records are still being gathered and/or redacted.
- b. From this list, by **Friday, March 31, 2023**, CDE Special Education Monitoring and Technical Assistance Consultant shall randomly select not more than 10 students for a file review. For the selected students, District shall provide CDE with a) a copy of the records request in writing, b) a copy of any written exchange clarifying the scope of the request, c) if applicable, a copy of the completed (or in process) checklist indicating which records have been located and provided and d) a copy of the full response that was provided or made available to the parent. District will provide requested documentation and access to records and staff as necessary for

CDE to complete a thorough and complete review of District's record request process, at CDE direction and request. This review will be completed **no later than May 5, 2023**. CDE will then conduct follow-up and verification activities as necessary.

- c. Based on the results of the review, the CDE will collaborate with District to revise relevant policy, procedure, and practice and to provide technical assistance, professional development, and resources to ensure compliance with IDEA's record request provisions. Findings of noncompliance identified through the CDE file review must be corrected consistent with 34 C.F.R. § 300.600(e).

#### **4. Student's Records**

- a. By **Monday, August 29, 2022**, District shall provide Parent with copies of Student's complete educational record, along with any necessary explanation or interpretation, and ensure Parent is able to access those records in the format provided.
- b. Evidence that these records were provided to Parent must be submitted to CDE no later than **Friday, August 31, 2022**.

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  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

**NOTE:** Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

#### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

The Decision, dated August 22, 2022, is hereby amended this 14<sup>th</sup> day of September, 2022.

A handwritten signature in blue ink, appearing to read "Rachel Dore", is positioned above a horizontal line.

Rachel Dore  
State Complaints Officer



## **APPENDIX**

### **Complaint, pages 1-11**

- Exhibit 1: Timeline

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

- Exhibit A: IEPs
- Exhibit B: Service Logs
- Exhibit C: PWNs
- Exhibit D: IEP meetings
- Exhibit E: Evaluations
- Exhibit F: Progress Reports
- Exhibit G: Disciplinary Records
- Exhibit H: District Policies
- Exhibit I: Emails
- Exhibit J: None
- Exhibit K: Verification of Delivery to Parent
- Exhibit L: Signature Pages
- Exhibit M: IEE Process

### **Reply, pages 1-38**

- Exhibit 2: Verification of Delivery to District
- Exhibit 3: Email
- Exhibit 4: Additional Emails

### **Telephone Interviews**

- Parent: July 7, 8 & 26, 2022
- Advocate: July 8, 2022
- Director: July 12 & 25, 2022
- Executive Director: July 12 & August 2, 2022
- Case Manager: July 12 & August 2, 2022
- Coordinator: July 13, 2022
- Principal: July 25, 2022