

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

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**State Complaint SC2025-579**  
**Pueblo School District 60**

**DECISION**

**INTRODUCTION**

On June 23, 2025, 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 complaint (“Complaint”) against Pueblo School District 60 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

On August 18, 2025, the CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 23, 2024. Information prior to June 23, 2024, may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

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

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

1. The District did not provide services comparable to those Student received under her prior IEP after Student transferred to the District in August 2024 until the District developed Student's IEP in October 2024, as required by 34 C.F.R. § 300.323(f).
2. The District did not conduct a comprehensive evaluation of Student during Fall 2024 because it:
  - a. Did not assess Student in all areas related to the suspected disability—specifically her medical needs, audiology needs, communication needs, and assistive technology needs—as required by 34 C.F.R. § 300.304(c)(4); and
  - b. Did not review existing evaluation data from Student’s prior school district, as required by 34 C.F.R. § 300.305(a)(1).
3. The District did not develop an IEP that was tailored to meet Student’s individualized needs from August 2024 to January 2025 because it:
  - a. Did not include school health services and school nurse services designed to enable Student to receive a FAPE, as required by 34 C.F.R. §§ 300.34(c)(13) and 300.320(a)(4)(ii)-(iii);
  - b. Did not consider the language, communication, or assistive technology needs of Student—specifically, Student’s need for augmentative and alternative communication—as required by 34 C.F.R. § 300.324(a)(2)(iv)-(v); and
  - c. Did not include a statement of the special education and related services—specifically audiology services—to enable Student to advance appropriately toward attaining annual goals and making progress in the general education curriculum, as required by 34 C.F.R. §§ 300.320 and 300.324.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is nine years old and, during the 2024-2025 school year, was a third grader at a District elementary school (“School”). *Response*, p. 1; *Exhibit A*, p. 33. Student is eligible for special education and related services under the disability category of Multiple Disabilities, including Intellectual Disability, Other Health Impairment, and Vision Impairment. *Exhibit A*, p. 33; *Exhibit B*, pp. 8-10.

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

2. Student has a genetic disorder that causes a range of physical, cognitive, and medical challenges, including developmental delays, bilateral hearing loss, gastrointestinal issues, dysphagia, and chronic lung disease. *Response*, p. 1; *Exhibit A*, p. 37. Student uses a wheelchair for mobility and relies on a gastrojejunostomy tube for nutrition, hydration, and medication. *Id.*; *Interview with Parent*. Despite these challenges, Student is a happy child who enjoys socializing, listening to music, and playing with sensory toys. *Interview with Parent*.
3. This investigation involves Student’s transfer to District from another state (“Prior State”) at the beginning of the 2024-2025 school year. *Complaint*, p. 2; *Response*, p. 2. Student enrolled in District with an IEP dated May 1, 2024 (“Prior IEP”) in effect. *Id.*; *Exhibit A*, pp. 3-28. Parent alleges District did not provide Student with services comparable to the Prior IEP, specifically, 1:1 school nursing services; did not conduct a comprehensive evaluation after rejecting Prior IEP; did not consider Student’s communication needs in developing a new IEP; and did not provide appropriate school health and/or nursing services and audiology services to meet Student’s needs. *Complaint*, pp. 1-5.
4. District concedes it omitted audiology services from Student’s IEP and, though it argues this omission was “harmless,” has proposed providing compensatory services in the amount of 60 minutes of indirect audiology services “to promote [Student’s] access and re-acclimation to her learning environment.” *Response*, pp. 9, 13. District denies all other allegations. *Id.* at pp. 8-12.

#### **B. Prior IEP**

5. The Prior IEP was developed by a properly convened IEP Team in Prior State in consideration of a school-based evaluation conducted in March 2024. *Complaint*, pp. 1-2; *Exhibit A*, p. 3.
6. The Prior IEP described Student’s present levels of performance, including a summary of her complex medical history and data from the March 2024 evaluation. *Exhibit A*, pp. 7-22. The Prior IEP noted Student required a 1:1 nurse throughout the school day to support daily living skills and manage health needs. *Id.* at p. 7. The IEP Team based the need for these services on private medical orders from Fall 2023, which note Student requires “as needed oral suction to clear secretions, chest physiotherapy, and inhaler use throughout the day,” as well as “60ml of warmed alkaline water given slowly through her J-tube every hour during school hours.” *Id.*; *Response*, p. 2.
7. The Prior IEP included an audiology report, which indicated Student has educationally significant hearing loss and a cochlear implant to support her hearing. *Exhibit A*, p. 22. The Prior IEP also indicated Student is nonverbal and “needs access to augmentative and alternative communication [“AAC”] systems to support her communication.” *Id.* at p. 5.
8. The Prior IEP noted Student had access to low-tech assistive technology (“AT”) devices (such as a picture choice board) and a high-tech AT device (an iPad) at school and was “demonstrat[ing] emerging skills in using direct select” on an iPad. *Id.* at p. 14. However, the

Prior IEP also indicated that she was primarily using the iPad in an “exploratory manner” and required “support from a communication partner to navigate between pages and to locate specific vocabulary needed for activities.” *Id.* at p. 15; *Response*, p. 3. The Prior IEP further indicated that she had not yet used a picture choice board or iPad to convey wants and needs. *Exhibit A*, p. 15; *Response*, p. 3.

9. The Prior IEP included numerous annual goals in the areas of Adaptive Behavior, Cognitive, Communication, Gross Motor, and Social-Emotional. *Exhibit A*, pp. 8-21. The Communication and Cognitive annual goals involved Student’s use of an AT device to communicate her wants and needs. *Id.* at pp. 13-15. Progress reporting on Student’s goals involving use of an AT device, included in the Prior IEP, reflects Student was still at baseline and was not yet using AT devices—either high or low tech—to communicate. *Id.* at p. 15. Instead, Student most consistently used eye gaze and entering another person’s physical space to communicate. *Id.*
10. The Prior IEP provided for the following special education and related services, all outside the general education setting: 1,625 total minutes per week of special education services, divided into adaptive behavior, cognitive, and social-emotional; full-time 1:1 nursing services, 20 minutes per week of physical therapy (“PT”), 30 minutes per week of occupational therapy (“OT”), and 20 minutes per month of audiology services, all provided concurrently with special education services; and 30 minutes per week of speech services. *Id.* at p. 26.

### **C. District’s Policies, Practices, and Procedures: Transfer Students**

11. District has a comprehensive, written special education procedural document (“the Procedure”) that describes, among other things, District’s procedures when a student with a disability transfers to District. *Exhibit L*, p. 167. For all students with disabilities, District “must have IEPs in effect at the beginning of each school year regardless of changes in district enrollment/attendance.” *Id.*
12. The Procedure indicates that a “transfer means a change in district enrollment/attendance that occurs within the same school year,” and a “change in district enrollment/attendance that occurs over the summer months, *i.e.*, not within the same school year, is not considered a ‘transfer’ under IDEA.” *Id.* Under the Procedure, when a student transfers to District “within the current school year”—either from another Colorado district or out of state—District must “immediately initiate education services and provide a [FAPE] by providing special education and related services comparable to those in the child’s IEP from the previous school district.” *Id.* If the student has transferred to District from another state, District may conduct an evaluation if District “determines that an evaluation is necessary to determine eligibility for special education and related services under the [Colorado] eligibility criteria.” *Id.*
13. District’s Executive Director of Exceptional Student Services (“Director”) reported that District adheres to the same out-of-state transfer process whether a student transfers to District over the summer or during the school year. *Interview with Director*. In both instances, as soon as possible after learning of a transfer student, a District special education coordinator arranges

a meeting with the student's parent(s) and invites the IEP Team members. *Interviews with Director and School's Special Education Coordinator ("Coordinator")*.

14. At the transfer meeting, District—in consultation with parents—determines whether to (1) adopt the child's previous IEP, or (2) reject the previous IEP, conduct an evaluation, redetermine eligibility under Colorado standards, and "develop, adopt, and implement a new IEP." *Exhibit L*, p. 167; *Interview with Director*. It is generally District's practice to follow the second approach. *Interview with Coordinator*. If District does not accept an incoming IEP, it must provide services comparable to those under the incoming IEP until the evaluation and eligibility processes are complete and a new IEP is developed. *Interview with Director*.
15. If a student transfers to District over the summer, District will proceed with the transfer meeting and evaluation process over the summer, and the IEP Team otherwise implements the incoming IEP until the Team can complete the evaluation and develop a new IEP. *Interview with Director*. Similarly, even when District rejects an out-of-state IEP and offers comparable services, staff should continue to implement the incoming IEP to the best of their ability until a new IEP is developed. *Interviews with Director and Coordinator*.

#### **D. Student's Transfer to District**

16. Parent and Student moved to Colorado in May 2024, and Parent enrolled Student in District—at Student's neighborhood school—on August 1, 2024. *Response*, p. 2; *Exhibit P*, p. 1; *Interview with Parent*. District asserts that Parent then unenrolled Student the following day, August 2. *Response*, p. 2. Documentation of Student's enrollment history reflects Student's initial enrollment on August 1 with an "end date" of August 2 and includes a notation indicating Student transferred back to her school district in Prior State. *Exhibit P*, p. 1. District staff interviewed were unfamiliar with the specifics of Student's enrollment, other than to report Student did enroll at her neighborhood school prior to enrolling at School, so District staff "knew about her." *Interviews with Director and Coordinator*.
17. Parent said she did not unenroll Student from District at any time after her initial enrollment on August 1. *Interview with Parent*. Indeed, District's actions align with Student remaining enrolled: District documented her enrollment on August 1, and staff proceeded to review her Prior IEP and hold a transfer meeting after her enrollment August 1, but prior to her enrollment at School on September 3. (FF #s 16, 18-19, 34). *Id.* Based on a preponderance of the evidence, the CDE finds that Student initially enrolled in District on August 1, 2024.
18. On August 14, District received a copy of the Prior IEP from Prior State, which was the only education record District received from Prior State. *Response*, pp. 2-3. Given Student's complex medical needs described in the Prior IEP, District determined Student's needs could not be met by her neighborhood school; instead, Student should be enrolled at School, which has a program dedicated to serving students with multiple disabilities and complex medical needs. *Id.* at p. 3; *Interviews with Director and Coordinator*.

19. Classes began at School on August 20, 2024. *Exhibit K*, p. 1. On August 28, Parent, Coordinator, the School nurse (“School Nurse”), and other School staff held a “transfer meeting” to discuss Student’s needs. *Response*, p. 3; *Interviews with Coordinator and School Nurse*. A teacher of the deaf was invited to the meeting but did not attend. *Response*, p. 3; *Exhibit M*, p. 8.
20. Coordinator—in consultation with Parent and other School staff—completed District’s “Transfer From Another State” form for Student (“Comparable Services Offer”). *Response*, p. 4; *Exhibit A*, p. 32. The Comparable Services Offer indicates that Student’s Prior IEP would not be adopted; instead, District sought Parent’s consent to conduct an initial evaluation to determine Student’s eligibility under Colorado standards and develop a new IEP. *Response*, p. 4; *Exhibit A*, p. 32. School staff “had a discussion with [Parent] about what areas will be evaluated,” and Parent signed consent to evaluate in the areas of functional, gross motor, fine motor, vision, and speech that same day. *Exhibit G*, pp. 2-3; *Exhibit M*, p. 43; *Interview with Parent*.
21. The Comparable Services Offer provides for these special education and related services, all outside the general education setting: 1,580 minutes per week of academic special education services; 20 minutes per week of PT and 30 minutes per week of OT, not concurrent with special education services; and 30 minutes per week of speech services. *Exhibit A*, p. 32. The Comparable Services Offer also indicates the annual goals in the Prior IEP were adopted in the interim and that the IEP Team was notified of the contents of the Offer. *Id.*
22. District acknowledges the Comparable Services Offer does not include audiology services, which were included in the Prior IEP (FF # 10). *Response*, p. 9. At beginning of the school year, District did not have a pediatric audiologist on staff due to regional staffing challenges in that specialty, though a teacher of the deaf was available at School to address students’ hearing needs in the interim. *Interview with Director*. After an audiologist was hired in late Fall, audiology services were added to Student’s IEP (FF # 54). *Id.*; *Exhibit A*, pp. 54, 73; *Response*, p. 9. Parent reports the audiology services Student received under the Prior IEP were “basic,” such as checking equipment and consulting, and that she was “not concerned with audiology services dropping off,” particularly given that they were added to Student’s IEP once an audiologist was hired. *Interview with Parent*; see *Exhibit A*, pp. 54, 73.
23. The Comparable Services Offer also does not include school health or nursing services, specifically, a full-time 1:1 nurse to provide Student’s health-related services throughout the school day, as the Prior IEP provided. *Exhibit A*, p. 32; see *id.* at p. 7. Parent concedes the special education and related services in the Comparable Services Offer were “nearly identical” to the Prior IEP, apart from 1:1 nursing services, which is Parent’s primary concern in the Complaint. *Complaint*, pp. 2-3; *Interview with Parent*; see *Exhibit A*, p. 49; *id.* at p. 32.

**E. District Policies, Practices, and Procedures: School Health and School Nurse Services**

24. School health and nursing services are related services in an IEP that must be determined by the student’s IEP Team. *Interview with Director*. When a student with a disability has school

health or school nurse service needs, the school nurse generally creates a healthcare plan (“HCP”) for that student—based on specific, current doctor’s orders—to ensure staff working with the student are aware of the student’s health needs and services. *Interviews with Director, School Nurse, and District’s Spring 2025 Nursing Supervisor (“Nursing Supervisor”).* It is standard practice for school nurses to request current doctor’s orders from parents to inform students’ health needs at school and to develop an appropriate HCP in order ensure staff working with the student are properly trained by the school nurse. *Id.*; *Response*, p. 12.

25. Typically, HCPs are not required for students receiving all health services via a parent-provided private duty nurse (“PDN”), as PDNs follow doctor’s orders entirely outside of any school-based HCP. *Interviews with Nursing Supervisor and School Nurse.* School nurses are responsible for implementing HCPs and for determining whether a specific health service task can be delegated to other qualified staff, based on Colorado Nursing Rules and Regulations. *Interviews with Director, Nursing Supervisor, and School Nurse.*
26. School nurses decide whether a task or service may be delegated to other qualified staff based on the nurse’s scope of practice and competence in that service or task, the delegatee’s competence and training, and safety concerns. *Interviews with Nursing Supervisor and School Nurse.* Tasks requiring nursing assessment or judgment, or those outside the nurse’s scope of practice and competence, must not be delegated and instead are to be performed directly by the school nurse after receiving further training, if appropriate. *Id.* Ultimately, a student’s IEP team—including Parent—must determine whether a student requires school health or nursing services as a related service in an IEP, but it is in the school nurse’s discretion whether to delegate a specific task or service to other qualified staff. *Interviews with Director, Nursing Supervisor, and School Nurse.* The CDE finds these practices consistent with IDEA and Colorado Nursing Rules and Regulations regarding delegation of nursing tasks under Colo. Rev. Stat. § 12-255-131. *Consultation with CDE Specialist.*
27. School uses health technicians to provide certain services to students at School under the supervision of School Nurse, all of whom are licensed as a certified nursing assistant (“CNA”) or restorative nurse aide (“RNA”) and undergo a lengthy training process before providing services to students. *Id.* Health technicians are responsible for administering medication, responding to seizures and other emergencies, and conducting tube feedings and maintenance for students at School, among other things. *Interviews with Nursing Supervisor and School Nurse.* Additionally, the special education teacher and paraprofessionals at School are trained to perform these tasks, as delegated and supervised by School Nurse, to provide ongoing monitoring and supervision of students with complex disabilities and medical needs. *Id.*

#### **F. Comparable Health Services: August – October 2024**

28. The attendees at the August 28 meeting, including School Nurse and Parent, discussed Student’s health needs and services at school. *Interviews with School Nurse and Parent.* School Nurse reviewed the Prior IEP and proposed that a School health technician or other

delegated staff deliver Student's services under the direction of School Nurse. *Response*, p. 4; *Exhibit M*, p. 42; *Interview with School Nurse*.

29. School Nurse reported that she has the experience and expertise to perform the services Student required at school and with delegating those tasks to health technicians or other qualified staff—who provide the same or similar services to other students at School, including tube feedings and maintenance—based on the information available to her at the time regarding Student's needs. *Interview with School Nurse*; see *Response*, pp. 3-4. However, School Nurse also informed Parent that updated medical orders were necessary to inform the specifics of the health-related services Student required at School and to develop an appropriate HCP, consistent with District practice (FF #s 24-25) and nursing responsibilities under Colorado law. *Response*, p. 4; *Exhibit M*, p. 41; *Interviews with School Nurse and Coordinator*.
30. Parent reported that School staff never informed her of the need for updated medical orders at the August 28 meeting, and that any such request at that time would have been inappropriate, as Parent was still securing medical providers after recently moving to Colorado. *Interview with Parent*. Instead, Parent said the medical orders from Fall 2023, described in the Prior IEP, were sufficient for District to provide 1:1 nursing services. *Id.*
31. District staff's notes from the August 28 meeting, made contemporaneously with or shortly thereafter, indicate "Parent will be contacting the doctor for orders." *Exhibit M*, p. 41; *Interview with School Nurse*. It is also consistent with District procedure to require current doctor's orders to inform school-based health or nursing services (FF # 24). Thus, the CDE finds that Parent was informed at the August 28 meeting that School Nurse needed updated medical orders to inform Student's needs at school.
32. Parent was concerned with District's proposed service delivery of Student's services by other qualified staff delegated by School Nurse, given that Student had previously received full-time 1:1 school nursing services under the Prior IEP. *Complaint*, p. 3; *Response*, p. 4; *Interview with Parent*. Parent explained that Student needed 1:1 nursing services from someone who understood Student's diagnosis and knew Student well enough to pick up on cues or symptoms that would otherwise go unnoticed. *Interview with Parent*.
33. Parent indicated at the meeting that she was actively pursuing hiring a PDN to provide Student's services at School. *Response*, p. 4; *Exhibit M*, pp. 4. Given Parent's concerns with District's proposed delegation of health services, Parent and School staff agreed that Parent—a CNA herself—would accompany Student to school on a temporary basis and provide Student's services until Parent was able to secure a PDN. *Response*, p. 4; *Interviews with School Nurse and Parent*. Parent provides for such needs at home, as Student does not receive any in-home nursing care from outside providers. *Interview with Parent*.
34. Student began attending School on September 3, 2024. *Response*, p. 4. Parent accompanied Student to school and provided her health services through October 7, until Parent was able

to secure a PDN. *Response*, p. 4; *Interview with Parent*. During this time, Student only attended school for half days—generally a few hours in the morning—due to medical appointments, Parent’s scheduling conflicts, and other external factors. *Interviews with School Nurse and Parent*. This scheduling arrangement was at Parent’s request; District was prepared to provide Student’s services and offer of FAPE based on full-day attendance. *Interviews with Coordinator, School Nurse, and Parent*.

35. Student also had a high number of absences in early Fall—specifically, Student attended 3 of 16 school days in September and 12 of 19 days in October. *Exhibit J*, pp. 5-6; *Response*, p. 4. Parent reports these absences were due to coordinating medical appointments with new providers, scheduling conflicts, and Student illness. *Interview with Parent*.
36. On October 8, Parent provided a PDN, who began accompanying Student to School and providing all her health services throughout the school day. *Response*, p. 4; *Exhibit M*, p. 43; *Interview with Parent*.

### **G. Student’s Evaluation**

37. District conducted Student’s evaluation in all areas identified in the consent to evaluate during times Student was at School in early Fall and completed an Evaluation Report (“the Report”). *Exhibit B*, pp. 1-14; *see Exhibit G*, pp. 2-3. All District staff interviewed reported reviewing Student’s Prior IEP as part of Student’s evaluation, eligibility, and IEP development processes. *Interviews with Coordinator, School Nurse, Nursing Supervisor, and the District speech-language pathologist (“SLP”) who conducted Student’s communication assessment*.
38. A school psychologist conducted a functional assessment using The Developmental Profile 4, which showed Student is in the Very Delayed range on the adaptive behavior, social-emotional, and cognitive scales. *Exhibit B*, p. 1.
39. SLP assessed Student’s functional communication in sensory/motor, attentiveness, receptive language, pragmatic/social language, speech, voice, oral, fluency, and non-oral communication. *Id.* at p. 2. The Report indicates she “lacks communication and social skills to address her needs and requires intensive support from adults to convey her needs and wants.” *Id.* at p. 6. Specifically, SLP notes she is both visually and hearing impaired, with bilateral profound hearing loss, and is a “nonverbal/limited communicator” who does not vocalize sounds or words for communication. *Id.* Instead, Student expresses likes and dislikes with facial expressions, expresses yes/no by accepting or rejecting items, and protests by pushing things off her desk. *Id.* The Report also indicates she “does not use a picture exchange system [“PECS”] or AAC for communication” and “is not yet making requests with PECS or iPad.” *Id.*
40. School Nurse completed the physical health portion of the evaluation, which includes a detailed summary of Student’s medical background and current healthcare needs, based on

the Prior IEP and information provided by Parent. *Id.* at p. 4. Parent acknowledges that School Nurse was qualified to conduct the assessment of these needs. *Interview with Parent.*

41. The Report includes a functional vision assessment but does not include a functional hearing assessment. *Id.* at pp. 3-5; *Interview with School Nurse.* District did not have an audiologist on staff at this time (FF # 22), and Student was absent the day standard hearing screenings were conducted at School. *Exhibit B*, p. 3; *Interview with School Nurse.* However, the Report indicates—in the background, communication, and physical health sections—that she has bilateral profound hearing loss and a cochlear implant in her right ear. *Interview with School Nurse; Exhibit B*, pp. 1-2, 4. Parent and School staff did not report any changes or concerns with her hearing or equipment during Fall 2024. *Response*, p. 9; *Interview with Parent.*
42. Parent had no concerns with the evaluation itself, only with the subsequent decision made by the IEP Team regarding the provision of 1:1 nursing services. *Interview with Parent; see Exhibit M*, p. 44.

#### **H. October 2024 IEP**

43. On October 22, 2024, a properly convened multidisciplinary team (“MDT”) met to review the Report and determine Student’s IDEA eligibility. *Exhibit B*, pp. 12-13; *Response*, p. 5. The MDT determined Student was eligible under the category of Multiple Disabilities, including Other Health Impairment, Intellectual Disability, and Visual Impairment. *Exhibit B*, pp. 8-13. A properly convened IEP Team then developed a new IEP (“October IEP”). *Exhibit A*, pp. 33-52.
44. The October IEP describes Student’s present levels of performance, noting she had a smooth transition to School and enjoys working on a tablet, moving herself throughout the classroom in her wheelchair, and being around peers. *Id.* at pp. 35-36. The October IEP also includes information from the recent evaluation in functional development, OT, PT, vision, physical health, and academics. *Id.* at pp. 36-37. The Communication section of the October IEP is blank, but Parent and District staff confirm the IEP Team discussed the Report at the meeting, including the results of the communication assessment and Student’s communication challenges (FF # 39). *Exhibit B*, pp. 2-3; *Interviews with Coordinator, SLP, and Parent.*
45. The October IEP indicates that, due to Student’s complex needs, “parent has provided a [PDN] to accompany [Student] to school and provide all health care interventions throughout her school day.” *Id.* at p. 37. The IEP’s Special Factors section also indicates Student does not require an HCP because Student has a parent-provided PDN who provides all healthcare-related services at school. *Id.* at p. 39.
46. The October IEP’s Special Factors section indicates Student is not deaf or hard of hearing, does not have unique communication needs, and does not need AT devices or services. *Id.* at p. 38. The IEP Team indicated Student does not need AT devices or services because it is SLP’s practice to only check “yes”—that a student needs AT devices or services—only if the student is specifically using a high-tech device. *Interview with SLP.* Because Student was not using a

high-tech AT device for communication at that time—or any AT device at all—the Team indicated she did not require those devices or services in the October IEP. *Id.*

47. Parent confirms that Student was not using any AT devices during Fall 2024, either at School or at home. *Interview with Parent*. Although Parent and SLP discussed trialing an iPad at School to facilitate communication, Parent opted to pursue trialing AT devices via Student’s private speech therapist instead. *Interviews with SLP and Parent*. Student began using an iPad in private speech therapy in December 2024, after Student stopped attending School (FF # 53). *Interview with Parent*.
48. The IEP Team mistakenly indicated in the October IEP that Student is not deaf or hard of hearing and does not have unique communication needs—a mistake that was corrected via IEP amendment on December 12, 2024 (FF # 54). *Exhibit A*, p. 38; *Interviews with Coordinator and SLP*. Notwithstanding the Special Factors section, the October IEP indicates that Student is non-verbal, has bilateral hearing loss and a cochlear implant, and “lacks communication and social skills to address her needs and requires intensive support from adults to convey her needs and wants.” *Exhibit A*, pp. 36-37.
49. The October IEP includes seven annual goals in the areas of fine motor, communication, receptive language, gross motor, number sense, writing, and basic reading. *Id.* at pp. 40-44. The annual goals in communication and receptive language involve Student starting to use AT devices to communicate her wants and needs. *Id.* at pp. 40-41. District staff report these annual goals were included with the understanding that Student was not yet using AT devices or services for communication, but that Student may be able to do so in the future, given positive results staff had seen in other students with cognitive challenges. *Interviews with Coordinator and SLP*.
50. The October IEP includes nine accommodations to ensure Student’s access to the general education curriculum. *Exhibit A*, p. 44.
51. The October IEP’s service delivery statement includes these services, all outside of general education: 1,600 minutes per week of special education services; 60 minutes per month of OT services; 80 minutes per month of PT services; and 60 minutes per month of speech services. *Id.* at p. 49. The October IEP does not include audiology services due to the continued unavailability of an audiologist. *Id.*; *Interview with Director*.
52. The October IEP indicates it was appropriate for Student to be in the general education classroom less than 40% of the time. *Id.* at pp. 50-51. The Team determined that placement was appropriate to accommodate Student’s educational learning skills at her instructional level in a small group setting based on extended evidence learning outcomes. *Id.* at p. 50.

#### **I. December 2024 IEP Meeting**

53. On December 9, 2024, Parent informed School staff that she was no longer able to provide the PDN for Student. *Response*, p. 6; *see Complaint*, p. 3. As a result, Student stopped attending School on or around December 10. *Response*, p. 12; *Interview with Parent*.
54. On December 12, a properly convened IEP Team met to develop a plan for Student’s school health and school nurse service needs going forward without a PDN and amend the October IEP. *Response*, p. 6; *see Exhibit A*, pp. 53-76. The following areas of the October IEP were amended at the December 12 IEP meeting:
- Special Factors were updated to reflect that Student is deaf or hard of hearing and requires a Communication Plan. *Exhibit A*, pp. 54, 59;
  - A Communication Plan was added. *Id.* at pp. 54, 61-62; and
  - Audiology services were added to the service delivery statement to reflect 15 minutes per month of indirect audiology services. *Id.* at pp. 54, 73.
55. The amendment includes an embedded Prior Written Notice (“PWN”) describing the December 12 meeting and Student’s needs and services. *Id.* at pp. 75-76. The PWN indicates that, without a PDN, “delegated staff would have to take over responsibility” for providing Student’s services at school. *Id.* at p. 75. Parent continued to express concerns with the delegation arrangement and again expressed her belief that Student’s needs required 1:1 school nursing services. *Id.*; *Response*, p. 4; *Interview with Parent*. Parent also informed District that she was currently pursuing another PDN via her insurance provider. *Id.*
56. District offered Parent the option of home hospital services on a temporary basis, until Parent could secure another PDN or reconsider her position on delegation, which Parent declined. *Exhibit A*, pp. 75-76; *Interview with Parent*. The PWN indicates the IEP Team “will continue to offer [Student] the ability to come to school,” by providing her services via other qualified staff delegated by the School Nurse, but Parent declined to bring Student to school without a PDN. *Exhibit A*, p. 76.
57. On December 17, Parent, Coordinator, and School Nurse met again informally “to discuss supports to keep [Student] safe and promote her access to education and to ensure Parent understood the District’s proposed services.” *Response*, pp. 6-7; *Interview with Parent*. School Nurse again reminded Parent that District needed updated doctor’s orders to inform Student’s healthcare in the school setting, and the parties decided to reconvene the IEP Team in January to revisit the issue. *Response*, p. 7; *Exhibit M*, p. 45.

#### **J. January 2025 IEP Meeting**

58. On January 23, 2025, a properly convened IEP Team—including District’s new Nursing Supervisor—met to discuss any updates regarding Parent’s hiring of a PDN and the plan for Student’s attendance at School moving forward. *Response*, p. 7; *Exhibit A*, p. 100. In the

absence of a PDN, District proposed to provide school-based health services throughout the school day, “delivered by the school nurse and/or a health technician who has been properly delegated certain tasks by the school nurse.” *Exhibit G*, p. 4; *Response*, p. 7. Further, Nursing Supervisor explained to Parent that “District hired an additional health technician so that one health technician could spend the whole day in [Student’s] classroom” and provide her health-related services, albeit not in a 1:1 capacity. *Response*, p. 7; *Interview with Nursing Supervisor*.

59. PWN issued to Parent after the meeting indicates District would develop an HCP “to reflect the cessation of [PDN] services and the initiation of school-based health services.” *Exhibit G*, p. 4. Nursing Supervisor again expressed to Parent the need for updated doctor’s orders to develop an accurate HCP and provide the appropriate services while Student is at school. *Exhibit A*, p. 100; *Interview with Nursing Supervisor*. The PWN reflects that Parent had, to date, not provided specific doctor’s orders contradicting District’s proposal and—based on School staff’s present understanding of Student’s health needs—District determined a school nurse could implement health supports for Student either directly or through a health technician to provide Student safe access in the school setting. *Exhibit G*, p. 4; *Response*, p. 7.
60. The PWN also noted District considered delivering Student’s health services only through a school nurse but rejected that option because District “has no information from medical providers supporting the need for a nurse to implement all health supports [Student] requires.” *Exhibit G*, p. 5; *Response*, p. 7. Based on the information available to the District nursing team, “a properly delegated health technician or other properly delegated adult is capable of lawfully and safely administering health services and supports to [Student].” *Exhibit G*, p. 5; *Interviews with Nursing Supervisor and School Nurse*.
61. On February 5, District received a letter from Student’s pediatrician, including medical orders expressing the doctor’s opinion that Student’s needs require support from a “registered RN.” *Exhibit D*, pp. 7-9; *Response*, p. 8. However, the letter also indicates her needs may be met by a CNA “skilled and experienced in the care of a child with [her] medical issues.” *Exhibit D*, p. 8.
62. District determined the letter was “not detailed enough to inform the implementation of health services at school” and contained conflicting information. *Response*, p. 8; *Interview with Nursing Supervisor*. Specifically, Nursing Supervisor indicated the medical orders provided were not specific enough to inform a detailed HCP as to timing, frequency, and volume/dosage of medication administration and other services Student required—for example, the orders include vague instructions such as “morning and afternoon,” “volume and rate may be adjusted over time,” “as needed” or “as directed by mom.” *Exhibit D*, p. 7; *Interview with Nursing Supervisor*. The letter was also conflicting as to who may provide services, indicating both that an RN was required and that a properly trained CNA could provide Student’s services (FF # 61). *Response*, p. 8; *Exhibit D*, p. 8.

63. Parent reports that she was actively seeking updated doctor's orders for Student during the school year, but Student's medical providers were reluctant to provide such documentation. *Interview with Parent*. Nevertheless, Parent asserts the Fall 2023 doctor's orders, Prior IEP, and February 5 pediatrician letter were sufficient for District to conclude that Student requires 1:1 nursing services provided directly by a school nurse. *Id.*

#### **K. Current Status**

64. On April 2, 2025, Parent and District staff met informally to discuss Parent's pending request for another PDN. *Response*, p. 8. Parent informed staff that she was unable to secure a PDN, and District reiterated its offer to provide Student's services via delegated staff. *Id.* Student did not return to school the remainder of the school year. *Interview with Parent*.

65. The 2024-2025 school year began August 19, 2025. *Exhibit K*, p. 2. Student has not attended School this school year due to Parent's continued safety concerns without a full-time 1:1 nurse to provide Student's services while at School. *Interview with Parent*.

#### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District provided Student services comparable to those in the Prior IEP, even though 34 C.F.R. § 300.323(f) is not applicable to this investigation because she enrolled in District prior to the start of the 2024-2025 school year. However, District did not have an IEP in effect for Student at the beginning of the 2024-2025 school year, as required by 34 C.F.R. § 300.323(a). This procedural noncompliance did not result in the denial of FAPE.**

#### **A. Legal Requirements for Interstate Transfers**

If a child with an IEP that was in effect at a previous school district enrolls in a new school district in a different state within the same school year, the new school district must provide services comparable to those services the child received in the previous school district until the receiving school district (in consultation with parents): (1) conducts an initial evaluation, and (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(f) (emphasis added); 20 U.S.C. § 1414(d)(2)(C)(i)(II) (supporting applicability only to children "with a disability who transfer[] school districts within the academic year"); *N.B. v. Hi. Dep't of Educ.*, 63 IDELR 216 (D. Hi. 2014) (finding enrollment drives the duty to provide "comparable" services under § 300.323(f)).

Although IDEA's transfer provisions do not directly apply to students who transfer during the summer, IDEA "contains other provisions designed to ensure continuity of services for students with disabilities moving from one jurisdiction to another." *El Paso Cnty. Sch. Dist. 11*, 118 LRP 28093 (SEA CO 05/15/18). For instance, at the beginning of each school year, a school district must have an IEP in effect for each child with a disability within its jurisdiction. 34 C.F.R. § 300.323(a); see *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg.

156, 46682 (Aug. 14, 2006) (noting “public agencies need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year”).

### **B. Applicability of IDEA’s Transfer Provisions to Student**

In this case, Student enrolled in a District neighborhood school on August 1, 2024, with Prior IEP—dated May 1, 2024—in effect. (FF #s 16-17). The first day of classes was August 20, 2024. (FF # 19). Although Student did not enroll in and begin attending School until September 3, 2024, the Record reflects that Student enrolled in District prior to the start of the 2024-2025 school year, and not “within the same school year.” (FF #s 11-17, 34). Therefore, the CDE finds and concludes that § 300.323(f) is not applicable here. Instead, District needed to have an IEP in effect for Student at the beginning of the school year and implement the Prior IEP until the IEP Team could meet and develop a new IEP. 34 C.F.R. § 300.323(a); *Ute Pass Bd. of Coop. Educ. Servs.*, 114 LRP 31981 (SEA CO 06/11/14) (finding IDEA’s transfer provisions inapplicable where student transferred to district before school year began and district should have implemented student’s incoming IEP until new IEP was developed).

### **C. IEP in Effect for Student**

The Record reflects District did not implement the Prior IEP as written at any time and did not have an IEP in effect for Student at the beginning of the school year—for five total school days between August 20, 2024 and August 28, 2024—until the Comparable Services Offer was accepted, as required by District policy and IDEA. (FF #s 11, 16-20). Thus, the CDE finds and concludes that District did not have an IEP in effect for Student at the beginning of the 2024-2025 school year, as required by 34 C.F.R. § 300.323(a).

Procedural noncompliance with the IDEA results in a denial of FAPE only to the extent the noncompliance 1) impeded the child’s right to a FAPE, 2) significantly impeded the parent’s opportunity to participate in the decision-making process, or 3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); see *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, there is no indication in the Record that Student’s right to a FAPE was impeded or that Student was deprived of an educational benefit during the five school days without an IEP in effect—particularly given Student’s inconsistent attendance at the beginning of the school year—or that this impeded Parent’s opportunity to participate in the decision-making process. (FF #s 19-23, 34-35). Therefore, the CDE finds and concludes this procedural noncompliance did not result in the denial of FAPE. 34 C.F.R. § 300.513(a)(2); *Sytsema ex rel. Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

### **D. Comparable Services for Student**

The allegation raised in the Complaint and accepted for investigation concerns IEPs for children who transfer to Colorado from another state under 34 C.F.R. § 300.323(f). Even though this provision is not applicable to this investigation, the CDE nevertheless finds and concludes that District—based on a review of the Prior IEP and Comparable Services Offer—offered Student services comparable to those in the Prior IEP until her October IEP was developed, consistent with § 300.323(f). (FF #s 6-10, 20-23); *see Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46681 (Aug. 14, 2006); *see also Sterling A. ex rel. Andrews v. Washoe Cnty. Sch. Dist.*, 108 LRP 67501 (D. Nev. 2008) (finding a receiving district “had no duty to replicate” in an interim IEP those services identified in a transfer student’s prior IEP).

Comparable services are “similar” or “equivalent” to those services described in the child’s IEP from the prior school district, as determined by the IEP Team at the new school district. 71 Fed. Reg. 46681 (Aug. 14, 2006). Whether services are comparable depends on the facts of the case. *See, e.g., Palo Alto Unified Sch. Dist.*, 114 LRP 1431 (SEA CA 2013) (finding that placement of a child with pica and food allergies in an isolated classroom was comparable to the in-home placement required by the child’s prior IEP).

Here, the special education and related services described in the Comparable Services Offer are nearly identical to those in the Prior IEP—as Parent acknowledges—apart from audiology and 1:1 school nursing services. (FF #s 10, 20-23). The Comparable Services Offer provided the same number of OT, PT, and speech minutes outside the general education setting as the Prior IEP, and the special education minutes are very similar, considering OT and PT minutes do not run concurrently in the Comparable Services Offer. (FF #s 10, 21). While audiology services were not initially included in the Comparable Services Offer, the Prior IEP only provided for 20 minutes per month of audiology services and, as Parent explained, those services were “basic” and consultative. (FF #s 10, 21-22). The Record also reflects that District’s offer of school health services provided by qualified staff delegated by a school nurse meets student’s school health and nursing needs, as more fully described in Conclusion 3(C)(1), below. (FF #s 23-29). Parent’s disagreement with District’s determination and preference for a 1:1 school nurse, while understandable given Student’s complex medical needs, does not render District’s offer incomparable. (FF # 32-33).

Accordingly, the CDE finds and concludes that District provided Student services comparable to those in the Prior IEP, as required by 34 C.F.R. § 300.323(f), even though § 300.323(f) is not applicable to this investigation because Student enrolled in District prior to the start of the 2024-2025 school year.

**Conclusion to Allegation No. 2: District did not assess Student in all areas related to her suspected disability—specifically, her audiology needs—as required by 34 C.F.R. § 300.304(c)(4). This did not result in the denial of FAPE. District reviewed existing evaluation data on Student, consistent with 34 C.F.R. § 300.305(a)(1).**

Parent’s concern is that District did not assess Student’s medical, communication, assistive technology, or audiology needs or review existing records from her Prior State school as part of the Fall 2024 evaluation. (FF # 3).

**A. Evaluation in All Areas Related to Suspected Disability**

The IDEA requires an evaluation to assess students “in all areas related to the suspected disability.” 34 C.F.R. § 300.304(c)(4). Evaluations must be sufficiently comprehensive to identify all of the child’s special education needs, whether or not commonly linked to the disability category with which the child has been identified. *Id.* § 300.304(c)(6). The evaluation must also gather all relevant information that may assist in determining “the content of the child’s IEP, including information related to enabling the child to be involved in and make progress in the general education curriculum.” *Id.* § 300.304(b)(1)(ii).

Here, District evaluated Student in all areas identified in the consent to evaluate. (FF #s 20, 37). The Report indicates School Nurse evaluated Student’s physical health, and Parent concedes School Nurse was qualified to assess these needs for Student. (FF # 40). The Report indicates SLP evaluated Student’s communicative status and considered Student’s AT needs as part of that assessment. (FF # 39). Specifically, SLP reported Student was not using any AT devices at the time of the evaluation, which Parent confirms. (*Id.*). Although AT-specific assessments may be warranted in some circumstances, at the discretion of the speech-language assessor, the Record does not indicate one was warranted here given that Student had not successfully used AT devices previously and was not currently using any such devices, either at School or home. (FF #s 8-9, 46-47). *See Dear Colleague Letter*, 124 LRP 1839 (OSERS 2024) (explaining that an AT evaluation may be conducted to help an IEP team determine when and why an AT device is needed “but is not required under the IDEA”).

However, the Report does not include a functional hearing or audiology assessment. (FF # 41). District did not have an audiologist on staff at the time of Student’s evaluation, however, staffing shortages do not relieve school districts of their obligations under IDEA. *See Denver Pub. Schs.*, 125 LRP 8572 (SEA CO 02/28/25) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage). Here, District had knowledge of Student’s bilateral profound hearing loss and cochlear implant—as described in the Prior IEP, August 28 meeting notes, and the Report itself—and therefore needed to evaluate Student’s audiology needs. (FF #s 7, 22, 41). Thus, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.304 with respect to audiology. District otherwise evaluated Student in all areas of need related to her suspected disability, as required by 34 C.F.R. § 300.304.

Procedural noncompliance with the IDEA results in a denial of FAPE only to the extent the noncompliance 1) impeded the child’s right to a FAPE, 2) significantly impeded the parent’s opportunity to participate in the decision-making process, or 3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, while District did not evaluate Student’s audiology needs, the Report reflects Student’s profound bilateral hearing loss and a cochlear implant, and the October IEP accurately indicates that Student is non-verbal, has bilateral hearing loss and a cochlear implant, and lacks communication and social skills as a result. (FF #s 39-41, 48). The October IEP also includes annual goals to address Student’s communication challenges. (FF # 49). Further, Parent and School staff did not report any concerns or changes with Student’s hearing or equipment during this time. (FF # 41). Finally, Student did not return to School after December 10, 2024—at Parent’s discretion—and was therefore not available for a hearing assessment once an audiologist was hired and audiology services added to Student’s IEP on December 12, 2024. (FF #s 53-54). For these reasons, the CDE finds and concludes that District’s noncompliance with 34 C.F.R. § 300.304 did not result in the denial of FAPE. 34 C.F.R. § 300.513(a)(2).

### **B. Review of Existing Data**

As part of an evaluation, school districts must review any existing evaluation data on the child, including (1) evaluations and information provided by the parent of the child, (2) current assessments and classroom observations, and (3) observations by teachers and related service providers. 34 C.F.R. § 300.305(a)(1).

Here, District requested but did not receive prior evaluation reports or other data from Prior State, other than the Prior IEP. (FF # 18). However, Coordinator, School Nurse, and SLP reviewed the Prior IEP as part of the evaluation and eligibility process, which included detailed information on Student and her needs. (FF # 37). The IEP Team also reviewed all information provided by Parent—which did not include any updated doctor’s orders at the time of the evaluation—and School staff’s observations of Student in the school environment. (FF #s 37-42). For these reasons, the CDE finds and concludes that District reviewed all existing data on Student, as required by 34 C.F.R. § 300.305(a)(1).

**Conclusion to Allegation No. 3: District did not develop an IEP that was reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances because it did not consider Student’s audiology needs, as required by 34 C.F.R. §§ 300.34(c)(1), 300.320, and 300.324. This resulted in a denial of FAPE.**

### **A. Legal Requirements for IEP Development**

The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseh F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). The IDEA requires a school district to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong

determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

## **B. IEP Development Process**

Parent's first concern is that the IEP Team did not consider Student's communication needs in developing the October IEP, specifically her need for an AT device. (FF # 3).

### **i. Consideration of Communication Needs**

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a). The IEP Team must also consider the communication needs of the child. *Id.* § 300.324(a)(2)(iv). For students who are deaf or hard of hearing, the IEP team must specifically consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode." *Id.*

Here, the IEP Team, including Parent, developed Student's October IEP at a properly convened IEP meeting on October 22, 2024. (FF # 43). The IEP Team reviewed the results of the recent evaluation, including a communicative assessment conducted by SLP. (FF #s 39, 43-44). The Report accurately reflects that Student is nonverbal, has profound bilateral hearing loss and a cochlear implant, and does not use AT devices or services to communicate. (FF # 39, 41). The Report also describes Student's primary mode of communication as gesturing and facial expressions. (FF # 39).

The October IEP incorrectly indicates in the Special Factors section that Student is not deaf or hard of hearing and does not have unique communication needs. (FF #s 46, 48). However, the October IEP reflects that Student is non-verbal, has bilateral hearing loss, and lacks communication and social skills to address her needs and wants without intensive adult support. (FF # 48). Further, the October IEP includes annual goals in Communication and Receptive Language and provides for 60 minutes per month of direct speech-language services to address delays in communication. (FF #s 49, 51). Finally, District corrected its error in the Special Factors section by amending the October IEP in December 2024 to reflect that Student is deaf or hard of hearing and has unique communication needs and to include a communication plan. (FF # 54). Notwithstanding, the Record reflects that the IEP Team did consider those needs in developing the October IEP. (FF #s 44, 46-49, 51).

For these reasons, the CDE finds and concludes that District considered Student's communication needs in developing her IEP, as required by 34 C.F.R. § 300.324(a)(2)(iv). District's development

of the IEP was otherwise consistent with IDEA's requirements. *Rowley*, 458 U.S. at 207. The CDE next turns to whether the IEP was substantively appropriate. *Id.*

### C. Substantive Adequacy of the IEP

An IEP must identify the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved in and make progress in the general education curriculum, and (3) participate in nonacademic activities. 34 C.F.R. § 300.324(a)(4). Related services must be included in a student's IEP when they are necessary for the student to benefit from special education. *See In re Student with a Disability*, 65 IDELR 160 (SEA ID 03/16/15).

#### i. School Health and School Nurse Services

Parent's primary concern relates to the IEP Team's decision not to include 1:1 nursing services in the October IEP and subsequent IEP amendments. (FF #s 3, 23).

School health services and school nursing services are related services. 34 C.F.R. § 300.34(a). School health services and school nursing services are both "health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP." *Id.* § 300.34(c)(13). While a nurse provides school nursing services, school health services may be provided by a school nurse or other qualified person. *Id.* A school district must provide school health or nursing services if the student needs such services to receive FAPE. *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 07/06/18).

Here, in developing the October IEP, the IEP Team considered Student's school health and school nursing information included in the Prior IEP, the results of the recent evaluation, parent input, and observations of Student by School staff. (FF #s 43-52). The October IEP reflects that Parent had provided a PDN to accompany Student to school and provide all healthcare interventions throughout the school day. (FF # 45). School Nurse had requested updated doctor's orders from Parent to inform the delivery of Student's services at School and create an HCP, consistent with District procedure, but had not received updated orders from Parent at the time of the October IEP Team meeting. (FF #s 29, 45). *See Arapahoe Cnty. Sch. Dist. 6*, 124 LRP 39074 (SEA CO 10/15/24) (finding parent's failure to provide necessary medical information to school nurse after multiple requests caused delay in student's receipt of services).

It was the IEP Team's decision whether Student requires school health or nursing services, and it was School Nurse's decision whether Student's services could be delegated to other qualified staff. (FF #s 24-26). Based on her review of the Prior IEP and information obtained from Parent, but without the benefit of current doctor's orders, School Nurse determined that Student's services were within her scope of practice and could be delegated to School health technicians or other qualified staff properly trained and supervised by School Nurse. (FF #s 28-29). Indeed, health technicians at School were delegated the same or similar tasks Student required—

including tube feedings and maintenance—and provided those services to other students at School with complex needs. (FF #s 27-29). As a result, District offered to provide Student with school health and school nurse services via qualified staff delegated and supervised by the school nurse throughout the school year. (FF #s 28-29). The CDE finds and concludes District’s process in determining and delegating school health services in Student’s IEP was consistent with IDEA and CDE Guidance. 34 C.F.R. § 300.320(a)(4); *Delegation Considerations for Colorado School Nurses and Childcare Health Consultants* (CDE 2024), available at [https://www.cde.state.co.us/shs/nurse\\_delegation](https://www.cde.state.co.us/shs/nurse_delegation).

Following the PDN’s departure, District reaffirmed its offer to provide Student delegated school services at the December 2024 and January 2025 IEP meetings. (FF #s 53, 55-60). However, Parent remained uncomfortable with that arrangement and declined to have Student attend School without 1:1 school nursing services or a PDN. (FF #s 53, 55-57). As a result, Student has not attended School since December 10, 2024. (FF # 53, 64-65).

While Parent’s safety concerns are understandable, given Student’s complex medical history, the evidence in the Record shows that District’s offer of FAPE meets Student’s health and school nurse service needs. (FF #s 24-29, 32, 37, 45, 55, 58-60). Therefore, the CDE finds and concludes that the October IEP was reasonably calculated to allow Student to make progress appropriate in light of Student’s circumstances in this respect, as required by 34 C.F.R. § 300.320(a)(4).

#### ii. Audiology Services

Parent’s concern is that the IEP Team did not include audiology services as a related service in the October IEP. (FF # 3).

Audiology is a related service under IDEA and includes: identification of children with hearing loss; determination of the range, nature, and degree of hearing loss, including referral for medical attention; provision of habilitative activities; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers; and determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification. 34 C.F.R. § 300.34(a), (c)(1).

Here, the October IEP described Student’s hearing loss and cochlear implant but did not include audiology as a related service because District did not have an audiologist on staff at the time. (FF #s 22, 48, 51). Once an audiologist was hired, Student’s October IEP was amended on December 12, 2024, to include 15 minutes per month of indirect audiology services. (FF # 54). Because the October IEP does not include audiology as a related service that the IEP Team knew Student needed, the CDE finds and concludes that it was not reasonably calculated to allow Student to access her special education services, as required by 34 C.F.R. § 300.320(a)(4). This noncompliance relates to IDEA’s substantive requirements around development of an IEP, resulting in a denial of FAPE. *See D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010)

(finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

#### **D. Compensatory Services**

Compensatory services are an equitable remedy intended to place a student in the same position she would have been if not for the noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an "hour-for-hour calculation." *Colo. Dep't of Educ.*, 118 LRP 43765 (SEA CO 06/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, Student did not receive audiology services under the Comparable Services Offer or the October IEP (i.e., between starting school on September 3, 2024, and discontinuing attendance on December 10, 2024). (FF #s 22, 51, 53). District proposed to provide 60 minutes of indirect audiology compensatory services to promote Student's access and re-acclimation to her learning environment. (FF # 4). The CDE finds this proposal is appropriate to remedy the denial of FAPE, given Student's needs, the length of time she was without audiology services, and her absences. (FF #s 7, 22, 35, 51, 53-54).

**Systemic Noncompliance: This investigation does not demonstrate noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in District if not corrected.**

Pursuant to its general supervisory authority, the 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*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, District's written Procedure outlines its process when a student with an IEP transfers to District and requires that District have an IEP in effect for each student within its jurisdiction at the beginning of each school year, regardless of any transfer/enrollment status, consistent with IDEA. (FF #s 11-12). Because District's written Procedure is consistent with IDEA's requirements, the CDE finds and concludes that District's noncompliance with 34 C.F.R. § 300.323(a) points to District staff not following its own procedures in this instance, rather than a systemic concern. (*Id.*). Similarly, the Record shows District's noncompliance with 34 C.F.R. §§ 300.304 and 300.320(a) was specific to Student's circumstances and not indicative of a systemic issue. Moreover, a teacher of the deaf was available to serve the needs of students with hearing challenges at School, and the staffing shortage has since been remedied; however, Parent did not return Student to School once an audiologist was available. (FF #s 19, 22, 53). For these

reasons, the CDE finds and concludes District's noncompliance here is not systemic and is not likely to impact the future provision of services for all children in District.

### **REMEDIES**

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

1. Having an IEP in effect for Student at the beginning of the school year, as required by 34 C.F.R. § 300.323(a);
2. Evaluating Student in all areas related to her suspected disability, as required by 34 C.F.R. § 300.304(c); and
3. Including audiology as a related service in the October IEP, as required by 34 C.F.R. § 300.320(a)(4).

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

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

- a. By **October 27, 2025**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance 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 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. Final Decision Review**

- a. Director, Coordinator, and all special education coordinators in District must read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.304, 300.320, and 300.323, by **November 3, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **November 7, 2025**.

#### **3. Compensatory Services**

- a. Student shall receive **60 minutes of indirect audiology services** provided by an appropriately licensed audiologist selected by the District.

- b. By **October 27, 2025**, Parent shall provide written consent for the provision of compensatory services to the CDE and the District. If Parent does not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by the District, this written consent shall be provided by Parent to Director. The District must then provide the written consent to the CDE Special Education Monitoring and Technical Assistance Consultant.
- c. By **October 27, 2025**, District shall provide written verification of Student's attendance at School to the CDE Special Education Monitoring and Technical Assistance Consultant. If Student does not attend School by **October 27, 2025**, the District will be excused from providing compensatory services. If, for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session.
- d. All compensatory services must be provided to Student **no later than February 27, 2026**. These services must be designed to advance Student toward annual IEP goals and ensure her participation in the general curriculum.
- e. To verify that Student has received the services required by this Decision, the District must submit records of service logs to the CDE by the second Monday of each month, once services begin, until compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. Parent may opt out of some or all compensatory services.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
201 E. Colfax Avenue  
Denver, CO 80203


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

### **CONCLUSION**

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process

Complaint on the issue with which the party disagrees. *Id.*; see also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 26th day of September, 2025.

A handwritten signature in black ink, appearing to read "Lee Sosebee", is written over a light blue rectangular background.

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Lee Sosebee, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-7**

- Exhibit 1: Documentation

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

- Exhibit A: IEPs
- Exhibit B: Evaluations and Assessments
- Exhibit D: Health and Medical Documentation
- Exhibit G: PWNs
- Exhibit H: Notice of Meeting
- Exhibit I: Progress Monitoring
- Exhibit J: Attendance
- Exhibit K: Calendars
- Exhibit L: Policies and Procedures
- Exhibit M: Correspondence
- Exhibit O: Verification of Delivery
- Exhibit P: Enrollment Documentation

### **Telephone Interviews**

- Coordinator: August 28, 2025
- School Nurse: August 28, 2025
- Nursing Supervisor: August 28, 2025
- SLP: August 28, 2025
- Director: August 28, 2025
- Parent: September 2, 2025