

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

State Complaint SC2025-609
Boulder Valley School District

DECISION

INTRODUCTION

On September 16, 2025, two special education advocates (“Complainants”) filed a state complaint against Boulder Valley School District (“District”) on behalf of students eligible for special education services under the Individuals with Disabilities Education Act (“IDEA”)¹. The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE 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 September 16, 2024. Information prior to September 16, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

² The CDE’s state complaint investigation determines if the 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 has a policy, procedure, or practice in place that:
 - a. Improperly places a one-year time limitation on parents' requests for an independent educational evaluation ("IEE"), inconsistent with 34 C.F.R. §§ 300.502(b)(4) and 300.502(e)(2).
 - b. Imposes criteria that limit parents' right to an IEE, inconsistent with 34 C.F.R. § 300.502, including:
 - i. Requiring evaluators to sign a contract with the District;
 - ii. Requiring evaluators to meet privately with the District to determine the scope of the evaluation;
 - iii. Requiring parents to identify specific assessment areas and sign a release; and
 - iv. Limiting evaluators' ability to meet with parents and attend IEP Team meetings.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact ("FF"):

A. Background

1. In their Complaint, Complainants raised concerns about the District's policies, procedures, and practices surrounding IEEs. *Complaint*, pp. 9-14. Specifically, Complainants alleged that the District's IEE processes improperly placed a time limitation on IEEs and imposed conditions that limited parents' right to IEEs. *Id.*
2. The Complainants' allegations did not identify specific students but, instead, argued these procedures systemically impacted all students eligible for special education in the District. *Id.*

B. Overview of the District's IEE Process

3. When a parent requests an IEE, District staff funnel that request to District's Executive Director of Special Education ("Executive Director"). *Interview with Executive Director*. This practice applies regardless of how a parent raises the request, whether it occurs during an IEP Team meeting or through an email to a student's case manager. *Id.*

³ The appendix, attached and incorporated by reference, details the entire Record.

4. Once Executive Director becomes aware of the request, she or her assistant (“Administrative Assistant”) sends the parent a handout detailing the IEE process (“Initial Handout”). *Interview with Executive Director; Exhibit C*, pp. 2-3. The Initial Handout provides information regarding: the general parameters of an IEE, the procedure for requesting an IEE, the protocol for completing an IEE, and the protocol for reviewing an IEE. *Exhibit C*, pp. 2-3.
5. Per the Initial Handout, requesting an IEE involves three steps: (1) submitting a written request via email to Executive Director; (2) identifying the evaluation with which the parent disagrees; and (3) specifying the areas of evaluation/assessments requested in the IEE. *Id.* at p. 2. Identifying the contested evaluation allows Executive Director to confirm that the parent is entitled to an IEE under the IDEA. *Interview with Executive Director*. Executive Director uses the areas of evaluation/assessments to understand the parent’s intention with the IEE. *Id.* The Initial Handout indicates that it is “helpful” for the parent to provide the reason for their disagreement. *Id.* The District conflates providing the reason for the IEE with the specific areas of evaluation/assessments in its Sur-Reply; however, the District’s Initial Handout makes clear that they are separate pieces of information. *Sur-Reply*, p. 3; *Exhibit C*, p. 2.
6. Executive Director then determines whether to approve the IEE. *Exhibit C*, p. 2. If the District approves the IEE, Administrative Assistant sends the parent an approval letter (“Approval Letter”). *Id.* at p. 1. The Approval Letter informs the parent that the IEE has been approved and provides information regarding next steps, including the District’s criteria for IEEs (“IEE Criteria”) and a list of possible evaluators (“IEE Resources”). *Id.*
7. Then, the parent must select an evaluator and sign a two-way release of information (“ROI”). *Id.* The District then meets with the evaluator to discuss and execute the District’s independent contractor agreement (“IC Agreement”). *Id.*; *Interview with Executive Director*. The parent does not participate in any discussion or negotiation of the IC Agreement. *Interviews with Executive Director and Complainants*.
8. Once the evaluator signs the IC Agreement, the parent schedules the student’s evaluation. *Exhibit C*, p. 1. Once complete, the evaluator sends the report to the District, where it will be considered at a subsequent multidisciplinary or IEP Team meeting, and the District pays the evaluator directly for the IEE. *Id.* at p. 3; *Interview with Executive Director*.
9. This process applies to direct pay IEEs, where the District pays the evaluator directly without the parent incurring any costs. *Id.* Approximately 95% of the District’s IEEs are direct pay. *Id.*
10. Alternatively, a parent can seek reimbursement from the District for an IEE. *Id.* In that case, the parent proceeds independently once the District has approved the IEE. *Id.* The parent selects an evaluator and has the evaluation completed without the need for an ROI or IC Agreement. *Id.*

C. Revisions to District's IEE Procedures

11. In Summer 2025, the District implemented new IEE procedures and practices. *Id.* At that time, the District's procedures and practices were approximately ten years old. *Interview with Executive Director.* They contained less detail and, in some ways, were simpler. *Id.*; *Interview with Complainants.*
12. Under the prior process, the parent completed a form to request an IEE. *Interview with Executive Director; Exhibit E, p. 40.* That form required the parent to check a box indicating the type of assessments requested (such as education, psychological, speech/language, occupational therapy, physical therapy, or other) and the reason for requesting an IEE. *Exhibit E, p. 40.* Once the District approved the IEE, the District had little, if any, interaction with the evaluator, and no IC Agreement or ROI was required. *Interview with Executive Director.*
13. The District's prior procedures and practices often left parents with unanswered questions. *Id.* Families with less knowledge of special education struggled with the IEE process. *Id.* This concern, coupled with the District's desire to modernize the IEE process, prompted Executive Director to begin drafting new IEE procedures in Spring 2025. *Id.*
14. The District completed the revised procedures in August 2025, though a draft version was briefly trialed in May 2025. *Id.* Executive Director sought feedback from external stakeholders, such as advocates (including Complainants) and evaluators, during the drafting process. *Id.*; *Exhibit E, pp. 4-5, 50-54, 57-60, 62-64.*
15. The District's new IEE process consists of: (1) the Initial Handout; (2) the Approval Letter; (3) the IEE Criteria; (4) the IEE Resources; and (5) the IC Agreement. *Exhibit A, pp. 1-10; Exhibit C, pp. 1-3.* Together, these document the IEE process outlined in Part A above, though the District does not appear to have a single procedure that details the entire IEE process. *Exhibit A, pp. 1-10; Exhibit C, pp. 1-3.*
16. The Findings of Fact below address only those portions of the IEE process at issue in this investigation and do not attempt to identify each component.

D. Timeframe for Requesting an IEE

17. The Initial Handout sets forth the timeframe in which parents may request an IEE:

Generally, the written request for an IEE must be submitted within one year from the date of the evaluation(s) with which you disagree though there may be some cases where it may be appropriate for up to two years.

Id. at p. 2.

18. Complainants argued this time restriction conflicted with the IDEA and improperly limited parents' ability to request an IEE. *Interview with Complainants; Complaint, pp. 6-10.*

19. Executive Director emphasized that this language represents the District's preference for parents to timely seek IEEs and that it was not intended to bar late IEEs. *Interview with Executive Director*. If the parents disagree with the District's evaluation, the District prefers to resolve that disagreement as soon as possible; as long as it remains outstanding, the District continues to rely on the information the parent disagreed with in the first place. *Id.*

E. ROI, IC Agreement, and Meetings with Evaluators

20. Once a parent selects an evaluator, the District requires the parent to sign a two-way ROI. *Interview with Executive Director*. The ROI allows the District to share "necessary information", such as the student's information with the evaluator. *Id.*; *Response*, p. 8. The District routinely provides evaluators with the student's most recent evaluation to ensure the evaluator knows which assessments have been completed. *Interview with Executive Director*. This step reduces the likelihood of any assessments being repeated improperly (i.e. too soon after a prior administration). *Id.*

21. Next, the evaluator signs an IC Agreement. *Id.* The District did not previously require evaluators to sign contracts; however, in recent years, the District, as a whole, has emphasized documenting arrangements with outside vendors through independent contractor agreements. *Id.*

22. The three-page IC Agreement covers standard contractual topics, such as payment terms, appropriate licensing, evaluator's status as an independent contractor (and related benefit and tax implications), liability, insurance, confidentiality, and enforceability. *Exhibit D*, pp. 1-3. The first paragraph of the IC Agreement states:

It is understood between the parties that the Contractor is an independent contractor, and as such, is free from the control and direction of the District in the performance of the services contracted for, and the Contractor is responsible for all decisions affecting their business.

Id. at p. 1.

23. Exhibit A to the IC Agreement sets forth the scope of work. *Id.* at p. 4. This exhibit contains space for the evaluator and District to identify the maximum cost of the IEE and a description of the services to be performed by the evaluator. *Id.* Exhibit A suggests including scope, detailed cost breakdowns, each party's deliverables/obligations, work schedule, and other information. *Id.*

24. The bottom of Exhibit A clarifies that:

Even though specific assessments are noted in this scope of work, evaluators are always given professional discretion in their ability to determine the specific assessments and evaluation procedures as they discuss the evaluation with parents and as they engage in the evaluation process. Evaluators can also always

reach back out to [the District] if something has changed significantly in terms of the scope of work whereas terms need to be adjusted throughout the course of the evaluation.

Id. According to Complainants, the District added the clarification after this state complaint was filed. *Interview with Complainants; Exhibit 1*, p. 13.

25. During this investigation, the District produced two examples of Exhibit A in use. *Exhibit 1*, pp. 1-2. One of the examples listed the scope of work as:

Tier 4+ -IEE evaluation: Comprehensive evaluation based on a 30.5 hour evaluation (includes intake, record review, collateral interviews, direct testing, scoring, in-school observations, data interpretation, writing, feedback, and collaborative post evaluation meeting with family and academic team).

Id. at p. 1. The second example detailed the specific assessments being performed:

Include: Cognitive (WISC-V), Academic (WIAT-4, GORT-5), Executive Functioning (selected tests from the NEPSY, D-KEFS, and BRIEF-2 report forms), Adaptive (Vineland-3 report forms), Social/Emotional (BASC-3 report forms, SCARED, SRS-2, other emotional tests if needed), Motor/Sensory – Not included, Observations in the school setting (selected school observation tool based on evaluation questions).

Id. at p. 2.

26. Typically, the District discusses a student’s prior evaluations and the terms of the IC Agreement—including the scope of work in Exhibit A—directly with the evaluator either through an email, a phone call, or a meeting. *Interview with Executive Director*. This consultation often occurs before the parent has spoken with the evaluator. *Interview with Executive Director*. At that point, the evaluator’s only information about the student comes from the District. *Id.*
27. The District views the consultation as “just getting a contract for payment” and merely a “business practice.” *Interview with Executive Director; Response*, p. 7. However, the conversation goes beyond payment terms given that the parties go through a “collaborative process” that “includes a discussion about each area to be assessed” and “clarif[ies] what is being assessed.” *Response*, p. 7. This discussion ensures the assessments “are not duplicative and appropriate.” *Id.* Though the District emphasized the “collaborative” nature of the discussion, it also stated that the evaluator determined the scope of services. *Id.* at pp. 7-8.
28. The District does not include parents in the consultations with evaluators and has explicitly denied requests from parents to join this part of the process. *Interview with Executive Director; see Exhibit E*, p. 110. In an internal email, Educational Systems Specialist—who often

meets with evaluators regarding the IC Agreement and Exhibit A—asked Executive Director about a parent’s request to join a meeting with an evaluator:

[An advocate] is asking that I include the parents when agreeing upon a scope of work for the IEE . . . Do I have to? This seems outside the scope of their FERPA rights. . . Or maybe they have a right to know what was discussed but not a right to be present for the negotiation with the IEE providers.

Exhibit E, p. 110. The District downplayed Educational Systems Specialist’s use of “agreeing upon” and “negotiation.” *Sur-Reply*, p. 8. Instead, the District characterized the conversation as Educational Systems Specialist “inform[ing] the IEE provider of the assessments already conducted and the provider inform[ing] the District of the assessments they will use.”

29. Executive Director responded to Educational Systems Specialist’s email: “This is us working on our agreement with the provider. This is not a meeting for the parent. . . . It isn’t an IEP meeting it is a meeting between [the District] and a contractor and we don’t involve parents in those meetings.” *Id.* In its *Sur-Reply*, the District reiterated, without support, its position that FERPA somehow affected the parents’ ability to participate in a consultation with an evaluator. *Sur-Reply*, p. 8. Whether or not any negotiation of the scope of the evaluation occurs, it is clear from the facts that the scope is determined during the District’s consultation with the evaluator, without any participation from the parent and without the evaluator meeting the student. *Interviews with Complainants and Executive Director; Response*, p. 7; *Sur-Reply*, p. 8.
30. Complainants expressed concern over the impact of the IC Agreement on the evaluator’s independence, noting that the IC Agreement makes it appear as if the District controls the scope of the evaluation rather than the evaluator. *Interview with Complainants*. They also indicated the District’s private conversations with the evaluator—especially before the parent meets with the evaluator—felt like an intrusion on the independence of the IEE process. *Id.*

F. Evaluators Attending Subsequent Meetings

31. The District’s standard practice involves having District staff review and interpret an IEE at a multidisciplinary or IEP Team meeting, whichever the case may be (or, perhaps, a multidisciplinary team meeting). *Interview with Executive Director*. If the District does not have a staff member who can interpret the evaluation, the District invites the evaluator to attend the meeting. *Id.* However, the District does not routinely invite evaluators to attend. *Id.*
32. Parents often prefer to have the evaluator attend and interpret the IEE; in such situations, the parent can invite the evaluator to attend at the parent’s expense. *Id.* On occasion, the District accommodates the parent’s preference and pays for the evaluator’s attendance, but scheduling a meeting around an evaluator’s schedule can be challenging. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District has procedures and practices in place that impose additional conditions or timelines on a parent’s right to an IEE, inconsistent with 34 C.F.R. § 300.502. The noncompliance arises directly from the District’s procedures and practices and, therefore, is systemic. 34 C.F.R. § 300.151(b)(2).

The sole allegation in the Complaint concerns the propriety of the District’s policies, procedures, and practices governing IEEs. Complainants allege the District has improperly imposed a time limitation on parents’ requests for IEEs and created criteria that restrict parents’ right to an IEE, inconsistent with 34 C.F.R. § 300.502.

A. IEE Requirements

“IEE” refers to an evaluation conducted by a qualified examiner who is not employed by the child’s school district. 34 C.F.R. § 300.502(a)(3)(i). The IDEA provides parents the right to seek an IEE at public expense—that is, paid for by the district or provided at no cost to the parent—if they disagree with an evaluation completed by the school district. *Id.* §§ 300.502(a)(1), (b)(1). Once a parent requests an IEE, the district must, without unnecessary delay, either approve the IEE or file a due process complaint to show that its evaluation was appropriate. *Id.* § 300.502(b)(2). The parent can seek only one IEE for each district evaluation. *Id.* § 300.502(b)(5). Other than this restriction, the IDEA provides no time limitation on when a parent can request an IEE. *See id.* § 300.502.

IEEs “play a critical role in the IDEA framework.” *Alex W. v. Poudre Sch. Dist. R-1*, 94 F.4th 1176, 124 LRP 7692 (10th Cir. 2024). School districts naturally have an advantage in terms of information and expertise compared to parents. *Id.* The IDEA “counterbalances this advantage by providing parents with the right to an IEE at public expense.” *Id.* An IEE “ensures parents ‘are not left to challenge the [school district] . . . without an expert with the firepower to match the opposition.’” *Id.* (quoting *Schaffer v. Weast*, 546 U.S. 49 (2005)).

B. Time Limitation on Requests for IEEs

The first portion of this allegation relates to the District’s time limitation on IEEs. As noted above, the IDEA places no time restriction on a parent’s request for an IEE. *See* 34 C.F.R. § 300.502. A disagreement with an evaluation completed by the school district triggers a parent’s right to an IEE. *Id.* The IDEA ties a parent’s right to an IEE to the frequency of the student’s evaluations. *Id.* § 300.502(b)(5). A parent is entitled to only one IEE for each evaluation completed by the district. *Id.* Guidance from the U.S. Department of Education’s Office of Special Education Programs (“OSEP”) suggests that entitlement runs out at some point: “It is not unreasonable for a school district to deny a parent’s reimbursement for an IEE that was conducted more than two years

after the public agency's evaluation." *Letter to Thorne*, 16 LRP 838 (OSEP 02/5/90). However, OSEP leaves unanswered the question of when exactly a request for an IEE becomes time barred.

Adoption of Two-Year Time Limitation

Other jurisdictions have relied on *Letter to Thorne* and 34 C.F.R. § 300.507(a)(2) in setting a two-year limitation for IEE requests. *See, e.g., Placentia-Yorba Linda Unified Sch. Dist.*, 112 LRP 41903 (SEA CA 08/07/12); *Salem Keizer Sch. Dist. 24J*, 109 LRP 65863, (SEA OR 09/24/04). The CDE finds this approach persuasive and adopts a two-year time limitation for requests for IEEs. That is, a parent has two years from the date of the district's evaluation to request an IEE. The CDE draws support for this limitation from the *Letter to Thorne*, as well as the IDEA's IEE framework.

As noted above, the IEE process seeks to provide parents an independent evaluator with the "firepower" to challenge an evaluation completed by the district. *See Alex W.*, 94 F.4th 1176 (10th Cir. 2004). The IDEA envisions both the district's evaluation and an IEE being used to develop a student's IEP. *See* 34 C.F.R. §§ 300.324(a), 300.502(c)(1). Yet, the potency of this firepower diminishes with the passage of time. Such a challenge serves little purpose when the district's original evaluation no longer reflects the student's present abilities or needs. An IEE completed more than two years after the district's evaluation has little comparative value and, instead, paints a picture of the student at a different point in time.

The IDEA requires students to be reevaluated at least once every three years. *Id.* § 300.303. If a parent waits more than two years to request an IEE, the student's triennial reevaluation would be drawing near. Under such circumstances, the district could plausibly pay for an IEE immediately before beginning a reevaluation (which would, in turn, entitle the parent to another IEE). The better practice in such situation would be to initiate the student's reevaluation and, if parent's concerns persisted, then move forward with an IEE.

For the reasons above, the CDE finds and concludes that a two-year time limitation applies to all requests for IEEs.

Time Limitation in Initial Handout

Here, the District's Initial Handout directs parents to request an IEE within one year and acknowledges that "there may be some cases where it may be appropriate for up to two years." (FF #s 4, 17.) The plain language of the Initial Handout creates a time limitation that simply does not exist under the IDEA. The IDEA makes clear that districts cannot impose any timelines on IEEs other than those specified in 34 C.F.R. § 300.502. 34 C.F.R. § 300.502(e)(2).

During this investigation, the District indicated this language merely expressed the District's preference that parents timely seek IEEs. (FF # 19.) The CDE recognizes the intent behind this language may make sense from a practical educational standpoint. After one year, an evaluation

no longer provides the most accurate snapshot of the student's current academic, developmental, and functional needs. Indeed, a student's academic, cognitive, social-emotional, and behavioral profiles can change significantly within a relatively short period. However, nothing in the language itself informs parents that this time limitation is merely a suggestion. (FF # 17.) A parent could rely on the Initial Handout to decide not to request an IEE if the evaluation occurred more than one year ago, and the District would not necessarily be aware of parents who were dissuaded by the time limitation.

For these reasons, the CDE finds and concludes that the District's IEE procedures create an improper one-year time limitation on IEEs, inconsistent with 34 C.F.R. § 300.503. This resulted in procedural noncompliance with the IDEA.

C. IEE Criteria

The second portion of this allegation concerns certain aspects of the District's IEE procedures and practices. Complainants questioned whether these requirements ultimately limited a parent's right to an IEE, inconsistent with 34 C.F.R. § 300.502. Except for the criteria detailed in 34 C.F.R. § 300.502(e)(1), school districts may not impose any conditions or timelines on IEEs. 34 C.F.R. § 300.502(e)(2).

Requiring Parents to Identify Assessment Areas

When requesting an IEE, the District's current procedures require a parent to identify both "the evaluation with which you disagree" and "the specific areas of evaluation/assessments you are requesting" in the IEE. (FF # 5.) Identifying the evaluation with which the parent disagrees allows the District to ensure the parent is entitled to an IEE under 34 C.F.R. § 300.502. (*Id.*) For example, Executive Director can confirm the evaluation identified was the most recent evaluation conducted by the District. (*Id.*)

According to the District, asking for the requested areas of evaluation helps the District understand what the parent seeks from the IEE. (*Id.*) Because the District no longer uses a form for IEE requests, parents must decide what information they need to share to satisfy this requirement. (*See* FF # 12.) During this investigation, the District acknowledged the varying levels of information parents bring to the IEE process. (FF # 13.) While some parents have a solid understanding of the different areas of evaluation and assessments, other parents know only that they disagree with the District's evaluation. For instance, a parent might disagree with the outcome of their child's psychological evaluation because the parent feels it does not accurately represent their child, but that parent might not be able to articulate the specific areas of evaluation/assessments that they are requesting. Parents often lack knowledge regarding the variety of assessments available or even any restrictions on repeating assessments.

By requiring a parent to identify specific areas of evaluation and assessments, the District has created an additional condition to obtaining an IEE. The IDEA does not require a parent to provide

such information to obtain an IEE, and § 300.502(e)(2) does not permit imposition of such condition. For these reasons, the CDE finds and concludes that requiring parents to identify areas of evaluation and assessments to obtain an IEE does not comply with 34 C.F.R. § 300.502(e)(2).

As an aside, the CDE notes that the District's procedures suggest that it is "helpful" if the parent includes the basis for their disagreement, but the reason is not required. (FF # 5.) The current procedures do not expressly require a parent to provide a reason for their disagreement. (*Id.*) Nonetheless, as a caution, the CDE notes that District staff may ask a parent why he or she disagrees with the district's evaluation; however, the District may not require the parent to provide such explanation or "unreasonably" delay the IEE because the parent declines to provide an explanation. *Id.* § 300.502(b)(4). Because the procedures make this information optional, they comply with 34 C.F.R. § 300.502(e)(2).

Requiring Parents to Sign ROI

Once the District approves an IEE, parents must sign an ROI allowing the District and evaluator to share information about the student. (FF #s 7, 20.) After the parent signs the ROI, the District provides the evaluator with the student's prior evaluation. (FF # 20.) According to the District, this sharing of information preserves the validity of the IEE by assuring assessments are not improperly duplicated or repeated too soon. (*Id.*)

The use of ROIs—even by the District—is neither new nor novel. See *Boulder Valley Sch. Dist. RE-2*, 123 LRP 31695 (SEA CO 04/18/23) (acknowledging the District's use of an ROI to facilitate communication between evaluators and District staff); *Boulder Valley Sch. Dist. RE-1J*, 123 LRP 5309 (SEA CO 09/14/22) (utilizing ROI with evaluator during IEE). Indeed, prior decisions by CDE have implicitly acknowledged the use of ROIs during IEEs. See *Boulder Valley Sch. Dist. RE-2*, 123 LRP 31695 (SEA CO 04/18/23); *Boulder Valley Sch. Dist. RE-1J*, 123 LRP 5309 (SEA CO 09/14/22). But the CDE has never been asked to decide whether the IDEA permitted a school district to condition an IEE on the signing of an ROI. Now, with this investigation, that question is directly at issue.

In *Letter to Anonymous*, 110 LRP 52283 (OSEP 2010), OSEP addressed the use of an ROI as part of the IEE process. There, OSEP was asked whether an IEE procedure that directed the parent to provide a copy of the IEE and "written consent to exchange information" was consistent with the IDEA. 110 LRP 52283. OSEP noted that "[p]arental consent would be required under 34 C.F.R. § 300.622(a) for a public agency to release education records to the independent examiner who conducted the IEE, since the independent examiner is not an official of a participating agency." 110 LRP 52283. OSEP acknowledged that neither the IDEA nor its implementing regulations addressed whether parental consent would be necessary for the evaluator to provide the results of the IEE to the school district. *Id.* Indeed, such action would likely be covered by the Health Insurance Portability and Accountability Act. *Id.* But OSEP did not directly answer whether a procedure that required an ROI would comply with the IDEA. *Id.*

The Oregon Department of Education specifically addressed this question in *Gresham-Barlow Sch. Dist. 10J*, 113 LRP 22781 (SEA OR 5/10/13). There—like here—the school district argued the ROI was “essential” in allowing the district to provide information to the evaluator. But the Oregon SEA noted that the evaluator might not need to examine the student’s records to complete the evaluation. *Id.* If the evaluator needed the records, the parent could provide them to the evaluator without an ROI. *Id.* Ultimately, the Oregon SEA determined that the ROI requirement contradicted the IDEA: “Nothing in the IDEA or its implementing regulations or case law supports a requirement that a parent sign a release of records before an IEE can begin. . . .” *Id.*

The CDE finds the *Gresham-Barlow* decision persuasive. Here, the District requires parents to sign a two-way release to share “necessary information” before the IEE can begin. (FF # 20.) However, the Findings of Facts show that the District prefers to share information with evaluators to facilitate drafting Exhibit A and avoid improper repetition of assessments. (FF #s 20, 26-29.) The District has not offered any facts to show that the exchange of information is truly necessary. Like in *Gresham-Barlow*, parents may provide the student’s records directly to the evaluator without the need for an ROI or even the District’s involvement.

The CDE acknowledges the benefit the ROI provides to the IEE process. The student’s prior evaluation aids the evaluator, and the District and the parent have a shared interest in the integrity of the IEE. But, by requiring a parent to sign an ROI, the District has usurped some of the parent’s power in the IEE process and created an additional condition to obtaining an IEE. The IDEA does not permit imposition of any such condition. 34 C.F.R. § 300.502(e)(2). The District may *request* that the parent sign an IEE, but it cannot *require* such a signature. For these reasons, the CDE finds and concludes that requiring a parent to sign an ROI creates an additional condition on a parent’s right to an IEE, inconsistent with 34 C.F.R. § 300.502(e)(2).

Use of IC Agreement

The District’s procedures require evaluators to enter into a contract with the District before the IEE begins. (FF #s 7, 21.) This contract, known as the IC Agreement, covers standard contractual topics, such as payment terms, licensing, liability, and insurance, and mirrors contracts used by the District with other outside vendors. (FF #s 21-22.) Exhibit A to the IC Agreement sets forth the scope of work for the contract, including the scope of the IEE and a cost breakdown. (FF # 23.) There, the evaluator and District identify the maximum cost of the IEE and describe the services to be performed by the evaluator. (FF #s 23, 25.) Exhibit A makes clear that evaluators have “professional discretion . . . to determine the specific assessments and evaluation procedures as they discuss the evaluation with parents and as they engage in the evaluation process.” (FF # 24.) The District and evaluator can agree to modify the scope of work at a later date, if needed. (*Id.*)

Here, the CDE finds the District’s IC Agreement consistent with the requirements of 34 C.F.R. § 300.502. The IDEA remains silent regarding contracts between school districts and evaluators.

See 34 C.F.R. § 300.502. No guidance from the U.S. Department of Education or legal authority supports finding a contract to create an additional condition on an IEE under § 300.502. Given the ubiquity of contracts between districts and evaluators, the CDE finds the lack of contrary guidance persuasive. Without supporting authority, the CDE remains reluctant to eliminate a district's ability to contract with an outside vendor for an IEE.

A contract benefits all parties: the District, the evaluator, and the parent. The contract assures that the District and the evaluator have a shared understanding of their business relationship—that is, what work will be done by whom at what cost, who will pay, and how any liability will be allocated. The IC Agreement gives the parent clarity on the scope of the evaluation and reassurance that the parent will not be expected to pay for the evaluation.

The CDE also acknowledges the appearance that the IC Agreement creates. Complainants argued the contract diminishes an evaluator's independence and gives the appearance that the District controls the IEE process. (FF # 28.) Parents naturally feel uneasy about being excluded from conversations regarding the scope of the IEE, especially before parents have spoken to the evaluator themselves. However, the IC Agreement also makes clear that the evaluator retains his or her independence during the evaluation process: "[T]he Contractor is an independent contractor, and as such, is free from the control and direction of the District in the performance of the services contracted for. . . ." (FF # 22.) Additionally, Exhibit A encourages the evaluator to contact the District should the scope of work need to be modified. (FF # 24.)

Here, Complainants' concerns arise less from the contract itself than from the way the District negotiates that contract. The District's closed-door consultations with evaluators and parents' exclusion from conversations regarding the scope of the IEE cause parents' unease, not the IC Agreement itself. These practices can be separated from the use of the IC Agreement and do not make the IC Agreement itself contradictory. The CDE has addressed these District practices separately below.

For the reasons stated above, the CDE finds and concludes that the District's use of the IC Agreement complies with 34 C.F.R. § 300.502.

Private Consultations with Evaluators

Under its current practice, the District meets with evaluators to review and finalize the IC Agreement. (FF #s 7, 26.) During this meeting (or, in some cases, email exchange or telephone conference), the District and the evaluator discuss the student's prior evaluations, determine the scope of the IEE, and document that scope in Exhibit A. (FF # 26.) Sometimes the scope identifies specific assessments, and sometimes it does not. (See FF # 25.)

This meeting occurs immediately after the parent selects an evaluator and signs the ROI, so often the evaluator has not yet met the parent or the student. (FF #s 7, 26.) The District does not permit parents to attend the meeting or include them in email correspondence or phone calls. (*Id.*) Even

when parents request to be included, the District has declined to extend an invitation. (FF # 26.) Thus, at this point in the process, the evaluator only has information from the District. (*Id.*)

The District refers to these meetings as a “business practice” necessary for finalizing the IC Agreement. (FF # 27.) At the same time, the District acknowledges that the meetings involve a “collaborative process that includes a discussion about each area to be assessed” to ensure the assessments are “appropriate” and “not duplicative.” (*Id.*)

Once a district approves an IEE, it has no responsibilities under the IDEA until the IEE is complete. See 34 C.F.R. § 300.502. The Oregon SEA addressed a similar situation in *Gresham-Barlow*:

The District made all the arrangements for the IEE and engaged in ongoing communication with [the evaluator]. . . . Nothing in the IDEA would prevent District from providing assistance to a parent in arranging an IEE, if that was the parent’s choice. However, the IDEA does not authorize District personnel to broker an IEE or limit the scope of an IEE against a parent’s wishes.

113 LRP 22781. Ultimately, the Oregon SEA determined that the “intervention of District personnel in determining the scope and conduct of an IEE defeated the Parent’s efforts to access the independent evaluation to which she was entitled and thus violated the IDEA.” *Id.*

Here, the District’s “collaborative consultation” with evaluators excludes parents from a key component of the IEE process: determining the scope of the IEE. (FF # 28.) Parents request IEEs because they disagree with an evaluation conducted by the District or, in some cases, because they do not trust the District’s evaluation. Determining the scope of the IEE without parents present gives the impression that the District controls the IEE process, not the parent. A parent’s independence is a hallmark of the IEE process. By excluding parents, the District has weakened parents’ independence and their ability to determine the scope of the IEE in partnership with the evaluator.

The CDE recognizes the extraordinary amount of money school districts spend on IEEs. However, the District cannot assume the rights afforded to parents under the IDEA to control the IEE process. For these reasons, the CDE finds and concludes that the District’s private consultations with evaluators create an additional condition on a parent’s right to an IEE, inconsistent with 34 C.F.R. § 300.502(e)(2).

Limiting Evaluators’ Attendance at IEP Team Meetings

Under the District’s existing practice, an IEE does not routinely cover any costs associated with the evaluator attending the multidisciplinary or IEP Team meeting where the IEE is reviewed. (FF # 31.) Ordinarily, the District has staff qualified to review and interpret the IEE in such a meeting consistent with 34 C.F.R. §§ 300.306 and 300.321. (*Id.*) When the District does not have a qualified staff member, the District pays the evaluator to attend the meeting. (*Id.*) If the parent

prefers that the evaluator attend the meeting even though the District has qualified staff, the parent must pay for the evaluator's attendance. (FF # 32.)

A school district must consider an IEE "in any decision made with respect to the provision of FAPE to the child." 34 C.F.R. § 300.502(c)(1). The plain language of the IDEA does not compel the evaluator's attendance at any such meeting. *See id.* § 300.502. Therefore, the District has leeway to determine whether it needs an evaluator to interpret an IEE. The District's existing practice does not place an additional condition or limitation on a parent's right to an IEE and, therefore, complies with 34 C.F.R. § 300.502(e)(2).

D. Systemic Nature of Noncompliance

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disability and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, Complainants raised concerns about the impact the District's IEE procedures and practices would have on all IDEA-eligible students in the District. As detailed above, the District's procedures and practices imposed conditions on the IEE process that were inconsistent with 34 C.F.R. § 300.502. As a result, the noncompliance was systemic. The CDE has outlined remedies below designed to correct such noncompliance.

REMEDIES

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

1. Ensuring the District does not impose any additional conditions or timelines related to obtaining an IEE at public expense, as required by 34 C.F.R. § 300.502(e)(2).

To demonstrate compliance, the District is ORDERED to submit a corrective action plan ("CAP") by **Friday, December 19, 2025** that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

1. Procedures

- a. By **Friday, December 19, 2025**, the District must draft comprehensive written IEE procedures to ensure compliance with 34 C.F.R. § 300.502. At a minimum, the procedures must address the timelines and conditions identified by this decision as noncompliant with 34 C.F.R. § 300.502.

- i. The procedures may indicate the District’s preference for IEE requests to be filed within one year of the District’s evaluation, but the language of the procedures must explicitly state that the time limitation represents only the District’s preference and that requests received after one year will not be time-barred. Additionally, the procedures may state that requests for IEEs must be filed within two years.
 - ii. The procedures may request that parents identify requested assessments and areas of evaluation but must make clear that providing such information is voluntary.
 - iii. The procedures must establish a new process for drafting the scope of District A. As a minimum, the new process must provide parents an opportunity to meet with the evaluator to discuss the scope of the evaluation and to review Exhibit A before the District and the evaluator sign the IC Agreement.
 - iv. The District must also revise any related handouts, forms or templates to ensure they are consistent with the procedures.
- b. The procedures and any related handouts, forms, or templates must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
 - c. Once approved, the District must ensure that Educational Systems Specialist, Administrative Assistant, and any other District staff who handle IEE requests, ROIs for IEEs, or IC Agreement for IEEs receive copies of the revised procedures and related handouts, forms, or templates.
 - i. Evidence that the procedures and associated documents were shared with staff, such as a copy of the email notice sent, must be provided to the CDE no later than **Friday, January 23, 2026.**

NOTE: CDE Special Education Monitoring and Technical Assistance Consultant will contact the District with specific instructions for securely submitting the documentation detailed above. The CDE will approve or request revisions that support compliance with the CAP. After approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District’s timely correction of the areas of noncompliance. If the District does not meet the timelines set forth above, it may adversely affect the District’s annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE’s State Complaint Procedures*, Section E, ¶ 2. If either party disagrees with this Decision, the filing of a Due Process Complaint is

available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *Id.*; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 24th day of November, 2025.



Ashley E. Schubert
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-14

- Exhibit 1: Supporting Documents

Response, pages 1-10

- Exhibit A: IEE Procedures
- Exhibit B: Blank
- Exhibit C: IEE Handouts
- Exhibit D: IC Agreement
- Exhibit E: Email Correspondence
- Exhibit F: Witness Contract Information
- Exhibit G: Delivery Verification
- Exhibit H: Other Documents
- Exhibit I: Examples of IC Agreement Exhibit A
- Exhibit J: ROI

Reply, pages 1-11

- Exhibit 2: Email Correspondence
- Exhibit 3: Recording of Meeting
- Exhibit 4: Transcription of Meeting
- Exhibit 5: Supporting Documents
- Exhibit 6: IEE Checklist
- Exhibit 7: SLD Evaluation Protocol
- Exhibit 8: Parent Statements
- Exhibit 9: Decision in State Complaint 2022:528
- Exhibit 10: Decision in State Complaint 2022:528
- Exhibit 11: Email Correspondence
- Exhibit 12: Email Correspondence

Sur-Reply, pages 1-9

Sur-Sur-Reply, pages 1-9

- Exhibit 13: Email Correspondence
- Exhibit 14: Email Correspondence
- Exhibit 15: IEE Handouts

Telephone Interviews

- Complainants: October 31, 2025

- Executive Director of Special Education: October 22, 2025