

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

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**State-Level Complaint 2021:505  
Arapahoe County School District 5**

**DECISION**

**INTRODUCTION**

On February 26, 2021, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Arapahoe County School District 5 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 26, 2020 through February 26, 2021 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether the District violated the IDEA and denied Student a free appropriate public education (“FAPE”) by:

1. Failing to reevaluate Student despite knowledge of increasing academic and work completion difficulties, from August 2020 to present, in violation of 34 C.F.R. § 300.303.

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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.

## **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>2</sup> the SCO makes the following FINDINGS OF FACT (“FF”):

### **A. Background**

1. Student is an eleventh grader whose parents reside within the District’s boundaries. *Interview with Parent*. Although Student previously attended a District high school (“High School”), Student currently attends a private school in another state. *Id.*
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and Speech or Language Impairment. *Exhibit A*, p. 2. Student’s OHI eligibility stems from his diagnosis with Attention Deficit Disorder (“ADD”).
3. Student is described as an intelligent, respectful young man who enjoys skiing, tennis, and traveling. *Interviews with Parent, Accelerated Algebra II Teacher, and Case Manager*. Student struggles with organization, work initiation, and work completion. *Id.*
4. The sole allegation at issue in this investigation concerns the District’s obligation, if any, to reevaluate Student during Fall 2020.

### **B. Student’s Evaluations and 2018 IEP**

5. When Student was in eighth grade, Parent obtained a psychoeducational evaluation from a licensed child psychologist (“Child Psychologist”). *Exhibit M*, pp. 1-13. That evaluation (“Private Evaluation”), dated July 27, 2018, recognized Student’s high cognitive ability and the impact of his disabilities on his education. *Id.*, p. 11. Student’s “significant organizational and executive functioning challenges led to patterns in which he would fall behind on his assignments and find the process of getting back on track insurmountable.” *Id.*, p. 3. As a result, Student’s “grades suffered and were inconsistent over time due in part to inconsistent patterns of completing and turning in work assignments.” *Id.* Child Psychologist recommended Student receive special education and related services under an IEP. *Id.*
6. In early August 2018—shortly before Student began ninth grade—the District completed an initial evaluation of Student and determined that Student was eligible for special education and related services under OHI and Speech or Language Impairment (“Initial Evaluation”). *Exhibit L*, pp. 1-17. The Initial Evaluation determined that Student’s IQ fell within the above average range on the Kaufman Brief Intelligence Test. *Id.* at p. 3.

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

7. The Initial Evaluation also identified Student’s struggles with work initiation and work completion. *Id.* at p. 2. One teacher commented:

Work completion was spotty at best. He [was] capable of understanding and applying the concepts, but he had much difficulty getting work done and in on time. . . . He ha[d] a pattern on [sic] digging a hole academically and then digging himself out at the end of the quarter. This causes him a lot of stress.

*Id.* at p. 10. Prior to the Initial Evaluation, Student received accommodations pursuant to a 504 plan. *See Exhibit N*, p. 15.

8. Student’s initial IEP, dated August 10, 2018, was in effect during ninth grade (“2018 IEP”). *See Exhibit N*, pp. 1-15. In the section regarding present levels of performance, the 2018 IEP acknowledge Student’s high IQ and academic ability but stated that Student experienced “significant difficulty with areas of executive functioning skills including but not limited to organization, task initiation and completion.” *Id.* at p. 7.

9. As noted in the 2018 IEP, Student’s disabilities caused him to feel overwhelmed by school tasks. *Id.* at p. 8. “Specifically, [Student] struggle[d] with homework completion and staying focused within the classroom.” *Id.*

10. The 2018 IEP contained three annual goals: one related to communication, one related to self-determination, and one related to vocational skills. *Id.* at pp. 10-11.

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

- Speech: 90 minutes per month of direct speech language services; and
- Special Education:
  - 15 minutes per week of direct special education services from Case Manager;
  - 15 minutes per week of indirect special education services from Case Manager;
  - 235 minutes per week of direct special education services in the Academic Support Lab. *Id.* at p. 14.

12. Per the 2018 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at pp. 14-15.

### **C. Student's Ninth Grade Year**

13. During the 2018-2019 school year, Student attended ninth grade at High School. *Interviews with Parent and Case Manager*. The 2018 IEP was in effect during this school year. *Exhibit L*, pp. 1-17.

14. Throughout ninth grade, Student struggled with work initiation and work completion. *Interview with Case Manager*. At the end of each semester, Student's teachers gave him extra time to complete missing assignments. *Id.* Where Student completed at least some of the missing assignments, his teachers changed his final grade. *Id.*

15. Ultimately, Student received the following grades during his freshman year:

<u>Fall Semester</u>		<u>Spring Semester</u>	
English 9:	B-	English 9:	C
United States History:	C	United States History:	C-
Accelerated Geometry:	B-	Accelerated Geometry:	C+
Physical Science:	B	Physical Science:	C
Intro to Business:	B	Computer Applications:	C
Academic Support Lab:	A-	Academic Support Lab:	A-

*Exhibit G*, p. 6.

16. Case Manager recalled these grades being the result of a lot of make-up work done at the end of both semesters. *Interview with Case Manager*.

### **D. Student's Tenth Grade Year**

17. For tenth grade, Parent elected to send Student to an out-of-state school with a residential program for students with dyslexia or language-based learning disabilities ("Boarding School"). *Interview with Parent*. Student lived on campus and was in the "school environment 24/7." *Id.*

18. At Boarding School, Student completed typical academic courses, such as Language Arts, Algebra II, World History, Biology, and Physical Education. *Exhibit O*, p. 2. Additionally, Student took Language Arts Tutorial and Study Skills classes. *Id.* In Language Arts Tutorial, Student received 1:1 instruction using a program designed specifically for him. *Id.* at pp. 4-5.

19. The Study Skills class sought to develop Student's time management and organizational skills. *Id.*, p. 7. The curriculum on time management skills focused on completing nightly homework assignments, recording homework details in assignment notebooks daily, and dividing large projects into smaller, more discrete tasks with interim deadlines. *Id.* To develop

organizational skills, students were taught to use a “master file system to keep track of materials for daily use and reserve finished material for later use/study.” *Id.*

20. The time management and organizational principles taught in Study Skills were integrated into the academic classes at Boarding School. *Id.* at pp. 1-19. For example, teachers checked students’ assignment notebooks to ensure homework assignments were correctly noted, helped students organize their notebooks, and worked with students 1:1 to create interim deadlines for larger projects. *Id.*

21. Despite the structure and supports in place at Boarding School, work initiation and work completion still challenged Student. Quarterly progress reports from Boarding School indicated that Student’s work completion was inconsistent, both between classes and across the course of the year. *Id.* In some classes, such as Language Arts, Student routinely turned in his assignments on time. *Id.* In other classes, work completion was a struggle with Student requiring “extra time and teacher assistance to complete independent work.” *Id.* at p. 4. As described by Student’s Study Skills teacher:

His homework completion was inconsistent this quarter: some assignments were submitted late, others lacked thoroughness. He was supported by additional time both in-class and after school to complete homework to the best of his ability. [Student] benefited from a structured time in class to organize his paper materials and electronic files.

*Id.* at p. 7.

22. In mid-March 2020, Boarding School shifted all students to remote instruction due to the COVID-19 pandemic. *Interview with Parent.* As a result, Student attended Boarding School virtually from Parent’s home in Colorado. *Id.*

23. Student’s progress reports indicated that Student struggled with remote instruction. *Exhibit O*, pp. 17-19. Three of Student’s teachers found the timeliness of his independent work to be unsatisfactory. *Id.* at p. 17. Student’s Biology teacher noted that Student advocated for help with missing assignments via email from time-to-time but “rarely demonstrated follow through when provided with an emailed list of items to do.” *Id.* at 19.

24. During remote instruction, students were only given pass/fail grades. *Id.* at p. 2. Student received the following grades in tenth grade at Boarding School:

Language Arts Tutorial:	B+
Language Arts:	A
Algebra II:	A-
Biology:	B-

World History II:	B+
Study Skills II:	B+
Physical Education:	P

### **E. Relevant District Policy and Practice**

25. Once a student previously identified by the District as a child with a disability returns to the District, the District gathers materials—such as transcripts and evaluations—from the student’s most recent school. *Interview with Director for Special Education for Middle Schools and Adaptive Programs (“Director”).* The District then begins the process of reinstating the student’s IEP, including holding an IEP Team meeting. *Id.* The District would initiate a reevaluation if the District could not provide the services required in any existing IEP from a student’s most recent school. *Id.*

26. Under District policy, all students with disabilities are reevaluated every three years in accordance with the IDEA. *Id.* The District also reevaluates students under certain circumstances, including where:

- A student is experiencing new or increasing behaviors;
- A student might need additional services;
- A student might qualify under an additional disability category;
- A student who is not attending school;
- A student who is withdrawn or otherwise has a change in affect;
- The District has safety concerns, such as a student who is exhibiting homicidal or suicidal ideation or who has undergone the threat assessment process;
- Warranted by the manifestation determination process; and
- A student is experiencing an academic change.

27. An academic change warrants a reevaluation where a student’s teachers or service providers notice a change in student’s academic performance that becomes a pattern over time (i.e. not a one-time or short-term change). *Id.*

28. Any teacher or staff member can initiate the reevaluation process. *Id.*

### **F. Student’s Return to the District and 2020 IEP**

29. Due to the ongoing COVID-19 pandemic, Parent opted to send Student back to High School for eleventh grade. *Interview with Parent.* Student’s prior Case Manager—who also provided specialized instruction during ninth grade—was assigned to be Student’s case manager again. *Interview with Case Manager.*

30. On August 7, 2020, the District notified Parent and Student that Student’s IEP Team would meet on August 13 to review, revise, and update Student’s 2018 IEP. *Exhibit D*, pp. 2-3.
31. As scheduled, a properly constituted IEP Team met on August 13. *Exhibit A*, p. 2. Though Student did not have an IEP at Boarding School, the IEP Team reviewed Student’s transcript and progress reports from Boarding School. *Interview with Case Manager*.
32. During the meeting, the IEP Team did not discuss reevaluating Student. *Id.* Student was already due for a reevaluation in August 2021, and, at the time, there were no concerns that suggested a reevaluation was warranted. *Id.*
33. None of the information available to the IEP Team indicated that Student’s academic ability or behavior had changed since he last attended High School. *Id.* If anything, the District members of the IEP Team got the sense from Parent that Student’s executive functioning skills had improved during his time at Boarding School. *Id.*
34. There was also no information available which suggested that Student qualified for special education and related services under an additional category. *Id.*
35. Student’s IEP was finalized on August 31 (“2020 IEP”). *Exhibit A*, p. 2. The section regarding Student’s present levels of performance included Student’s grades from Boarding School and reports from select teachers at Boarding School. *Id.*, pp. 5-6. Student’s teachers at Boarding School rated his ability to timely complete work and his ability to manage his time as poor. *Id.* at p. 5.
36. This discussion included excerpts from recommendation letters Student’s teachers wrote for another high school (that Student ultimately did not attend). *See id.* at pp. 5-6; *Exhibit H*, pp. 123-24. In these excerpts, Student’s Language Arts and Math Teachers from Boarding School rated Student as being in the top 10% of his Language Arts and Algebra II classes at Boarding School. *Exhibit A*, pp. 5-6; *Exhibit H*, pp. 123-124.
37. Under Student’s present levels of performance, the 2020 IEP also remarked on Student’s above average intelligence and indicated that there were no concerns with Student’s math or written language skills. *Exhibit A*, p. 6.
38. Student’s disabilities impacted his work completion, time management, and test preparation, affecting his ability to be successful in the general education classroom. *Id.* at p. 10.
39. The 2020 IEP contained two annual goals: one related to self-determination, and one related to vocational skills. *Id.* at pp. 12-13.

40. Under the 2020 IEP, Student received the following special education and related services:

- Speech: 15 minutes per month of indirect speech services to monitor the continued development of Student’s communication skills and provide consultative support to Case Manager and Student’s general education teachers as needed;
- Special Education:
  - 10 minutes per week of direct special education services from Case Manager; and
  - 60 minutes per month of indirect special education services from Case Manager.

*Id.* at p. 16. Student was to receive a variety of accommodations under the 2020 IEP, including, but not limited to, extended time for tests and quizzes, adult check-ins regarding assignments, and copies of notes or a peer notetaker. *Id.* at p. 14.

41. Per the 2020 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at pp. 16-17.

#### **G. Beginning of Eleventh Grade and Student’s Math Class**

42. The 2020-2021 school year at High School began on August 17, 2020. *Exhibit I*, p. 2. At that time, High School was operating on a hybrid schedule due to the COVID-19 pandemic. *Interview with Case Manager*. Under the hybrid schedule, Student attended school in-person two days per week, received asynchronous learning two days per week, and completed independent work on the fifth day. *Id.*

43. Based on Student’s transcripts from ninth and tenth grade, the District enrolled Student in English 11, History of Ancient Rome, Pre-Calculus, Chemistry, French I, and Personal Finance. *Id.*; *Exhibit G*, p. 5.

44. Typically, students on the accelerated math track at High School complete courses in the following order: Accelerated Algebra I, Accelerated Geometry, Accelerated Algebra II, Pre-Calculus/Trigonometry, and either AP Calculus or Calculus I. *Interview with Accelerated Algebra II Teacher*. The accelerated math track is one class above grade level. *Id.*

45. Student completed Algebra I in middle school and, as a result, began high school in Accelerated Geometry on the accelerated math track. *Id.* While at Boarding School, Student took Algebra II. *Exhibit G*, p. 5. Therefore, the District placed Student in Pre-Calculus upon his return to High School. *Interview with Case Manager*.

46. By September 3, Student’s Pre-Calculus teacher (“Pre-Calculus Teacher”) expressed concerns to Case Manager about Student’s placement in Pre-Calculus. *Id.*; *Exhibit H*, p. 83. Pre-



Calculus Teacher indicated Student lacked the foundational knowledge necessary for the course and that Student was not engaging with the material. *Interview with Case Manager*. Specifically, Pre-Calculus Teacher noticed that Student was not watching any of the assigned videos on asynchronous learning days. *Id.* The application used for the videos informed Pre-Calculus Teacher when students accessed a video and whether they viewed the entirety of the video. *Id.*

47. Pre-Calculus Teacher's concerns prompted the District to review the content in Boarding School's Algebra II course. *Id.* The District determined that Boarding School's Algebra II class covered significantly less material than High School's Accelerated Algebra II class—the foundational course for Pre-Calculus. *Id.*; *Exhibit H*, p. 80.

48. On or around September 11, Student moved from Pre-Calculus to Accelerated Algebra II. *Interview with Case Manager*. At that point, Student had missed approximately four weeks of Accelerated Algebra II. *Interview with Accelerated Algebra II Teacher*. The first semester of Accelerated Algebra II was primarily a review of Algebra I, a course Student completed in eighth grade. *Id.*

49. Algebra II Teacher did not require Student to make up assignments from earlier in the semester. *Id.*; *Interview with Case Manager*. Instead, Algebra II Teacher only asked Student to watch two ten-minute videos and complete review worksheets covering Algebra I principles. *Interview with Accelerated Algebra II Teacher*. All other prior assignments were excused, meaning Student was not penalized for not completing them. *Id.*; *Interview with Case Manager*.

50. Shortly after his transfer into Accelerated Algebra II, the teacher reached out to Student via email several times to see how things were going in the class. *Exhibit H*, pp. 74-75. Additionally, Case Manager met with Student to walk him through the class's virtual page to show him the class calendar and location of his assignments. *Interview with Case Manager*; *Exhibit H*, p. 73.

51. In his other courses, Student did a fairly good job of staying caught up on his assignments (with the exception of French 1, where he struggled). *Interview with Case Manager*. However, as the semester progressed, Student's missing work began to compound. *Id.*; see *Exhibit G*, pp. 8-48. For example, if Student left one assignment incomplete each week, by the end of an eight-week period, Student would now have eight assignments to make up. See *Exhibit G*, pp. 8-48.

52. Student met with Case Manager weekly on one of the days he attended High School in person. *Id.* Case Manager used these sessions to help Student improve his executive functioning skills. *Id.* Case Manager would pull up Student's courses online to identify missing assignments and check his grades. *Id.* They also developed plans for Student to complete missing assignments and, from time-to-time, wrote emails to his teachers. *Id.* Student was extremely

receptive when he attended these sessions, though his attendance began to drop off after the first two months of the school year. *Id.*

53. In late October or early November, Case Manager, Student, and one of his parents met virtually to discuss Student's missing work and develop a strategy for getting Student caught up. *Interview with Case Manager.* Student did not follow through with the plan they developed. *Id.*

54. Student continued to attend High School on the hybrid schedule through November 10. *Response*, p. 4.

#### **H. Transition to Remote Learning and Conclusion of Fall 2020 Semester**

55. The District remained on the hybrid schedule until November 11. *Response*, p. 4. At that point, the District moved all students to remote instruction for the remainder of the semester due to the COVID-19 pandemic. *Id.*

56. Once the District shifted to remote instruction, Student was engaged less in the virtual classroom than he was when he attended in-person. *Id.*; *Interview with Algebra II Teacher.* On several occasions, Accelerated Algebra II teacher emailed Student requesting that he attend office hours or Academic Support (High School's version of study hall). *Interview with Accelerated Algebra II Teacher*; see, e.g., *Exhibit Q*, p. 6. Student did not attend office hours or Academic Support. *Interview with Accelerated Algebra II Teacher.*

57. Near the end of the semester, Student became overwhelmed by the amount of outstanding work he needed to complete. *Interview with Parent.*

58. Throughout the semester—and even over winter break—Student's teachers provided information on how to make up missing work, quizzes, or tests. See, e.g., *Exhibit H*, pp. 15-20, 22-25, 30-34, 36-38, 50, 52-53, 64. His teachers offered to meet with Student 1:1 outside of class to provide additional support. See, e.g., *Exhibit H*, p. 54; *Interviews with Case Manager and Accelerated Algebra II Teacher.* Sometimes Student scheduled these meetings but, often, failed to show up for the meeting. *Exhibit H*, p. 54; *Interviews with Case Manager and Accelerated Algebra II Teacher.*

59. All of Student's teachers (except his Personal Finance teacher) gave Student until January 21, 2021 to complete missing work, quizzes, and tests for credit. *Interviews with Case Manager and Accelerated Algebra II Teacher.* This deadline was more than a month beyond the end of the semester on December 18, 2020. *Exhibit I*, p. 2. If Student completed the missing work, his teachers would change his final grade. *Interview with Case Manager.*

60. Student completed additional work in English 11, which resulted in his grade changing from a C- to a B-. *Exhibit G*, p. 6; *Exhibit H*, pp. 4-6. Student did not complete missing work in any of his other classes. *Interview with Case Manager; Exhibit H*, pp. 4-5.

61. Ultimately, Student earned the following grades:

Accelerated Algebra II:	F
Chemistry:	C-
English 11:	B-
French I:	D-
History of Ancient Rome:	C
Personal Finance:	D-

*Exhibit G*, pp. 74-75.

62. Student's grades would have been in line with his prior grades at High School if he had completed more of his missing work over winter break. *Interview with Case Manager*. When Student turned in work or completed quizzes and tests, he generally received good grades. *Exhibit G*, pp. 8-48. The District's documentation makes clear that Student's final grades were heavily impacted by his missing assignments, tests, and quizzes. *Id.*

63. Neither Student's parents nor his teachers requested that the District reevaluate Student during the Fall 2020 semester. *Interviews with Case Manager and Accelerated Algebra II Teacher*. And, at no point during the Fall 2020 semester did any of Student's teachers suspect that he qualified for special education and related services under a new or different disability category. *Id.*

64. Case Manager found Student's struggles with work initiation and work completion in eleventh grade to be very similar to the struggles he faced during ninth grade. *Interview with Case Manager*.

65. In early January, Parent's counsel requested that Student's grades for Accelerated Algebra II and Personal Finance be removed from Student's transcript. *Exhibit H*, p. 18. The District's counsel notified Parent's counsel that these grades would not be removed from Student's transcript but indicated that Student had the option to retake the courses to earn a higher grade. *Id.*

66. Student did not return to High School for the second semester. *Interview with Parent*. Instead, Parent enrolled Student in a private, out-of-state school where Student has access to 1:1 academic and emotional support. *Id.*

67. Following receipt of Parent's Complaint, the District proposed a comprehensive reevaluation of Student and requested Parent's consent on February 23, 2021. *Exhibit B*, pp. 2-3, 6. Parent declined, indicating that the reevaluation was unnecessary because Student was attending a private school out of state. *Id.* at p. 6.

### CONCLUSIONS OF LAW

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

**Conclusion to Allegation 1: Student's academic performance during Fall 2020 did not trigger the District's obligation to reevaluate Student under 34 C.F.R. § 300.303. Therefore, no reevaluation was required under the IDEA.**

In the Complaint, Parent alleged that Student's poor academic performance during Fall 2020 warranted a reevaluation under the IDEA. Specifically, Parent contends that Student's misplacement in Pre-Calculus and late transfer into Accelerated Algebra II caused Student to struggle in all of his classes, resulting in low grades.

Under the IDEA, a school district must reevaluate a student with a disability in two situations:

- (1) if the [school district] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) If the child's parent or teacher requests a reevaluation.

34 C.F.R. § 300.303(a). Such a reevaluation must occur at least once every three years and may not occur more than once a year, unless the parent and school district agree otherwise. *Id.* § 300.303(b).

School districts must be alert to signs that a reevaluation is warranted, even when a triennial evaluation is not due and even when the parent has not requested a reevaluation, to ensure the student's IEP continues to be reasonably calculated to enable the child to make progress that is appropriate in light of the child's circumstances. *Arapahoe Cty. Sch. Dist. 6*, 120 LRP 16800 (SEA CO 03/24/2020) (citing *Questions and Answers on Andrew F. v. Douglas Cnty. Sch. Dist. Re-1*, 71 IDELR 68 (EDU 2017)). The IDEA provides no guidance on determining when a student's education or related services needs would warrant a reevaluation. Decisions by courts and hearing officers have identified certain circumstances that trigger a school district's obligation to reevaluate. *See, e.g., M.T.V. v. DeKalb Cty. Sch. Dist.*, 446 F.3d 1153 (11th Cir. 2006) (reevaluation warranted where student had made significant progress on goals and appeared to no longer qualify for special education and related services); *West-Linn Wilsonville School District v. Student*, 63 IDELR 251 (D. Ore. 2014) (significant change in student's behavior

warranted reevaluation); *Springfield Sch. Comm. v. Doe*, 623 F. Supp. 2d 150 (D. Mass. 2009) (school district had obligation to reevaluate student with excess absenteeism).

Parent's Reply to the District's Response cites two decisions compelling a reevaluation of Student. First, the Reply contends that a substantial change in a student's academic performance requires a reevaluation, citing *Corona-Norco Unified School District*, 22 IDELR 469 (SEA CA 1995). Because Student earned A's and B's at Boarding School (FF # 24), the Reply argues Student's lower grades in Fall 2020 represented a substantial change in Student's academic performance, warranting a reevaluation.

The SCO finds this argument unpersuasive. As an initial matter, the hearing officer in *Corona-Norco* considered whether the District had the right to conduct an additional evaluation of a student who was previously found ineligible for special education and related services. *Corona-Norco*, 22 IDELR 469. To resolve this question, the hearing officer considered a provision in the California Education Code (which mirrored the IDEA provision in effect at that time) that allowed "reassessment 'if conditions warrant.'" *Id.* For these reasons alone, the decision in *Corona-Norco* is not instructive here. This investigation concerns the reevaluation of a student eligible for special education and related services and whether that reevaluation was required by a provision in the IDEA that uses different language.

Additionally, the Reply's comparison of Student's grades at Boarding School with his grades at High School is imbalanced. Boarding School is designed specifically for students with dyslexia or language-based learning disabilities. (FF # 17.) At Boarding School, Student was in a more restrictive setting and in the school environment 24/7. (*Id.*) Student received supports at Boarding School that were not required by his 2020 IEP at High School. (FF #s 18-20.) Though Student had better grades at Boarding School than at High School (FF #s 24, 61), his teachers still noted struggles with work initiation and work completion (FF #s 21 23).

Second, the Reply argues a significant discrepancy in the description of Student's abilities in the 2020 IEP and his actual performance triggered the District's obligation to reevaluate Student. For this argument, the Reply cites *S.D. v. Portland Public Schools*, 64 IDELR 74 (D. Me. 2014). In that decision, the Court held that a district should have reevaluated a student when it became clear that the student was not reading at the level identified in his IEP: "Because [the student's] IEP was formulated with the assumption that he was reading at Wilson level 7, the discovery that he was actually reading at level 2 should have triggered a reevaluation of [the student's] sixth grade IEP." *Id.*

This argument is similarly unpersuasive. Student's 2020 IEP indicated that he was an academically competent student who struggled with work initiation and work completion due to his disabilities. (FF #s 35-38.) Student's performance during Fall 2020 confirmed that he was an academically competent student who struggled with work initiation and work completion due to his disabilities. (FF #s 51, 52, 56, 57, 62.) Indeed, Case Manager—who worked with

Student both in ninth grade and eleventh grade—found Student’s struggles to be very similar between the two years. (FF # 64). And even Student’s teachers at Boarding School recognized that he struggled with starting and completing his work. (FF #s 21, 23.) There was no discrepancy between the description of Student’s abilities in the IEP and his actual performance.

The Reply contains quotes from several of Student’s teachers at Boarding School ranking Student in the top 10% of students in his class at Boarding School and remarking on his high IQ. (See FF # 32.) When Student’s performance at High School did not match these descriptions, the Reply argues the District was required to reevaluate Student. Of note, the quotes from Student’s teachers appear in recommendation letters the teachers wrote for Student to attend a school other than High School (*Id.*), so they are naturally complimentary. But, more importantly, Student’s IEP reflects his strong academic and cognitive abilities. (FF # 37.) When Student turned in work, he generally received good grades. Student’s final grades were heavily impacted by his missing assignments or failure to complete quizzes and tests. (FF # 62.)

In total, Student returned to the District for five months. So, at most, High School had only one semester to monitor Student’s progress under the 2020 IEP, provide him accommodations, assess his academic performance, and implement any additional interventions. But, in reality, Student’s teachers had significantly less time to work with Student due to the limitations imposed by the COVID-19 pandemic. Excluding Fall and Thanksgiving breaks, High School’s semester was approximately 16 weeks long. (FF #s 42, 59.) Between August 17 and November 10, Student attended High School in person only two days per week. (FF #s 42, 54.) And from November 11 to December 18, Student received exclusively remote instruction. (FF # 55.)

Remote instruction during the COVID-19 pandemic has, undoubtedly, challenged all students. As a result of his disabilities, work completion and work initiation challenge Student. (FF # 38.) Remote instruction likely further exacerbated that challenge. (See FF#s 23, 56.)

The Complaint and Reply both suggest that, but for Student being placed in Pre-Calculus, he would not have fallen behind in his classes. The evidence in the record does not support Parent’s position. Student was not required to make-up all the missed work; indeed, the make-up work required was minimal. (FF #s 48, 49.) Student’s placement in Pre-Calculus and late start in Accelerated Algebra II did not create the sort of “insurmountable” situation identified in Parent’s Complaint and the Private Evaluation. (See FF # 5.) The insurmountable situation was created over the course of the semester, as Student’s missing assignments and tests continued to accumulate. (FF #s 51, 57.)

Once Parent requested a reevaluation as part of the Complaint, the District provided consent to reevaluate. (FF # 67.) Ultimately, Parent refused on the basis that Student is currently attending a private school out of state. But, nonetheless, the District’s actions demonstrated adherence with 34 C.F.R. § 300.303(a) and the District’s own policies and practices. (See FF #s 25-28.)

In sum, the circumstances present here did not warrant a reevaluation. And neither Student's parents nor his teachers requested a reevaluation during Fall 2020. (FF # 59.) As a result, the SCO finds and concludes that the District was not required to reevaluate Student pursuant to 34 C.F.R. § 300.303.

### **REMEDIES**

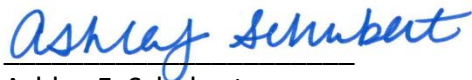
The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

### **CONCLUSION**

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

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

Dated this 27th day of April, 2021.



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Ashley E. Schubert  
State Complaints Officer

## Appendix

### Complaint, pages 1-8

#### Response, pages 1-11

- Exhibit A: IEPs
- Exhibit B: Requests for parental consent
- Exhibit C: Prior written notices
- Exhibit D: Notices of meeting
- Exhibit E: Blank
- Exhibit F: Progress monitoring reports or data
- Exhibit G: Grade and attendance reports
- Exhibit H: Email correspondence
- Exhibit I: District's calendar for 2020-2021 school year
- Exhibit J: District policies
- Exhibit K: Blank
- Exhibit L: Initial Evaluation
- Exhibit M: Private Evaluation
- Exhibit N: 2018 IEP
- Exhibit O: Documents from Boarding School
- Exhibit P: Excerpt from High School Student Handbook
- Exhibit Q: Additional email correspondence

#### Reply, pages 1-8

- Exhibit 1: Email correspondence

#### Telephonic Interviews:

- Director for Special Education for Middle Schools and Adaptive Programs: April 2, 2021
- Algebra II Teacher: April 2, 2021
- Case Manager: April 5, 2021
- Special Education Administrator: April 5, 2021
- Parent: April 7, 2021