

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 2024:558  
El Paso (Academy) School District 20**

**DECISION**

**INTRODUCTION**

On May 8, 2024, the parents (“Parents”) 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 Academy School District 20 (“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**

The Colorado Department of Education (the “CDE”) has the authority to investigate alleged noncompliance that occurred no earlier than one year from the date the Complaint was filed. 34 C.F.R. §300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after May 8, 2023. Information prior to May 8, 2023 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Amended Student’s IEP without agreement of Parents and outside an IEP team meeting between November 2023 and March 2024, in violation of 34 C.F.R. § 300.324(a)(6).

**FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following findings of fact (“FF”):

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

### **A. Background**

1. Student is eight years old and attends a District elementary school in second grade. *Exhibit A*, p. 30. He qualifies for special education and related services under the disability categories of Multiple Disabilities and Autism Spectrum Disorders. *CDE Exhibit 1*, p. 1.
2. Student is sweet-tempered, has a great sense of humor, and communicates well using assistive technology. *Interviews with Parents and Student's special education teacher ("Teacher")*. Student loves music, being outside, and riding the school bus. *Id.*
3. Student has autism, attention deficit hyperactivity disorder, and cerebral palsy. *Interview with Parents*. He does not communicate verbally, and makes use of assistive technology to communicate with adults and peers. *Interviews with Parents and Teacher; Exhibit A*, p. 40.
4. This investigation involves an IEP dated November 8, 2023 ("the IEP"). *Exhibit A*, p. 30. The IEP was based on a re-evaluation which was completed on October 30, 2023. *Response*, p. 7.

### **B. Student's IEP**

5. The IEP's Present Levels of Academic Performance section documents Student's strengths and interests, his performance on a wide spectrum of assessments, and his progress on previous IEP goals. *Exhibit A*, pp. 32-39.
6. The IEP describes Student's disability as impacting his ability to communicate, his interactions with peers, and his behavior. *Id.* at p. 40.
7. The IEP includes extensive input from Parents regarding Student's needs. *Id.* at pp. 41-42.
8. The IEP's Consideration of Special Factors section indicates that Student has a behavior plan, has unique communication needs, has limited English proficiency, uses assistive technology devices and services, and requires specialized transportation. *Id.* at pp. 42-43.
9. The IEP includes a copy of Student's behavior intervention plan. *Id.* at pp. 44-45.
10. The IEP includes four annual goals, one each in the areas of Math, Reading, Communication and Writing. *Id.* at pp. 46-49.
11. The IEP includes six accommodations designed to improve Student's access to the general education curriculum. *Id.* at p. 49.
12. The IEP's Service Delivery Statement indicates that Student is to receive 2,060 minutes per week of direct specialized instructional services, 160 minutes per month of direct speech-language services, 30 minutes per month of indirect occupational therapy services, 10 minutes per month of indirect mental health services, 20 minutes per month of indirect

speech-language services, 30 minutes per month of indirect physical therapy services, and 10 minutes per month of indirect adaptive physical education services. *Id.* at pp. 52-53.

13. The IEP Team determined that it was appropriate that Student be in the general education classroom less than 40% of the time. *Id.* at pp. 53-54.
14. The IEP included a Prior Written Notice (PWN) addressing Parents' request for a higher number of service minutes. *Id.* at pp. 54-55.

### **C. District's Practices, Procedures, and Policies**

15. District's special education director ("Director") described District's efforts to ensure that District staff are knowledgeable about and compliant with the requirements of IDEA and ECEA Rules, stating that District special education staff are frequently trained on special education compliance issues, meet monthly to discuss legal requirements and answer questions, and have access to a District procedural manual which guides staff with respect to their obligations under the law. *Interview with Director.*
16. With respect to IEP amendment, Director stated that District's practice is to make changes to IEPs at IEP meetings whenever possible, to ensure that parents and team members have the greatest opportunity to participate in the development of the document. *Id.* When changes to an IEP must be made outside of a meeting, District staff are instructed to obtain a written agreement between the parents and the District documenting the changes to be made, and the parents' agreement to make those changes outside of an IEP meeting. *Id.*
17. District encourages IEP teams to provide parents with draft IEPs prior to an IEP development meeting, to allow parents to be able to effectively provide input into the process and ask informed questions about the IEP. *Id.*

### **D. Student's Enrollment at District**

18. Parents and Student moved to District from an out-of-state school district in August 2023 and attempted to enroll Student at his home school. *Interview with Parents.*
19. Shortly afterward, District placed Student at School, due to Student's need for a significant supports needs classroom. *Interviews with Parents and Teacher.*
20. At an IEP meeting on August 16, 2023, the IEP team reviewed Student's out-of-state IEP and found that Student had been due for an annual IEP review since April 13, 2023, and would be due for a triennial re-evaluation on or before October 14, 2023. *Interview with Teacher; Exhibit A, p. 78; Exhibit D, p. 11.*
21. On September 6, 2023, District issued a PWN and Consent for Evaluation proposing to evaluate Student in the areas of speech and language, occupational therapy, physical therapy,

cognitive, social-emotional-behavioral, autism, and adapted physical education. *Exhibit C*, p. 10. Parents consented to the re-evaluation the next day. *Id.* at p. 11.

22. The evaluation was completed October 30, 2023. *Exhibit A*, p. 30. The same day, the IEP Team, including Parents, met to review the evaluation and determine Student's eligibility for special education and related services. *Exhibit D*, p. 14.
23. On November 8, 2023, the IEP Team reconvened to develop Student's IEP. *Id.* at p. 15. The IEP went into effect following this meeting. *Exhibit A*, pp. 30-55.

#### **E. Additional Evaluation and Development of New IEP**

24. During the November 8, 2023 IEP meeting, Parents requested that Student receive a state wide assistive technology and augmentative alternative communication ("SWAAAC") evaluation in order to address his communication and assistive technology needs. *Interview with Parents and Teacher; Exhibit D*, p. 2.
25. On January 5, 2024, District issued a PWN and Consent for Evaluation proposing that Student receive a SWAAAC evaluation. *Exhibit D*, p. 2. Parents consented to this evaluation several days later. *CDE Exhibit 1*, p. 4.
26. Following the completion of the SWAAAC evaluation, the IEP Team reconvened on February 28, 2024 to review the results of the evaluation. *Id.*; *Exhibit D*, p. 4.
27. On March 20, 2024, the IEP Team met to develop a new IEP in light of the information obtained through the SWAAAC evaluation. *Exhibit D*, p. 6.
28. Prior to that meeting, on or around March 16, 2024, District sent Parents a draft IEP to be discussed at the March 20, 2024 meeting. *Interviews with Parents, Teacher, and District special education facilitator ("District Facilitator"); Complaint*, p. 8. In a March 18, 2024 email from Teacher to Parents and their advocates, Teacher notes that she is sending Parents "the draft of the IEP" electronically, and will be sending a hard copy of the draft home with Student. *Exhibit J*, p. 152.
29. The draft IEP contained additions to the November 8, 2023 IEP as a result of the new information obtained through the evaluation process. *Complaint*, p. 8; *Exhibit A*, pp. 1-29. Due to the content of this draft IEP, Parents believed that the November 8, 2023 IEP had been changed without their consent. *Complaint*, p. 8.
30. Parents submitted their comments on the draft IEP and requested that certain information be added to the draft IEP before completion. *Exhibit J*, p. 152.
31. Over the course of several additional meetings from March 20, 2024 to June 13, 2024, the IEP Team, including Parents, developed a new IEP for Student. *Interviews with Parents, Teacher,*

and District Facilitator. At an IEP Team meeting on June 13, 2024, Student's new IEP was finalized, and went into effect. *Id.*; *CDE Exhibit 1*.

32. No new IEP went into effect between the issuance of the November 8, 2023 IEP and the issuance of the new IEP on June 13, 2024. *Interviews with Teacher and Facilitator; Exhibit A; CDE Exhibit 1*.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District did not amend Student's November 8, 2023 IEP and thus no violation of 34 C.F.R. § 300.324(a)(6) occurred.**

Parents' concern is that on or before March 16, 2024, District amended Student's IEP without their agreement and outside of an IEP Team meeting. (FF # 29.)

After an annual IEP team meeting, a student's IEP can be amended either by an IEP team at an IEP team meeting or by agreement of the parent and the district to amend the IEP in writing without an IEP team meeting. 34 C.F.R. § 300.324(a)(6).

Here, no change to the IEP occurred between the issuance of the November 8, 2023 IEP and the issuance of Student's new IEP on June 13, 2024. (FF # 32.) On March 16, 2024, District issued a draft IEP containing new information prior to a March 20, 2024 IEP Team meeting. (FF #s 28-29.) The draft IEP, however, was not a new IEP, and its language did not go into effect until after Parents had the opportunity to review, comment upon, and propose changes to it. (FF # 30.) Teacher, in sending the draft IEP to Parents and their advocates, noted that the document was a draft. (FF # 28.) Student's new IEP was issued June 13, 2024, after a series of IEP Team meetings at which Parents were in attendance. (FF # 31.)

Based upon these facts, the SCO finds and concludes that Student's IEP was not amended between November 8, 2023 and June 13, 2024. Accordingly, District did not violate the IDEA.

### **REMEDIES**

District complied with the requirements of the IDEA. Accordingly, no remedies are ordered.

### **CONCLUSION**

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

Dated this 7th day of July, 2024.

A handwritten signature in blue ink, appearing to read "Nick Butler", is written over a faint, light blue grid background.

Nick Butler  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-15

#### Response, pages 1-11

- Exhibit A: IEPs
- Exhibit B: IEP Meeting Documentation
- Exhibit C: PWNs
- Exhibit D: Notices of Meeting
- Exhibit E: Report Cards, Progress Reports, Progress Monitoring
- Exhibit F: Grades and Attendance
- Exhibit G: District Calendar
- Exhibit H: Evaluations
- Exhibit I: Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: District Staff
- Exhibit L: Verification of Delivery
- Exhibit M: Additional Student Information
- Exhibit N: Behavior and Speech Data
- Exhibit O: Complaint and Complaint Procedures

#### Reply, pages 1-6

- Exhibit 1: Documentation regarding Student's splint
- Exhibit 2: November 8, 2023 IEP
- Exhibit 3: March 20, 2024 IEP Draft
- Exhibit 4: May 15, 2024 IEP Draft

#### CDE Exhibit

- CDE Exhibit 1: June 13, 2024 IEP

#### Telephone Interviews

- Parents: June 14, 2024
- Teacher: June 11, 2024
- District Facilitator: June 17, 2024
- Director: June 17, 2024