

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

State-Level Complaint 2024:578
Denver Public Schools

DECISION

INTRODUCTION

On July 25, 2024, the parents (“Mother,” “Father,” and collectively “Parents”) of two students (“Student A,” “Student B,” and collectively “Students”) identified as children with disabilities under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) 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 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

On July 29, 2024, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in an impasse and the CDE resumed the investigation on September 3, 2024.

The CDE’s goal with this investigation and written decision is to build capacity among all participants in the special education process and to provide opportunities for professional growth to educators. The CDE views the state complaint process as an opportunity for participants in the IEP process to learn about special education, identify points for improvement, and tap available resources, all to improve outcomes for students with disabilities.

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 filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after July 25, 2023. Information prior to July 25, 2023 may be considered to fully investigate all allegations.

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.

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 District did not take reasonable steps to promptly respond to a request by New District in March 2024 for Students’ records, as required by 34 C.F.R. § 300.323(g)(2).

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. Student A attended third grade, and Student B attended second grade, at a District elementary school (“School”) in the 2023-2024 school year. *Exhibit A*, pp. 1, 51.
2. In February 2024, Parents enrolled Students in a new school district (“New District”). *Interview with Parents*.
3. Parents’ concern in this Complaint arises from the time it took the District to transmit Students’ special education records to New District. *Complaint*, p. 4. Parents have alleged that, although New District requested the records on February 14, 2024, the District did not provide the records until March 1, March 5, and March 8, 2024, resulting in a delay to the start of Students’ special education services in New District. *Reply*, p. 2.
4. The District, in response, initially stated that New District did not request Students’ special education records until March 1, March 5, and March 8, and the District provided those records on each of those same days. *Response*, p. 2. After Parents submitted evidence showing that New District requested the records via an email to School’s administrative assistant (“School Secretary”) on February 14, 2024, the District provided additional documents confirming that New District did request the records on February 14, 2024. *Exhibit I*.

B. Students’ Transfer to New District

5. Parents’ allegation concerns the timeliness of the transmittal of records from District to New District, and the circumstances of Students’ transfer between school districts are relevant to determining the District’s duties under the law as well as establishing the District’s knowledge

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

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

that Students' records would be requested by a new school or district in early- to mid-February 2024.

6. The District states that Students were withdrawn from School and disenrolled from the District on February 1, 2024. *Response*, p. 2. Parents believe that Students may never have been withdrawn or disenrolled. *Interview with Parents*.
7. On February 1, 2024, Father picked Students up from School. *Interviews with Parents, School Secretary, School Office Assistant, and Principal*. While waiting for the children to be brought to the front office, he addressed School Secretary and School Office Assistant, who were the only individuals in the front office. *Id.* He said he was withdrawing the children from School because he did not believe they were safe there. *Id.* School Secretary asked for the name of Students' new school. *Id.* He said he did not have one, but he provided a home address within New District. *Id.*
8. Principal had been in her office during this time, and she overheard Father's conversation with the front office staff. *Interviews with School Secretary, School Office Assistant, and Principal*. After Father left, she came to the front office and directed School Secretary to immediately withdraw Students from School. *Id.*
9. School Secretary, to comply with this direction, immediately accessed Students' records in the District's student database and entered February 1, 2024 as the end date of their attendance. *Id.*
10. According to ordinary practice and District policy and procedures, the entry of an end date in a student's record is not the final step in the process of withdrawing a student from a school or disenrolling a student from the District. *Interviews with School Secretary and Attendance Specialist*. Generally, school staff will wait until a new school or district has requested a student's records before entering an end date, and the District-level team responsible for reviewing and approving end dates will not approve an end date unless the student's record shows that a new school or district has requested the student's records. *Id.*
11. Students' District records reflect School Secretary's entry of a February 1, 2024 end date, entered prior to any request from a new school or district for Students' records, and they do not reflect approval from the District-level team. *Interview with Attendance Specialist*.
12. On February 6, 2024—the third school day after Father's visit—Mother spoke to Principal and two District-level teams involved in enrollment. *See Interviews with Parents and Principal; CDE Exhibit 1*. She said that, contrary to Father's statement, they were not moving to a new school district, and she explained that Students needed a school to attend, whether it was School or another District school. *Id.* She told the District-level staff that Principal said that Students were disenrolled based on Father's statement and could not return to School. *Id.* The District did not provide a school for Students to attend. *Id.*

13. In light of these facts, the SCO finds that the District had information that no new school or district had requested Students' records prior to or shortly following School Secretary's entry of an end date for Students; that Principal would not allow Students back into School; and that Mother told appropriate District personnel that Parents did not want to withdraw or disenroll Students, they were not moving to a new school district, and Students needed a school to attend.

C. New District's Records Requests and the District's Responses

14. Students began attending an elementary school in New District on February 12, 2024. *Interview with Parents.*

15. A New District employee with the title "Enrollment/Attendance Secretary" emailed a records-request form to School Secretary on February 14, 2024. *Interview with Parents; Exhibit I, pp. 2, 8.*

16. The records-request form asked School to provide all Students' school records including, expressly, their special education records. *Exhibit I, p. 2.*

17. It is not unusual for School Secretary to handle requests for student records from students' new school districts. *Interview with School Secretary.*

18. The District has an online portal allowing other school districts (and parents) to request student records, which are then provided by a centralized team at the District level. *Interview with District Support Supervisor.* But the use of this portal is not mandatory, and individual schools are permitted to handle records requests at the school level. *Id.* The District does not have a policy or procedure that specifies a timeline for responding to records requests. *Id.* There is no coordination between District-level and school-level staff to track special education records requests and responses. *Id.*

19. After School Secretary received New District's request, she asked Student A's special education teacher to gather the special education records for both Students, because School Secretary does not have access to the system containing those records. *Interview with School Secretary; see Exhibit I, p. 6.* The teacher provided both Students' determinations of eligibility, most recent evaluations, and most recent IEPs on February 15, 2024. *Exhibit I, p. 6.*

20. School Secretary responded by emailing Student B's determination of eligibility, most recent evaluation, and most recent IEP to New District on February 20, 2024, which was three business days and six calendar days after New District's request. *Id.* at pp. 3-5, 8-9. However, School Secretary did not send Student A's documents until March 7, 2024, which was thirteen business days and twenty calendar days after the original request. *Interview with School Secretary; Exhibit I, pp. 10-13; Exhibits J-1 to J-4.*

21. On March 1, 2024, a member of Students' multidisciplinary teams in New District told Parents that the team was having difficulty obtaining Student A's records. *Interview with Parents; Exhibit 2*. Father emailed Student A's IEP to the team member that same day. *Exhibit 2*.
22. Separately, New District submitted requests for Students' special education records on March 1 (for Student B), March 5 (for both Students), and March 8, 2024 (for Student B again) using the District's centralized online portal, and the District responded with the requested documents the same day for each request. *Exhibit G*, pp. 1, 4, 7, 10, 13, 15-16, 19, 22. The transmitted documents included each Student's determination of eligibility, most recent evaluation, and most recent IEP. *Id.* at pp. 36, 41, 62, 114, 118, and 122.
23. Once New District had Students' IEPs, it was able to quickly set up services. *Interview with Parents; see Exhibit 2*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not take reasonable steps to promptly respond to a request by New District on February 14, 2024 for Student A's records, as required by 34 C.F.R. § 300.323(g)(2). This did not result in a denial of FAPE.

Parents have alleged that the District did not provide Students' special education records to New District in a timely manner.

"To facilitate the transition for a child" who transfers between school districts, the child's "new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records," and "[t]he previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request" for the records. 34 C.F.R. § 300.323(g). Although neither the IDEA nor ECEA provide a specific definition of "enrolled," the ECEA states that, with exceptions not applicable here, "the administrative unit of attendance is responsible for child identification . . . IEP planning, delivery of special education services, and the provision of a free appropriate public education to each child with a disability attending public school within the administrative unit." ECEA Rule 8.02(1), 1 C.C.R. § 301-8:8.02(1).

The first question is whether the District was "[t]he *previous* public agency in which the child was enrolled" on February 14, 2024, when the District received New District's request for records. 34 C.F.R. § 300.323(g)(2) (emphasis added). Although enrollment status is ordinarily a simple question, here, the District and Parents disagree about whether Father's statement to front office staff that he was withdrawing the children constituted a "disenrollment" from the District. (FF #s 6.) Indeed, the District did not disenroll Students according to its policies and procedures. (FF #s 7-11.)

The SCO finds and concludes that the District was the "previous public agency in which the child was enrolled" for purposes of 34 C.F.R. § 300.323(g) beginning on February 12, 2024, the date

that Students began attending an elementary school in New District. (FF # 14.) The school district of attendance is generally responsible, under the IDEA, for the special education needs of a student with a disability that attends one of the district's schools. ECEA Rule 8.02(1), 1 C.C.R. § 301-8:8.02(1). On February 12, 2024, Students' district of attendance was New District. (FF # 14.) Accordingly, the SCO finds and concludes that, on February 14, 2024, when New District requested Students' records from the District, the District was required by 34 C.F.R. § 300.323(g) to "take reasonable steps to promptly respond" to that request.

The second question is whether the District's actions constituted "reasonable steps to promptly respond" to the records request. Neither the ECEA nor IDEA provide specific guidance on the nature or timing of a "reasonable" and "prompt" response under 34 C.F.R. § 300.323(g). However, the Office of Special Education and Rehabilitative Services ("OSERS") has explained that, in the context of the timeline for a new school district to either adopt a child's IEP from the prior district or else develop a new IEP, the new district must act "to avoid any undue interruption in the provision of required special education and related services." *Questions and Answers on Individualized Educ. Programs, Evaluations, and Reevaluations*, 54 IDELR 297 (OSERS June 1, 2010). Additionally, the facts in this investigation show that the District can respond to other districts' requests for special education records on the same day, when the district-level portal is used, and within three business days when a new school emails the old school. (FF #s 14-23.)

School Secretary sent Student A's records to New District thirteen business days and twenty calendar days after she received New District's request. (FF # 20.) The District had information since February 6, 2024 that Principal would not allow Students in School, that Students needed a school to attend, and that Mother was actively seeking a school for them to attend. (FF #s 12-13.)

Despite having this information, it took District thirteen business days to respond to the February 14, 2024 request for Student A's records while it responded within three business days for Student B's records and was able to provide same-day responses through its central portal. (FF #s 14-23.) Accordingly, the SCO finds and concludes that the District did not take reasonable steps to promptly respond to New District's request on February 14, 2024 for Student A's records, in noncompliance with 34 C.F.R. § 300.323(g)(2).

Procedural noncompliance results in a denial of FAPE—allowing remedies such as compensatory services—only if the noncompliance (1) impeded a child's right to a FAPE, (2) significantly impeded a parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, on March 1, 2024, Student A's multidisciplinary team told Parents that the District had not yet transmitted Student A's records, and Father provided Student A's IEP that same day. (FF # 21.) New District then quickly set up services. (FF # 23.) The timely intervention by New District and Father limited the impact of the District's delay on Student A, and the Record does not support a finding that Student A suffered a deprivation of educational benefit. Accordingly, the

SCO finds and concludes that the District’s delay in transmitting Student A’s records did not result in a denial of FAPE.

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic and will likely impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authority, the CDE must also 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 process is “critical” to the state enforcement agency’s “exercise of its general supervision responsibilities” and serves as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

The District does not have a policy or procedure that specifies a timeline for responding to records requests. (FF # 18.) The District allows individual schools to handle records requests, and there is no coordination between District-level and school staff to track requests and responses. (*Id.*) Indeed, the District’s Response to Parents’ Complaint informed the CDE—inaccurately—that New District did not request records until March 2024, although New District in fact requested the records on February 14, 2024. (FF # 4.) In sum, the District has no internal policy or procedure requiring compliance with 34 C.F.R. § 300.323(g)(2), no way to track its own compliance or noncompliance in this regard, and no certain process for obtaining and providing accurate compliance information to the CDE in its supervisory role under the IDEA.

For these reasons, the SCO finds and concludes that District’s noncompliance is systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.

REMEDIES

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

1. Taking reasonable steps to promptly respond to a request for special education records by a child’s new school district, as required by 34 C.F.R. § 300.323(g)(2).

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

1. Corrective Action Plan

- a. By **Friday, November 22, 2024**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Students and all other students with disabilities for whom the District is responsible. The CDE will approve or request revisions

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

2. Final Decision Review

- a. The District's Executive Director of Special Education must review this Decision. The review of this Decision must occur no later than **Monday, November 25, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, December 2, 2024**.

3. Policy and Procedure Review

- a. By **Friday, December 20, 2024**, District must submit written procedures or guidance detailing the steps staff must take to ensure that the District takes reasonable steps to promptly respond to requests for special education records from students' new educational agencies, consistent with 34 C.F.R. § 300.323(g)(2).
 - i. At a minimum, the written procedures must offer clear guidance on:
 1. A specific deadline for transmitting requested special education records to the new educational agency;
 2. A method for tracking all requests for special education records from a student's new school or educational agency and verifying that a student's records have been successfully transmitted to the new school or agency.
- b. The District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. The District must ensure that all District administrators and staff who are permitted to handle requests for special education records from students' new educational agencies, including school staff, receive a copy of the procedures no later than **Friday, January 17, 2025**. Evidence that the procedures were shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Wednesday, January 22, 2025**.

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant


201 E. Colfax Avenue
Denver, CO 80203

NOTE: If 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 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 State Complaints Officer ("SCO").

Dated this 25th day of October, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-3

- Exhibit A: IEPs
- Exhibit C: Notices of Meetings
- Exhibit D: Attendance Records
- Exhibit E: Policies and Procedures
- Exhibit F: Correspondence
- Exhibit G: Correspondence
- Exhibit H: Staff Contacts
- Exhibit I: Correspondence
- Exhibit J: Correspondence

Reply, pages 1-3

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence

Telephone Interviews

- District Support Supervisor: October 3, 2024
- School Office Assistant: October 3, 2024
- School Secretary: October 3, 2024
- Attendance Specialist: October 4, 2024
- School Principal: October 4, 2024

CDE Exhibits

- CDE Exhibit 1: Correspondence