

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

**State-Level Complaint 2024:600
Adams 12 Five Star Schools**

DECISION

INTRODUCTION

On October 8, 2024, a third-party individual (“Complainant”) filed a state-level complaint (“Complaint”) against Adams 12 Five Star Schools (“District”) on behalf of a student (“Student”) not then identified as a child with a disability 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’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final 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 filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after October 8, 2023. Information prior to October 8, 2023 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 will determine if 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.

1. Whether, in or around September 2024, District failed to conduct a full and individual initial evaluation before the initial provision of special education and related services to Student, as required by 34 C.F.R. § 300.301.

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 is seven years old and attends second grade in a District elementary school (“School 2”). *Exhibit B*, p. 19. She qualifies for special education and related services under the disability category of Multiple Disabilities, which includes identification under the categories Intellectual Disability, Other Health Impairment, and Hearing Impairment including Deafness. *Id.* at p. 35.
2. Student is a happy girl who brightens any room she enters. *Interviews with Student’s parent (“Parent”), Complainant, a District special education coordinator (“Coordinator”), and a District psychologist (“Psychologist”).* She enjoys music, moving around the classroom environment, and being around classmates. *Id.*
3. Student has been diagnosed with autism and chromosomal deletion, and she exhibits significant hearing loss. *Exhibit B*, p. 23. She does not communicate verbally but engages in a combination of vocalizations and body language to express herself. *Id.* Student’s cognitive development is significantly delayed for a child her age. *Id.* at p. 21.
4. This investigation involves whether Student was improperly receiving special education services prior to the determination of her eligibility for special education on November 14, 2024. *Exhibit A*, p. 1.

B. District’s Policies, Practices, and Procedures

5. District’s assistant director for special education (“Assistant Director”) described District’s expectations with respect to the referral of students not previously served by an IEP, stating that District’s priority with respect to such students is to perform a comprehensive evaluation to determine whether the student is eligible for special education. *Interview with Assistant Director.*
6. District’s written procedures for initial evaluations describe the process by which District staff are expected to pursue an initial evaluation when a disability is suspected. *Exhibit I.* In addition, District regularly provides continuing education programming to staff, which

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

addresses topics in special education compliance including initial evaluations. *Interview with Assistant Director.*

7. In some cases, conducting an evaluation may require observing a student in different environments to gauge their response to various stimuli. *Interviews with Psychologist and Assistant Director.* In addition, where a student's reported and observed health and safety needs are such that the student cannot be effectively evaluated without additional environmental support, District directs its staff to ensure that those needs are met to conduct an effective evaluation. *Interview with Assistant Director.*
8. In such cases, a student may, with parental consent, be observed or evaluated in a more restrictive environment than the general education classroom during the evaluation period. *Id.* District does not view an evaluation in such a setting as a "placement" but rather as part of the evaluation process. *Id.*
9. Once the evaluation has been completed, District's practice is to convene an IEP meeting to determine the child's eligibility for special education and related services, and if the child is found eligible, develop an IEP tailored to the needs identified in the evaluation. *Id.*

C. Student's Enrollment at School 1

10. On August 15, 2024, Parent contacted Coordinator to indicate that she would like for Student to attend school in District for the 2024-2025 academic year. *Interviews with Parent and Coordinator; Exhibit J, p. 2.* Student, who was seven years old, had not previously attended school. *Interviews with Parent and Coordinator.*
11. On August 19, 2024, Student formally enrolled at her home school ("School 1"). *Exhibit J, p. 3.* Parent stated to Coordinator that she believed that Student would need significant support to be able to attend school safely. *Interviews with Parent and Coordinator.*
12. Over the next week, Parent and Coordinator worked to obtain Student's medical documentation and scheduled a meeting at School 1 for August 29, 2024 in order to discuss Student's needs and her transition into a school environment. *Id.*
13. At that meeting, Parent, Coordinator, a District nurse, and several providers from School 1 discussed supports for Student as she entered the school environment. *Exhibit L.* The participants discussed Student's medical conditions, the supports she would need to stay safe and healthy at school, and the therapies and treatments she was receiving outside of school. *Id.* At the end of the meeting, Coordinator told Parent that District would like to evaluate Student for special education and related services and would be preparing and sending her a Consent to Evaluate form to initiate that evaluation. *Id.* In addition, Coordinator recommended that given the support needs discussed at the meeting, it might make sense for Student's evaluations to be performed at School 2, an elementary school with more resources for students with significant needs. *Id.*

14. Parent agreed that School 2 would be a more appropriate setting for Student's evaluation than School 1 and stated that she would be safer in that environment. *Interview with Parent.*

D. Student's Move to School 2

15. On September 5, 2024, Coordinator met with Complainant, a special education teacher who oversaw School 2's significant supports needs ("SSN") classroom, and other members of School staff who might interact with Student during her evaluations to discuss Student's needs and create a plan for conducting evaluations. *Exhibit J, p. 27; Exhibit L, p. 3.*
16. During this meeting, Coordinator noted that Student would not be receiving special education services but would spend some time in School 2's significant supports need classroom "while testing is taking place." *Id.* Coordinator stated that Student would be at School 2 for about three hours per day to participate in evaluations. *Id.*
17. Complainant expressed concern to Coordinator about having Student in the SSN while she did not have an IEP and was not receiving services. *Interview with Complainant; Complaint, p. 17.* Coordinator stated that Complainant needed to comply with District's plan for evaluation despite her objections. *Id.*
18. Following the meeting, Complainant sent an email to School 2 staff indicating that Student would be attending School 2 in the next week and that "we will be starting an immediate initial eval for her," conditional upon receiving Parent's consent to evaluate. *Complaint, p. 20; Exhibit J, pp. 31-32.*
19. Complainant also contacted Parent to schedule a meeting between a School 2 team and Parent and Student on September 13, 2024. *Id. at p. 36.*
20. At the meeting, Parent signed a Prior Written Notice and Consent for Initial Evaluation form authorizing district to evaluate Student for special education eligibility. *Exhibit D, pp. 1-2.* This form stated that Student would be attending School 2 "in order to access the significant support needs classroom while she is being evaluated." *Id.* Under the "Other options considered and reason(s) rejected" section of the form, it notes that the team considered evaluating Student at her home school, but that this option was rejected because she requires significant adult support immediately in order to access the learning environment. *Id.*
21. Parent understood at the time of signing that Student would be in the SSN classroom for the purpose of evaluation, and that a placement decision would be made for Student after the evaluations were complete, if Student were determined eligible. *Interview with Parent.*

E. The Evaluation Process

22. On September 17, 2024, Student attended her first day at School 2. *Exhibit G.* Student attended school for three days that week but was absent all but one day from September 20 through October 1. *Id.*

23. During the three days of attendance, Complainant observed Student in various settings and administered several academic assessments, the results of which are reflected in the evaluation report completed by District. *Exhibit B*, pp. 25-28. During the period of Student's nonattendance, Complainant noted in a September 27 email to the other evaluators that "I know we are all struggling to access [Student] for evaluation," and offered her written observation notes to the other evaluators. *Exhibit J*, pp. 59-66. Complainant also sent videos of Student's movement to the physical therapist to enable her to observe Student's motor skills. *Id.* at p. 68.
24. While at School 2, Student did not receive specialized instruction or related services, but did receive support from paraprofessionals in the SSN classroom to move about the room and perform hygiene tasks. *Interviews with Complainant, Psychologist, and Coordinator.*
25. On or around October 1, 2024, Complainant submitted a resignation for her position, effective October 30, citing frustration with District's evaluation process. *Interview with Complainant.*
26. On October 2, 2024, School's assistant principal ("Assistant Principal") sent a letter to Parent indicating concerns with Student's attendance. *Exhibit J*, pp. 72-77. On October 10, 2024, Assistant Principal contacted Parent by phone to schedule a meeting to discuss Student's nonattendance and to create an Attendance Improvement Plan. *Id.* at p. 1.
27. On October 11, 2024, Parent met with Assistant Principal and developed an Attendance Improvement Plan. *Id.* at pp. 80-83. District's fall break fell from October 14 through 18, but starting October 21, Student returned to School 2. *Exhibit H; Exhibit G.*
28. Following the implementation of the Attendance Improvement Plan, Student began to attend school consistently, allowing District staff to complete its observations and assessments. *Interviews with Psychologist and Coordinator.*
29. Psychologist observed and assessed Student in the general education classroom, the SSN classroom, and the occupational therapy classroom. *Interview with Psychologist.* Psychologist described that observing Student in those unique settings allowed her to draw conclusions regarding Student's ability to interact with others, her reaction to sensory stimulus, and her ability to engage with fine and gross motor activities. *Interview with Psychologist; Exhibit B*, pp. 20-21. Moreover, Psychologist stated that Student's access to paraprofessional support in the SSN classroom was crucial to being able to gather reliable observations of Student's behavior. *Interview with Psychologist.*
30. Likewise, the other observations and assessments recorded in District's evaluation reflect Student's performance and behavior in a variety of settings at School 2. *See, e.g., Exhibit B*, pp. 24, 31, 33.
31. On November 12, 2024, District completed its evaluation of Student. *Exhibit B*, p. 19.

32. On November 12, 2024, a properly constituted multidisciplinary team, including Parent, convened for a special education eligibility meeting. *Exhibit E*, p. 1. The team reviewed Student’s evaluation report and determined that Student was eligible for special education and related services. *Exhibit B*, p. 35.
33. At this meeting, Parent signed a Consent for Provision of Special Education and Related Services form, giving permission for an IEP to be developed for Student and for special education and related services to be provided. *Exhibit D*, pp. 6-8.
34. District then scheduled an IEP meeting for November 22, 2024, to begin the process of developing an IEP for Student. See *Exhibit A*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: No special education or related services were provided to Student prior to Student being evaluated and determined IDEA-eligible. Accordingly, District complied with 34 C.F.R. § 300.301.

Complainant’s concern is that Student’s presence in the SSN room prior to the completion of her evaluation and development of her IEP was improper. (FF # 17).

School districts “must conduct a full and individual initial evaluation” prior to the provision of special education and related services to a child with a disability. 34 C.F.R. § 300.301(a). In conducting an evaluation, school districts must use “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in” determining whether the student qualifies for special education and developing the IEP. 34 C.F.R. § 300.304(b)(1). Evaluations must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. 300.304(c)(6).

A student may be evaluated in a location other than a general education setting when such an environment is necessary to obtain a comprehensive evaluation. *See, e.g. King Philip Reg’l Sch. Dist.*, 112 LRP 2059 (SEA MA 2012) (finding a school district’s proposal to evaluate a student with ADHD and a seizure disorder in a separate setting, catered to students with similar educational and clinical needs, to be appropriate given the student’s “complicated educational profile”).

Here, although Student was in the SSN classroom for portions of her school day prior to being determined IDEA-eligible, the Record shows that Student did not receive special education or related services while in that classroom. (FF # 24). Instead, District staff observed her as part of an initial IDEA evaluation. (FF #s 23, 29-30). During this time, she received support with hygiene and movement from paraprofessionals so that she could access the educational environment as District staff conducted their evaluation. (FF # 24, 29). Her presence in that classroom, as well as

other settings in the School 2 building, allowed evaluators to make observations and draw conclusions to ensure a comprehensive initial evaluation and assist in their eventual determination of Student's IDEA-eligibility. (FF #s 23, 29-30).

The circumstances of this case, particularly Student's inconsistent attendance and complex needs, presented a highly unusual and difficult context in which to perform an initial evaluation, but Complainant and other District staff performed their duties under IDEA to complete the evaluation process. (FF # 22-31). The fact that Student received necessary paraprofessional support during this time further supports this notion and is not inconsistent with IDEA or other federal law. *See Kimble v. Douglas Cty. Sch. Dist.* 925 F.Supp.2d 1176 (D. Colo. 2013) (finding that Section 504's requirements, which are independent from IDEA, obligate school districts to provide accommodations to students with disabilities to access the learning environment). District has found Student to be eligible for special education and related services and begun developing an IEP for Student. (FF #s 32-34).

For these reasons, the state complaints officer ("SCO") finds and concludes that Student did not receive special education or related services prior to being determined IDEA-eligible, and that District complied with the requirements of 34 C.F.R. § 300.301(a).

REMEDIES

The CDE concludes that District complied with the IDEA. Accordingly, no remedies are ordered.

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 SCO.

Dated this 4th day of December, 2024.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-9

- Exhibit 1: Supporting Documentation

Response, pages 1-5

- Exhibit A: Student's IEP
- Exhibit B: Evaluations
- Exhibit C: Notices of meetings
- Exhibit D: Prior Written Notice
- Exhibit E: Notes from IEP meetings
- Exhibit F: n/a
- Exhibit G: Attendance Records
- Exhibit H: District Calendar
- Exhibit I: District Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: List of staff with knowledge of facts
- Exhibit L: Meeting Notes
- Exhibit M: Student's enrollment history
- Exhibit N: Student's School 2 schedule

Telephone Interviews

- Complainant: November 7, 2024
- Psychologist: November 7, 2024
- Parent: November 11, 2024
- Coordinator: November 12, 2024
- Assistant Director: November 14, 2024