

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

**State-Level Complaint 2020:528
Douglas County School District RE-1**

DECISION

INTRODUCTION

The parents (“Parents”) of a child (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Douglas County School District RE-1 (“District”) on August 18, 2020.

The SCO determined that the Complaint identified two allegations 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 300.152. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will consider only events that occurred not earlier than August 18, 2019 to determine whether a violation of the IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate all allegations accepted in this matter. Findings of non-compliance, if any, shall be limited to one year prior to the date the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student a Free Appropriate Public Education because the District:

1. Failed to identify and evaluate Student when District was on notice, as early as August 21, 2019, that Student may have a disability and be in need of special

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.

education and related services, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3); and

2. Failed to conduct an initial evaluation, as requested by Parent on or around August 21, 2019, to determine if Student qualified as a child with a disability under the IDEA, in violation of 34 C.F.R. § 300.301.

FINDINGS OF FACT

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

A. Background

1. Student is enrolled in an online high school for ninth grade. *Interview with Parents.* During the 2019-2020 academic year, Student attended eighth grade at a school within the District (“School”). *Id.*
2. Student has never been identified as a student eligible for special education and related services, though he has been consistently identified as gifted since fifth grade under the ECEA Rules. *Id.; Interview with Case Manager.*
3. Student is described as a bright, kind, and polite young man. *Interviews with Parents and School Counselor.* His primary areas of interest are government, economics, and computers; Student enjoys learning as much as he can about these topics. *Interview with Parents.* In School, Student performs well in courses related to his interests, but he struggles to maintain motivation in areas of less interest to him. *Id.; Interviews with Assistant Director of Special Programs (“Assistant Director”) and School Counselor.*

B. Outside Evaluation

4. In middle school, Student performed above grade-level on state and district assessments. *See Exhibit F*, pp. 8-16. Additionally, Student scored in the 95th percentile on the PSAT in October 2019. *Id.* at p. 14. Yet, despite this solid performance on assessments and his identification as gifted, Student struggled academically in middle school. *Interviews with Parents and School Counselor.*
5. Parents described Student’s academic performance in middle school as a “roller coaster.” *Id.* Though his grades often started as A’s and B’s, they routinely dropped to D’s and

² The appendix, attached and incorporated by reference, details the entire record.

F's as Student became less interested and fell behind in his homework. *Id.*; *see also Exhibit F*, pp. 1-8. In seventh grade, Student earned 2 B's, 8 C's, and 4 D's. *Id.* at p. 2.

6. The contradiction between Student's intellect and his academic performance prompted Parents to contact Gifted Assessment Center. *Id.* A preliminary assessment by Gifted Assessment Center indicated Student might have central auditory processing disorder ("CAPD"). *Id.* Gifted Assessment Center referred Student to Foundation, which specialized in CAPD, for further evaluation. *Id.*

7. On August 21, 2019, Foundation evaluated Student and confirmed that Student had CAPD. *Exhibit E*, pp. 3-8. Due to his CAPD, Student might "have problems processing or interpreting auditory information when presented in a less than quiet listening environment." *Id.* at p. 4. Additionally, Student might have difficulty concentrating in environments with background noise or experience fatigue from listening for long periods of time. *Id.*

8. Foundation's report ("Report") included 21 recommendations for Student. These recommendations included, in part:

- Preferential seating in the least distracting location in each classroom;
- Use of a custom filter for Student's right ear to decrease background noise;
- Providing Student auditory, visual, and written instructions;
- Scheduling classes which rely heavily on auditory transmission of information in the morning; and
- Use of earmuffs or earplugs while completing assignments or exams to reduce distracting noises.

Id. at pp. 4-6.

9. Additionally, Foundation recommended Parents seek a 504 plan for Student. *Interview with Parents*.

B. Student's Anxiety about Returning to School

10. Student began eighth grade on August 7, 2019, the first day of the 2019-2020 school year. *Interview with Parents; Exhibit H*, p. 1.

11. Shortly after the school year began, Parents contacted School Counselor regarding Student's anxiety about returning to School. *Interviews with Parents and School Counselor*. In May 2019, a traumatic event occurred at School near Student's classroom. *Interview with Parents; Response*, p. 2. Other than providing social/emotional wellness services to students

and staff, School was closed for the remainder of the 2018-2019 school year. *Interview with School Counselor; Response*, p. 2.

12. After the traumatic event, Student seemed unphased. *Interview with Parents*. But, in August, Student expressed apprehension about returning to School. *Id.* As a result, Parents requested that School Counselor meet with Student. *Id.; Interview with School Counselor*.

13. During the first few weeks of the school year, School Counselor checked in with Student every few days to see how he was feeling. *Interview with School Counselor*. If Student wanted to talk, School Counselor pulled Student from class for a break and then took him back to class. *Id.* After the first few weeks of School, Student's anxiety appeared to diminish, and he did not meet as frequently with School Counselor. *Id.* School Counselor continued to check in with Student every couple of weeks for the first few months of School. *Id.*

C. Parents' Request for a 504 Evaluation & Eligibility Determination

14. Following Foundation's evaluation of Student, Parents told School Counselor that Student had been diagnosed with CAPD and requested that Student be evaluated for a 504 plan. *Id.; Interview with School Counselor*. Parents provided School Counselor with a copy of Foundation's Report. *Exhibit G*, pp. 1-8.

15. Upon Parents' request, School Counselor—who also served as School's 504 plan coordinator—scheduled an initial meeting for August 30, 2019. *Interview with School Counselor*.

16. On August 30, School Counselor, Assistant Director, and Parents met to discuss evaluating Student for a 504 plan. *Interviews with School Counselor, Parents, and Assistant Director*. As support for a 504 plan, Parents reported Student had "difficulty with following directions, task initiation [,] and often [misheard] what [was] said." *Exhibit G*, p. 27. Ultimately, School agreed to evaluate Student for a 504 plan. *Interviews with School Counselor, Parents, and Assistant Director*.

17. During the August 30 meeting, Parents did not request that Student be evaluated for special education and related services. *Id.* In fact, there was no discussion whatsoever at the August 30 meeting regarding evaluating Student for special education and related services. *Id.*

18. On October 3, School held Student's 504 eligibility meeting. *Interview with School Counselor; Response*, p. 2. The meeting was scheduled before School started to allow Student's teachers to participate without missing their classes. *Id.* Due to traffic, Parents were late to the meeting and missed the discussion of the evaluation data. *Id.; Interview with Parents*. By then, Student's teachers had left to begin teaching. *Interview with School Counselor*. School Counselor gave Parents the option of rescheduling the meeting or continuing the meeting with School Counselor and Assistant Director. *Id.; Interview with Parents*.

19. Parents chose to continue the meeting, so School Counselor and Assistant Director reviewed the evaluation data with Parents, including the teachers' feedback. *Interviews with School Counselor, Assistant Director, and Parents.*

20. During the eligibility meeting, the Section 504 team determined that Student's CAPD did not substantially limit one or more major life activities. *Id.*, p. 28. The team explained this decision as follows:

[Student's] teachers report that he is intelligent, cheerful, good with technology and can be enthusiastic about some content. [Student] is performing well on assessments. When he turns things in, he does well. Teachers report that much of [Student's] performance is a choice.

[Student's] teachers had concerns regarding classwork/homework completion, organization, following written directions, test/quiz grades, and attention span. . . . However, teachers note significant improvement in [Student's] performance and emotional regulation over the past two weeks or so.

Id. at p. 29.

21. For these reasons, the Section 504 team concluded that a 504 plan was not necessary. *Id.* at pp. 29-30. Parents agreed with this decision. *Id.*; *Interviews with School Counselor and Parents.*

22. Parents did not request that Student be evaluated for special education and related services during the October 3 meeting. *Id.* Once again, there was no discussion regarding evaluating Student for special education and related services. *Id.* The evaluation did not reveal any concerns suggesting that Student needed to be evaluated for special education. *Interview with School Counselor.* School staff did not feel that Student's grades were a lack of his ability or a product of a disability but, instead, were the result of a lack of interest or motivation on Student's part. *Id.*

23. Following the meeting, Parents emailed School Counselor:

Thanks for a good meeting today. I think we're on the right path for [Student] and I'll make an appointment with his French teacher to talk with her about [Student's] diagnosis and see how we can work together to ensure [Student] has a successful year in French.

Exhibit G, p. 25. School Counselor replied with a copy of the 504 Eligibility Determination Report and said "I agree! I think we are all in agreement and I am so happy to hear about [Student's] progress at school and at home." *Id.*

24. There was no further discussion during the 2019-2020 school year about Student's need for a 504 plan. *Interviews with School Counselor and Parents.*

25. Student's performance at School remained relatively unchanged during the Fall of 2019 and Spring of 2020. *Id.*; see *Exhibit F*, pp. 1-2. Though Student was not performing as well as he was at the time of the 504 eligibility meeting, Student's performance was in line with his performance in sixth and seventh grade. *Interview with School Counselor.* In seventh grade, Student earned 2 B's, 8 C's, and 4 D's. *Exhibit F*, p. 2. During the first semester of eighth grade, Student earned 1 A, 2 C's, 2 D's, and 1 F. *Id.* at p. 1. Student's attendance at School also remained consistent with prior years. See *Exhibit F*, pp. 1-2.

D. Parents' Request for a Special Education Evaluation and Eligibility Determination

26. School's IEP Case Manager ("Case Manager") oversaw all aspects of IEPs at School, including requests for evaluation and special education referral meetings. *Interview with Case Manager.* Per School policy, teachers directed parents to contact Case Manager to request a special education evaluation. *Id.* Additionally, when teachers independently thought a student needed to be evaluated, teachers reached out to Case Manager. *Id.* Prior to March 13, 2020, no one contacted IEP Case Manager regarding evaluating Student for special education and related services. *Id.*

27. On March 13, 2020, Parents emailed Assistant Director to request that Student be evaluated for special education and related services. *Exhibit G*, p. 33. Parents concede this was their first request for a special education evaluation. *Interview with Parents.*

28. Based on these facts, the SCO finds that—prior to March 13, 2020—Parents did not request an evaluation for special education.

29. In response to Parents' request, School held a referral meeting on March 31 and obtained Parents' consent to evaluate on April 7. *Exhibit G*, pp. 56-58; *Exhibit A*, p. 1-3.

30. On May 22, School completed Student's evaluation. *Interview with Case Manager; Exhibit D*, pp. 10. The same day, a multidisciplinary team met to determine Student's eligibility for special education and related services. *Interview with Case Manager; Exhibit B*, pp. 1-4. That team concluded Student did not need specialized instruction to access the general education curriculum and, as a result, did not qualify for special education under the IDEA. *Interview with Case Manager; Exhibit B*, pp. 1-4.³

31. Of note, during his evaluation, Student's teachers expressed no significant concerns regarding Student's ability to access the general education curriculum. *Exhibit D*, pp. 17-18. All

³ Even though Parents' Complaint was filed on August 18, 2020, it contains no facts after March 25, 2020. From the face of the Complaint alone, it is unclear whether School evaluated Student for special education following Parents' request on March 13. Parents' Complaint did not challenge the sufficiency of the Spring 2020 initial evaluation or Student's eligibility determination and, as a result, those issues have not been considered in this investigation.

of Student's teachers commented on Student's intelligence, noting that he learned material easily and performed well when he put forth effort. *Id.* However, his teachers all agreed that Student lacked motivation to complete his work. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not violate the IDEA by not initiating a special education evaluation prior to March 2020, because the District did not have reason to suspect that Student may have a disability and need specialized instruction.

Parents' Complaint asserts that the District had a reason to suspect that Student might have needed special education and related services as early as August 2019, when Parents informed School Counselor of Student's CAPD diagnosis. Parents contend the District violated the IDEA by failing to initiate a special education evaluation in response to Student's CAPD diagnosis.

A. The Child Identification Process Under the IDEA

The IDEA mandates that school districts develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process "shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education." ECEA Rule 4.02(1)(a)(ii).

Under the "special education referral" component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(a). The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is "whether the child should be referred for an evaluation, not whether the child actually qualifies for the services." *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion "may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54

IDELR 71 (9th Cir. 2010), cert. denied, 112 LRP 1321, 132 S. Ct. 996 (2012). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe County Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

To decide whether the District fulfilled its child find obligations here, the SCO considers the individual circumstances of this case to determine whether the District had a reason to suspect that Student needed to be evaluated for special education. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); *Weld RE-4 School District*, 119 LRP 5662 (SEA CO 1/2/19) (citing *Clark County Sch. Dist.*, 114 LRP 45477 (SEA NV 8/28/14)).

B. Parents' Concerns Regarding Student's Academics and Anxiety

In August 2019, Parents had concerns regarding Student's academic performance and his anxiety. (FF #s 4-6, 11.) Academic concerns and social emotional issues can each be a red flag that triggers a school district's special education referral obligations. See *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19) (citing *Smith v. Cheyenne Mtn. Sch. Dist.*, No. 15-00881-PAB-CBS, 2017 WL 279191415, at *18 (D. Colo. 5/11/17)).

However, school districts "need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities . . ." *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 252 (3d Cir. 2012). Liability for child find obligations is imposed only where there are clear notifications or a "reason to believe" that a school district should take action. *Id.* at p. 243.

The SCO finds and concludes that, based on evidence presented, the District lacked sufficient reason to suspect a disability between August 2019 and Parents' request for evaluation on March 13, 2020. In September 2019, the District evaluated Student for a 504 plan. (FF #s 16, 20, 21.) That evaluation revealed no red flags to suggest that Student should be referred for a special education evaluation. (FF # 22.) During that evaluation, Student's teachers noted his academic ability but questioned his motivation to complete his coursework. (FF #s 20, 22.)

Student experienced no academic downturn or a spike in absences. (FF # 25.) Indeed, Student's grades remained relatively consistent between the 2018-2019 and 2019-2020 school years. (*Id.*) Though Student experienced anxiety upon his return to School, his anxiety was resolved, for the most part, a few weeks after the 2019-2020 school year began. (FF #s 11-13.)

In August 2019, Parents informed School of Student's recent CAPD diagnosis. (FF # 14.) Parents were concerned over the misalignment between Student's intellect—as measured on state and District assessments—and academic performance at School. (FF #s 4-5.) Parents thought Student's CAPD might be the underlying cause of Student's academic struggles at School. (FF # 14.) School undoubtedly was aware of Student's CAPD diagnosis. (FF #s 14-15.) But the SCO finds and concludes that this diagnosis alone did not give the District reason to suspect that

Student needed to be evaluated for special education. Indeed, the District considered CAPD's impact on Student's education during the 504 evaluation and, at that time, determined that Student's CAPD did not limit his ability to access his education. (FF #s 20-22.) Without other red flags (or a request from Parents), the District was not obligated to give Student's CAPD any further consideration. (See FF # 22.)

Based on the above, the SCO finds and concludes that—between August 2019 and March 2020—the District did not have a reasonable suspicion that Student might be a child with a disability as defined by the IDEA. As a result, the District had no obligation to refer Student for an initial evaluation and, therefore, did not violate 34 C.F.R. § 300.111 or ECEA Rule 4.02(1)-(3).

Conclusion to Allegation No. 2: The District did not violate the IDEA where it timely initiated a special education evaluation in response to Parents' first and only request for an evaluation on March 13, 2020.

In their Complaint, Parents contend the District failed to evaluate Student for special education despite a specific—yet undated—request from Parents for such an evaluation. *Complaint*, ¶ 22.

A parent of a child may request an initial special education evaluation. 34 C.F.R. § 300.301(b); ECEA Rule 4.02(3)(a). Such an evaluation seeks to determine whether the child has a disability within the scope of the IDEA and, if so, the content of the child's IEP. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). School districts must complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with prior written notice explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19).

Here, as the record makes clear, Parents first requested a special education evaluation on March 13, 2020. (FF #s 26-28.) Parents, by their own admission, never asked that Student be evaluated for special education prior to that date. (FF #s 17, 22, 27.) Once Parents requested an evaluation, the District acted on that request and evaluated Student. (FF #s 29-30.) Parents' Complaint contained no allegations regarding the adequacy of that evaluation—either in form or in substance—so no further analysis by the SCO is necessary.

In response to the allegations in the Complaint, the SCO finds and concludes that Parents did not request that Student be evaluated for special education on or around August 21, 2019. As a result, the SCO finds and concludes that the District had no obligation to conduct an initial evaluation in response to parental request at that time. Therefore, the District did not violate 34 C.F.R. § 300.301.

REMEDIES

The SCO finds and concludes that the District did not violate any requirements of the IDEA. Accordingly, no remedies are ordered pursuant to the IDEA and my authority as an SCO.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, the aggrieved party may 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 SCO.

Dated this 16th day of October, 2020.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-11

- Exhibit 1: Foundation Report
- Exhibit 2: Timeline

Response, pages 1-11

- Exhibit A: Requests for Parental Consent
- Exhibit B: Prior Written Notices
- Exhibit C: Notices of Meeting
- Exhibit D: Evaluation and Assessment Reports
- Exhibit E: Student's Health Information and Foundation Report
- Exhibit F: Grades and Attendance Reports
- Exhibit G: Email Correspondence between District and Parents
- Exhibit H: District Calendar for 2019-2020
- Exhibit I: District Policies and Procedures
- Exhibit J: None
- Exhibit K: Behavior Detail Report and Disciplinary Information
- Exhibit L: Delivery Verification

Telephonic Interviews:

- Director of Special Education: September 29, 2020
- Case Manager: September 30, 2020
- Parents: September 30, 2020
- Assistant Director of Special Programs: September 30, 2020
- School Counselor: October 1, 2020