

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

State-Level Complaint 2023:569
El Paso District 49

DECISION

INTRODUCTION

On Monday, August 21, 2023, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso 49 (District 49) (“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), the Colorado Department of Education (the “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 August 21, 2022 to the present 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 District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Deprived Parent of meaningful participation in the development, review, and revision of Student’s IEP in IEP Team meetings held in or about May 2023, in violation of 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii), and 300.501(b)-(c).

FINDINGS OF FACT

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.

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student is twenty years old and attends District's transition program. *Interview with Parent*. During the 2022-2023 academic year, he attended 12th grade at a District high school. *Exhibit A.1.*, p. 1.
2. Student qualifies for special education under the disability category of Specific Learning Disability with targeted needs in reading comprehension, reading fluency, math calculation, math problem solving, and written expression skills. *Id.*; *Exhibit B.3*, p. 3. Student is exceptionally kind and personable, a hard worker, and a wonderful singer. *Interviews with Special Education Teacher ("Teacher") and Transition Coordinator*.
3. Student lives with his biological mother, Parent, and his stepfather ("Stepparent"). *Interviews with Parent and Stepparent*. Both act as Student's parents on a day-to-day basis. *Id.* Both are also listed as contacts in District's Student Information Service. *Exhibit K*.
4. This investigation involves Parent's participation in IEP team meetings in May 2023 regarding Student's postsecondary transition services. *Complaint*, p. 7.

B. Parent Participation: District's Practices and Procedures

5. District's Special Education Director ("Director") described practices and procedures regarding its responsibility to ensure that parents have an opportunity to meaningfully participate in the IEP process, stating that it is an affirmative responsibility to encourage participation, and not sufficient to merely provide an opportunity. *Interview with Director*. District practice is to provide notice of meetings to parents via multiple forms of communication (e.g., email and phone) and to provide parents with the opportunity to attend meetings virtually or telephonically if desired. *Id.* During meetings, District staff are expected to solicit parent input by asking frequent questions and checking for understanding. *Id.*
6. With respect to how these practices and procedures are communicated to District staff, Director stated that special education coordinators are expected to ensure that members of all IEP teams are familiar and in compliance with District practice, and that she regularly works with school principals and fields questions regarding special education practices and procedures. *Id.* District also provides professional development and training sessions regarding special education policy. *Id.* All District staff interviewed indicated an understanding of District practice and procedure consistent with Director's description. *Interviews with Teacher, Transition Coordinator, Special Education Coordinator and Director*.

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

7. District provided the SCO with extensive written guidance regarding its responsibility to ensure meaningful parent participation, including a document entitled “Parent Participation” that described practices and procedures consistent with Director’s description. *Exhibit F.*
8. Director, when asked to describe District’s practices regarding the participation of non-biological parents in IEP team meetings, stated that under District’s interpretation of the IDEA, a person with whom the child resides and who functions as a parent on a day-to-day basis is qualified to act as the child’s parent for IDEA purposes. *Interview with Director.*

C. The May 10, 2023 IEP Meeting

9. As of April 2023, Student had obtained or was in process of obtaining all necessary credits to graduate and receive his diploma. *Exhibit E.2.*
10. On April 10, Teacher emailed Parent and Stepparent asking for their availability for “an additional Meeting for [Student] to discuss his transition plan after his senior year.” *Exhibit G.2.* Both Parent and Stepparent indicated their availability for a meeting on April 26, 2023. *Id.* On April 12, at Parent and Stepparent’s request, the meeting was rescheduled to May 10, 2023 at 10:00 a.m. *Id.* Parent indicated her availability for the rescheduled meeting. *Id.*
11. On April 28, 2023, Teacher sent a Notice of Meeting indicating the purpose, time, location, and attendees (including an option to attend virtually) of the May 10, 2023 IEP team meeting via email to Student, Parent, and Stepparent, along with a Google calendar invite and a Zoom link. *Exhibit G.1; Exhibit D.1.*
12. At 7:22 a.m. on the morning of May 10, 2023, Parent emailed Teacher and other meeting attendees, writing “I will be attending the meeting virtually.” *Exhibit G.3.* Ultimately, Parent was unable to attend the meeting due to the need to attend a medical appointment for her other child, so she asked Stepparent to attend in her place. *Interview with Parent.*
13. That day, a properly composed IEP team, including Student and Stepparent, met. *Interviews with Parent, Stepparent, Teacher, and Transition Coordinator.* Teacher left the Zoom meeting open during the meeting to enable Parent to attend virtually, but Parent did not join the meeting. *Interviews with Teacher and Transition Coordinator.*
14. Transition Coordinator attended to discuss the potential for Student to participate in District’s transition program. *Interview with Transition Coordinator.* In addition, a representative from the Department of Vocational Rehabilitation’s (“DVR”) School to Work Alliance Program (“SWAP”) attended to discuss Student’s potential participation in that program. *Exhibit B.2.*
15. Although a student can participate in either a transition program or the SWAP program on its own, a student can participate in both programs simultaneously. *Interviews with Transition Coordinator and Director.* A student may participate in a transition program until aging out

on the student's twenty-first birthday but can continue to engage with DVR programming beyond age twenty-one. *Id.* Because of the persistent availability of DVR services, it is often in the best interest of transition-aged students to participate in both a transition program and the SWAP program. *Consultation with CDE Content Specialist.* Transition services and DVR programming are designed to work hand-in-hand with one another, and the combination of both can help ensure that when a student ages out of school services at twenty-one, the student will be able to continue to receive employment-related support through DVR. *Id.*

16. The IEP team discussed Student's performance in school, and his plans for the future. *Exhibit B.2.* Student expressed a desire to become a florist and to work in a grocery store floral department. *Id.* After Transition Coordinator and a SWAP coordinator ("SWAP Coordinator") presented information regarding their respective programs, Student was asked directly if he would like to continue attending District through its transition program, or if he would like to take his diploma and end his schooling with District. *Exhibit B.2.*
17. Student responded that he wished to take his diploma and graduate from school. *Id.; Interviews with Stepparent, Teacher, and Transition Coordinator.* Stepparent stated that he respected Student's decision. *Exhibit B.2; Interviews with Stepparent, Teacher, and Transition Coordinator.* SWAP Coordinator discussed the ways in which DVR might be able to support Student in pursuing his employment goals. *Exhibit B.2.* After discussion, the IEP team, including Student and Stepparent, concluded that Student would graduate and take his diploma, and receive job support services from DVR. *Id.*
18. At the conclusion of the meeting, Teacher gave Stepparent a Prior Written Notice ("PWN") summarizing the IEP team's decision that Student would graduate and receive his diploma, and that Student would no longer receive special education services from District. *Exhibit C.1.* After receiving the PWN, Stepparent was asked if he had any further questions, and he did not. *Exhibit B.2.* Student completed the application for DVR services shortly after the end of the meeting. *Interview with Teacher.*

D. The May 19, 2023 Senior Exit Meeting

19. According to District policy, all IDEA-eligible students graduating and taking their diploma are required to participate in a Senior Exit Meeting, to document postsecondary goals, provide a summary of performance, and provide prior written notice of the end of participation in special education. *Exhibit F.9.* Per policy, Student Exit Meetings are held as an additional meeting rather than an IEP meeting. *Id.*
20. Teacher scheduled, in consultation with Parent and Stepparent, a Senior Exit Meeting for Student, on May 15, 2023. *Exhibit D.3.* At Parent's request, the meeting was rescheduled to May 19, 2023. *Id.* Teacher sent a notice of meeting to Student and Parent regarding this meeting on May 11, 2023. *Id.*

21. Parent and Student attended the Senior Exit Meeting on May 19, 2023, but Stepparent did not. *Interviews with Parent, Stepparent, and Teacher.*
22. At the beginning of the meeting, Teacher noted that Student would be graduating with the class of 2023 and congratulated Student, before beginning to discuss postsecondary goals regarding participation in SWAP programming. *Interviews with Parent and Teacher.* Parent expressed surprise that Student would be graduating and leaving special education services, and expressed her desire that Student continue into the transition program. *Id.* Parent asked Student if he really wished to graduate and exit services, and after dialogue between Parent and Student, Student stated that he was not sure. *Id.*
23. Parent requested that Student's graduation be put on hold. *Exhibit B.3.* Teacher stated that because the Senior Exit Meeting was not a properly constituted IEP meeting, an IEP meeting would need to be scheduled to make this change, and Parent requested that meeting be scheduled. *Id.* Teacher ended the Student Exit Meeting and assured Parent that an IEP meeting would be scheduled. *Id.*
24. After the meeting, Parent emailed Teacher to request documentation from the May 10, 2023 IEP meeting. *Exhibit G.4* at p. 1. Less than one hour later, Teacher provided, via email, meeting notes and the PWN provided to Stepparent at the conclusion of that meeting. *Id.*

E. The May 26, 2023 IEP Meeting

25. The next morning Teacher proposed, via an email to Parent, dates to reconvene the IEP Team for an additional meeting in light of Parent's objection. *Id.* at p. 2. On May 23, 2023, Parent and Teacher agreed via email to schedule an IEP team meeting for May 26, 2023. *Exhibit G.5.* Teacher sent a Notice of Meeting later that day indicating the purpose, time, location, and attendees of the May 26 IEP meeting. *Exhibit D.2.*
26. A properly composed IEP Team, including Student, Parent, and Stepparent, met on May 26, 2023. *Interviews with Parent, Stepparent, Teacher, and Transition Coordinator.*
27. At the meeting, Parent expressed that Student would be best served by continuing into the transition program rather than ending special education services. *Id.*
28. Members of the IEP team reviewed Student's needs and his performance in the school environment. See *Exhibit B.3.* Teacher stated that, based upon his profile, he would be a good candidate for the transition program. *Interview with Teacher.* Another member of the IEP team, a school psychologist, stated that Student's parents know him best, and that the IEP team would be doing Student a disservice if they did not offer him transition services. *Exhibit B.3.* According to Parent, after this exchange she "was feeling better about things," and her input was being heard by the IEP team. *Interview with Parent.*

29. The IEP team agreed that Student's IEP would be amended to reflect that he would not exit services and instead would receive services through District's transition program. *Exhibit B.3.*
30. At the conclusion of the meeting, a PWN was created and handed to Parent detailing the IEP team's decision that Student would continue into the transition program. *Exhibit C.3.*
31. Student currently attends District's transition program, but at Parent's request, does not participate in DVR programming. *Interviews with Transition Coordinator and Director.* Student has the option of enrolling, if he and Parent so desire, in DVR programming without impacting the provision of his transition programming. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: Parent was afforded the opportunity for meaningful participation in the development, review, and revision of Student's IEP in IEP team meetings in May 2023, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). No violation of the IDEA occurred.

Parent's concern centers on participation at May 10, 2023 and May 26, 2023 IEP meetings. (FF #s 9-18, 25-30). Specifically she is concerned that she was denied the opportunity for meaningful participation in these meetings because a decision that Student would receive his diploma and forgo transition programming was initially made in her absence. (FF #s 13, 17).

The IDEA requires that parental participation be meaningful, to include carefully considering parents' concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful consideration does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.*

An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . ." *Id.*

Under the IDEA and ECEA Rules “parent” includes not only the student’s biological parent, but also an “individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives.” 34 C.F.R. § 300.30(a)(4); ECEA Rule 2.33(1)(d).

Here, the SCO finds and concludes that Parent and Stepparent had an opportunity to meaningfully participate in the May 2023 meetings.

With respect to the May 10 meeting, District took reasonable steps to ensure that Parent had the opportunity to attend. For instance, Teacher collaborated with Parent to choose an agreed upon meeting date, and at Parent’s request, rescheduled the meeting. (FF # 10). Teacher also provided a proper Notice of Meeting twelve days prior to the meeting and sent a calendar invitation and a Zoom link to enable remote participation. (FF # 11). Moreover, on the morning of the meeting, Parent indicated that she would be participating in the meeting remotely, so Teacher left the Zoom meeting open for Parent to join at any time. (FF #s 12-13). Although Parent did not ultimately attend the May 10 meeting, she asked Stepparent to attend on Student’s behalf and in her place. (FF # 12). A properly composed IEP Team, including Stepparent and Student, attended the meeting. (FF # 13). During the meeting, Stepparent indicated his support for Student’s stated preference to take his diploma. (FF # 17). Student lives with Stepparent and Stepparent acts as his parent on a day-to-day basis (FF # 3). The IEP honored Stepparent’s input and the IEP team made a decision in line with the input he provided. (FF # 18). Teacher asked Stepparent if he had any further questions regarding the IEP team’s decision and provided Stepparent with PWN of the IEP team’s decision. (*Id.*).

With respect to the May 26 meeting, a properly composed IEP team, including Parent and Stepparent, attended. (FF #s 21, 26). Teacher sent a proper Notice of Meeting prior to the meeting. (FF # 25). Parent’s concerns were at the heart of the May 26 IEP meeting after she raised an objection at the May 19 Student Exit Meeting which caused Teacher to discontinue the Student Exit Meeting and promptly reconvene the IEP team. (FF # 22-23). During the IEP team meeting, Parent again expressed her wish that Student receive transition services. (FF # 27). An IEP team member specifically pointed to parental input as a factor supporting the option to provide Student with transition services. (FF # 28). The IEP team listened to Parent’s input and adjusted Student’s special education programming consistent with her wishes. (FF #s 29-31). Indeed, during the current school year, Student attends the transition program, and at Parent’s request, is not involved in DVR programming. (FF # 31). Parent was provided with a PWN of the IEP team’s decision. (FF # 30).

Overall, District carefully considered the concerns of Parent and Stepparent for enhancing the education of Student at the two meetings. This was exemplified by working collaboratively to schedule meetings, ensure attendance, and incorporate Parent’s requests into Student’s IEP. Although Parent’s decision to decline DVR programming may be due to a fear that those services would lead to Student no longer receiving transition services, the SCO reminds Parent that, as noted by CDE Content Specialist, transition services and DVR programming are designed to work

hand-in-hand with one another in a way to ensure that when a student ages out of school services the student will continue to receive employment-related support through DVR. (FF # 15).

For these reasons, the SCO finds and concludes that District afforded Parent meaningful participation in the IEP Team meetings held in May 2023, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii), and 300.501(b)-(c).


REMEDIES

The SCO concludes that District has not violated 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. *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 16th day of October, 2023.



Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-9

Response, pages 1-14

- Exhibit A: Student's IEPs
- Exhibit B: IEP Meeting Notes
- Exhibit C: Prior Written Notices
- Exhibit D: Notices of Meeting
- Exhibit E: Report Cards and Progress Reports
- Exhibit F: District Policies and Procedures
- Exhibit G: Correspondence
- Exhibit H: Academic Calendar for the 2022-2023 School Year
- Exhibit I: District/School Staff with Knowledge Pertaining to the Complaint
- Exhibit J: Verification of Delivery of Response to Complainant
- Exhibit K: Emergency Contact Information for Student

Telephone Interviews

- Parent: September 22, 2023
- Stepparent: September 22, 2023
- Special Education Teacher: September 25, 2023
- Transition Coordinator: September 25, 2023
- Special Education Coordinator: September 25, 2023
- Special Education Director: September 25, 2023