

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

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**State-Level Complaint 2024:568**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On June 14, 2024, the parent (“Parent”) of a student (“Student”) not currently 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 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.

**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 June 14, 2023. Information prior to June 14, 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) of the IDEA:

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

1. Failed to provide an Independent Educational Evaluation (“IEE”) at public expense without unnecessary delay or file a due process complaint to show District’s evaluation was appropriate following Parent’s request for an IEE in May 2024, in violation of 34 C.F.R. § 300.502(b)(1)-(2).

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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.

## **FINDINGS OF FACT**

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

### **A. Background**

1. During the 2023-2024 school year, Student attended eighth grade at a District school (“School”). *Interview with Parent.*
2. Though Student is not currently eligible for special education and related services, he has a 504 Plan. *Id.*; *Response*, p. 1.
3. Parent described Student as an easygoing, hardworking young man. *Interview with Parent.* Spelling and writing challenge Student the most at School. *Id.* At home, Student enjoys socializing with friends and rowing. *Id.*

### **B. The Evaluation and Eligibility Determination**

4. In January 2024, the District completed an initial evaluation based on Parent’s request. *Exhibit B*, pp. 1-38. The District evaluated Student’s academic performance, communicative status, general intelligence, social-emotional status, health, and motor skills. *Id.*
5. The District convened a multi-disciplinary team on January 10, 2024 to consider the evaluation and determine Student’s eligibility for special education and related services. *Exhibit G*, p. 1; *Interview with Parent.* Ultimately, the team determined Student was not eligible for special education and related services. *Exhibit F*, p. 1. The team found that Student could access the general education curriculum with support from a 504 Plan. *Id.*

### **C. Parent’s Request for an IEE**

6. Parent attended a 504 Team meeting on May 3, 2024. *Interview with Parent*; *Exhibit G*, p. 1. Parent disagreed with the 504 Plan the District offered during the meeting. *Interview with Parent.* As a result, Parent decided to pursue an IEP and informed the 504 Team that she wanted an IEE. *Id.*
7. After the meeting, Parent emailed School Administrator to document her request for an IEE in writing: “This is documentation that on May 3, 2024 I requested an IEE at public expense . . . because I disagree with the evaluation given by [District].” *Exhibit I*, p. 23.
8. Separately, School Administrator informed Special Education Instructional Specialist (“SEIS”) of Parent’s request. *Id.* at p. 17. School Administrator explained that Parent requested the IEE due to “her perceived discrepancies between his private evaluation from four years ago and

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

our most recent IEP evaluation data.” *Id.* School Administrator acknowledged she was “not familiar with IEEs, timelines and next steps” and sought guidance from SEIS on how to proceed. *Id.*

9. On May 5, School Administrator replied to Parent’s email, stating “I emailed our SEIS about this request on Friday and will keep you in the loop about pertinent next steps.” *Id.* at p. 20.

#### **D. The District’s Response to Parent’s Request**

10. SEIS contacted Parent on May 7. *Id.* at pp. 18-19. In her email, SEIS asked Parent to confirm, in writing, that she requested an IEE and to identify the areas of evaluation for the IEE. *Id.* at p. 19. SEIS indicated that, once she received this information, she would “be moving as quickly as possible to get [Parent] a decision from [SEIS’s] manager.” *Id.* SEIS attached a copy of the District’s IEE Procedures for Parents. *Id.* at p. 15.
11. At the time of her email, SEIS had only been informed of Parent’s request in an email from School Administrator. *Id.* at pp. 1-23. No one forwarded a copy of Parent’s written request to SEIS. *Id.*
12. Parent replied to SEIS the same day, confirming her request for an IEE in writing and indicating that she disagreed with the District’s evaluation. *Id.* at p. 18. Parent declined to provide any additional information regarding the basis for requesting an IEE. *Id.* In her email, Parent also asked the District to provide a list of IEE providers. *Id.*
13. Neither SEIS nor any other District employee responded to Parent’s May 7 email. *Interviews with Parent and SEIS.* Parent did not have any contact with School or District staff regarding the status of her request for an IEE between May 7 and June 10, when the District received a copy of her Complaint. *Interview with Parent.*
14. After the District received the Complaint, SEIS looked for Parent’s May 7 email in her inbox but was unable to locate it. *Interview with SEIS.* SEIS speculated that the email may have gone to her spam folder, but she was unable to verify this because her spam folder automatically deletes every 30 days. *Id.* SEIS did not think it was unusual that she did not receive a response from Parent; instead, SEIS thought Parent was no longer interested in an IEE. *Id.*
15. Parent questioned the likelihood of her response being in SEIS’s spam folder given that Parent replied to an email from SEIS. *Interview with Parent.* Instead, Parent felt the District ignored her email to make it more difficult for her to obtain an IEE. *Id.*
16. Upon receipt of the Complaint, Special Education Senior Manager (“Senior Manager”) sent Parent a prior written notice approving the IEE. *Exhibit I*, p. 12; *Exhibit F*, p. 3. Senior Manager included copies of the District’s IEE Procedures for Parents and the District’s IEE criteria. *Exhibit I*, p. 12. The IEE criteria included standards for assessments and evaluators, as well as list of potential evaluators and the District’s cost containment criteria. *Exhibit H*, pp. 1-6. The cost containment criteria identified a maximum cost for different areas of assessment, as well

as a total allowable cost. *Id.* However, the cost criteria made clear that the fee limits “may be negotiated . . . if extraordinary circumstances require additional expense.” *Id.* at p. 5.

17. During this investigation, Parent expressed concern about the District’s cost containment criteria. *Interview with Parent; Reply*, p. 2. Parent suggested the criteria were inconsistent with the IDEA and created barriers preventing parents from obtaining IEEs. *Interview with Parent; Reply*, p. 2.

#### **E. Status of the IEE**

18. Due to the evaluator’s schedule, the IEE has not been completed. *Interview with Parent*. Parent anticipates that the IEE will be completed in September 2024. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District provided Parent with an IEE without unnecessary delay, consistent with 34 C.F.R. § 300.502.**

The sole allegation in Parent’s Complaint concerns the timeliness of the District’s response to Parent’s request for an IEE. Specifically, Parent asserted that the District failed to provide her with an IEE without unnecessary delay by failing to timely respond to her May 3 request.

Under the IDEA, parents have the right to seek an IEE at public expense if they disagree with an evaluation completed by the school district. 34 C.F.R. § 300.502(b)(1). An “IEE” is an evaluation conducted by a qualified examiner who is not employed by the child’s school district. *Id.* § 300.502(a)(3)(i).

Once a parent requests an IEE, the district must “without unnecessary delay” either: (1) file a due process complaint to request a hearing to show that the district’s evaluation was appropriate; or (2) provide the IEE at public expense. *Id.* § 300.502(b)(2).

#### **A. Timeliness of IEE**

Neither the IDEA nor guidance from the U.S. Department of Education defines what constitutes “unnecessary delay.” *See id.* § 300.502(b)(2). Whether a delay is unnecessary turns on the circumstances of the individual case. *C.W. v. Capistrano Unified Sch. Dist.*, 784 F.3d 1237, 1247 (9th Cir. 2015).

Prior CDE state-level complaint decisions also provide guidance on this issue. The CDE has previously found delays of 63 days, 120 days, and 135 days to be unnecessary. *See Boulder RE-1J, St. Vrain*, 2022:528, 123 LRP 5309 (CO SEA 09/14/22) (finding a delay of 63 days without any communication to be unnecessary); *Weld Cty. Sch. Dist. RE-5J*, 2021:502, 121 LRP 19090 (CO SEA 03/19/21) (finding a four-month delay in providing the IEE to be unnecessary); *San Luis Valley*

BOCES, 2021:506, 121 LRP 34228 (CO SEA 06/28/21) (finding a delay of 135 days—in which the BOCES repeatedly asked parent to explain the basis for her disagreement—to be unnecessary). At the same time, the CDE has also determined a two-week delay was acceptable before moving forward with an IEE. *Arapahoe Cty. Sch. Dist. 6*, 2020:538, 121 LRP 13659 (CO SEA 03/03/21).

Here, Parent requested an IEE on May 3, 2024. (FF #s 6, 7.) District staff notified SEIS of Parent’s request, and, on May 7, SEIS contacted Parent. (FF #s 8, 10, 11.) SEIS asked Parent to confirm her request for an IEE in writing. (FF # 10.) Parent did so the same day. (FF # 12.) However, Parent heard nothing further from the District until June 10, when the District received a copy of Parent’s Complaint. (FF # 13.) That same day, the District provided Parent prior written notice approving the IEE. (FF # 16.)

The state complaints officer (“SCO”) finds and concludes that the District’s delay was not unnecessary. In total, 38 days passed between the date of Parent’s request and receipt of the prior written notice approving the IEE. (FF #s 6, 16.) During these 38 days, there was no communication between Parent and the District about her request. (FF # 13.) Parent never questioned the District about the status of the IEE, and the District never asked Parent whether she still wanted an IEE. (FF # 13.)

The SCO acknowledges that the District issued the prior written notice only after Parent filed this Complaint. (FF # 16.) While a parent should not have to file a state-level complaint to access rights afforded them by the IDEA, the SCO recognizes that miscommunication occurs at times. The Findings of Fact do not evidence any ill intent by the District. (See FF #s 10-17.) Instead, the SCO finds the District’s initial responsiveness to indicate otherwise. For these reasons, the SCO finds and concludes that the District provided—or, at least, agreed to provide as the IEE is still in progress—an IEE at public expense without unnecessary delay, consistent with 34 C.F.R. § 300.502.

### **B. Cost Containment Criteria for IEEs**

During this investigation, Parent also expressed concern about the District’s cost criteria for IEEs. (FF # 17.) Though this concern falls outside the scope of the accepted allegation, it is closely related to the accepted allegation as it involves the same IEE request, and, thus, some clarification on this issue may assist the parties moving forward. The IDEA requires school districts to provide parents with the district’s criteria for IEEs. 34 C.F.R. § 300.502(a)(2). This requirement arises, in part, from the U.S. Department of Education’s “longstanding position that public agencies should not be required to bear the cost of unreasonably expensive IEEs.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540, at 46689 (2006). A school district may “establish reasonable cost containment criteria” as long as the district provides parents with an “opportunity to demonstrate that unique circumstances justify selection of an evaluator whose fees fall outside the [district’s] cost containment criteria.” *Id.* at 46689-90.

Here, the District provided Parent with its criteria for IEEs, including a fee schedule broken down by the area of assessment. (FF # 16.) The fee schedule specifically stated that excessive fees could be approved if justified by extraordinary circumstances. (*Id.*) Thus, the SCO finds and concludes that the District's cost containment criteria comply with 34 C.F.R. § 300.502.

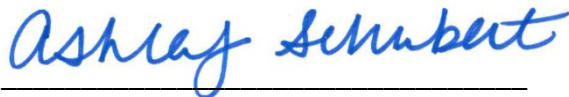
### **REMEDIES**

The CDE concludes that the District complied with the requirements of 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 13th day of August, 2024.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-8**

### **Response, pages 1-5**

- Exhibit A: Blank
- Exhibit B: Evaluations
- Exhibit C: Report cards
- Exhibit D: Attendance reports
- Exhibit E: Request for IEE
- Exhibit F: Prior written notices
- Exhibit G: Notices of meeting
- Exhibit H: District policies and procedures
- Exhibit I: Email correspondence
- Exhibit J: District witnesses

### **Reply, pages 2**

- Exhibit 1: Transcription

### **Telephone Interviews**

- SEIS: July 19, 2024
- Parent: July 19, 2024