

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

State-Level Complaint 2024:598
Denver Public Schools

DECISION

INTRODUCTION

On September 30, 2024, the parents (“Mother,” “Father,” and collectively “Parents”) of two students (“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 an 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 September 30, 2023. Information prior to September 30, 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. District did not make a FAPE available to Students from or about February 6, 2024 through the end of the 2023-2024 school year as required by 34 C.F.R. §§ 300.1 and 300.101(a),

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 determines if 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.

including by not implementing Students' Individualized Education Programs ("IEPs") from or about February 6, 2024 through the end of the 2023-2024 school year, because it did not provide the services listed in the IEPs as required by 34 C.F.R. § 300.323(c).

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. Students attended second and third grade at a District elementary school ("School") in the 2023-2024 school year. *Exhibit A*, pp. 1, 51.
2. Parents' concern arises from the District's discontinuation of Students' special education and related services in February 2024. *Complaint*, p. 4.
3. The District acknowledges that it discontinued Students' services in February 2024 but states that the discontinuation was proper. *Response*, pp. 2-3. Specifically, it states that Father withdrew Students and that Parents changed their residence to a different school district. *Id.*

B. The Events of February 2024

4. On Thursday, 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. *Id.* School Secretary asked for the name of Students' new school. *Id.* He said he did not have one, but he provided a residential address within the bounds of a different school district ("New District"). *Id.*
5. After Father left with his children, Principal, who had been listening to Father's statements from her office, came out of her office and immediately directed School Secretary to withdraw Students by entering February 1 as Students' "end date" in their records. *Interviews with School Secretary and Principal*.
6. Withdrawing Students in this fashion was unusual. *Interview with School Secretary*. Normally, although there is no written policy or procedure governing the withdrawal process, a school waits until a new school or district has requested a student's records before entering a student's end date. *Id.*; *CDE Exhibit 1*. Parents and Principal had developed negative views of

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

each other following months of contention regarding issues not relevant to this investigation. *Interviews with Principal and Parents.*

7. The following Monday—February 5, 2024, the second school day after Father’s actions—Mother called School to ask Principal to allow Students back into School. *Interview with Parents; see Exhibit G*, p. 2. Parents had not sent Students to School on February 2 or February 5, but they wanted Students to return the next day. *Interview with Parents.* Principal told Mother that Students could not return to School because Father had withdrawn them. *Id.*
8. Immediately after speaking with Principal, Mother called two District offices, and she asked the District staff to either allow Students back into School or else place them in a different District school, because they needed a school to attend. *Interview with Parents; see Exhibit G.* Mother told the District staff that—despite Father’s statements in the School front office—the family was not moving out of the District’s residential bounds, and Parents did not want to withdraw Students from School. *Interview with Parents.*
9. The District staff, treating Mother’s request as a request for enrollment, asked for proof of residency. *Id.; Exhibit G*, p. 2; *see Interview with Director of Enrollment.*
10. That same day, February 5, Mother emailed the staff a lease agreement with a Denver address showing a tenancy start date of January 16, 2024. *Exhibit F; Exhibit G*, p. 2. The lease stated that it was an agreement between the landlord and Parents. *Id.* The tenancy address was the same address that Parents provided to the CDE on their Complaint paperwork. *See Complaint*, p. 2.
11. After Mother submitted the lease agreement, she did not hear anything more from the District. *Interview with Parents; see Exhibit G.*
12. On February 6, Father applied for enrollment for Students at New District using the same address in New District’s boundaries that he had given School Secretary. *Interview with Parents; Exhibits J, K, L, and M.*
13. The Record contains New District’s documents for both Father’s enrollment application and Students’ enrollment history. *See id.* The application documents show that Father, in creating the application, entered an “enrolled date” of February 6, 2024, which was the date of the applications. *Exhibit K*, p. 3; *Exhibit M*, p. 3. The “enrollment history” documents show a “start date” for both “enrollment” and “transfer from pub[lic] school [in a] different CO district” of February 13, 2024 for both Students. *Exhibit J*, p. 1; *Exhibit L*, p. 1.
14. Sometime that week, an unknown District staff member spoke with Principal about Mother’s request to return Students to School. *Interview with Principal.* Principal told the District staff member that Students were withdrawn from School and could not return. *Id.*

15. District staff internally referred Mother’s requests to a different District office. *See Exhibit F; Interview with Director of Enrollment.* The District has provided an email thread corroborating Mother’s requests:
- a. After submitting the lease agreement on February 5, Mother emailed again on February 8 saying she was following up and offering to provide a utility bill with the Denver address; although the utility bill would be in her grandmother’s name, she also offered to get a letter from her grandmother stating that Parents and Students lived there. *Exhibit G; Interview with Parents.*
 - b. On February 13, a District staff member emailed a second District staff member asking if she had been able to connect with Mother. *Exhibit G.*
 - c. On February 15, the second District staff member asked a third District staff member, “Can we work on this sooner than later?” *Exhibit G.*
16. There is no other documentary evidence, in the form of call notes or otherwise, pertaining to Mother’s requests. *Interview with Director of Enrollment.*
17. Parents decided that the District would likely not provide a school for Students in a timely manner, and, on February 13, 2024, Students began attending an elementary school in New District. *Interview with Parents; Exhibits J and L.*⁴ As noted, this is also the date provided in New District’s paperwork as Students’ enrollment start date. *Exhibits J and L.*
18. Although there was some delay in getting Students’ records transmitted, New District was able to quickly set up services after March 1, 2024. *See First Decision, FF # 23.*
19. For the 2024-2025 school year, Parents enrolled Students in a District charter school, where they currently attend third and fourth grade. *Interview with Parents; Response, p. 1.* Parents stated that it simply made more sense, and was more convenient, to enroll Students in the school district in which they live. *Interview with Parents.*

Summary of Findings

20. In light of these facts, considering the Record as a whole, and weighing the credibility of the parties, the state complaints officer (“SCO”) finds that, contrary to Father’s statement to the front office staff on February 1, Parents resided within the District’s residential boundaries during, at a minimum, the time period of February 1 through February 12, 2024.

⁴ Prior to filing this Complaint, Parents filed a complaint regarding the District’s delay in transmitting records to New District, which CDE accepted for investigation as State Complaint 2024:578. CDE’s written decision is available at <https://www.cde.state.co.us/spedlaw/sc2024-578> (“First Decision”). In that decision, the SCO found that Students began attending New District on February 12, 2024. However, based on newly submitted documents, the SCO revises this finding by one day to February 13, 2024. *See Exhibits J, K, L, and M.* None of the legal conclusions or remedies in First Decision would be affected by this revised finding.

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 implement Students' IEPs from February 6, 2024 through February 12, 2024 as required by 34 C.F.R. §§ 300.101 and 300.323(c). The District's noncompliance did not result in a denial of FAPE.

Parents have alleged that the District improperly ceased implementing the services required by Students' IEPs after February 1, 2024.

A. Legal Requirements

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. §§ 300.1, 300.17, 300.101(a); ECEA Rule 2.19. School districts must have an IEP in effect for each child with a disability within the district or otherwise within the district's jurisdiction. 34 C.F.R. § 300.323(a). The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 580 U.S. at 391 (2017). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). In Colorado, administrative units, including school districts, are responsible for implementing the rules governing the provision of educational services to exceptional students. ECEA Rule 2.02.

The school district of attendance is generally responsible, under the ECEA and 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). A student has a district of attendance when the student is both enrolled in and attending a school in that district. C.R.S. § 22-32-116.5(10)(g). When a student does not have a district of attendance, the school district of residence is responsible for providing a FAPE. 34 C.F.R. §§ 300.101(a), 300.201; *James ex rel. James v. Upper Arlington City Sch. Dist.*, 228 F.3d 764, 768 (6th Cir. 2000); *Regional Sch. Dist. No. 9 Bd. of Educ. v. Mr. and Mrs. M.*, 2009 WL 2514064, at *10 (D. Conn. Aug. 7, 2009); *Centennial BOCES & East Central BOCES*, 122 LRP 26057 (SEA CO 4/24/22). The school district of residence is the district in which the student resides on a day-to-day basis, with exceptions not applicable here. ECEA Rule 2.02(1).

B. The District's Discontinuation of Services

The District ceased offering a FAPE and discontinued Students' services after Thursday, February 1, 2024, when Father said he was withdrawing Students and provided a new residential address within a different district's boundaries. (FF #s 3-17.)

The District's non-provision of services was permissible on Friday, February 2, 2024, and on Monday, February 5, 2024, because a school district is not responsible for failure to provide services when a parent's actions prevent the district from providing the services. *Montgomery County Public Sch.*, 111 LRP 54915 (Md. SEA 2/16/11). Father's statements on February 1 followed by Parents' declining to send Students to School on the next two school days prevented the District from providing services on these dates. (See FF #s 4, 7.)

On February 5, Mother told Principal and the District that the family was not withdrawing Students or leaving the District. (FF #s 7-15.) In addition, Mother provided a lease showing that Parents and Students still resided within the District's boundaries. (*Id.*) They did still reside within the District's boundaries. (FF # 20.)

Parents provided conflicting information. Nonetheless, the District should not have treated this as a withdrawal until it had verification that the students were enrolled in another district, private school, or with the homeschool office. Until that was confirmed, Students should have been marked absent. Because there was conflicting information about the intent to withdraw and where the family was residing, the District should have tried to engage with the family to problem solve until it had received the record request from New District or had evidence of enrollment elsewhere. Indeed, this was School's ordinary practice. (FF # 6.)

Because the District was the district of residence, the District's duty to implement Students' IEPs ended only on February 13, the start date for Students' enrollment and attendance in New District. (FF #s 14, 17.) At that time, New District became Students' district of attendance responsible for their FAPE. C.R.S. § 22-32-116.5(10)(g); ECEA Rule 8.02(1).

For these reasons, the SCO finds and concludes that the District did not make a FAPE available to Students or implement Students' IEPs as required by 34 C.F.R. §§ 300.101 and 300.323 for five school days from Tuesday, February 6 through Friday, February 9, 2024, and the following Monday, February 12, 2024.

C. Denial of FAPE

A district's lapse in implementing an IEP results in a denial of FAPE if the omission was "material," "essential," or "significant." *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Id.* The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

As explained above, the District did not provide services for five school days. Parents' enrollment of Students in New District on February 13, 2024 and New District's ability to quickly set up

services following Students' enrollment minimized the time that Students lost in school. (FF # 18.) For this reason, the lapse in services was not "material." Moreover, the Record does not support the finding that Students' educational progress was impacted. Accordingly, the SCO finds and concludes that the lapse in implementing Students' IEPs did not result in a denial of FAPE.

Systemic IDEA Noncompliance: This investigation does not demonstrate 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).

Here, the noncompliance appears to have resulted from an unusual situation involving contradictory information coming from Mother and Father, and a subsequent lapse of communication between the District and Parents. The lapse in communication appears to have arisen from the involvement of multiple District-level offices and situation-specific misunderstanding of which office was handling the issue. The Record does not suggest that the noncompliance extended beyond Students. For these reasons, the SCO finds and concludes that the District's noncompliance was isolated and not systemic.

REMEDIES

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

1. The District did not implement Students' IEPs as required by 34 C.F.R. §§ 300.101 and 300.323(c).

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

1. Corrective Action Plan

- a. By **Friday, January 10, 2025**, 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 Student 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 **Friday, January 10, 2025**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Wednesday, January 15, 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 SCO.

Dated this 23rd day of November, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-4

- Exhibit B: Correspondence
- Exhibit D: List of staff
- Exhibit E: Email attachment
- Exhibit F: Email attachment
- Exhibit G: Correspondence
- Exhibit H: Correspondence
- Exhibit I: Correspondence
- Exhibit J: Student record
- Exhibit K: Student record
- Exhibit L: Student record
- Exhibit M: Student record

Reply, pages 1-3

- Exhibit 1: District form

CDE Exhibit

- Exhibit 1: Correspondence

Telephone Interviews

- Parents: September 30, 2024
- School Office Assistant: October 3, 2024
- School Secretary: October 3, 2024
- School Principal: October 4, 2024
- Manager: November 1, 2024
- Director of Enrollment: November 1, 2024