

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

**State-Level Complaint 2024:601
El Paso 20 (Academy) School District**

DECISION

INTRODUCTION

On October 9, 2024, 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 20 (Academy) School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified four 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 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

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 9, 2023. Information prior to October 9, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations 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. District did not permit Parent to inspect and review education records relating to Student without unnecessary delay and before any IEP meetings after Parent’s request on or around August 9, 2024, as required by 34 C.F.R. § 300.613.
2. District did not provide Parent with proper notice of an IEP Team meeting held on September 12, 2024, as required by 34 C.F.R. § 300.322(a)-(b).
3. District did not develop, review, and revise an IEP that was tailored to meet Student’s individualized needs at a September 12, 2024 IEP Team meeting because it:
 - a. Did not consider the concerns of Parent for enhancing the education of Student, the results of the most recent evaluation of Student, or the academic, developmental, and functional needs of Student—all specifically with respect to transportation as a related service—as required by 34 C.F.R. § 300.324(a)(1)(ii), (iii), (iv);
 - b. Did not include transportation as a related service to enable Student to advance appropriately toward attaining annual goals, and to be educated and participate with other children with disabilities and nondisabled children, as required by 34 C.F.R. §§ 300.34(c)(16), 300.320(a)(4); and
 - c. Did not include travel training to enable Student to develop awareness of the environment in which he lives and learn the skills necessary to move effectively and safely from place to place, as required by 34 C.F.R. §§ 300.39(b)(4), 300.320(a)(4).
4. District did not provide Parent with proper prior written notice (“PWN”) of its proposed or refused actions regarding the provision of a free appropriate public education (“FAPE”)—specifically its decision at an IEP Team meeting on September 12, 2024 to not include transportation as a related service in Student’s IEP—as required by 34 C.F.R. § 300.503.

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 twelve years old and is currently a sixth grader at his neighborhood middle school (“School”) in District. *Complaint*, p. 1; *Response*, pp. 9, 17.

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

2. Student is eligible for special education and related services under the disability categories of a specific learning disability (“SLD”) in reading and writing and Other Health Impairment (“OHI”) based on symptoms of ADHD, dyslexia, and adjustment disorder. *Exhibit A*, p. 6.
3. Student is described as a funny, friendly young man who enjoys interacting with others, particularly adults. *Interviews with Parent, Student’s case manager (“Case Manager”), and Student’s general education teacher (“General Education Teacher”).* Student struggles with inattentiveness, anxiety, and significant academic challenges in reading and writing. *Id.*
4. This Complaint involves Parent’s request for transportation as a related service in Student’s IEP, and the IEP Team’s determination that Student did not require transportation as a related service at an IEP meeting on September 12, 2024. *See Complaint*, pp. 2-19. Parent is concerned with District’s process and conclusion in making its transportation determination at the IEP meeting—specifically, that District did not meaningfully consider her concerns, Student’s prior evaluation results, Student’s functional needs, and travel training in making its decision. *Id.* Parent also asserts District did not provide her access to Student’s education records, proper notice of the meeting, or proper PWN explaining its decision that Student did not require special transportation. *Id.* District denies all allegations. *Response*, p. 3.

B. Student’s 2023 IEP

5. Student’s IEP in effect during the time relevant to the Complaint allegations was dated November 27, 2023 (“2023 IEP”). *See Exhibit A*, pp. 2-40. The 2023 IEP was developed in consideration of a school-based evaluation conducted in September 2023 and an outside evaluation obtained by Parent in February 2023. *Id.* at pp. 6, 22.
6. The 2023 IEP describes Student’s present levels of performance, incorporating extensive results from Student’s recent evaluations and Parent input. *Id.* at pp. 5-22, 24-28. The IEP indicates Student demonstrates executive functioning difficulties in his working memory, emotional control, and ability to shift attention from one activity to another, as well as moderate to severe sensory processing difficulties. *Id.* at pp. 9-11, 14-15. Further, Student “frequently has difficulty following verbal directions,” “frequently takes more time than others to complete necessary tasks,” and “needs more practice than others to learn a new skill.” *Id.* at p. 15. “In functional skills,” Student’s teacher observed “he is easily distracted and has difficulty sustaining attention in work/play.” *Id.*
7. The 2023 IEP describes the impact of Student’s disability on his involvement in the general curriculum, noting Student’s decreased reading and writing skills impact his ability to participate in the classroom and require targeted intervention in those areas. *Id.* at p. 23. The IEP recognizes that Student’s sensory processing and social-emotional challenges impact his class participation, and the IEP addresses those challenges via accommodations and Student’s IEP goals. *Id.* at p. 23; *see id.* at pp. 30-35.
8. The 2023 IEP indicates that Student does not require special transportation. *Id.* at p. 29.

9. The 2023 IEP includes four annual goals, one each in the areas of Reading, Writing, Emotional Regulation, and Self-Esteem. *Id.* at pp. 30-34.
10. The 2023 IEP includes numerous accommodations to ensure Student can access and make effective progress in the general curriculum, including having directions repeated/clarified, frequent checks for understanding, and access to sensory tools and strategies. *Id.* at p. 35.
11. The 2023 IEP's service delivery statement identifies the following services:
 - 175 minutes per week of direct specialized instruction in reading and writing from a resource teacher, outside the general education setting;
 - 125 minutes per week of direct specialized instruction in reading and writing from a resource teacher, inside the general education setting;
 - 60 minutes per month of direct mental health services from a mental health provider to address social-emotional IEP goals, outside the general education setting; and
 - 30 minutes per month of indirect occupational therapy services provided by an occupational therapist ("OT") to address fine and visual motor development and monitor the need and use of sensory strategies, outside the general education setting.

Id. at pp. 38-39.

12. The 2023 IEP reflects that it was appropriate for Student to be in general education at least 80% of the time. *Id.* at p. 39. The IEP Team determined this was the most appropriate placement to ensure Student's "participation with his peers to the greatest extent possible," with accommodations to facilitate Student's ability to access the general classroom environment and instruction. *Id.*

C. District's Policies, Practices, and Procedures

Transportation

13. District's Director of Special Education for Compliance ("Director") described District's policies on general and special education transportation and how IEP teams determine whether a student with a disability is eligible for transportation as a related service pursuant to those policies. *Interview with Director.*
14. District provides bus service to the general student population only for, as relevant here, secondary students who live more than 1.75 miles walking distance from their neighborhood school. *Response*, p. 17; *Exhibit I*, p. 139. "These distances are calculated based on walking paths between the neighborhood school and the student's address" by the District's general

transportation department. *Response*, p. 17; *Interview with Director*. Based on its calculations, the transportation department establishes “walk zones” around each neighborhood school. *Exhibit 1*, p. 139; *Interview with Director*. District does not provide general education bus service to students living within the designated walk zones. *Id.*

15. Separately, “Special Education Transportation Services are provided to meet the specific needs of students in accordance with their [IEP].” *Exhibit 1*, p. 140. The determination as to whether a student with disabilities requires transportation as a related service is made by the IEP team on a case-by-case basis. *Response*, p. 7; *Interview with Director*. Special education transportation “is typically reserved for students who meet specific eligibility criteria related to their IEP.” *Response*, p. 19. “The District’s policy does not extend special education transportation to students who attend their neighborhood school and do not meet these criteria.” *Id.*

16. District’s transportation guidance checklist (“the Checklist”) outlines the criteria that IEP teams must consider in making a transportation determination:

- The nature of the student’s disability. Specifically, IEP Teams are directed to “[l]ook beyond the student’s classification and consider the unique disability-related issues that affect the student”;
- Physical/mobility needs;
- Significant behavior;
- Cognitive functioning, particularly cognitive impairment that significantly limits a student’s adaptive functioning;
- Communication needs;
- Distance and time for transportation;
- Student’s age and how the other factors impact the student’s ability to access general education transportation at their current age; and
- Final considerations.

Exhibit 1, p. 43; *Exhibit I-2*, p. 2. “Based on a review of the above factors, the IEP team will determine if the student is eligible for specialized transportation as a related service.” *Id.* District policy also directs IEP teams to consider whether the child’s disability prevents the child from “[u]sing the same transportation provided to children without disabilities (e.g. general education bus) or “[g]etting to school in the same manner as children without disabilities (e.g. walking . . .).” *Exhibit 1*, p. 43; *Exhibit I-2*, p. 1.

17. District describes the Checklist as an “internal document” that “serves to guide the decision-making process, posing questions for the team to consider,” but “does not dictate final decisions on transportation services for any specific student.” *Response*, p. 11; *Interviews with Director, Case Manager, and District’s Special Education Administrator (“Administrator”).* Specifically, school teams use the Checklist in IEP meetings by walking through the factors and having discussions around each as to whether a student demonstrates a significant need in any area(s) that would require transportation as a related service. *Interviews with Director, Administrator, and Case Manager.*
18. In reviewing the Checklist’s factors, if an IEP team identifies any gray areas that warrant further assessment, or if the student has not recently been evaluated, the team may decide to conduct a reevaluation to assess that student’s specific transportation-related needs. *Interviews with Director, Administrator, and Case Manager.* However, IEP teams are not required to conduct an evaluation of every student for whom it is determining transportation eligibility. *Id.*
19. District staff reported that the ultimate decision as to whether a student requires transportation as a related service is left to IEP teams, which must consider a student’s individualized needs and any relevant information beyond the Checklist’s listed factors. *Id.* However, Director confirmed the Checklist is exhaustive—while there is no requirement that a student “check a certain number of boxes” to be found eligible, an IEP team would need to find a student meets one of the Checklist’s criteria to qualify for special transportation. *Interview with Director.*
20. The Checklist, in its current form, was developed this past summer, and District provided training to special education staff on the topic of transportation and how to use the Checklist in making determinations in August 2024. *Interviews with Director and Case Manager.* Case Manager reported that Student’s September 12 IEP meeting (FF #s 41-57) was her first time using the Checklist in making a transportation determination. *Interview with Case Manager.*
21. The Checklist is maintained by the District electronically in its Infinite Campus system and is accessible only to District special education staff. *Interviews with Director and Administrator.*

Education Records

22. District also has written policies regarding the content of student education records and parents’ right to access those records. *Exhibit I*, pp. 143-49; *Interview with Director.* District defines education records as records that are directly related to a student and are maintained by the District. *Exhibit I*, p. 143; *Response*, p. 10. District maintains its student education records both in hard copy and electronically through its Infinite Campus system. *Interview with Director.*
23. Typically, student education records include “the student’s IEP, evaluation reports, progress reports, discipline records, and other materials directly related to the student’s educational

progress and services.” *Response*, p. 10; *Interviews with Director and Administrator*. Parents have a right to inspect and review a student’s education records within a reasonable time after the request for access is made, not to exceed 45 days. *Exhibit I*, p. 149.

24. District staff reported the Checklist may become part of a student’s education record if the Checklist is completed for that student and notes are taken regarding the eligibility factors, which may occur if a student is found to require transportation as a related service or if the team was considering an evaluation. *Interview with Director and Administrator*.
25. Official IEP meeting notes are generally considered education records by District; however, meeting notes taken by District staff for their own personal use as a memory aid are not. *Interviews with Director and Administrator*.

Notice of Meetings

26. Director also described District’s practices and procedures around providing parents notice of IEP meetings. *Interview with Director*. Generally, IEP teams should provide parents with at least 10 days’ notice of an IEP team meeting, though exigent circumstances do arise. *Response*, p. 13; *Interview with Director*. District has a formal “Notice of Meeting” form that IEP teams may use, although it is not required. *Id.* In some instances, notices of meetings may be provided via email, but in all cases must be in writing and note the date, time, location, and purpose of the meeting and the participants. *Interview with Director*.
27. District staff provided inconsistent responses as to whether notices of meetings are required for all IEP meetings or only annual IEP review meetings; however, Director confirmed that notices of meetings must be provided for all IEP meetings, whether an IEP annual review or not. *Interviews with Director, Administrator, and Case Manager*.
28. District staff are informed of these policies via several avenues, including a procedural notebook, CDE manual, and regular professional development for all special education staff. *Interview with Director*.

D. Parent’s Request for Transportation

29. Prior to the start of the 2024-2025 school year, Parent began to make arrangements for Student’s transition to middle school, including planning for his transportation to and from school. *Interview with Parent*. Parent has transported Student to and from school in the past and presently continues to do so. *Id.*; *Response*, p. 22.
30. According to Google Maps, Student’s home is 1.8 miles walking distance from School. *Exhibit 1*, p. 20. However, Student lives within School’s designated walk zone, as defined by District’s transportation department, and is therefore not eligible to receive general transportation bus service provided by District. *Exhibit 2*, p. 1; *Interviews with Administrator and Parent*; see *Exhibit I*, p. 139.

31. Concerned with the distance and the unavailability of general bus service, Parent first reached out to District's transportation department seeking an exception to the walk zone policy for Student to potentially access bus service. *Interview with Parent*. Parent's request was denied. *Interviews with Parent and Administrator; see Exhibit 2, p. 1; Exhibit 3, p. 1*. There is no dispute here that Student could access general education bus service if he were eligible under District policy. *Response, p. 8; Exhibit D, p. 74; Interviews with Parent and Administrator*.
32. Administrator was notified of Parent's request by the transportation department on August 14. *Interview with Administrator*. Parent also reached out to Student's Case Manager around this time to inquire about transportation options. *Interviews with Case Manager and Parent; see Exhibit J, pp. 155-56, 617-18*. Based on conversations between Parent and School staff, it was staff's understanding that Parent was seeking transportation for Student at that time because her job responsibilities may be changing, which may then impact her continued availability to drive Student to and from school. *Interviews with Administrator and Case Manager; see Exhibit C, p. 50*.
33. Parent disputes District's characterization of the reason for her request for transportation, asserting that she sought transportation "relative to [Student's] transition to a new school, and his ability to safely access FAPE based on his unique needs," particularly his ability to walk to and from school safely given the unavailability of general transportation bus service. *Reply, p. 8; Exhibit J, pp. 247-48; Interview with Parent*.

E. Scheduling of IEP Team Meeting

34. On or around August 23, Case Manager and Parent agreed to schedule an IEP meeting for September 5 to continue the discussion around Parent's request for transportation. *Interviews with Parent and Case Manager*. District's contact log indicates this scheduling conversation occurred instead via email, but the State Complaints Officer ("SCO") could not locate such email in the documentation provided, and Case Manager confirms this conversation may have instead been by phone. *Interview with Case Manager; see Exhibit J, p. 156*.
35. During a phone call on August 26, Case Manager and Parent agreed to reschedule the IEP meeting for September 12, and on August 30, Case Manager emailed Parent with written confirmation of the scheduled meeting, specifically noting: "On 9/12 at 2:00pm, we will meet to go through the transportation guidance documents as a team with [Administrator] for any clarifications." *Exhibit 1, p. 10; see Exhibit J, p. 156*.
36. On September 12, the day of the meeting, Parent emailed Case Manager several concerns for the IEP Team to discuss in the meeting, including the impact of Student's executive functioning, sensory processing, and emotional regulation difficulties on his ability to walk 1.8 miles to and from school each way. *Exhibit J, pp. 349-50*. Parent also included for review a letter from Student's personal counselor expressing similar concerns. *Id.; see Exhibit 1, pp. 21-22*. Approximately 30 minutes before the meeting, Case Manager replied to Parent's

email, acknowledging receipt of her concerns and noting that Student’s mental health provider and an occupational therapist (“OT”) would be present at the meeting. *Exhibit J*, p. 349. Parent reports she first became aware of the mental health provider and OT’s participation when Parent arrived at the meeting and asserts that not having prior knowledge of the OT’s participation, specifically, “prevented [her] from preparing for a collaborative discussion.” *Reply*, p. 12; *Interview with Parent*.

37. District admits it “did not send a separate document, titled Notice of Meeting, to Parent.” *Response*, p. 13; *Interview with Case Manager*. However, District explains that the meeting was scheduled at Parent’s request and that staff exchanged several emails and phone calls with Parent in the weeks prior to the scheduled meeting, “demonstrating substantial compliance with the notice requirement.” *Response*, p. 14; *Interviews with Administrator and Resource Teacher*; see *Exhibit J*, pp. 155-56.

F. Parent’s Request for the Checklist

38. On August 30, Parent requested “a copy of the transportation guidance documents”—the Checklist—referenced by Case Manager that the IEP Team would be reviewing at the September 12 meeting (FF # 35). *Exhibit 1*, pp. 10-11. Case Manager discussed Parent’s request with Director and informed Parent that the requested documents were “internal documents only, so they don’t typically get sent out,” but confirmed the IEP Team would go over the information together at the September 12 meeting. *Exhibit 1*, p. 11; *Exhibit J*, p. 379. Specifically, Case Manager conveyed that the documents were “to guide [the Team’s] discussion, not to make a determination.” *Exhibit 1*, p. 14; *Exhibit J*, p. 215.
39. On September 4, Case Manager provided Parent with a list of the Checklist’s factors and the regulations that inform District’s processes around transportation decisions. *Exhibit 1*, pp. 14-15; *Exhibit J*, p. 215; *Interviews with Case Manager and Parent*.
40. District asserts the Checklist is not an “educational record” subject to parental access under District policy because it is not directly related to Student and not maintained as part of Student’s educational file. *Response*, p. 12. Instead, District argues the Checklist is an internal “procedural guide for staff, informing discussions but not making decisions,” and therefore District was not required to provide access to Parent as an educational record. *Id.* Parent argues the Checklist “was specifically applied to [Student’s] case within the [September 12 IEP] meeting” and “served as the sole document influencing the IEP team’s decision regarding [Student’s] transportation needs,” and therefore she was entitled to inspect and review it. *Reply*, pp. 9-10.

G. The September 12 IEP Team Meeting

41. At the beginning of the meeting, the first page of Student’s 2023 IEP was shown via projector for the IEP Team’s reference. *Interviews with Parent and Administrator*. The IEP Team discussed content that appears in Student’s IEP and prior evaluation results during the

meeting in reviewing several of the Checklist's factors and in addressing Parent's concerns with Student's executive functioning and other challenges. *Interviews with Administrator, Case Manager, General Education Teacher, and Parent; Exhibit D, pp. 73-75.*

42. Most, but not all, District staff reported reviewing Student's IEP and/or prior evaluation reports prior to the September 12 meeting. *Interviews with Director, Administrator, Case Manager, and General Education Teacher.* Case Manager also ensured Parent's submission of concerns and the letter from Student's counselor were circulated to the IEP Team members prior to the meeting. (FF # 36); *Interview with Case Manager.*
43. District shared the Checklist with Parent by projecting a copy for the Team's reference during the meeting. *Interviews with Administrator and Parent; see Exhibit D, p. 73.* The IEP Team did not physically complete the Checklist for Student during the meeting or at any other time, although the version shared at the meeting included Student's full name. *Interviews with Administrator and Case Manager; see Exhibit 1, p. 43; Exhibit I-2, p. 2.* District asserts the Checklist was not added to Student's educational file, as it was only used as a reference document for the IEP Team; however, Parent was provided the information in the Checklist on September 4, and a hard copy of the Checklist was provided to Parent directly after the meeting on September 12. *Response, p. 12; Interviews with Administrator, Case Manager, and Parent; see Exhibit 1, p. 43.*
44. The IEP Team discussed the nature of Student's disabilities, including Parent's concerns in the areas of executive functioning and emotional regulation and their impact on Student's ability to walk 1.8 miles each way to school, cross major intersections, and otherwise travel safely. *Exhibit D, p. 73; Interviews with Administrator, Case Manager, and Parent.* Specifically, Parent expressed concern regarding Student's inattentiveness, environmental awareness, anxiety, and ability to react appropriately to unknown situations or people along the route. *Exhibit J, p. 350; Exhibit D, p. 73-75; Interviews with Parent, Administrator, and Case Manager.*
45. Case Manager also relayed teacher concerns with Student's executive functioning, noting "that [Student] will at times lose track of time when he goes from her class to lunch . . . and needs a lot of teacher support to get to lunch on time." *Exhibit D, p. 73.* The IEP Team recognized Student "did initially need to be trained to leave classes on time" but noted he had improved since the beginning of the year. *Id.*
46. District acknowledged some concerns around Student's executive functioning, particularly that he needed "redirection and teaching of routines," but found those concerns were not presently impactful enough to warrant special transportation. *Exhibit C, p. 50; Interviews with Administrator and Case Manager.* Specifically, District did not see an impact as far as Student's ability to traverse through his school day or any difficulty finding his way within and throughout school buildings and had no safety concerns around Student's working memory. *Exhibit D, p. 74; Interviews with Administrator and Case Manager.* District staff recognized they were "just starting to get to know" Student but communicated that were they to observe these concerns on a more consistent basis or with a higher level of impact, the IEP Team

would reconvene and reconsider Student's need for special transportation. *Interviews with Administrator and Case Manager; Exhibit C*, p. 51; *Exhibit D*, p. 73.

47. The IEP Team discussed Student's physical/mobility needs by considering an informal observation of Student conducted by OT the same day as the IEP meeting. *Complaint*, p. 7; *Exhibit D*, p. 73. Specifically, OT observed Student for 45 minutes "during resource back to math and then to ELA and to lunch" and saw "no concerns with navigation," noting Student "[n]avigated various times by himself and with friends being social." *Exhibit D*, p. 73. Parent voiced objection to OT's observation being conducted the same day of the meeting and within the school setting, which Parent felt was not comparable to the unstructured environment of navigating to school. *Complaint*, p. 7; *Reply*, p. 3; *Exhibit D*, p. 73. The IEP Team concluded Student did not have significant mobility needs. *Exhibit D*, p. 73.
48. In addition to information shared by OT, General Education Teacher and Case Manager offered informal observations of Student in the school setting during the meeting. *Exhibit C*, p. 73; *Interviews with Case Manager, General Education Teacher, and Parent*; see *Reply*, pp. 13-14. Those observations generally indicated that Student was able to independently navigate a new school setting successfully without incident, though Student does need prompting, redirection, and repetition of directions. *Interview with Case Manager and General Education Teacher; Exhibit C*, p. 50. Parent asserts the IEP Team based its decision primarily on these informal observations by staff "while disregarding substantial evidence," including the evaluation reports, letter from Student's personal counselor, and Parent's detailed concerns about Student's safety and needs. *Complaint*, p. 7; *Interview with Parent*.
49. The IEP Team discussed the distance and time involved in the potential routes Student would take walking to and from school and reviewed a walking map provided by Parent, noting it was 1.8 to 2 miles walking distance and approximately a 45 minute walk each way. *Id.* at pp. 73-74. The IEP Team discussed the major intersections involved and documented Parent's concern with Student's "ability to walk safely and navigate this path" given his disability-related challenges. *Id.* at p. 74. District staff expressed that they were not observing any kind of difficulty in Student navigating in the school setting and suggested that Parent attempt to walk the route with Student, which would then provide the IEP Team with some "real world" data on his abilities and any concerns. *Id.*; *Interview with Administrator*. Parent felt it was too long of a distance for Student to attempt with an adult, much less independently. *Exhibit D*, p. 74; *Interviews with Parent, Administrator, and Case Manager*. Parent has not attempted the walk with Student. *Interview with Parent*.
50. The IEP Team discussed Student's age and the general transition difficulties for all students entering middle school, noting that typical 6th graders walking to school need some review and parental involvement initially and all students at that age are learning how to advocate for themselves. *Exhibit D*, p. 74; *Interviews with Case Manager and General Education Teacher*. District staff noted Student "has been successful walking to/from within the school environment independently, on time, and without any kind of meltdowns." *Id.*

51. General Education Teacher shared that “in the classroom [Student] needs repetitions and check ins to help him t[o] be able to advocate for himself and his needs,” and requires “more 1:1 conversations and directions than a typical 6th grader.” *Id.* Specifically, based on her experience that Student needs frequent prompting and struggles to ask for help, she questioned whether Student can “navigate and have the ability to process and think about if he could advocate for needs if he was on his own and around unfamiliar people.” *Id.* “Can he critically think, focus, and advocate for his needs?” *Id.* The IEP Team recognized Student’s need for prompting and repetition in the school setting, but ultimately found these concerns were not presently impactful to a degree that indicated Student required transportation as a related service. (FF #s 46, 57).
52. As “final considerations” pursuant to the Checklist, the IEP Team considered a letter from Student’s personal counselor and the walking map Parent provided. *Interviews with Administrator and Parent; Exhibit D*, p. 74; *see Exhibit 1*, pp. 20-22. Specifically, the letter was projected for the IEP Team and read aloud, and the IEP Team reviewed the walking map and discussed the distance and intersections involved in Student’s route to school. *Interviews with Administrator and Case Manager; Exhibit D*, p. 74.
53. School staff noted that walk zone distances are set by the transportation department, and are therefore out of its control, but offered Parent alternatives and suggestions around Student’s transportation to School, including carpooling groups, coordinating with other School students who walk the same or similar route, and discussing less impactful walking paths with the transportation department directly. *Response*, pp. 18-19; *Exhibit D*, pp. 73-74; *Interviews with Administrator and Case Manager*. Parent asserts these solutions were “impractical” and did not “adequately address [Student’s] unique needs for safe travel.” *Reply*, p. 20; *Interview with Parent*.
54. The IEP Team did not specifically discuss conducting a reevaluation to assess Student’s specific transportation-related needs during the meeting, though District staff reported that option was considered and the PWN reflects that consideration. *Interview with Director, Administrator, Case Manager, and Parent; Exhibit C*, p. 51. District asserts the IEP Team did not conduct a reevaluation to assess Student’s transportation-related needs here because a recent evaluation had been completed in September 2023, which was comprehensive and still accurate—the IEP Team considered that evaluation during the September 12 meeting and determined no further information was required to make its decision. (FF # 41); *Exhibit C*, p. 51; *Interviews with Director, Administrator, and Case Manager*. Parent, however, asserts that a formal “travel assessment” is required as part of every transportation determination and was required for Student here. *Reply*, pp. 7-8.
55. The IEP Team did not discuss including travel training in Student’s IEP at the meeting, and it was not raised by Parent during the meeting as a possible need for Student. *Complaint*, p. 14; *Response*, pp. 21-23; *Interviews with Administrator, Case Manager, and Parent; see Exhibit D*, pp. 73-75. District staff reported that travel training is typically reserved for students with significant cognitive impairment. *Interviews with Director, Administrator, and Case Manager*.

Because District staff did not see that Student’s working memory and executive functioning challenges were impacting his ability to travel throughout his school day, District asserts further consideration of travel training was not warranted here. *Response*, pp. 22-23; *Interviews with Administrator and Case Manager*. However, Parent argues the IEP Team should have considered travel training “when concerns were raised about Student’s safety,” given his executive functioning and other challenges. *Complaint*, p. 13; *Reply*, p. 21; *Interview with Parent*.

56. Case Manager reported a belief that Student can walk to and from school independently in a manner like his general education peers, with some level of guidance. *Interview with Case Manager*. However, Case Manager reported that the IEP Team did not further discuss what any guidance or support for Student may look like due to Parent’s firm stance that she would not feel safe with Student walking to and from school independently under any circumstances—in other words, any discussion of travel training would have been futile, as that training would necessarily involve learning the skills needed to walk independently, which Parent did not support. *Interview with Case Manager*; see *Response*, pp. 22-23.
57. Ultimately, the IEP Team—except for Parent—agreed that Student “does not demonstrate significant deficits in the listed areas to the degree to justify removing [Student’s] access to participate in general education transportation methods (including walking similar routes to peers) in favor [of] specialized transportation.” *Exhibit C*, p. 50. The SCO finds, in consideration of Student’s needs as well as the 2023 IEP and evaluation reports, that nothing indicates Student cannot walk to and from school in the same manner as his general education peers. *Consultation with CDE Content Specialist*.

H. Parent’s Request for Meeting Notes

58. Administrator took notes during the September 12 meeting, which Parent requested immediately afterwards. *Complaint*, p. 4; *Interviews with Administrator and Parent*. Administrator did not provide her meeting notes to Parent at that time and asserts they were personal notes for her own memory aid, rather than official meeting notes, and therefore she did not think she was required to provide them to Parent. *Interview with Administrator*; see *Exhibit D*, pp. 73-75.
59. The notes are relatively lengthy and describe, in some detail, the IEP Team’s consideration of the Checklist’s factors and discussions around each. *Exhibit D*, pp. 73-75. In addition, the notes also describe the meeting’s participants (including Parent’s full name); Parent’s reason for the transportation request; Parent’s request for the Checklist prior to the meeting and District’s response; Parent’s and General Education Teacher’s concerns; and District’s offer of alternatives to Parent. *Id.* The notes also include the only documentation of OT’s observation of Student considered at the meeting. *Id.* at p. 73.
60. Administrator’s notes were later used by Case Manager—who also reviewed the notes—to draft the PWN provided to Parent. *Interviews with Administrator and Case Manager*. District

argues, then, that the “official” meeting notes were appropriately included within the PWN and provided to Parent. *Id.*

61. Parent ultimately received access to the meeting notes on October 25, 2024, during this Complaint investigation. *Exhibit L*, p. 647; *Interview with Parent*. Parent does not challenge the accuracy of the meeting notes. *Interview with Parent*; see *Reply*, pp. 3-5, 9-10.

I. PWN

62. Following the meeting, District timely provided Parent PWN of its refusal to include transportation as a related service. *Reply*, p. 22-23; *Interview with Parent*; see *Exhibit C*, pp. 50-51.
63. The PWN indicates Parent “asked for consideration for special education transportation” due to the unavailability of general education busing given Student’s residence within School’s walk zone and Parent’s concerns that “[Student’s] needs would make walking to school independently unsafe.” *Exhibit C*, p. 50.
64. The PWN also indicates the IEP Team’s decision was based on “[t]he special education evaluation dated 9/13/23, IEP dated 11/28/23, outside neuro report dated 2/24/23, as well as observations of his current functioning in the school setting, external counselor input (via letter), and parent input.” *Id.* The PWN reflects the IEP Team considered finding Student eligible for special transportation but rejected that option, “as the data considered by the team indicates that [Student’s] deficits are not severe enough to require special transportation” and that “[Student] has adequate skills to remain with his general education peers for transportation.” *Id.* at p. 51.
65. The PWN also explains the IEP Team considered reevaluating Student “to identify potentially significant deficits that would necessitate specialized transportation” but rejected that option because “[Student] recently (9/13/23) had a comprehensive evaluation and it did not indicate significant or severe deficits . . . which would require specialized transportation.” *Id.*
66. The PWN includes other factors the IEP Team considered, including Parent’s “concerns related to [Student’s] executive functioning ability, attention, maturity level and processing.” *Id.* The PWN reflects that the IEP Team “made suggestions on how to introduce the skill of walking to school, however [Parent] stated she would not be willing to engage in instructing [Student] in this area because she does not want him walking to school, as she feels it would be unsafe regardless of his familiarity with the task.” *Id.* It also explains that Student “will continue to be monitored by the team and if a decline in his functioning is observed, the team will reconvene to discuss options again.” *Id.*
67. The PWN also indicates Parent’s disagreement with the IEP Team’s decision. *Id.*

68. Parent objected to the content of the PWN in writing to School staff after receiving it and reasserts her primary objection here—that the PWN “did not accurately reflect the IEP meeting.” *Complaint*, pp. 4-5; *Reply*, p. 22; *see Exhibit J*, pp. 515-21.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District permitted Parent to inspect and review the Checklist and IEP meeting notes as education records within 45 days of her requests, as required by 34 C.F.R. § 300.613. District complied with the IDEA.

Parent is concerned that District did not provide her the Checklist prior to the September 12 IEP meeting or Administrator’s meeting notes after the meeting, as requested.

A. The Right to Inspect and Review Records

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). Thus, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” *Id.* A district must comply with a request from a parent to review his or her child’s education records “without unnecessary delay and before any meeting regarding an IEP,” and in no case more than 45 days after the request.” *Id.*

B. What Constitutes an Education Record

The IDEA borrows the definition of “education records” from the Federal Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). Under FERPA, “education records” are “those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a party acting for the agency or institution.” *Id.* § 99.3.

i. The Checklist as an Education Record

Generally, records that contain “child-specific information [that] is used to determine a child’s eligibility and need for services” and include a student’s personally identifiable information (“PII”) are education records under IDEA and FERPA. *Letter to Price*, 57 IDELR 50 (OSEP 2010).

Here, Parent requested the Checklist via email on August 30, 2024. (FF # 38). If the Checklist was an education record when requested, District was required to permit Parent to inspect and review it without unnecessary delay, before any meeting regarding Student’s IEP or, in any case, by October 14, 2024. *See* 34 C.F.R. § 300.613(a).

District did not provide Parent the Checklist before the meeting because it considered the Checklist to be internal procedural document that was not directly related to Student and not

maintained in Student’s educational file. (FF #s 22, 38, 40). As an initial matter, and despite District’s assertion, it is evident the IEP Team used the Checklist as the determinative document in making Student’s transportation eligibility decision and not merely as a guide or reference. (FF #s 41-57). Indeed, the Checklist provided the structure for the Team’s discussions throughout the meeting and Director confirmed the Checklist is exhaustive. (FF #s 19, 43-52). Further, the Checklist shared with Parent at the meeting and provided to her after the meeting includes Student’s full name. (FF # 43). Finally, District maintains the Checklist itself and confirmed the Checklist may become part of a student’s file in certain circumstances. (FF #s 21, 24).

Therefore, the SCO finds that the Checklist became an education record at the September 12 meeting when it was used by the IEP Team to determine whether Student was eligible for transportation as a related service and included Student’s PII. (FF # 43). Before that time, it was not an education record to which Parent was entitled, as it was not directly related to Student. *See* 34 C.F.R. § 99.3; *see Grafton Pub. Schs.*, 115 LRP 27907 (SEA MA 06/12/15) (finding a district was not required to produce testing protocols for parent inspection and review because blank protocols did not identify the student). Further, Parent was informed of the Checklist’s factors eight days prior to the IEP meeting and therefore had the information she sought to prepare for the meeting, and Parent was provided a hard copy of the Checklist directly after the meeting on September 12, 2024—the day the Checklist became an education record and thirteen days after Parent’s initial request. (FF #s 39, 43).

For these reasons, the SCO finds and concludes that District permitted Parent to inspect and review the Checklist as an education record within 45 days of Parent’s request, as required by 34 C.F.R. § 300.613.

ii. Meeting Notes as an Education Record

Generally, official IEP meeting notes are considered education records because they are directly related to a student’s educational services and maintained by the school district or by a person who is acting for the school district in the performance of his or her official duties. *See* 34 C.F.R. § 99.3; *Letter to Price*, 57 IDELR 50 (OSEP 2010). However, “education records” do not include “[r]ecords that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” 34 C.F.R. § 99.3. These are commonly referred to as “sole possession” records. *See Appendix B, Commentary to Final Regulations at 34 C.F.R. § 99*, 65 Fed. Reg. 41855 (July 6, 2000).

“The main purpose of this exception to the definition of ‘education records’ is to allow school officials to keep personal notes private,” which necessarily means the record maker “does not share the note with anyone else.” *Id.* “Once the contents or information recorded in a sole possession record is disclosed to any party other than a temporary substitute for the maker of the record, that record becomes an education record under FERPA.” *Letter to Otter*, 110 LRP 1015 (FPCO 2002); *see also Anchorage Sch. Dist.*, 69 IDELR 260 (SEA AK 02/13/17) (finding consultant’s

notes were sole possession records because they were for the purpose of providing feedback to teachers, not evaluating student, and “were not shown to anyone else”).

Here, Parent requested the meeting notes on September 12, 2024, directly after the IEP meeting. (FF # 58). Therefore, if the meeting notes constitute an education record, District was required to permit Parent to inspect and review them without unnecessary delay, before any meeting regarding Student’s IEP, or, in any case, by October 27, 2024. 34 C.F.R. § 300.613(a).

The meeting notes were directly related to Student and were maintained “by a party acting for the agency or institution”—Administrator—for the educational purpose of preparing the PWN issued to Parent describing District’s transportation determination. (FF #s 58-60). *See* 34 C.F.R. § 99.3; *Letter to Price*, 57 IDELR 50 (OSEP 2010). Specifically, the meeting notes describe the IEP Team’s discussion of the Checklist’s factors and related concerns in some detail and, indeed, it is the document that most clearly outlines District’s transportation determination and the specific reasons for it, given that the Checklist itself was never completed for Student and the PWN did not include that level of detail. (FF #s 43, 58-67). The notes also include the only written documentation regarding OT’s observation of Student considered during the meeting. (FF #s 47, 59). Under these circumstances, the meeting notes were in the nature of official IEP Team meeting notes, which, as Director acknowledged, are generally considered education records. (FF # 25).

Administrator did not provide her meeting notes to Parent after the September 12 meeting because she viewed them as “personal notes” used only for her own memory aid. (FF # 58). However, Case Manager reviewed Administrator’s notes and used them to draft the PWN. (FF # 60). Because Administrator’s notes were shared with others, they do not constitute “sole possession” records exempt from parental inspection and review. *See K.C. v. Fulton Cnty. Sch. Dist.*, 46 IDELR 39 (N. Ga. 2006) (finding teacher’s notes were accessible to individuals other than herself or a substitute and therefore did not constitute sole possession records under FERPA’s exemption); *Hi. Dep’t of Educ.*, 107 LRP 35423 (SEA HI 03/23/07) (finding teacher’s handwritten notes taken at an IEP meeting, and not shared with anyone else, to be personal notes and not education records).

Nevertheless, Parent received access to the meeting notes on October 25, 2024, as part of this Complaint investigation (FF # 61). For that reason, the SCO finds and concludes that District permitted Parent to inspect and review the meeting notes as an education record within 45 days of Parent’s request, as required by 34 C.F.R. § 300.613.

Conclusion to Allegation No. 2: District did not provide Parent with proper notice of an IEP Team meeting held on September 12, 2024, as required by 34 C.F.R. § 300.322(a)-(b). This did not result in a denial of FAPE.

Under the IDEA, school districts must notify parents of IEP team meetings “early enough to ensure they have an opportunity to attend.” 34 C.F.R. § 300.322(a)(1). Notice of the meeting

must indicate the purpose, time, and location of the meeting and the attendees, and inform the parents that they may invite other individuals. *Id.* § 300.322(b)(1)(i)-(ii).

Here, District conceded that it did not provide Parent formal notice of meeting prior to the September 12 IEP meeting, and no documentation in the Record indicates Parent was informed, prior to the day of the IEP meeting, who the meeting’s participants would be or that Parent was entitled to invite other individuals to participate. (FF #s 34-37). Therefore, the SCO finds and concludes that District did not provide Parent with proper notice of an IEP Team meeting held on September 12, 2024, as required by 34 C.F.R. § 300.322(a)-(b).

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child’s right to a FAPE, significantly impede the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, Parent knew the purpose, time, and location of the IEP meeting well in advance—indeed, the meeting was scheduled at Parent’s request—and District staff coordinated with Parent to schedule a mutually agreeable time and place. (FF #s 34-37). District also confirmed the date, time, and purpose of the meeting with Parent via email on August 30, 2024—thirteen days before the IEP meeting—consistent with District’s policy to provide such notices at least 10 days in advance. (FF # 35).

Further, while Parent expressed disagreement with the OT’s manner and method of observation, Parent did not raise concerns with OT’s *participation* in the meeting. (FF #s 36, 47). Although Parent asserts the lack of prior notice of the OT’s participation interfered with her ability to participate in the collaborative process, Parent does not indicate how, had she known about OT’s participation in advance, her thorough preparation prior to the meeting or her objection to OT’s observation process would have been any different. (FF #s 36, 47). The lack of formal notice also had no impact on Student’s services, so it did not impede Student’s right to FAPE or cause a deprivation of educational benefit. Therefore, the SCO finds and concludes that this procedural noncompliance did not result in a denial of FAPE.

Conclusion to Allegation No. 3: District reviewed and, as appropriate, revised Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.34(c)(16), 300.39(b)(4), 300.320(a)(4), and 300.324(b)(i), (ii)(B)-(C). District complied with IDEA.

Parent’s concern is recent and does not involve development of Student’s IEP in November 2023. (FF # 5-12, 29-33). Rather, Parent’s concern relates to perceived changed needs. (FF #s 31, 33).

A. Legal Obligation to Review and Revise IEPs

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA contemplates that a student's IEP may need to be reviewed and revised more frequently to address, in part, the results of any reevaluation, information about the student provided to or by parents, the student's anticipated needs, or other matters. See 34 C.F.R. § 300.324(a)(4)-(6), (b); *Andrew*, 580 U.S. at 391. The U.S. Department of Education confirmed that an "IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it." *Questions and Answers on Andrew F. v. Douglas Cnty. Sch. Dist. Re-1*, 71 IDELR 68 (EDU 12/07/17).

B. Parent Information, Prior Evaluations, and Academic, Developmental and Functional Needs

Parent's concern is that District did not meaningfully consider the information she provided about Student, specifically his functional needs and resulting safety needs, or Student's prior evaluation results in determining that Student did not require transportation as a related service at the September 12 IEP meeting. (FF #s 4, 41-57).

i. Information Provided by Parent

In developing a child's IEP, the IEP team must consider the "concerns of the parents for enhancing the education of their child." 34 C.F.R. § 300.324(a)(1)(iii). In reviewing and revising, as appropriate, a child's IEP, the IEP team must address "information about the child provided to, or by, the parents." 34 C.F.R. § 300.324(b)(1)(ii).

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). 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). To that end, IDEA requires that parental participation be meaningful, to include addressing information about the child provided to, or by, the parents in reviewing and, as appropriate, revising a student's IEP. 34 C.F.R. §§ 300.321(a), 300.322, 300.324(b)(1).

Meaningful parent participation 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 Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108

(SEA CO 03/22/18). However, 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.* Evidence that a district “was receptive and responsive at all stages” to the parent’s position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, Parent attended the September 12 IEP meeting and actively participated by asking questions and providing input about Student’s needs and her safety concerns. (FF #s 41, 44, 47-49, 52). In response to Parent’s concerns, District acknowledged that Student needs redirection and teaching of routines but shared present observations of Student indicating he has had no difficulty navigating through School, both independently and socially, without much adult direction and without any emotional regulation challenges. (FF #s 45-49, 51, 55). District also provided Parent suggestions and alternatives to alleviate her safety concerns, including offering to connect with other School students who walk a similar route. (FF # 53).

Moreover, prior to the September 12 IEP meeting, Parent provided District detailed information regarding her concerns with Student’s ability to walk to school safely, including a letter from Student’s personal counselor expressing similar concerns. (FF # 36). The IEP Team reviewed and read the letter aloud at the meeting, and the concerns expressed in the letter were addressed during the Team’s discussions of several of the Checklist’s factors. (FF #s 44-52). The IEP Team also reviewed the walking map Parent provided during the meeting and discussed the distance and time involved in Student’s potential routes to School. (FF #s 49, 52).

Though District did not agree to Parent’s one request at the meeting—that Student be provided transportation as a related service—the Record reflects that District afforded Parent a meaningful opportunity to participate and considered, addressed and responded to the information about Student provided by Parent at the September 12 meeting (FF #s 41-56). For these reasons, the SCO finds and concludes that District addressed the information about Student provided by Parent in reviewing and, as appropriate, revising Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.324(a)(1)(iii), 300.324(b)(1)(ii).

ii. Prior Evaluations

In developing a child’s IEP, the IEP team must consider the “results of the initial or most recent evaluation of the child.” 34 C.F.R. § 300.324(a)(1)(iii). In reviewing and revising, as appropriate, a child’s IEP, the IEP team must address the results of any reevaluation. 34 C.F.R. § 300.324(b)(1)(ii).

Here, the IEP Team discussed the content of Student’s prior evaluation results during the September 12 meeting in addressing Parent’s concerns with Student’s executive functioning and other challenges (FF # 41). This included a comprehensive evaluation conducted in September 2023 which did not show Student had needs that would require transportation (FF #s 5-6, 54, 57, 65). Specifically, the IEP Team discussed the nature of Student’s disabilities and how they may impact his ability to walk to School, including Parent’s concerns with Student’s executive functioning and emotional regulation. (FF #s 44-46, 49-50). District’s current observations of

Student in the school setting, including OT’s observation conducted prior to the meeting, indicated that Student can successfully navigate a new school with minimal adult support and supervision and without any discernable safety-related challenges that would indicate he requires special transportation. (FF #s 45-51). Parent asserts that District relied primarily on these current observations of Student and disregarded other evidence, including the results of prior evaluations. (FF # 48). However, the Record reflects that District did not “disregard” the results of those evaluations, but instead incorporated relevant current observations of Student in discussing Student’s needs—as expressed in the evaluation results—during the September 12 meeting. (FF #s 41, 44-51).

Moreover, as the IEP Team was just getting to know Student at the time of the September 12 meeting, it agreed to continue to monitor Student for any changed needs and reevaluate Student if it were to see any changes or increased impact because of those needs. (FF # 46). Therefore, the SCO finds and concludes that District considered the results of Student’s prior evaluations and addressed the results of any reevaluation in reviewing and, as appropriate, revising Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.324(a)(1)(iii), 300.324(b)(1).

iii. *Student’s Academic Developmental, and Functional Needs*

In developing a child’s IEP, the IEP team must consider the “academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a)(iv). In reviewing and revising, as appropriate, a child’s IEP, the IEP team must address the child’s anticipated needs and other matters. 34 C.F.R. § 300.324(b)(1)(ii).

Here, the IEP Team considered Student’s executive functioning and other challenges at the September 12 meeting while discussing several of the Checklist’s factors. (FF #s 41, 44-46, 49-51). The IEP Team also addressed Student’s anticipated needs—walking to and from school—by, among other things, reviewing Student’s potential route on the walking map Parent provided and offering suggestions and alternatives to address those needs. (FF #s 49-50, 52-53). The IEP Team concluded that Student’s executive functioning, emotional regulation, and other needs did not demonstrate Student required special transportation. (FF #s 46, 57). District also noted that, should Student’s needs change or become more impactful, the IEP Team would reconvene and reassess his need for transportation as a related service. (FF # 46). Therefore, the SCO finds and concludes that District considered Student’s academic, developmental, and functional needs and addressed Student’s anticipated needs in reviewing and, as appropriate, revising Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.324(a)(iv), 300.324(b)(1)(ii).

C. Transportation as a Related Service

Parent’s concern is that the IEP Team improperly determined that Student does not require transportation as a related service.

Transportation is a related service that an IEP may include, where appropriate, to enable a student to advance appropriately toward attaining annual goals and to be educated and

participate with other children with disabilities and nondisabled children. 34 C.F.R. §§ 300.34(c)(16), 300.320(a)(4). As a related service, transportation may include: (a) transportation to and from school and between schools; (b) travel in and around school buildings; and (c) specialized equipment required to provide special transportation for a child with a disability. *Id.* § 300.34(c)(16).

Transportation as a related service is appropriate where “a child’s disabilities create unique needs that make it especially problematic to get the child to school in the same manner that a nondisabled child would get to school in the same circumstances.” *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). However, “if the disabled student is capable of using the same transportation services as nondisabled students, then it would be consistent with [IDEA] for the student’s IEP team to find that transportation is not required as a related service.” *Id.*

School districts must assess a student’s need for special education and related services, including transportation, in light of each student’s “unique needs.” *Id.*; *Rowley*, 458 U.S. at 181. “‘Unique needs’ is a broader term that incorporates all the child’s circumstances that, without the benefit of a related service, could interfere with access to FAPE.” *Eagle Cnty. Sch. Dist. RE-50J*, 46 IDELR 176 (SEA CO 02/24/06).

Although IDEA does not specify criteria for determining whether a child needs transportation as a related service, courts have indicated several factors that are useful in such a determination: “(1) the child’s age; (2) the distance the child must travel; (3) the nature of the area through which the child must pass; (4) the child’s access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit.” *Donald B. ex rel. Christine B. v. Bd. of Sch. Comm’rs*, 117 F.3d 1371, 1375 (11th Cir. 1997). However, a need for transportation that is created solely by parental preference or convenience, and not by the child’s educational needs, does not warrant transportation as a related service. *Fick v. Sioux Falls Sch. Dist. 49-5*, 337 F.3d 968, 970 (8th Cir. 2003).

Here, an initial matter, Student lives within the walk zone for School and is therefore not eligible for general education busing, though there is no dispute that Student would be able to access general education busing if he were eligible under District’s policy. (FF #s 30-31). Therefore, whether Student required transportation as a related service was properly left to the IEP Team to determine on a case-by-case basis. (FF # 15).

District used the Checklist, in consideration of Student’s individualized needs, in making its decision that Student did not require transportation as a related service. (FF #s 19, 41-57). The Checklist includes eight factors for IEP teams to consider that align with criteria the courts have deemed appropriate in making these determinations, directs teams to “consider the unique disability-related issues that affect the student,” and allows for consideration of parent-provided and other information in “final considerations.” (FF # 16). These considerations are appropriate under IDEA’s requirements and federal guidance. *See Donald B.*, 117 F.3d at 1375; *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). The IEP Team considered each of the Checklist’s factors,

discussed concerns where appropriate, and determined that Student did not demonstrate significant needs that required transportation. (FF #s 41-57). To the extent Parent asserts that a “transportation assessment” was required here (FF # 54), the IDEA does not provide for or require a separate evaluation of a student’s transportation-related needs; instead, a student’s need for transportation as a related service is an issue to be discussed and decided during the IDEA’s evaluation and IEP processes, as District did here. *Letter to Smith*, 23 IDELR 344 (OSEP 1995); see 34 C.F.R. §§ 300.301-304, 300.324.

Further, the Record does not indicate Student lacks the ability to walk to and from School in the same manner as his general education peers, such that he requires transportation as a related service. (FF #s 41-57). The SCO recognizes Parent’s concerns with Student walking to and from school and can appreciate that 1.8 miles each way is a long walking distance for a twelve-year-old. However, there is no indication that Student’s needs make it “especially problematic” for him to do so in the same manner as other general education 6th graders, who may also be walking to school independently for the first time, and who are all learning to advocate for themselves during this time of transition into greater independence, expectations, and anxieties. (FF #s 44-53).

Moreover, the Record does not show that, without transportation as related service, Student would be physically unable to attend School and, therefore, access a FAPE. See *Mountain Bd. of Coop. Educ. Services*, 45 IDELR 83 (SEA CO 11/21/05) (finding student’s access to educational benefit would occur only if district provided transportation; otherwise, a four-year-old would have to walk 1.4 miles to get to school). Indeed, there is no indication that Student’s educational access has been at all impacted by District’s transportation determination, as Parent continues to provide Student’s transportation to school. (FF # 29).

Finally, given District’s compliance with IDEA as to the legal conclusion to Allegation No. 3(a), the decision of the IEP Team that Student does not require transportation as a related service is due a certain degree of deference. See *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1318 (10th Cir. 2008); *El Paso Cnty. Sch. Dist. 2*, 67 IDELR 75 (SEA CO 11/16/15). Regardless, as a matter of policy, the CDE will not declare a student to be eligible for special transportation through a state complaint decision. For all these reasons, SCO finds and concludes that District reviewed and, as appropriate, revised Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.34(c)(16), 300.320(a)(4), and 300.324(b).

D. Travel Training as Specialized Instruction

Parent’s concern is that District did not consider travel training as part of its determination that Student did not require transportation at the September 12 meeting. (FF # 55).

IDEA defines travel training as “providing instruction for children with significant cognitive disabilities and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and learn the skills necessary to move effectively and safely from place to place within their environment.” 34 C.F.R. §

300.39(b)(4); ECEA Rule 2.43(2)(d). Travel training is considered a type of special education that IEP teams must consider in designing a child’s IEP if indicated by the child’s needs. 34 C.F.R. § 300.39(a)(2)(ii); *Questions and Answers on Serving Children with Disabilities for Transportation*, 53 IDELR 268 (OSERS 2009).

Travel training may address skills such as “orientation to the immediate environment, identifying landmarks, learning a route, street-crossing skills, and safety while moving in close proximity to traffic,” as well as “how to interact with others [on a route] and what to do when unexpected changes occur such as delays, detours, or inclement weather.” *CDE’s Colorado Transporting Students With Special Needs Guide*, p. 67 (May 2023).

Here, Parent did not raise the issue of travel training for Student at the September 12 meeting and, indeed, it was Parent’s position that Student would not be able to walk to school safely and independently under any circumstances, including with some level of guidance or training. (FF #s 49, 55-56). Therefore, this is not a situation where Parent raised a concern that District did not consider. (*Id.*). Further, nothing in Record—including Student’s IEP and prior evaluation results—otherwise indicates that Student requires travel training as specialized instruction based on his current needs, such that District was obligated to consider it during the review and revision of Student’s IEP at the September 12 meeting. (FF # 57). Therefore, the SCO finds and concludes that District reviewed and, as appropriate, revised Student’s 2023 IEP, as required by 34 C.F.R. §§ 300.39(b)(4), 300.324(b).

Conclusion to Allegation No. 4: District issued PWN of its refusal to change the provision of FAPE by including transportation as a related service after the September 12, 2024 IEP Team meeting, as required by 34 C.F.R. § 300.503(a). District complied with IDEA.

Parent’s concern is that the PWN she received after the September 12 meeting, reflecting District’s decisions during the meeting, was not accurate.

PWN must be issued a reasonable time before a district proposes or refuses to change “the educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district’s proposal or refusal. *Id.* § 300.503(b)(1)-(7).

Adequately identifying and explaining the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See*

Letter to Boswell, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 07/06/18).

Here, Parent received PWN in a timely manner and is only objecting to the accuracy of its contents. (FF # 62, 68). The PWN indicates the IEP Team considered Student's IEP, prior evaluations, current observations of Student in school, the letter from Student's counselor, and Parent's input in making its decision and accurately describes Parent's reason for the transportation request, Parent's request for the Checklist and District's response, and District's offer of suggestions in response to Parent's safety concerns during the meeting, among other things. (FF #s 63-67). Further, the PWN was drafted based on the meeting notes from the September 12 meeting, which Parent does not challenge as inaccurate. (FF #s 60-61). Therefore, the SCO finds and concludes that District issued PWN of its refusal to change Student's provision of FAPE, as required by 34 C.F.R. § 300.503(a).

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.

Pursuant to its general supervisory authority, CDE must 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 procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disability and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the Record does not indicate that District's noncompliance with the IEP meeting notice requirements is systemic in nature. District's practices and procedures regarding meeting notices are consistent with IDEA's requirements, and Director accurately described those procedures. (FF #s 26-28). Instead, District's noncompliance here appears to be primarily related to scheduling the IEP meeting with Parent via telephone, rather than in writing, which points to an instance of staff deviating from District's own policies rather than a systemic concern. (FF #s 26-28, 34-37). Therefore, the SCO finds and concludes that District's noncompliance is not systemic and is not likely to impact the future provision of services for all IDEA-eligible students in District.

REMEDIES

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

1. Providing Parent with proper notice of an IEP Team meeting, as required by 34 C.F.R. § 300.322(a)-(b).

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

1. **Corrective Action Plan**

- a. By **January 7, 2025**, 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 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 District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Administrator, Case Manager, and all District special education case managers and administrators must review this Decision, as well as the requirements of 34 C.F.R. § 300.322. This review must occur no later than **January 14, 2025**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **January 21, 2025**.

Please submit the documentation detailed above to the CDE as follows:

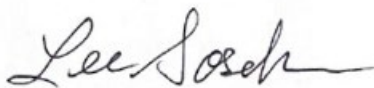
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it may adversely affect District’s annual determination under the IDEA and subject 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 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 6th day of December, 2024.



Lee Sosebee, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-19

- Exhibit 1: Supporting Documentation

Response, pages 1-26

- Exhibit A: Student's IEP
- Exhibit B: Notices of Meetings
- Exhibit C: Prior Written Notices
- Exhibit D: Meeting Notes
- Exhibit E: Evaluation Reports
- Exhibit F: Parent-Provided Documentation
- Exhibit G: Attendance, Grades, Progress Reports
- Exhibit H: School Calendar
- Exhibit I: District Policies
- Exhibit I-2: District Policies
- Exhibit J: Correspondence
- Exhibit K: Staff Information
- Exhibit L: Verification of Delivery

Reply, pages 1-27

- Exhibit 2: Correspondence
- Exhibit 3: Correspondence
- Exhibit 4: Walking Map

Telephone Interviews

- Director: November 1, 2024
- Administrator: November 1, 2024
- General Education Teacher: November 1, 2024
- Case Manager: November 11, 2024
- Parent: November 11, 2024