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

State Complaint SC2026-571
Cherry Creek School District

DECISION

INTRODUCTION

On May 8, 2026, the parent ("Parent") of a student ("Student") currently identified as a child with a disability under the Individuals with Disabilities Education Act ("IDEA")[1] filed a state complaint ("Complaint") against Cherry Creek School District ("District"). The Colorado Department of Education ("CDE") determined that the Complaint identified two allegations 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 final written 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 not more than one year prior to the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring on or after May 8, 2025. Information prior to that date 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. District did not educate Student in the least restrictive environment from September 2025 to present because it did not ensure that Student participated with nondisabled children

[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 District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education ("FAPE"). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

in the extracurricular services and activities to the maximum extent appropriate to the needs of Student—specifically outdoor recess with peers—as required by 34 C.F.R. § 300.117; and

2. District did not review and, as appropriate, revise Student's Individualized Education Program ("IEP") between September 2025 and present to address a lack of expected progress toward annual goals, as required by 34 C.F.R. § 300.324(b).

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 attended a District elementary school ("School") in the third grade during the 2025-2026 school year. *Exhibit A*, p. 1. He qualifies for special education and related services under the disability categories of Autism Spectrum Disorder and Speech or Language impairment. *Id*.

2. Student is curious and energetic, and shows significant enthusiasm when engaged in preferred activities and subjects. *Interviews with Parent, Student's Special Education Teacher ("Teacher"), and the District behavior analyst assigned to Student ("Analyst").* Student has a keen interest in mechanical devices such as air conditioning units and lighting systems. *Id*.

3. Student participates in District's integrated learning center program ("the ILC") at School, a center-based program designed for students with significant affective needs. *Interview with Teacher*.

4. This investigation involves the review and revision of Student's IEP dated February 20, 2025 ("IEP 1"), in effect from the start of the 2025-2026 school year through February 1, 2026, and Student's IEP dated December 18, 2025 ("IEP 2"), in effect from February 2, 2026 through the end of the school year. *Exhibit A*, pp. 1-34. Specifically, Parent raised concerns related to whether District reviewed and revised IEP 1 to address a lack of expected progress. *Complaint*, pp. 12-13. Additionally, Parent raised concerns related to Student's ability to participate in recess with peers during the 2025-2026 school year. *Id*. at p. 12.

B. District's Practices, Policies and Procedures

5. District's director of elementary special education ("Director") described District's obligations with respect to students with IEPs, stating that each student's program must be individually

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

designed based on data to ensure that the student can make progress within the least restrictive environment appropriate for that student. *Interview with Director*.

6. Director described that District seeks to ensure that its staff members are knowledgeable regarding their special education obligations by offering frequent training on emerging issues in special education law. *Id*. In addition, District holds meetings each month involving at least one member of each building's special education staff, at which District provides guidance for its building-level staff members. *Id*.

7. District also maintains a special education compliance team—involving several District special education coordinators and education specialists—which operates as a resource for building-level staff to answer questions and problem-solve difficult issues. *Id*.

8. Director described that in determining the least restrictive environment appropriate to educate a student, District must consider that student's safety and behavioral needs. *Id*. Where safety concerns impact a student's access to activities like recess, Director stated that the IEP team should seek to develop strategies to enable the student to develop the skills necessary to access that setting. *Id*.

9. Director emphasized that a student's IEP team should engage in consistent progress monitoring to determine whether the student is making expected progress toward annual goals. *Id*. Based on the progress monitoring data, the team should review and, as appropriate, revise the IEP to enable the student to make progress and access their education to the maximum extent appropriate. *Id*.

10. In cases where a student's parents choose to withhold the student from a full school day, Director stated that the IEP should still represent the IEP team's determination of an appropriate offer of FAPE—that is, at the time the IEP is developed, the student's identified needs lead to the annual goals, and the goals inform the services required to help the student achieve them. *Id*. Director stated that while District staff strive to create the best outcomes for all students, if a parent declines to allow student to access the full complement of services offered in the IEP, the student may struggle to make the progress envisioned in the IEP. *Id*.

C. IEP 1

11. IEP 1 describes Student's present levels of educational performance, reporting on his progress toward previous IEP goals, his performance on standardized assessments, and the observations of teachers and parents regarding his needs. *Exhibit A*, pp. 21-23.

12. IEP 1 describes the impact of Student's disability, noting academic, communicative, and social-emotional functioning as areas of impact. *Id*. at p. 24.

13. IEP 1 notes that Student benefits from the use of a behavior intervention plan ("BIP"). *Id*. at p. 24. The BIP describes the target behaviors such as elopement, work refusal/avoidance, physical aggression, and verbal aggression. *Id*. at p. 47.

14. The BIP contains a table of behavioral strategies, including strategies to reduce the impact of events that might trigger target behaviors, strategies to decrease the likelihood of target behaviors, strategies to increase the likelihood Student will engage in alternative behaviors, and strategies to reinforce Student's engagement in alternative behaviors. *Id.* at pp. 47-50. For example, an alternative behavior strategy to address elopement directs staff to "[t]each and practice a spot in the building that [Student] can go to if he is feeling dysregulated. *Id*. at p. 48.

15. The BIP includes a section entitled "De-escalation Plan in Response to a Crisis Situation," describing the strategies to be used in responding to significant behavioral incidents, including elopement. *Id*. at pp. 50-52. Its proposed strategies for elopement include verbal redirection, maintenance of line-of-sight observation, and directing staff to physically block points of egress when possible. *Id*.

16. IEP 1 includes four annual goals:

    - Reading: This goal proposed that by February 2026, Student would improve his knowledge in the areas of comprehension, phonological awareness, and phonics by moving from a baseline score of 54 on a standards-based scoring tool for reading to a score of 88. The goal identified a number of objectives on which the scoring tool would monitor Student's progress.

    - Mathematics: This goal proposed that Student would improve his mathematical operations skills—addition and subtraction—from a baseline score of 21 on a standards-based scoring tool to a score of 35.

    - Communication: This goal proposed that Student would, when engaged in play-based, student-led activities, spontaneously produce sentences using the correct forms of pronouns and verbs to communicate various intentions, using a standards-based rubric.

    - Self-Determination: This goal proposed that Student would demonstrate improved self-regulation, motor, communication, and social skills by moving from a baseline score of 15 on a standards-based scoring tool to a score of 40.

    Id. at pp. 25-28.

17. IEP 1 describes a set of accommodations designed to enable Student to access the educational environment. *Id*. at pp. 28-29.

18. IEP 1 contains a Service Delivery Statement describing the services to be provided to Student. *Id*. at pp. 14, 31. IEP 1 requires 1,050 minutes per week of direct specialized instruction outside the general education classroom, and 800 minutes per week of direct specialized instruction inside the general education classroom. *Id*. at pp. 31-32. IEP 1 also requires 150

minutes per month of occupational therapy (120 direct and 30 indirect), 270 minutes per month of speech-language services (240 direct and 30 indirect), and 120 minutes per month of direct mental health services. *Id*. at pp. 31-32.

19. IEP 1 identifies Student's recommended placement in the least restrictive environment as participating in the general education setting between 40% and 70% of the time. *Id*. at p. 33.

20. IEP 1 contains an attached prior written notice ("PWN") describing the discussions during the IEP meeting and the data relied upon by the IEP team in making its determinations. *Id*. at pp. 33-34.

21. District offered FAPE through IEPs that provided for Student's attendance during the full school day. *Id.* at pp. 1-53. Throughout the 2025-2026 school year, Student attended afternoon sessions with a private applied behavior analysis provider, chosen by Parents, outside of School. *Interview with Parent and Teacher*. Parents withdrew Student from School each day at or around 12:30 p.m. to take him to these private behavior sessions. *Id*.; *Complaint*, p. 9. Student's shortened school day was imposed by Parents and was not an IEP team decision. *Interview with Parent*; *Response*, p. 7.

D. Student's Elopement at School

22. At the start of the 2025-2026 school year, Student participated in recess with his peers in School's unfenced playground. *Interviews with Parent, Teacher, and Analyst*; *Exhibit F*, p. 11.

23. School's outdoor recess areas include an unfenced playground for third through fifth graders, and a separate fenced playground for younger students. *Interviews with Parent, Teacher, and Analyst*.

24. On August 22, 2025, during recess, Student eloped from the paraprofessional designated to observe him and left the School campus. *Exhibit F*, p. 11; *Exhibit L*, pp. 211-212. Student ran into a nearby neighborhood, and four members of School staff pursued him by foot and car. *Id.* Student was safely returned to School in a staff member's vehicle. *Id*.

25. After the incident, School's administrator contacted Analyst, who participated in the development of Student's BIP, to let her know that a significant elopement event had occurred. *Interview with Analyst*; *Exhibit L*, pp. 211-212.

26. Analyst described that while elopement had been a concern for Student previously, that concern had been more manageable because Student lacked the speed to outrun School staff assigned to observe him. *Interview with Analyst*. Analyst, in an email responding to School staff regarding this incident, suggested that Student's BIP might need to be updated, and that as a safety measure, Student should engage in physical activity in the gym and School's motor activities room rather than outside the school building. *Exhibit L*, p. 211.

27. On August 27, 2025, during a scheduled running break in the gym, Student eloped through the gym doors and toward the outside field. *Exhibit F*, p. 2. School staff was able to persuade Student to return to the ILC classroom before he left School grounds. *Id*.

28. On September 26, 2025, Student attempted to elope from the ILC classroom but was blocked by a member of School staff. *Exhibit P*, p. 4.

29. On September 29, 2025, Student attempted to elope from the School building during lunchtime. *Id*. at pp. 3-4. Student was redirected from elopement when School staff offered to let him ride in a wagon that his updated BIP—described below—had identified as a redirection strategy. *Id*., *Exhibit A*, p. 43.

E. Review and Revision of IEP 1

Revisions to BIP prior to February 2026

30. After the August 2025 elopements, Analyst asked School staff to collaborate on a shared document to record observations related to these concerns. *Interview with Analyst*; *Exhibit P*.

31. In consideration of these observations, Student's BIP was reviewed and revised over the course of the 2025-2026 school year to address Student's needs related to elopement. *Interviews with Analyst and Teacher*; *Exhibit A*, pp. 35-53.

32. For example, on or around September 8, 2025, Analyst developed a token economy system to reinforce safe behaviors at School. *Interview with Analyst*; *Exhibit A*, p. 37; *Exhibit P*, p. 4.

33. Likewise, prior to the September 29 elopement, Student's BIP was revised to add language indicating that Student could be offered a ride in a wagon as a redirection strategy when escalated (a strategy which successfully de-escalated an elopement attempt on September 29). *Exhibit P*, p. 4; *Exhibit A*, p. 43.

34. In November 2025, the "Behavior Teaching Strategies" section in Student's BIP was revised to add a subsection entitled "Safety & Routines." *Interview with Analyst*; *Exhibit A*, pp. 37-38. This subsection describes that staff should "[c]reate systems for engaging in safety routines" including "returning inside from recess." *Id*. Analyst described this component of the BIP to be focused on creating an opportunity for Student to learn the skills needed to participate safely in recess. *Interview with Analyst*.

35. In addition, the BIP's "Response Strategies" section was revised to add a paragraph stating that "[w]hen [Student] is following expectations and showing signs of success, all efforts should be made to have him engage in typical school day routines, including lunch and recess." *Exhibit A*, p. 40.

Student's Recess Plan

36. Beginning in November 2025, pursuant to the BIP, a three-tiered "Recess Plan" was developed for Student to help him gain the safety skills needed to engage in recess with peers while managing the risk of elopement. *Interview with Analyst*; *Exhibit O*.

37. At Level 1, Student would participate in recess within the fenced playground area while closely supervised by one paraprofessional and at least one additional trained adult. *Exhibit O*, p. 1. During this level, Student would work on the safe transition from the classroom to the playground and vice versa. *Id*. at pp. 1-2. Upon Student's successful completion of three consecutive days of recess in Level 1, he would move to Level 2. *Id*.

38. At Level 2, Student would engage in lunch recess in the unfenced playground with one paraprofessional close at hand, and another trained adult nearby and available to assist. *Id*. at p. 3. Upon Student's successful completion of three consecutive days of recess in Level 2, he would move to Level 3. *Id*.

39. At Level 3, Student would engage in regular recess in the unfenced playground with a paraprofessional present and circling the perimeter of the playground, but not in close proximity to Student. *Id*. at p. 4. Student could run and play freely, so long as he remained within the playground area. *Id.*

40. At the same time the "Recess Plan" was introduced, Analyst created a visual aid to be presented to Student prior to recess, including statements like "I can run on the playground," "I will not leave the playground," "I will listen to my teacher when it's time to come in," and "When the whistle blows I walk inside with my teacher." *Id*. at p. 5. The use of visual aids of this nature is consistent with the BIP's "Setting Events Strategies" section, which encourages the use of visual aids to demonstrate expected behavior as well as the use of concise and direct sentences. *Exhibit A*, p. 39.

41. Analyst and Teacher described that from November 2025 to the end of school year, Student participated in the "Recess Plan" daily. *Interview with Teacher and Analyst*. Both described that although he continued to have some days on which he struggled to remain regulated during recess and had to return to a lower level of the plan, he overall made significant progress and dramatically reduced the incidence of elopement over the course of the year. *Id*.

December 2025 and February 2026 IEP Meetings

42. On October 5, 2025, Teacher sent a consent for re-evaluation to Parents, which Parents signed and returned. *Interview with Teacher*; *Exhibit L*, pp. 201-203.

43. Between October and December 2025, District administered assessments related to Student's cognitive ability, communication skills, academic performance, social and emotional skills, health, and motor abilities, which were summarized in an evaluation report dated December 18, 2025. *Exhibit B*, pp. 1-32.

44. On December 18, 2025, following a review of the evaluation report, Student was determined to remain eligible for special education and related services. *Exhibit A*, pp. 16, 67-70. After the determination of eligibility, the IEP team agreed to reconvene after winter break to revise the IEP. *Id*. at p. 16.

45. On February 2, 2026, the IEP team reconvened. *Id*. at pp. 16-17. The team discussed Student's present levels of performance, with his general education teacher discussing participation in her class, and Teacher reviewing progress toward his annual IEP goals. *Id.* at p. 17.

46. Teacher described that Student made progress on each of his four annual goals but described his progress in reading and math as "small." *Id*.

47. Because Student left school at 12:30 each day, he typically missed classroom math instruction, which was delivered during the afternoons. *Interview with Teacher*.

48. To address Parents' concerns related to Student's math performance, Teacher agreed to spend 30 minutes working one-on-one with Student in the mornings on math, so that he would have more exposure to math instruction despite his shortened schedule. *Id*.

49. The IEP team revised each of Student's annual goals based on Student's present levels of performance and progress:

    - Reading: This goal proposed that by February 2027, Student would move from a baseline score of 59 on his reading rubric to a score of 88.

    - Mathematics: This goal proposed that by February 2027, Student would move from a baseline score of 23 on his mathematics rubric to a score of 40.

    - Communication: This goal proposed that Student would comment during reading activities, describe a personal picture, describe attributes of a common object, and engage in parallel play with a peer, moving from a score of 4 on a speech-language rubric to a score of 20.

    - Self-Determination: This goal proposed that Student would demonstrate appropriate social skills and emotional regulation by using coping skills and expected peer interaction behaviors.

    Exhibit A, pp. 8-11.

50. In addition, the IEP team increased direct specialized instruction minutes outside of general education from 1,050 minutes per week to 1,515 minutes per week. *Id.* at pp. 14-15, 17, 31-32.

F. Student's Progress Toward Annual IEP Goals

Reading Goal

51. Student's progress reports indicated that he made insufficient progress toward this goal by the end of his second-grade year, remaining at the baseline score of 54. *Exhibit H*, p. 1. In October 2025 and February 2026, during his third-grade year under IEP 1, he had made some progress, moving to a score of 59. *Id*.

52. From February 2026 through the end of the 2025-2026 school year, under IEP 2, Student's progress reports indicate that his rubric scores rose from 59 to 69, showing substantially more growth than he had under IEP 1. *Id.* at pp. 8-9.

Mathematics Goal

53. Student's progress reports indicated that he made insufficient progress toward this goal by the end of his second-grade year, remaining at the baseline score of 21. *Id.* at pp. 2-3. In October 2025 and February 2026, under IEP 1, he made some progress, moving to a score of 23. *Id*.

54. From February 2026 through the end of the 2025-2026 school year, under IEP 2, Student's progress reports indicate that his rubric scores rose from 23 to 28, showing substantially more growth than he had under IEP 1. *Id*. at pp. 10-11.

Communication Goal

55. Student's progress reports indicated that he made progress between February 2025 and February 2026, under IEP 1, moving from a baseline rubric score of 7 to a score of 25. *Id.* at pp. 3-4.

56. From February 2026 through the end of the 2025-2026 school year, under IEP 2, he continued to make progress on his revised goal, moving from a baseline score of 4 on his revised speech-language rubric to a score of 12 by the end of the school year. *Id*. at pp. 12-13.

Self-Determination Goal

57. Student's progress reports indicated that he made some progress toward this goal between February 2025 and February 2026, under IEP 1, moving from a rubric score of 15 to a score of 19, but falling short of his annual goal of a score of 40. *Id*. at pp. 6-7.

58. From February 2026 through the end of the 2025-2026 school year, under IEP 2, Student made substantial progress toward his revised goal, moving from a baseline score of 7 on his revised self-determination rubric to a score of 12, showing substantially more growth than he had under IEP 1. *Id*. at pp. 14-15.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District ensured that Student participated in extracurricular services and activities with nondisabled peers to the maximum extent appropriate to Student's needs from September 2025 to present, consistent with 34. C.F.R. § 300.117. District complied with IDEA.

Parent's concern is that Student was not permitted to participate in outdoor recess with his peers between September 2025 and February 2026. (FF # 4.)

The IDEA requires that, to "maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled" and that "removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114. And unless the child's IEP "requires some other arrangement, the child is [to be] educated in the school that he or she would attend if nondisabled." 34 C.F.R. § 300.116. This requirement extends outside of the classroom as school districts "must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child." 34 C.F.R. § 300.117. "Regular educational environment" in 34 C.F.R. § 300.114(a) encompasses regular classrooms and other settings in schools such as lunchrooms and playgrounds in which children without disabilities participate. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,585 (2006).

Here, Student began the 2025-2026 school year participating in recess with his peers in an unfenced playground outside School. (FF # 22.) Over the first few weeks of school, however, safety concerns with elopement began to arise in the recess environment. (FF #s 24-29.) On August 22, 2025, Student eloped from School's grounds into a nearby neighborhood, requiring a coordinated effort to safely return him to School. (FF # 24.) Although elopement had been identified as a concern for Student in the past, it had escalated at the start of the 2025-2026 school year as Student was fast enough to evade his supervising paraprofessional. (FF # 26.)

In response, Analyst proposed that Student's BIP be reviewed and revised to address these elopement concerns. (FF # 26.) Between September and November 2025, Student's BIP was revised to address elopement and ensure his continued participation in recess safely with additional support, resulting in the identification of strategies that were used to redirect potential elopement incidents. (FF #s 29, 30-35.)

For instance, in November 2025, Student's BIP was revised to emphasize teaching Student strategies related to "Safety and Routines" involving elopement behavior at recess. (FF # 34.) This included a three-tiered Recess Plan, per the BIP, which gradually reintroduced Student to recess activities with peers while maintaining safeguards to prevent dangerous elopement incidents. (FF # 36-41.) Through the Recess Plan, Student increased his safe participation with peers, moving

from the fenced-in playground for younger students, to the unfenced playground with close adult supervision, to the unfenced playground with more distant supervision. (FF #s 37-39.) As another example, resources to help teach Student the safe behaviors he would need to demonstrate at recess were also developed. (FF # 40.) Student made significant progress under the Recess Plan, reducing the incidence of elopement over the course of the school year while engaging more fully in recess activities with peers. (FF # 41.) In addition, despite limited school attendance, he made significant progress toward his self-determination goal—related to demonstrating emotional regulation and social skills—while the Recess Plan was in place. (FF #s 49, 58.)

By developing a plan to allow Student to access recess with the safety measures and adult supervision needed to ensure safe participation, the CDE finds that District enabled Student to access recess activities to the greatest extent appropriate to his needs. As Student developed and demonstrated the skills needed to safely participate in recess with peers, District proportionately increased his level of access. See, e.g*., A.H. v. Smith*, 119 LRP 4155 (D. Md. 02/08/19), (finding that an IEP's provision of access to recess activities with "close adult proximity at all times" and "proximity control" did not deny the student access to FAPE.")

For these reasons, the CDE finds and concludes that District ensured that Student participated in recess with nondisabled peers to the maximum extent appropriate to his needs, consistent with 34 C.F.R. § 300.117.

<u>Conclusion to Allegation No. 2</u>: District reviewed and, as appropriate, revised Student's IEP to address any lack of expected progress toward annual goals, consistent with 34 C.F.R. § 300.324(b). District complied with the IDEA.

Parent's concern is that Student's IEP did not adequately address concerns related to a lack of expected progress toward his annual reading and mathematics goals. (FF # 4.)

A. <u>IEP Review and Revision: Legal Requirements</u>

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. *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399. 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 or changed needs. *Id.* at 400. 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's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address any lack of expected progress toward the annual goals, the results of any reevaluation, "[i]nformation about the child provided to, or by, the parents," "[t]he child's anticipated needs," or other matters. *Id.*; *see Endrew F.*, 580 U.S. at 400.

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 Endrew F., 71 IDELR 68 (EDU 2017). This includes monitoring and revising an IEP as necessary, particularly if appropriate progress is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.*

B. Parental Refusal of a FAPE Offer

If a parent's refusal to one part of an IEP means that the remaining portions of the IEP no longer provide a FAPE, then the district is not liable for not providing a FAPE. *I.L. through Taylor v. Knox County Bd. of Educ.,* 257 F. Supp. 3d 946, 981-84 (E.D. Tenn. 2017), *aff'd on other grounds sub nom. I.L. by & through Taylor v. Tennessee Dep't of Educ.,* 739 Fed. Appx. 319 (6th Cir. 2018). "[P]arents retain the right to refuse consent to an offer of FAPE. Accordingly, it would prove impossibly onerous to require school districts to somehow implement a rejected IEP and provide a FAPE in the face of such refusal." *I.R. ex rel. E.N. v. Los Angeles Unified Sch. Dist.,* 805 F.3d 1164, 1170 (9th Cir. 2015).

Here, a discussion of Student's expected progress toward annual goals must first consider that Parents did not, at any time during the 2025-2026 school year, make Student available to receive the full offer of FAPE described in Student's IEP. (FF # 21.) Although the IEP's goals and services contemplated Student's full-day attendance at School, Parents chose to withdraw Student from school each day at 12:30 p.m. (FF #s 10, 21.) This early withdrawal caused Student to miss a substantial number of instructional minutes, including nearly all scheduled mathematics instruction. (FF # 47.) Because Parent's partial rejection of the IEP prevented District from providing its full offer of FAPE, Parent cannot then allege that District did not comply with its duty to offer a FAPE. *I.R.*, 805 F.3d at 1170. Nevertheless, the Record shows that despite Parent's partial rejection of the IEP's offer of FAPE, District still reviewed and revised the IEP over the course of the 2025-2026 school year.

C. Annual and Ongoing Review and Revision of Student's IEP

Student made substantial progress toward his communications goal during the time IEP 1 was in effect, but District described his progress toward his reading, mathematics, and self-determination goals as "small." (FF #s 46, 51, 53, 55, 57.) However, Student did not attend full school days—as contemplated by the full offer of FAPE in the IEPs—as Parents withdrew him each day at or around 12:30 p.m. to take him to private behavior sessions. (FF # 21.) Student typically missed math class in the afternoon to attend these private behavior sessions. (FF # 47.)

Even so, in response to this lack of progress, District proposed in October 2025 that Student be re-evaluated. (FF # 42.) Following the completion of that evaluation in December 2025, District re-convened his IEP team to review and revise the IEP. (FF #s 44-45.) Based upon concerns related to Student's academic progress, District increased Student's direct specialized instruction minutes, and Teacher proposed rescheduling some of Student's math instruction to ensure that he was able to receive it during his time at School. (FF #s 48, 50.) In addition, the IEP team revised Student's annual goals in light of his performance and needs. (FF # 49.)

Following these revisions, Student began to see a marked increase in his progress in reading and mathematics, raising his reading rubric score 10 points over the course of three months (where he had previously only increased it by 5 points over the past year), raising his math rubric score 5 points over the course of those three months (where he had previously only increased it by two points over the past year), and raising his self-determination rubric score by 5 points over the course of those three months (where he had previously only increased it by four points over the past year). (FF #s 52-58.) In addition, Student continued to make progress toward his new communication goal. (FF # 56.)

For these reasons, to include Parents' decision to remove Student from School each day to attend private behavior sessions instead of participating in the full offer of FAPE through the IEPs, the CDE finds and concludes that Student did not experience a lack of expected progress toward annual goals. The CDE also finds and concludes that District reviewed and, as appropriate, revised Student's IEP to address any lack of expected progress toward annual IEP goals, consistent with 34 C.F.R. § 300.324(b).

REMEDIES

The CDE concludes that District complied with IDEA and ECEA. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; *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 State Complaints Officer ("SCO").

Dated this 7th day of July, 2026.



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Nick Butler
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-14

- Exhibit 1: Various documents related to Complaint allegations

Response, pages 1-17

- Exhibit A: IEPs
- Exhibit B: Evaluation Report
- Exhibit C: Notices of Meeting
- Exhibit D: PWNs
- Exhibit E: Meeting documentation
- Exhibit F: Disciplinary records
- Exhibit G: Schedule, Grades, Attendance
- Exhibit H: Progress Monitoring
- Exhibit I: Service Logs
- Exhibit J: District Calendar
- Exhibit K: Policies and Procedures
- Exhibit L: Correspondence
- Exhibit M: List of District Staff with Knowledge related to Complaint Allegations
- Exhibit N: n/a
- Exhibit O: Recess Plan
- Exhibit P: Behavior incident tracker

Telephone Interviews

- Parent: June 15, 2026
- Analyst: June 9, 2026
- Teacher: June 16, 2026
- Director: June 18, 2026