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

State Complaint SC2026-594
Mesa County Valley School District 51

DECISION

INTRODUCTION

On June 2, 2026, the Parent ("Parent") of a student ("Student") not currently identified as a child with a disability under the Individuals with Disabilities Education Act ("IDEA")[1] filed a state complaint ("Complaint") against Mesa County Valley School District 51 ("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 June 2, 2025. Information prior to June 2, 2025 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 conduct an initial evaluation to determine whether Student qualified as a child with a disability under the IDEA—as requested by Parent from February 2026

[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.

through April 2026—or provide Parent with prior written notice explaining its decision(s) to not evaluate Student, as required by 34 C.F.R. §§ 300.301 and 300.503(a).

2. District did not identify and evaluate Student—from June 2, 2025 to June 2, 2026—when it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

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 second grade at a District elementary school ("School") during the 2025-2026 school year. *Complaint*, p. 1. He is not currently eligible for special education and related services. *Response*, p. 2; *Interviews with District's special education director ("Special Education Director"), Student's second grade teacher ("Second Grade Teacher"), School's Psychologist ("School Psychologist"), and Parent*.

2. Student is described as a kind and thoughtful child who likes to challenge himself and loves gymnastics, climbing, and caring for animals. *Interviews with Second Grade Teacher and Parent*. However, at school, he struggles with work completion, and, at home, he struggles with anxiety, elopement, and emotional regulation. *Id.*

3. Student has a diagnosis of Fetal Alcohol Spectrum Disorder ("FASD"). *Complaint*, p. 4; *Exhibit A*, p. 10; *Reply*, p. 23. Individuals with FASD have brain damage caused by prenatal alcohol exposure. *Consultation with CDE Specialist.* That brain damage can impact an individual's executive functioning, judgment, impulse control, memory formation, and cognitive processing. *Id.* FASD can also show up as uneven skills, poor cause and effect understanding, low adaptive function, inconsistency, and high rates of frustration or behavioral issues despite intervention. *Id.*

4. Parent's Complaint concerns District's response to a request for an initial special education evaluation in February 2026, as well as any obligation District had to identify and evaluate Student for special education and related services. *Complaint*, pp. 4-5; *Interview with Parent*.

B. District Policies, Practices, and Procedures

5. District's 2025-2026 Procedural Guidelines ("District Guidelines") outline the purpose, scope, and requirements of the IDEA's child find obligation. *Exhibit F*, p. 5. A special education referral may be made by either a parental request for evaluation or by District staff who have

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

reason to believe a student may have a disability under IDEA and need special education services. *Id.* at p. 5.

6. District has an established child find process in each school. *Interview with Special Education Director*. Each school has a multi-tiered system of supports ("MTSS") team that meets regularly, approximately every two weeks, to discuss students who may need special education services, interventions, or additional supports. *Interviews with School Psychologist and Special Education Director*. Depending on the school, a variety of staff participate in these meetings, such as administrators, counselors, school psychologists, general education teachers, and special education teachers. *Id*. During MTSS meetings, staff discuss students whose parents requested initial evaluations, as well as students referred by staff for initial evaluations. *Id*.

7. After a parent requests a special education evaluation, the District must either agree to the evaluation and provide the parent with prior written notice ("PWN") and a consent to evaluate or decline to evaluate and provide the parent with PWN explaining its reasons for declining to do so. *Id*. If the District declines to evaluate, Special Education Director reviews the PWN and the supporting data before the PWN is issued to the parent to ensure that the decision is appropriate. *Interview with Special Education Director*.

C. The 2024-2025 School Year and the Private Evaluation

8. During Student's first grade year, or the 2024-2025 academic year, he struggled with work avoidance, completing tasks, and listening to instructions. *Interview with School Psychologist*.

9. School Psychologist called Parent in November 2024 after school administration informed her that Parent had concerns about Student. *Id*. Parent shared with School Psychologist that she was worried about Student's anxiety and that he was not eating at home. *Id*. Additionally, Parent discussed Student's diagnosis of FASD with School Psychologist. *Id*.

10. After the call, School Psychologist sent Parent a consent form to allow School Psychologist to gather additional information from Student's first grade teacher ("First Grade Teacher"), which Parent signed. *Id*.

11. School Psychologist also reviewed an outside evaluation ("Private Evaluation") provided by Parent. *Id*. A private provider completed the Private Evaluation in October 2024. *Exhibit A*, pp. 1-13. The Private Evaluation noted Student was referred for a private, neuropsychological evaluation by his primary care physician based on known in utero exposure to "multiple substances" and concerning behaviors, including aggression, hyperactivity, and difficulty with concentration and listening. *Id.* at p. 1.

12. As part of the Private Evaluation, Private Psychologist assessed Student's cognitive functioning, neuropsychological abilities, and his behavior functioning. *Id.* at pp. 1-13. Overall, Student's cognitive functioning scores fell within the average range. *Id.* at pp. 2-3. Of note,

his verbal comprehension score was in the 81st percentile and his processing speed was in the 5th percentile. *Id.* Here, processing speed measures accuracy of visual identification, decision-making and implementation, short term memory, and visual coordination. *Id.*

13. The neuropsychological testing showed that Student had challenges related to "attention, inhibitory control, and adaptability," as well as difficulty with auditory attention and behavioral productivity. *Id.* at p. 5.

14. The assessments related to Student's behavior functioning were completed only by Parent; however, nearly two dozen of the categories fell within the "clinically significant range." *Id.* at pp. 7-9. His overall adaptive functioning also fell within the third percentile. *Id.*at p. 9.

15. The Private Evaluation included diagnoses of "other specified neurodevelopmental disorder with prenatal exposure to methamphetamines, alcohol and nicotine," "other specified depressive episodes" and "other specified anxiety disorder." *Id*. at p. 10.

16. Following her review of the Private Evaluation, School Psychologist reached out to First Grade Teacher to discuss Student's performance at School. *Interview with School Psychologist*.

17. First Grade Tracher shared that Student struggled with work refusal, listening, and writing. *Id.* At that time, First Grade Teacher was using a sticker chart to track how often Student needed repeated directions and to reinforce his ability to stay focused on his work. *Id*. Student used the sticker chart for first and second quarters but was exited from the sticker chart for third and fourth quarters due to his improvement. *Id*.

18. Parent stated that she requested an initial special education evaluation in February 2025 due to her concern about Student's behavior following an incident earlier that month. *Id*. District decided there was no need for an evaluation, because Student responded well to general education interventions and the behaviors seen in the school setting for Student were considered typical for his age. *Interview with School Psychologist*.

D. <u>The 2025-2026 School Year</u>

19. During the 2025-2026 school year, Student similarly struggled with work avoidance and listening to directions. *Interview with Second Grade Teacher*. Three or four times during the school year, Student did not complete his weekly work by Friday and missed out on "Free Choice Friday" with his classmates. *Id*. Second Grade Teacher reported that Student's work refusal increased from fall to spring. *Id*. Parent indicated that Student struggled to understand why he received consequences, both at home and at school. *Interview with Parent.*

20. Academically, Student was at benchmark, and he performed well on standardized tests. *Interview with Second Grade Teacher*. Throughout the school year, he consistently received grades indicating he was "partially proficient." *Exhibit B*, p. 1. His grades in math showed he was proficient, while his grades in writing were "unsatisfactory." *Id.* Student's report card

showed his behavior in the classroom was "partially proficient," though his specials teachers noted his behavior was "unsatisfactory" during the fourth quarter. *Id.* at p. 1.

21. His behavior log for the 2025-2026 school year includes a variety of minor incidents related to being distracted in class, work refusal, and noncompliance with Second Grade Teacher's instruction, as well as a few major incidents involving physical aggression toward other students and staff. *Exhibit C*, pp. 1-3. Not all of his behaviors were included in the behavior log. *Interview with Second Grade Teacher*. For instance, if Student stopped the behavior with one reminder from Second Grade Teacher, then the incident was not added to the behavior log. *Id*. Similarly, if Student was called to the office but responded to School staff and was able to return to the classroom, then the incident was not added to the behavior log. *Id*.

22. In February 2026, Student's class had a Valentine's Day party. *Id*. Student was able to attend a portion of the party before lunch; however, he was excluded from the remainder of the party following lunch and recess, because he had not yet finished his schoolwork. *Id.* Student and one other classmate went to the office to finish their work instead of joining the class for the remainder of the Valentine's Day party. *Id*.

23. Following Student's exclusion from a portion of the class Valentine's Day party, he was upset and struggled to emotionally regulate at home. *Interview with Parent*. Parent noticed his emotional regulation and behavioral functioning decline following this event. *Id*.

E. Parent's Request for Initial Evaluation and District's Response

24. Parent requested an initial special education evaluation in late February 2026, following the Valentine's Day party. *Interviews with Parent and School Psychologist.*

25. After District received Parent's request for an initial evaluation, School Psychologist reached out to Parent to let her know that the request was received and that the MTSS team would review Student's data and then get back to Parent with a decision. *Interview with School Psychologist*; *Reply*, p. 2; *Exhibit G*, p. 14; *Exhibit D*, p. 1.

26. School Psychologist contacted Second Grade Teacher to gather information, specifically regarding whether Student avoided completing his work or required any additional support in the classroom. *Exhibit G*, p. 14; *Interview with School Psychologist*. Second Grade Teacher reported that Student continued to struggle with work avoidance but did not identify any new behaviors or other areas of concern. *Id*. Second Grade Teacher also noted he was not receiving any social-emotional supports or interventions from the School's counselor or principal. *Id*.

27. In making the decision whether to evaluate, School Psychologist, in consultation with the MTSS Team, reviewed a variety of data, including: the Private Evaluation provided by Parent, Student's standardized assessment results, Second Grade Teacher's input, and Student's

historical behavior data and previous behavior charts. *Exhibit D*, p. 1; *Interview with School Psychologist*.

28. District ultimately decided not to move forward with an initial special education evaluation due to Student's academic performance and a lack of concern from Second Grade Teacher regarding motor skills or sensory regulation. *Interview with School Psychologist*. Additionally, School Psychologist considered the fact that while Student did struggle with work avoidance, he also responded well in the past to general education supports, such as a sticker chart. *Id*.

29. School Psychologist prepared the PWN and issued it on April 7, 2026. *Exhibit D*, p. 1. School Psychologist emailed the PWN to Parent on April 7, 2026 along with an explanation that District would not be moving forward with a special education evaluation and an offer to conduct a "formal classroom observation" of Student to address Parent's "Social-Emotional Learning (SEL concerns)." *Exhibit G*, p. 3; *Exhibit D*, p. 1 Parent did not consent to this observation. *Interviews with Parent and School Psychologist*.

30. As with all cases where there is a decision not to move forward with an initial special education evaluation, Special Education Director reviewed Student's case, data, and PWN ahead of the PWN being issued. *Interview with Special Education Director*. Special Education director agreed with the decision not to evaluate. *Id*.

F. Subsequent Behavioral Incidents

31. In May 2026, Student's behavior escalated, culminating in two "major" behavioral incidents. *Exhibit C*, p. 1. The first incident occurred on May 7 in a specials class. *Id*.; *Interview with Second Grade Teacher*. That day, Student's friend told him that he no longer wanted to be friends. *Exhibit C*, p. 1. Student began yelling at the friend and threatened to punch the friend. *Id.; Interview with Parent*. Student then took papers from the teacher, and when Student was called to the office, he hit and pushed two teachers. *Exhibit C,* p. 1. Following the incident, School called Parent and requested Parent pick Student up from School. *Interview with Parent*. Student's babysitter picked Student up from School. *Id*.

32. Following this incident, Student received one day of in-school suspension ("ISS") served on May 11, 2026. *Exhibit C*, p.1; *Interviews with Second Grade Teacher and Parent*. After being picked up from ISS, Student became dysregulated and began crawling around on the floor at home. *Interview with Parent*. Parent was unable to comfort Student, and he eloped out of his bedroom window and ran to a neighbor's house that evening. *Id*.

33. The second behavioral incident occurred on the following day, May 12. *Exhibit C*, p. 1; *Interview with Parent*. Student was refusing to complete his work and was crawling around the classroom. *Exhibit C*, p. 1; *Interview with Second Grade Teacher*. Second Grade Teacher asked him if he wanted to go to the "calm corner", but he declined. *Interview with Second Grade Teacher*. She also asked him if there was "anything [she] could do to help him." *Id.* He indicated he wanted to be left alone. *Id.* A couple minutes later, Second Grade Teacher called

the office for support because Student was not responding to her redirection, and he was sent to the office where he served ISS the day prior. *Id.* While in the office, Student opened windows, pulled out the heater vent, and hit and kicked several staff members. *Interview with Parent*. School called the security guard. *Id.* When Parent arrived to pick Student up, he was in a fetal position, rocking back and forth. *Id*.

34. Since the behavioral incident on May 12, 2026, Student has struggled at home with closed doors and cannot be left alone in a room. *Id.* Student has also experienced increased anxiety and emotional dysregulation at home following the incident. *Id*.

35. Parent did not take Student back to School following the May 12 incident, due to Student's heightened anxiety and dysregulation. *Interviews with Second Grade Teacher and Parent*. Student does plan to return for the 2026-2027 school year. *Interview with Parent*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District provided Parent with PWN explaining its decision not to evaluate Student in April 2026, as required 34 C.F.R. §§ 300.301 and 300.503(a). District complied with the law.

A. Legal Requirements for Requests for an Initial Evaluation

An initial special education evaluation seeks to determine whether a child has a disability within the scope of the IDEA and, if so, aids the IEP Team in the development of the child's IEP. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). School districts must complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a). A school district may initiate a special education evaluation on its own reasonable suspicion, or a parent may request an initial special education evaluation. *Id.* § 300.301(b); ECEA Rule 4.02(3)(a). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with PWN explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 05/17/19); 34 C.F.R. § 300.503(a).

If a District agrees to evaluate the student, it must seek parental consent for the evaluation and, within 60 days of receiving parental consent, complete the evaluation. 34 C.F.R. § 300.301(c); ECEA Rule 4.02(3)(c). If a school district does not suspect a disability and denies a parent's request for an initial evaluation, the district must provide PWN to the parent explaining why the district refused to conduct an initial evaluation and the information used as the basis for that decision. 34 C.F.R. § 300.503(a)-(b); *see also Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011). Further, "[a] district cannot escape its obligation to provide [PWN] by failing to appropriately respond to a parent's request. A school district's decision to take no action qualifies as affirmative refusal." *W. Linn-Wilsonville Sch. Dist*., 121 LRP 40626 (SEA OR 06/11/21). School

districts that do not either obtain parental consent or provide PWN after a parental request for an evaluation act inconsistent with IDEA. *See Denver Pub. Schs.*, 125 LRP 2519 (SEA CO 11/19/24) (finding five-month gap between a parent's request for evaluation and the district seeking parent's consent was unreasonable and did not "cure" the fact that the district did not provide PWN after its initial decision not to evaluate the student); *Athens City Schs.*, 123 LRP 36938 (SEA OH 07/18/23) (following a parent's request for evaluation, "District did not obtain consent, complete an evaluation, nor did it sent the Parent [PWN] to say it did not suspect a disability and would not be conducting an evaluation," resulting in noncompliance with the IDEA).

B. District's Response to Parent's Request for an Initial Evaluation

In this case, Parent requested an initial special education evaluation in late February 2026. (FF # 24). District received and considered Parent's request. (FF # 25). School Psychologist was informed of the request and thereafter began her consideration of the request. (FF #s 25-26). School Psychologist reviewed a variety of data, including historical behavioral data, as well as Second Grade Teacher's input. (FF # 27). Ultimately, District decided that a special education evaluation was unwarranted. (FF # 28). School Psychologist prepared a PWN and included in that PWN an explanation of the decision to not evaluate, including a brief review of Student's standardized assessment result, Second Grade Teacher's input, and Student's historical behavior data. (FF #s 27-29). A copy of the PWN was emailed to Parent on April 7, 2026. (FF # 29).

Therefore, the CDE concludes that District provided Parent with PWN explaining its decision not to evaluate Student in April 2026, as required by 34 C.F.R. §§ 300.301 and 300.503(a). District complied with the IDEA.

Conclusion to Allegation No. 2: District did not identify and evaluate Student for special education and related services during the 2025-2026 school year when District had a reason to suspect that Student may have a qualifying IDEA disability and need for special education, as required by 34 C.F.R. §300.111 and ECEA Rule 4.02(1)-(3). This noncompliance did not result in a denial of FAPE.

A. The Child Identification Process Under IDEA

The IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process "shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education." ECEA Rule 4.02(1)(a)(ii).

Under the "special education referral" component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(a); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a). A student who is gifted may still be eligible for special education

and related services under the IDEA as long as the student has a qualifying disability. *Letter to Anonymous*, 110 LRP 52277 (OSEP 01/13/10) ("[S]tudents who have high cognition, have disabilities, and require special education and related services are protected under the IDEA and its implementing regulations").

The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is "whether the child should be referred for an evaluation, not whether the child actually qualifies for the services." *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion "may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist*., 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; *see also Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School Districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe Cnty. Sch. Dist*. 5, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch*., 115 LRP 26069 (SEA OH 5/07/15)).

However, "child find does not demand that schools conduct a formal evaluation of every struggling student," and "schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities," especially at a time when students are acclimating to a new school environment. *D.K. ex rel. Stephen K. v. Abington Sch. Dist.*, 696 F.3d 233, 254 (3d Cir. 2012) (finding no child find violation where student was exhibiting behaviors typical of his age and District responded by implementing general education interventions with parents' cooperation); *Cherry Creek Sch. Dist. No. 5*, 125 LRP 10301 (SEA CO 01/11/23) ("[T]he child find obligation does not extend to testing every student who is not successful when factors other than a disability would also explain the failure to progress") (citing *J.N. v. Jefferson Cnty. Bd. of Educ.*, 421 F. Supp. 3d 1288 (N.D. Ala. 2019)). And "mixed academic success does not—in itself—trigger a school district's obligation to evaluate." *Leigh Ann H. ex rel. K.S. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 797 (5th Cir. 2021) (finding no child find violation where neither parent or school staff expressed academic or behavioral concerns before parent requested an evaluation, and student was "an average student"); *Brighton 27J Sch. Dist.*, 119 LRP 37633 (SEA CO 06/24/19) (finding no child find violation where student's performance was average and his behavior and academic performance were not sufficient to put the district on notice that student may have an IDEA-qualifying disability).

A school district may attempt pre-referral interventions before initiating an IDEA evaluation. *See, e.g.*, *M.G. v. Williamson Cnty. Schs.*, 720 F. App'x 280, 285 (6th Cir. 2018) (finding district "effectively utilized general intervention strategies" before evaluating student); *Denver Pub.*

Schs., 123 LRP 33002 (SEA CO 03/10/23) (finding no child find violation where district did not have reasonable suspicion that student may be a student with a disability, even given certain behaviors, which district addressed via general education interventions). However, a response-to-intervention process cannot be used to delay or deny an evaluation. *Letter to Ferrara*, 60 IDELR 46 (OSEP 2012). School districts must act within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. *D.T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1274 (10th Cir. 2022).

In deciding whether District fulfilled its child-find obligation here, the CDE considers the individual circumstances of this case to determine whether District had a reason to suspect that Student needed to be evaluated for special education. *Cherry Creek Sch. Dist*., 119 LRP 30204 (SEA CO 5/17/19); *Weld RE-4 Sch. Dist.*, 119 LRP 5662 (SEA CO 1/2/19) (citing *Clark Cnty. Sch. Dist*., 114 LRP 45477 (SEA NV 8/28/14)).

B. District's Child Find Obligation to Student

Here, the evidence in the Record demonstrates that District had a reasonable suspicion that Student may have a disability and need for special education and related services during the 2025-2026 school year. Reasonable suspicion can be inferred from "written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017). In Student's case, several of these areas indicated Student may have at least one IDEA disability and need special education and related services and, in turn, should have prompted District to evaluate Student.

First, Parent had both expressed concern about Student's diagnosis and requested an initial evaluation. (FF #s 9, 18, 24). As early as November 2024, Parent provided the Private Evaluation and shared concerns regarding Student's performance and the impact his FASD diagnosis—which can affect executive functioning, judgment, impulse control, memory formation, and cognitive processing and manifest, in part, as low adaptive function, high rates of frustration, or behavioral challenges despite intervention—might have at School. (FF #s 3, 9). District declined to evaluate during the 2024-2025 school year, despite Parent sharing these concerns, citing the fact that Student was responding well to general education intervention. (FF # 18). These conversations continued until Spring 2026 and involved, at various times, Second Grade Teacher, School Psychologist, and School administrators. (FF #s 25-27.)

Second, District was aware of ongoing behavioral concerns for Student. As a first grader, Student struggled with work avoidance and listening to directions in the classroom. (FF # 17). While Student's work avoidance improved through the implementation of a sticker chart during the first half of the 2024-2025 school year, Student continued to struggle with work avoidance and listening in the 2025-2026 school year. (FF # 19). His behavior log reflects a few behavioral challenges during the school year, but Second Grade Teacher indicated incidents were not documented in the log if Student was able to ultimately regulate and return to the classroom. (FF # 21). Because of this, the Record does not accurately reflect how often Student required support

from the office to address his behavior. (FF # 21.) Regardless, Second Grade Teacher reported that his work refusal increased during second semester of the 2025-2026 school year. (FF # 19).

Third, District witnessed an escalating pattern of behavior in May 2026. (FF #s 31-35). On May 7, an interpersonal conflict between Student and a friend resulted in Student yelling and threatening to punch the friend. (FF # 31). This escalated to Student taking papers from Second Grade Teacher and being called to the office where he hit and pushed two teachers. (FF # 31). Student received ISS, which he served on May 11. (FF # 32). After serving ISS, he became emotionally dysregulated at home and struggled with increased anxiety and elopement at home. (FF # 32).

The next day, on May 12, after refusing to complete his work and crawling on the floor, Student was sent to the office where he had served ISS the day prior. (FF # 33). While there, Student's behavior escalated as he opened windows, pulled out the heater vent, and hit and kicked several staff members. (FF # 33). School called the security guard. (FF # 33). After this event, Student struggled at home with heightened anxiety, being alone, being behind closed doors, and emotional regulation. (FF #s 34-35).

Taken together, the above information created a reasonable suspicion that Student might be a child with a disability as defined by the IDEA and need special education. This reasonable suspicion was created by Student's continued behavioral concerns and work refusal, knowledge of Student's FASD diagnosis and observed functional impacts at School consistent with that diagnosis, parental concern, and a parental request for an evaluation. District appeared to heavily base its decision not to evaluate on Student's academic performance. (FF # 28). Even though Student was at benchmark and meeting academic goals, he had behavioral concerns that warranted further assessment to determine if they reflected disability-related educational need. (FF #s 19-22, 31-33).

Based on this, the CDE finds and concludes that District had a reasonable suspicion that Student might be a child with an IDEA disability and need special education and related services. Therefore, District had an obligation to evaluate Student during the 2025-2026 school year and did not comply with 34 C.F.R. § 300.111 or ECEA Rule 4.02(1)-(3).

C. No Denial of FAPE

Procedural noncompliance with the IDEA results in a denial of FAPE if it (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001). For a district to be held liable for a denial of FAPE, the student must be a student with a disability. *D.G. v. Flour Bluff Indep. Sch. Dist.*, 481 F. App'x 887, 893 (5th Cir. 2012) (holding that a school district cannot be held liable for a denial of FAPE unless the student has a need for special education).

Here, since Student's status as a child with a disability requiring special education has not been determined, there is no basis for the CDE to conclude that the procedural noncompliance resulted in a denial of FAPE. *See Pueblo Sch. Dist. 60*, 124 LRP 36441 (SEA CO 05/31/24) (finding that it cannot be known until after an evaluation and eligibility determination whether a student will qualify for special education); *Douglas Cnty. Sch. Dist.*, 119 LRP 30196 (SEA CO 04/15/19); *D.G.*, 481 F. App'x at 893.

This conclusion, however, does not preclude the CDE from ordering a remedy to address the effect of District's noncompliance. Accordingly, the CDE will order District to complete a special education evaluation for Student to determine whether he is eligible for special education and related services, provided Parent makes Student available for the evaluation process consistent with the ordered remedy.

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, the 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 Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, nothing in the Record indicates that the District's noncompliance is systemic in nature. District's procedures regarding special education referrals, child find, and initial evaluations are consistent with the IDEA's requirements. (FF #s 4-6). And District has systems in place—such as its MTSS teams—to regularly discuss students whose parents requested initial evaluations, as well as students referred by staff for initial evaluations and other students who might need special education interventions. (FF # 4). The noncompliance in this investigation appears to arise from the emphasis District staff placed on his academic performance, as well as a lack of understanding regarding the complexity of FASD and the potential functional impacts that may warrant consideration as part of the child find process. Accordingly, the CDE finds and concludes that the noncompliance in this case was not systemic.

REMEDIES

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

1. Not identifying and evaluating Student when it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

To demonstrate compliance, District is ORDERED to submit a corrective action plan ("CAP") by **Friday, August 28, 2026** that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

1. **Final Decision Review**

    a. Special Education Director, School Psychologist, and Second Grade Teacher must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3), by **Friday, September 11, 2026**. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE no later than **Friday, September 18, 2026.**

2. **Evaluation of Student and Determination of Eligibility**

    a. By **Friday, October 30, 2026**, District must conduct a comprehensive evaluation of Student in all areas of suspected disability. District may determine the appropriate evaluations and evaluators. The evaluation must be conducted in all areas of suspected disability and be consistent with the IDEA's evaluation procedures at 34 C.F.R. §§ 300.301, 300.304. The evaluator(s) must be appropriately licensed, trained, and knowledgeable to conduct the assessments.

    b. Consent for the evaluation must be obtained no later than **Friday, September 11, 2026**. If Parent does not provide consent within 10 days of receiving the request to evaluate, District will be excused from conducting the evaluation ordered in this Decision provided District diligently attempts to obtain consent. A determination that District diligently attempted to secure consent for evaluation, and thus should be excused from evaluating Student, rests solely with the CDE. If Parent conditions consent for evaluation inconsistent with the scope of the evaluation ordered in this Decision, this may be construed as a refusal to provide consent. A determination that Parent refused consent by adding conditions rests solely with the CDE.

    c. Evidence that this evaluation has occurred—including consent to evaluate and the evaluation report—shall be provided to the CDE by **Friday, November 6, 2026**.

NOTE: CDE Special Education Monitoring and Technical Assistance Consultant will contact District with specific instructions for securely submitting the documentation detailed above. The CDE will approve or request revisions that support compliance with the CAP. After approval of the CAP, the CDE will arrange to conduct verification activities to confirm District timely correction of the areas of noncompliance. 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. ECEA Rule 7.06(3); *CDE's State Complaint Procedures*, Section E, ¶ 2. If a party disagrees with this Decision, that party may file a Due Process Complaint if the law permits a due process hearing on the issue(s) in dispute. ECEA Rule 7.06(3); *CDE's State Complaint Procedures*, Section E, ¶ 2; 34 C.F.R. § 300.507(a); 71 Fed. Reg. 46,607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer ("SCO").

Dated this 31st day of July, 2026.



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Haley Solomon, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-5

Response, pages 1-4

- Exhibit A: Outside Evaluation
- Exhibit B: Student Grades
- Exhibit B: Student Period Attendance
- Exhibit C: Student Disciplinary History
- Exhibit D: Prior Written Notice
- Exhibit E: District Calendar
- Exhibit F: District Procedural Guidelines
- Exhibit G: Emails
- Exhibit H: Email Between Parent and Second Grade Teacher
- Exhibit I: First Grade Teacher BASC Rating
- Exhibit J: First Grade Teacher Input

Reply, pages 1-31

Telephone Interviews

- Second Grade Teacher: July 1, 2026
- School Psychologist: July 1, 2026
- Parent: July 2, 2026
- Special Education Director: July 8, 2026