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

State Complaint SC2026-596
Mesa County Valley School District 51

DECISION

INTRODUCTION

On May 22, 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 four 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 extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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 22, 2025. Information prior to May 22, 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:

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[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.

1. District did not develop an individualized education program from May 22, 2025 to present that included a statement of the special education and related services—specifically a 1:1 aide—to enable Student to advance appropriately toward attaining annual goals, as required by 34 C.F.R. §§ 300.320 and 300.324.

2. District did not evaluate Student in all areas related to the suspected disability—specifically his social/emotional, functional, health, communication, and written expression needs—in spring 2026 as required by 34 C.F.R. § 300.304(c)(4).

3. District did not properly determine Student's eligibility and educational need at a meeting on May 6, 2026, because it:

    a. Did not ensure a group of qualified professionals and Parent—specifically the special education director or designee and the school nurse—determined whether Student is a child with disability, as required by 34 C.F.R. § 300.306(a)(1) and ECEA Rule 4.02(6)(b).

    b. Did not ensure that information obtained from the variety of sources—specifically the Parent and private ABA provider—was documented and carefully considered, as required by 34 C.F.R. § 300.306(c)(1)(ii).

4. District imposed conditions or timelines related to obtaining an independent educational evaluation ("IEE") at public expense—specifically by limiting the scope of the IEE—following Parent's request for an IEE in summer 2026, that were inconsistent with the requirements of 34 C.F.R. § 300.502(e).

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 eight years old and resides within the boundaries of District. *Exhibit A*, p. 1. During the 2025-2026 school year, Student attended second grade at a District school ("School"). *Response*, p. 1.

2. Student was previously eligible as a child with an other health impairment ("OHI") and autism spectrum disorder ("ASD"). *Exhibit A*, p. 1. Student has some difficulties with anxiety, atypical behaviors, self-regulation and change in routine. *Id.* at p. 6; *Exhibit B*, pp. 15-9. He also has

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

challenges with written expression, including legibility and organizing his thoughts. *Exhibit B*, pp. 9, 21.

3. Student is outgoing and enjoys interacting with peers. *Interviews with Student's classroom teacher ("Teacher") and his special education teacher and case manager ("Case Manager")*. He is bright and curious. *Interviews with Parent and Teacher*. He is also very active and has a hard time sitting still or slowing down. *Id*.

B. District's Practices and Procedures

Reevaluations and Eligibility Determinations

4. District evaluates eligible students at least every three years but may reevaluate sooner when it sees consistent growth. *Interview with Case Manager*. When students are making consistent progress, District wants to check in and see if the student still requires specialized instruction. *Id*.

5. Before conducting a reevaluation, staff meet to review data and decide what areas to evaluate. *Interviews with Case Manager and District's special education coordinator ("Coordinator")*. The team considers academic testing, classroom data, behavior data, and current services to determine what areas to assess. *Id*.

6. District coordinators have been focusing on supporting teams to ensure staff are conducting comprehensive evaluations. *Interview with District's special education compliance coordinator ("Compliance Coordinator")*. They have offered training on this during professional development. *Id*. Coordinators also support teams during meetings to identify the areas to evaluate. *Id*.

7. Eligibility determination meetings are always attended by the case manager, the special education teacher (if different than the case manager), the school psychologist, a general education teacher, and parents. *Interview with Coordinator*. Other providers, like occupational therapists and speech-language pathologists, attend if there are related concerns for the student. *Id*.

8. Coordinators participate as often as they can and support teams as needed. *Interviews with Coordinator and Compliance Coordinator*. When coordinators attend, they act as the director designee. *Id*. If no coordinator attends, the director designee may be the case manager or a school psychologist. *Id*.

9. Nurses only attend if the student has a more involved medical condition. *Id.* Otherwise, medical issues are addressed through health plans that are separate from the IEP process. *Id*.

IEE Requests

10. Requests for independent educational evaluations ("IEEs") are always directed to Compliance Coordinator. *Id.* Compliance Coordinator reviews any requests with District's Legal Counsel to decide how to proceed. *Interview with Compliance Coordinator*. She also sends the parents District's guidelines for IEE requests ("IEE Guidelines"). *Id.*; *see Exhibit I*, pp. 82-83.

11. The IEE Guidelines advise that parents must request IEEs in writing and can only request them for "the most recent evaluation performed by the District." *Exhibit I*, p. 81. The IEE Guidelines add that District "is not obligated to perform any assessment or evaluations that were not completed previously on the child." *Id*.

12. Upon receipt of an IEE request, District must, "without unnecessary delay" either grant the IEE or file a due process complaint. *Id*. If District is granting the IEE, District must provide parents with information about where to obtain an IEE and District's criteria. *Id*. The IEE Guidelines include a list of criteria along with the relevant citation from the federal regulations. *Id*. at p. 82. They also include required qualifications for evaluators. *Id*.

13. During the summer of 2026, District's Director of Special Education ("Director") and Compliance Coordinator revised District's IEE Guidelines ("Updated IEE Guidelines") to include more details. *Id*. at pp. 83-88; *Interview with Compliance Coordinator*. The Updated IEE Guidelines include additional explanations about the qualifications required for evaluators and the permissible costs for various types of assessments. *Exhibit I*, pp. 84-89. They also continue to specify that "District is not obligated to perform any assessment or evaluations on areas that were not completed previously on the child." *Id*. at p. 83.

C. Student's Behavioral History

14. During the 2024-2025 school year, Student was supposed to check out with a special education teacher at the end of the day and then be released to his Parents in the front of School. *Interviews with Student's occupational therapist ("OT") and Case Manager; Exhibit J*, p. 137. On December 3, 2024, the special education teacher was late to pick up Student, who told the substitute teacher in his classroom that he "goes to the back gate for dismissal" and started walking home. *Exhibit J*, p. 137. Although he was found in under three minutes, he was not there when Parent arrived to pick him up. *Id*.; *Interviews with Parent, OT, and Case Manager*.

15. Between October and December 2024, Student told his first-grade teacher three times that he was "to go to a location that [was] not where he was meant to be." *Exhibit A*, p. 5. Parent also recalled a second incident in December 2024 when Student ran to the cafeteria when he was supposed to be in class. *Interview with Parent*. School staff do not recall any other incidents when Student eloped or went somewhere without permission. *Interviews with OT, Case Manager, and Teacher*.

16. Student was consistently supervised during transitions but never tried to wander or leave when walking with OT or Teacher. *Id*. He sometimes did not want to come in from recess but responded easily to redirection. *Interview with Teacher*. Teacher did notice him pulling or darting away from Parent when Parent was present. *Id*.

17. At home, Student frequently leaves the house without permission or darts away in public. *Interview with Parent*; *Exhibit 5*, p. 2. His family is constantly on alert trying to keep him safe. *Interview with Parent*.

18. Student also meets with staff from a private respite program several times per week. *Interview with Student's respite provider ("Private Respite Provider")*. Staff from the respite program meet with Student in his home and take him out into the community. *Id*. He needs constant 1:1 support in the community and tends to leave without permission. *Id*.

19. Student also leaves the room in the middle of the private applied behavior analysis ("ABA") therapy he attends outside of school. *Interview with Student's private board certified behavior analyst ("Private BCBA")*. With both providers, when he wanders away, he does not respond to verbal redirection and must be physically prompted to return. *Interviews with Private BCBA and Private Respite Provider*.

20. Student is easily distracted and needs constant engagement. *Interview with Private Respite Provider*. He is "one of the most hyperactive children" with whom Private Respite Provider, a licensed special education teacher, has ever worked. *Id*.

21. Parent brings Student's lunch to School almost every day and feeds him. *Interviews with Parent and Case Manager*. Student does not have any motor needs that impact his ability to eat. *Interview with Parent and OT*. Parent started doing this because Student was so distractable he was not eating his lunch and was losing weight. *Interview with Parent*. Student was slow to eat lunch, which caused some awkward social situations when the class had to wait for him to finish. *Interview with Teacher*. District was not aware of this concern, but Student was physically capable of eating independently. *Interviews with OT and Coordinator.*

D. Student's 2025 IEP

22. Student's most recent individualized education program ("IEP") was developed on May 16, 2025 by an IEP Team that included Parent, Case Manager, Coordinator, and OT. *Exhibit A*, pp. 1-15; *Interviews with Parent, Case Manager and Coordinator*.

Present Levels

23. During the 2024-2025 school year, under his previous IEP, he received 500 minutes per week ("MPW") of direct instruction outside of general education in "social skills, emotional regulation, school and safety expectations, and communicating wants and needs." *Exhibit A*, p. 4. His IEP also required 1,000 MPW of direct instruction inside general education in "social skills, following teacher directions, completing non preferred (sic) tasks, emotional regulation

and communicating wants and needs." *Id*. With those supports, he met his previous goals of taking turns in group activities and transitioning from preferred activities with no more than two warnings. *Id*. at p. 5.

24. Student attended only 71% of school days the 2024-2025 school year but was still meeting grade-level expectations for reading and math. *Id.* at pp. 3-4. Student had "great ideas" when writing but struggled with the fine motor skills. *Id*. at p. 4. Student received 90 minutes per month ("MPM") of direct occupational therapy services "to address his fine motor, visual motor, and sensory processing skills." *Id*. He made insufficient progress on his goal to accurately form upper- and lowercase letters "due to his attendance." *Id*. at p. 6.

25. He was diagnosed with an ASD and Attention Deficit Hyperactivity Disorder ("ADHD") and participated in several outside therapies. *Id*. at p. 5. He needed direct instruction in coping skills, managing impulsive behaviors, interacting with peers, safety awareness, and following school expectations. *Id*. at p. 6. "Due to a lack of safety awareness" generally observed during transitions, Student "require[d] safety monitoring as needed, throughout the school day." *Id*. He also required "skilled OT services" to help him express himself in writing. *Id*.

Supports and Annual Goals

26. Student required a behavior intervention plan ("BIP") and special transportation. *Id*. at p. 7. The IEP included accommodations for emergency situations, requiring that Student remain near staff throughout any related events, like fires. *Id*. at p. 9

27. The IEP included 31 other accommodations, such as movement breaks, wait time for compliance, teaching social problem solving, preferential seating near an adult, and chunking information. *Id*. at pp. 8-9. For safety, the accommodations required that staff "have close line of sight monitoring" "in all environments including transitions, non preferred (sic) activities." *Id*. at p. 9. When around cars or away from School, Student would be "in close proximity of an adult or holding their hand." *Id*.

28. The IEP included two social emotional goals, challenging Student to: (1) "initiate teacher directives with a maximum of 2 individualized redirections" 80% of the time, up from a baseline of 60%; and (2) "generalize turn-taking skills into unstructured play settings" in 80% of opportunities, up from a baseline of 50%. *Id*. at pp. 7-8. It also included a physical motor goal to "write 2 sentences legibly with consistent upper and lowercase letter formation, size, and line adherence 80% of the time," up from a baseline of 30%. *Id*. at p. 8.

Special Education and Related Services

29. Parent was pleased with Student's academic progress but concerned about his behavior. *Id.* at p. 6. Parent wanted all staff to be aware of his "behavioral tendencies, including elopement, manipulation, and hiding." *Id*. Parent expressed a need for close supervision for

all transitions. *Id*. Specifically, Parent requested a 1:1 aide for Student. *Interviews with Parent, OT, and Case Manager*.

30. The rest of the IEP Team did not see a need for a 1:1 aide. *Interviews with OT, Case Manager, and Coordinator*. Student was progressing on his goals and not having any significant behavior incidents. *Id*. Instead, to address Parent's concern, the IEP Team "ensured that safety accommodations related to [Student's] supervision [were] clearly documented in multiple sections" of the IEP. *Exhibit A*, p. 15. This included "supervision during transitions, anytime [Student was] outside the [S]chool fence, and in emergency situations." *Id*.

31. The IEP Team also "agreed to reduce the amount of direct service time provided outside of the general education environment . . . to increase his time with general education peers." *Id*. The IEP required 60 MPM of direct support in occupational therapy in "fine motor, visual motor, sensory processing, and neuro-cognitive interventions." *Id*. at pp. 12-13.

32. The IEP also required 400 MPW of direct instruction from a special education teacher outside of general education for social emotional support including daily check-ins and "small group instruction aimed at improving positive peer interactions." *Id*. Finally, it required 300 MPW of paraprofessional support inside of the general education setting to support Student "during transitions and times of unstructured play." *Id*.; *Interview with Case Manager*.

33. His least restrictive environment was general education 79.6% of the time. *Exhibit A*, p. 14.

E. Student's Attendance

34. In November 2025, Student started attending private ABA therapy outside of school. *Exhibit D*, p. 1; *Interview with Private BCBA*. These services are provided in the morning for two hours per day, four days per week. *Interview with Private BCBA*. This caused him to miss school. *Id*.; *Exhibit D*, p. 1.

35. District issued a prior written notice ("PWN") on November 11, 2025 ("November PWN") stating that "IEP services missed due to therapy outside of school [would] not be made up, as the IEP services [were] only available when the Student" attended school. *Exhibit D*, p. 1. District remained "ready, willing, and able to provide [his] services" when he was present. *Id*.

36. He also traveled internationally with Parent from February 10 through March 7 when she had to care for a family member. *Exhibit G*, pp. 6-7; *Exhibit 11*, p. 82; *Interview with Parent*.

37. In addition, Student was absent several other times for various reasons. *Exhibit G*, pp. 2-7. As of May 6, 2026, Student had attended 75.5% of the school year. *Exhibit B*, p. 1.

38. Student's sessions with Case Manager were scheduled before 10:00 a.m., so Case Manager only saw him once per week after he started ABA therapy. *Interview with Case Manager*. He continued to do well in general education without her services. *Id*. As a result of absences, OT saw Student nine times during the 2025-2026 school year. *Interview with OT*.

39. Despite the absences, Student continued to do well in class and recovered skills very quickly. *Interview with Coordinator*. The main support he required was redirection to start and complete tasks. *Interviews with Teacher and Coordinator*.

F. 2026 Reevaluation

40. Although Student was reevaluated in 2024 ("2024 Reevaluation"), District decided to reevaluate Student after two years because of his consistent progress on his IEP goals and in general education. *Interviews with Case Manager and Coordinator*. Based on his current areas of eligibility, District proposed conducting social and emotional assessments for Student, and Parent signed the consent for reevaluation on April 7, 2026. *Exhibit E*, p. 5.

41. Based on his classroom performance, District did not see a need to evaluate Student's academic abilities. *Interviews with Case Manager and Coordinator*. School staff considered conducting communication evaluations but did not because the 2024 IEP Team had decided there was not a need for speech services. *Interview with Coordinator*. District completed the reevaluation on May 6, 2026 ("2026 Reevaluation"). *Exhibit B*, pp. 1-7.

Review of Records

42. The 2026 Reevaluation started with a review of Student's background and health. *Id.* at pp. 1-2. The 2026 Reevaluation indicated Student was allergic to chocolate milk but had "[n]o other health concerns . . . that would affect the educational environment." *Id.* at p. 2.

43. The 2026 Reevaluation reviewed assessments previously administered to Student, including those from the 2024 Reevaluation. *Id.* at pp. 2-7. The 2024 Reevaluation found Student had average to above average cognitive abilities. *Id*.

44. On communication assessments used in the 2024 Reevaluation, Student scored in the severe range—or less than the 2nd percentile—in the areas of core language, expressive language, language content, and language structure. *Id.* at p. 3. He scored in the very low range (at the 4th percentile) for receptive language. *Id*. at pp. 2-3. He "struggle[d] to speak in a group setting and [would] at times growl and groan when asked to wait his turn." *Id*. at p. 3. The SLP concluded that, at the time, his "social communication goals [would] be best served under social-emotional learning." *Id*. However, speech services might "be added when the [SLP could] provide services that [were] uniquely different from what [was] already being provided." *Id*.

45. In 2024, Student scored in the average range on a test of achievement, except in "general information," which was delayed. *Id*. at p. 4. That section of the assessment considers a student's general understanding, with questions like "what do you use a stove for?" *Interview with Case Manager*. That section can be challenging for students with ASD. *Id*.

46. Student also had "Very Elevated" scores on some social emotional assessments in 2024, particularly in the areas of inattention/hyperactivity, defiance, and atypical behaviors and below average social and practical adaptive skills. *Exhibit B*, pp. 2, 4-6.

47. In 2024, OT assessed Student's visual motor integration and found that Student had average abilities for design copying and visual perception but low scores for motor coordination, or the ability to "trace between lines without going out of the lines." *Id*. at p. 7. He also had severe sensory difficulties with hearing, touch, and body awareness. *Id*.

Classroom Participation

48. During the 2025-2026 school year, Student approached expectations on District-wide math assessments. *Id*. at p. 7. He was at or above benchmark on a classroom literacy assessment. *Id*. at p 8. He was also meeting expectations in most areas on his report card. *Id*. at p. 8; *Exhibit G*, pp. 9-10. However, his behavior in elective classes was only partially proficient, even with adult support. *Exhibit B*, p. 8; *Exhibit G*, pp. 9-10. His grades indicated the most challenges with writing and grammar, where he earned unsatisfactory to partially proficient grades, with the lowest scores occurring in the first quarter. *Exhibit B*, p. 8; *Exhibit G*, pp. 9-10.

49. Teacher indicated that during reading instruction, Student was "observant, intelligent, and knowledgeable about text and analysis," but that this did "not show through on written assessment or on tasks that he approache[d] alone." *Exhibit B*, p. 9. Student's handwriting was difficult to read due to challenges with letter formation, spacing and not "adher[ing] to standard left-to-right, top-down linear text placement." *Id*. Student could form a sentence but "struggle[d] to slow down enough to write [his thoughts] in a coherent way" as he "skip[ped] essential words, transitions, etc." *Id*. His "chaotic" writing, "which often [led] him to become confused partway through a problem," also impacted his math performance. *Id*.

50. Student's behavior had "shown enormous improvements." *Id*. While Student liked to "negotiate," he responded well to "firm redirections." *Id*. Student's behavior did not result in any office referrals during the 2025-2026 school year. *Id*. at p. 2.

51. There were no progress updates for any goals after March 2026. *Exhibit F*, pp. 1-3; *Exhibit B*, pp. 10-11. Student made progress on both his social and emotional goals. *Id*. at pp. 10-11. As of March 2026, Student did "not require[e] individual prompts/directions and listen[ed] to whole group directions and follow[ed] them." *Exhibit F*, p. 1.

52. He also took "turns, independently without staff support." *Id*. at p. 2. Student made progress on his physical motor goal, but he intermixed upper and lowercase letters and struggled with line adherence and adequate spacing. *Id.* at p. 3; *Exhibit B*, p. 11.

Social and Emotional Assessments

53. Teacher and Student's other special education teacher ("Special Education Teacher") completed the Autism Spectrum Rating Scale ("ASRS") and the Behavior Assessment System

for Children ("BASC") rating scales. *Exhibit B*, pp. 13-19. On the ASRS, both noted elevated or slightly elevated concerns with unusual behavior (like tolerance for change in routine or overreactions to sensory experiences), self-regulation, behavioral rigidity ("tolerance for changes in environment [or] routines"), sensory sensitivity, and attention. *Id*. at pp. 18-19. Teacher reported slightly elevated concerns with atypical language ("ability to communicate in a structured and conventional way") and stereotypy ("repetitive, unpurposeful behaviors"). *Id*. at p. 19. Both reported average abilities for peer and adult socialization. *Id*.

54. On the BASC, both teachers noted clinically significant concerns with anxiety and atypicality ("the tendency to behave in…immature, odd, or seemingly disconnected" ways). *Id*. at pp. 14-16. Special Education Teacher also indicated clinically significant concerns with hyperactivity, which Teacher rated as at-risk. *Id*. Teacher rated Student as clinically significant for both internalizing problems ("social withdrawal and/or feelings of nervousness and sadness") and somatization ("complaints of physical ailments or oversensitivity to seemingly normal physical problems"). *Id*. Special Education Teacher indicated at-risk scores for both. *Id*.

55. Both also reported at-risk scores for: (1) externalizing problems, indicating Student "may struggle to keep his impulses under control and has been observed to act out in various ways that are detrimental to his academic success"); (2) conduct problems, suggesting he "ha[d] significant difficulties maintaining interpersonal relationships"; (3) school problems, signaling he displays some "behaviors that are very likely to interfere with achievement"; and (4) attention problems. *Id*. Teacher also reported at-risk concerns with Student's functional communication (the "skills needed to communicate feelings, present ideas, obtain needed information, and . . . communicate clearly"). *Id*. Neither reported concerns with Student's social skills or ability to complete activities of daily living. *Id*. at pp. 14-16.

56. A school psychologist ("School Psychologist") emailed Parent on April 27 about completing the rating forms over Google Meet with the support of an interpreter. *Exhibit J*, p. 74. She also called Parent twice, but her voicemail box was full the second time. *Id*. at p. 71. A building administrator sent her a message using a parent application. *Id*. at p. 70.

57. Parent did not respond, but she told the school nurse ("Nurse") she planned to complete the forms by May 1. *Id*. at p. 63. Parent expected to receive the forms by email but could not find them, so did not complete them. *Id*. at pp. 62-74; *Interview with Parent*. She did not understand she had to complete them with School Psychologist. *Interview with Parent*.

Occupational Therapy Assessment

58. OT completed the School Function Assessment ("SFA") to identify areas of need for Student. *Exhibit B*, pp. 20-22. The SFA measured his ability to complete various tasks throughout the school day. *Id*. Student exhibited skills at or above the grade-level cutoff in almost all areas. *Id*. This included tasks like setup and cleanup, eating and drinking, hygiene, and clothing management. *Id*.

59. The one exception was Student's written work score, which was significantly below the cutoff for his grade level. *Id*. During sessions, Student "struggled following directions" and required maximal cues to write one sentence. *Id*. at p. 22. OT stated that Student's "dishonesty" and "refusal to listen" impacted his fine motor skills. *Id*. She expected Student's writing would improve with more consistent attendance in general education. *Id*.

60. OT did not repeat the sensory assessments because his high energy levels and sensory needs are addressed through accommodations. *Interview with OT*.

Functional Behavior Assessment

61. After reviewing the initial data, District identified a need for additional data on Student's social and emotional functioning and proposed conducting a functional behavior assessment ("FBA"). *Exhibit E*, p. 1. Parent signed that consent April 22, 2026. *Id*.

62. The FBA identified the target behavior as "Off-Task behaviors" or engaging "in any tasks other than the assigned task or ongoing activity." *Exhibit B*, p. 25.

63. Teacher tracked all redirections required for Student over the course of four days. *Id*. at p. 26. The majority of redirections, 77%, were required on the day he arrived late, when he required 14 redirections. *Id*. ABC data tracking indicated that in unstructured environments, Student became "more active/engage[d] in movement in order to gain sensory input." *Id*.

64. Student was observed by a school psychology assistant three times and by School Psychologist once for the FBA. *Id.* at pp. 11-12, 26-28. Student engaged in classroom activities and followed teacher directions throughout all four observations. *Id*. During a 20-minute interval observation in Student's class, he was on task 100% of the time. *Id*. However, Student was very active, jumping and running while other students sat and never looking tired despite running "extremely fast" in gym class. *Id*. Teacher also provided hand-over-hand guidance for cutting during a class project. *Id*. at p. 27.

65. The FBA concluded that when "expected to follow directions in a more unstructured environment, [Student] becomes more active/engages in movement in order to gain sensory input." *Id*. at p. 30. This was most likely to occur during unstructured times, specials, and schedule disruptions. *Id*. In those moments, he benefited from "reteaching," and "reminders of what to do in certain social situations (especially with peers) or when dysregulated." *Id*.

Health History

66. Student's health history was included in the FBA. *Id.* at p. 29. Student had allergies and was undergoing evaluation for asthma due to symptoms when sick. *Id*. at p. 29. Parent stated that Student has asthma and severe allergies that necessitate support at school. *Complaint*, p. 13.

67. Parent also reported that Student needed support with toileting as he frequently came home with soiled clothes. *Interview with Parent.* Student previously had a health care plan for

toileting and still had "occasional accidents." *Exhibit B*, p. 29. Nurse noted that he might "require reminders to perform adequate hygiene." *Id*.

68. In fall 2025, Student fainted on the playground, and School had to call an ambulance. *Id*.; *Interviews with Case Manager, Teacher, and Parent*. After going to the hospital, Student wore a heart monitor for a few weeks, but no diagnosis was made. *Id*. Student would sometimes report that his "heart felt weird" or that he was dizzy. *Exhibit B*, p. 29; *Interview with Teacher*. Parent told School this was not cause for concern. *Exhibit B*, p. 29; *Interview with Teacher*.

69. The health summary also said Student required safety monitoring due to "a lack of safety awareness and history of eloping during transitions." *Exhibit B*, p. 29.

G. Eligibility Determination

70. On May 6, a Multidisciplinary Team ("MDT") including Parent, Special Education Teacher, School Psychologist, OT, Teacher, Coordinator, and Case Manager met to review the 2026 Reevaluation and discuss Student's continuing eligibility. *Exhibit E*, p. 7. Parent's concern with the composition of the MDT is that Coordinator signed as the director designee and that Nurse did not attend. *Id*.; *Complaint*, p. 4. Case Manager attended as the director designee, consistent with District practice. *Exhibit E*, p. 7; *Interview with Coordinator*. District determined that a nurse's attendance was not necessary given the nature of Student's health needs. *Interviews with Case Manager and Coordinator*.

71. The MDT started by reviewing the new assessments from the 2026 Reevaluation. *Interviews with Parent, OT, and Case Manager*. They did not discuss the communication assessments, or anything else included in the record review section. *Id*.

72. During the review, Parent did not ask many questions, and District staff thought she was nodding in agreement. *Interviews with Case Manager and Coordinator*. Parent did not receive a copy of the 2026 Evaluation before the meeting and was confused by what staff were saying, because they did not seem to be describing her child. *Complaint*, p. 6; *Interview with Parent*; *see Exhibit J*, pp. 1-148.

73. Parent raised concerns about Student's ability to use the bathroom independently. *Interviews with Parent and OT*. OT pointed out that he had the motor skills to do so. *Id*. In addition to Parent's concern about accidents, he had recently been observed to play with the toilet after using it. *Interviews with Parent and Private BCBA*. When OT asked Student why he needed an escort to the bathroom, he said it was because he would "mess around" in there. *Interview with OT*.

74. After reading through the 2026 Reevaluation, the MDT moved on to the eligibility determination form. *Interviews with Case Manager, OT, Parent, and Coordinator*. When they got to the question of whether Student could benefit from general education alone, everyone

but Parent answered yes. *Id*. This came as a surprise to Parent, who immediately disagreed. *Interviews with Parent, Case Manager, Teacher and OT*.

75. Parent raised concerns about Student's ability to make safe choices and stay in the building without supervision. *Interview with Teacher*. Parent also questioned how Student would be performing at School if he was not receiving so much private ABA support. *Id*. District staff did not share this concern and explained that Student was seeking age-appropriate independence. *Interviews with OT and Teacher*. School would also be a very safe place for him to practice those skills. *Id*. Parent's concern is that the MDT did not consider her feedback during the meeting. *Complaint*, p. 6.

76. Parent followed up in writing that day with an email to Director and several other District administrators. *Exhibit J*, pp. 44-46. Parent disagreed that Student could safely navigate School and the bus independently. *Id*. She also brought up his challenges in writing. *Id*. She requested a detailed PWN of the decision. *Id*.

77. District issued a PWN ("May PWN") explaining the eligibility determination. *Exhibit D*, pp. 2-3. Per the May PWN, the MDT considered the 2026 Reevaluation and determined that Student "display[ed] reading and math skills at grade level expectations" and "significant growth with his social-emotional skills." *Id*. Student was "able to maintain friendships with peers, stay on task, and follow directions similarly to other students his age." *Id*. Although Parent disagreed with this determination, "no data points within the body of evidence" showed that Student was "performing in the below-average range." *Id*.

78. The MDT concluded that his "high level of achievement" was the result of "his strong academic and cognitive skills" and not "a byproduct of specially designed instruction." *Id*. Although he displayed "anxiety and behavioral rigidity related symptoms," those did "not involve a deficit in his ability to learn" but rather indicated a need for accommodations. *Id*. Student benefitted from accommodations including, in part, structured movement breaks, reduced visual distractions, wait time, and frontloaded transitions and expectations. *Id.* at p. 3. The May PWN did not include information about why Parent disagreed with the decision. *Id*. at pp. 2-3.

H. Parent's IEE Request

79. In her May 6 email to Director, Parent requested an IEE to assess "his fine motor skills, self-regulation, and safety needs." *Exhibit J*, p. 44. Director granted the IEE, clarifying that it would be considered along with the 2026 Evaluation and not replace those results. *Id*. at p. 21. He also explained that the IEE would be "limited only to the areas of evaluation that were completed on the current evaluation." *Id*.

80. On May 14, Compliance Coordinator sent Parent the IEE Guidelines. *Id*. at p. 1. Compliance Coordinator explained that she was "in the process of locating providers that [were] licensed

and available" to assess in the areas included in the 2026 Reevaluation: (1) social/emotional assessment; (2) Autism rating scales; and (3) motor assessments. *Id*.

81. Parent clarified that she considered the 2026 Reevaluation to be incomplete, because District did not evaluate Student's academic, functional, and safety needs that had been documented by Parent and private providers. *Id*. at p. 164. Specifically, Parent said District had not evaluated Student's safety and behavior around elopement which required a BIP or his hyperactivity and inability to remain at his desk for more than five minutes at a time. *Id*.

82. Parent indicated on May 18 that federal guidance states a parent is entitled to an IEE if the parent disagreed that a district's evaluation was comprehensive. *Id*. Thus, Parent asked that the IEE not be limited to areas previously assessed by District. *Id*. She requested a comprehensive evaluation including an FBA and a comprehensive psychoeducational and attention assessment to measure the impact of hyperactivity on his education. *Id*.

83. Director and Compliance Coordinator reiterated on May 20 that the IEE would be limited to the areas evaluated by District in the 2026 Reevaluation. *Id*. at p. 158. Compliance Coordinator also identified two potential evaluators to complete the identified assessments. *Id*. Parent responded June 4 and reiterated her concern with the 2026 Evaluation. *Id*. at pp. 153-57.

84. Specifically, Parent noted that the 2026 Evaluation omitted the following concerns: (1) communication, which has consistently been documented as an area of need; (2) health, including diagnoses Parent had shared with District; and (3) writing, as Student was performing well below the level required for third grade and Parent suspected a specific learning disability in written expression. *Id*. Parent also disagreed with the social emotional assessment, including the limited assessment of his behaviors. *Id*. at p. 156. Parent questioned how Student's composite scores could be "average" when his scores were "at risk" or "clinically significant" on more than half the subcategories. *Id*.

85. Parent stated the IEE needed to correct those omissions and that District could not place limits on the areas to be evaluated. *Id*. at p. 154. Director responded that parents are only entitled to an IEE for areas a district had already evaluated and that if Parent "wish[ed] to have an evaluation in areas not previously assessed" she was "free to request a new evaluation for those areas." *Id*. at p. 152.

86. Ultimately, District "accepted" her email as a request for a new reevaluation and, on June 11, issued a PWN ("June PWN") declining to evaluate in the additional areas requested by Parent. *Id*. at p. 174; *Exhibit D*, p. 4. Per the June PWN, the MDT on May 6 determined that it had sufficient information to make a decision about Student's needs and eligibility. *Id*.

87. The June PWN stated that the 2024 Evaluation included a communication assessment and that "speech-language services were discontinued because the [Student] demonstrated receptive and expressive language skills that were age-appropriate and did not require

specially designed instruction." *Id*. Having reviewed the available information, District determined that "there [was] no evidence suggesting a need for additional assessment." *Id*.

88. District rejected Parent's request for an evaluation because the current data showed that Student's "academic and communication skills were within the [a]verage range across multiple data sources." *Id*.

89. District was prepared to provide an IEE limited to the areas included in the 2026 Reevaluation. *Response*, p. 7; *Exhibit J*, p. 152. An IEE has not occurred due to the disagreement over the scope. *Response*, p. 7; *Interviews with Parent and Compliance Coordinator*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District developed an IEP that included the special education and related services required to address Student's supervision needs, as required by 34 C.F.R. §§ 300.320 and 300.324. District complied with the IDEA.

Parent alleges that Student's IEP did not include the 1:1 adult support needed to address Student's history of elopement. (FF #s 4-9, 19, 20.)

A. Legal Requirements: IEP Development

The IDEA requires a school 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 Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

Regarding the second prong, the substantive adequacy of an IEP depends on whether the IEP was appropriate when drafted and not with consideration of subsequent information. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) ("An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken."); *see also Tyler V. v. St. Vrain Valley Sch. Dist. No. RE-1J*, No. 07-CV-01094-PAB-KLM, 2011 WL 1045434, at *3-4 (D. Colo. Mar. 21, 2011). Moreover, the inquiry concerns "not whether the IEP was prescient enough to achieve perfect academic results, but whether it was 'reasonably calculated' to provide an 'appropriate' education." *Roland M.*, 910 F.2d at 992.

B. Development of the IEP

The IEP was developed more than one year before the Complaint was filed. (FF # 22.) Thus, the CDE cannot consider the propriety of the IEP development process. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ C(2)(c). However, the CDE still has authority to consider the propriety of the IEP itself. An IEP that does not comply with the requirements of the IDEA remains noncompliant each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day that IEP is in effect. *Weld Cnty. Sch. Dist. 6*, 81 IDELR 239 (SEA CO 2022). Thus, the CDE turns directly to the second prong regarding whether the IEP was substantively adequate. Rowley, 458 U.S. at 207.

C. Substantive Adequacy of the IEP

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to: (1) attain the annual goals, (2) be involved and make progress in the general education curriculum, and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). An IEP must "include information about the services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

This statement, commonly known as a service delivery statement, must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017) (noting that "Parents can't make an informed decision on whether to accept a proposed IEP if the document includes only a vague description of the student's services"); *see also Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 2018). The service delivery statement must clearly specify the amount and type of services that will be provided to a student. *Adams 12 Five Star Schs.*, 75 IDELR 86 (SEA CO 2019).

Related services mean supportive services, including speech and language pathology, psychological services, and physical and occupational therapy, that "are required to assist a child with a disability to benefit from special education." 34 C.F.R. § 300.34. Related services must be included in a student's IEP when they are necessary for the student to benefit from special education. *Colo. Springs Sch. Dist. 11*, 124 LRP 34343, (SEA CO 2023) (finding that student did not require direct physical or occupational therapy to access his school environment or his self-care needs); *see also*, *In re: Student with a Disability,* 65 IDELR 160 (SEA ID 2015) (holding that an IEP need not include a one-to-one aide where other options are available for facilitating communication between school and home).

Here, Parent advocated for Student to have a 1:1 aide due to his "behavioral tendencies, including elopement, manipulation, and hiding." (FF # 29.) In December 2024, before the IEP was developed in May 2025, Student left School grounds on his own. (FF # 14.) Student also regularly

eloped from his home and talked about eloping at school. (FF #s 15, 17.) However, apart from a few incidents in the first half of the 2024-2025 school year, School staff did not recall any other times where Student eloped or went somewhere without permission. (FF # 15.) Thus, the IEP Team, other than Parent, did not observe a need for a 1:1 aide. (FF # 30.) Nevertheless, based on Student's prior elopement and in consideration of Parent's related concerns, the IEP Team included plans for supervision during transitions, when outside of School grounds, and during any emergency situations in the IEP. (FF # 30.) Indeed, these supports were clearly articulated in and required by the IEP in more than one section. (*Id*.) With that support, Student never wandered off or tried to elope or otherwise leave School. (FF # 16.) Thus, the CDE finds that Student did not require a 1:1 aide and that the IEP otherwise addressed Student's needs without such an aide. *See In re: Student with a Disability*, 65 IDELR 160 (SEA ID 2015).

For these reasons, the CDE finds and concludes that District included a statement of the special education and related services in the IEP to enable Student to advance toward attaining annual goals, as required by 34 C.F.R. §§ 300.320 and 300.324.

Conclusion to Allegation No. 2: District did not evaluate Student in all areas related to the suspected disability—specifically communication and writing—in May 2026, as required by 34 C.F.R. § 300.304(c)(4). This noncompliance did not result in a denial of FAPE.

A. Legal Requirements: Evaluation Procedures

In conducting a reevaluation, school districts must "use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent" that may assist in determining "the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum." 34 C.F.R. § 300.304(b)(1)(i)-(ii). A reevaluation must assess the student "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." *Id.* § 300.304(c)(4). "This is not an exhaustive list of areas that must be assessed. Decisions regarding the areas to be assessed are determined by the suspected needs of the child." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,643 (Aug. 14, 2006). A reevaluation must also be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." 34 C.F.R. § 300.304(c)(6).

As additional requirements for reevaluations, school districts must review any existing evaluation data on the child, including: (1) evaluations and information provided by the parent of the child, (2) current assessments and classroom observations, and (3) observations by teachers and related service providers. *Id.* § 300.305(a)(1). Based on that review and input from the child's parents, school districts must then identify what additional data, if any, are needed to determine whether the child continues to have such a disability and their educational needs. *Id.* § 300.305(a)(2).

B. Student's May 2026 Reevaluation

In this case, Parent has alleged that the 2026 Reevaluation did not consider Student's social and emotional, functional, health, communication, and writing needs. (FF #s 76, 81-84.)

1. *Social and Emotional Needs*

District proposed conducting an FBA and social and emotional assessments for Student. (FF #s 40, 61.) The 2026 Reevaluation included teacher observations, BASC and ASRS rating scales, an FBA, and four formal observations. (FF #s 48-57, 61-65.) Both the BASC and ASRS indicated several elevated and/or clinically significant scores from teachers. (FF #s 53-55.) District attempted to obtain Parent input but she did not complete the forms. (FF #s 56-57.) The FBA concluded that Student benefited from "reteaching" and reminders in social situations because he becomes "more active" in unstructured environments. (FF # 65.) School staff had a markedly different perspective on Student's functioning relative to Parent and his private providers. (FF #s 15-21, 48-65, 71-76.) That Parent disagreed with District's interpretation of the social and emotional assessments does not mean they were not conducted. (FF #s 53-55, 81.) Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.304(c)(4) in this respect.

2. *Functional Needs*

Parent reported that Student could not use the bathroom independently as he regularly came home in soiled clothing. (FF #s 67, 73.) Parent also reported concerns about him playing inappropriately in the bathroom. (FF # 73.) Additionally, Parent brought him lunch and fed him, because he had been so distracted at lunch he was losing weight. (FF # 21.) Nevertheless, the 2026 Reevaluation included the BASC, which did not indicate any concerns with his ability to perform activities of daily living. (FF # 55.) The SFA, an occupational therapy assessment, measured Student's ability to perform various functions throughout the day, including setup and cleanup, eating and drinking hygiene, and clothing management. (FF # 58.) He exhibited skills at or above the grade-level cutoff for hygiene and eating and drinking. (*Id*.) This assessment showed he had the motor skills to both eat and use the bathroom independently. (*Id*.) Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.304(c)(4) in this respect.

3. *Health Needs*

Student has allergies and was assessed privately for asthma. (FF # 66.) Student also fainted at School once in fall 2025 and was taken to the hospital. (FF # 68.) The episode did not result in a diagnosis, and Parent indicated that Student's reported symptoms after the fact were not cause for concern. (*Id*.) All of this information was included in the FBA, which was conducted as part of the 2026 Reevaluation. (FF #s 61, 66-69.) Nothing in the Record suggests that Student required specialized instruction or related services for his health needs. Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.304(c)(4) in this respect.

4. *Communication Needs*

According to the IDEA, ASD is "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance." 34 C.F.R. §300.8(c)(1); *see also* ECEA Rule 2.09(1). To qualify for special education as a student with an ASD, the child must demonstrate significant difficulties with both interpersonal interactions and social communication. ECEA Rule 2.09(1)(a). Thus, to determine whether a child is eligible under this criteria, a district must assess the child's communication skills. 34 C.F.R. § 300.8(c)(1); ECEA Rule 2.09(1).

In this case, Student previously qualified as a Student with an ASD. (FF # 2.) During the 2024 Reevaluation, he scored in the severe range on almost all assessed areas of communication. (FF # 44.) The CDE recognizes that, at the time, the IEP Team agreed to discontinue Student's speech services. (*Id*.) However, this decision was due to Student's social communication needs being addressed as part of his social-emotional learning, not because he no longer had communication needs. (*Id*.) Even then, the SLP suggested reconsidering Student's SLP services when, and if, an SLP could provide something unique. (*Id*.)

During the 2025-2026 school year, while both Teacher and Special Education Teacher reported average social skills, they also identified concerns with atypicality, functional communication, and maintaining interpersonal relationships. (FF #s 53-55.) The 2026 Reevaluation did not directly assess Student's communication skills. (FF # 41.) As a result, the 2026 Revaluation did not identify how, if at all, his communication needs had changed since 2024. (FF #s 40-69.) Thus, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.304(c)(4) in this respect.

5. *Written Expression*

During the 2025-2026 school year, Student's writing grades ranged from unsatisfactory to partially proficient. (FF # 48.) His written work in class did not reflect his observant and knowledgeable verbal participation in reading. (FF # 49.) Teacher observed his writing was "chaotic" and hard to read, to the extent that it was also impacting his math performance. (*Id*.) In sessions with OT, he required maximal cues to write a single sentence, and his abilities were well-below grade-level expectations. (FF # 59.) OT concluded that Student's challenges were the result of behavior and attendance. (*Id*.) However, Student earned the lowest grades in writing first quarter, before his attendance decreased. (FF #s 34-39, 48.) The 2026 Reevaluation, despite consistent concerns, did not include any formal academic assessments or standardized testing of his written expression to verify that hypothesis. (FF #s 40-69.) Thus, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.304(c)(4) in this respect.

C. No Denial of FAPE

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 noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

In this case, Student is not eligible as a child with a disability. (FF # 74-76.) The FAPE requirement applies to children with disabilities who are eligible for special education and related services. 34 C.F.R. §§ 300.8, 300.101. Thus, the Record does not support a finding and conclusion that this noncompliance resulted in a denial of FAPE.

Conclusion to Allegation No. 3: District ensured a group of qualified professionals determined Student's eligibility in May 2026, as required by 34 C.F.R. § 300.306(a)(1) and ECEA Rule 4.02(6)(b). District documented and carefully considered Parent input at the May 2026 eligibility determination, as required by 34 C.F.R. § 300.306(c)(1). District complied with the IDEA.

A. Legal Requirements: Eligibility Determinations

Eligibility for special education and related services under the IDEA requires that (1) a child have one of thirteen qualifying disabilities and, (2) "by reason thereof, need[] special education and related services." 34 C.F.R. § 300.8(a)(1); ECEA Rule 2.08. Thus, even if a child has one of the thirteen qualifying disabilities, the child must also require "specially designed instruction . . . to meet [his or her] unique needs." 34 C.F.R. § 300.39(a)(1).

The IDEA requires that a MDT determine "whether the child is a child with a disability." 34 C.F.R. § 300.306(a)(1). An analysis of the appropriateness of an eligibility determination involves two steps. First, the CDE examines whether the school district followed relevant standards and procedures in making the determination. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013). Second, the CDE determines whether the eligibility decision was consistent with the data in the record. *Id.* As a matter of policy, the CDE cannot declare a student IDEA eligible through a state complaint decision. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 2018).

B. Adherence to IDEA Standards and Procedures

The CDE begins by examining whether District adhered to applicable IDEA standards and procedures regarding how school districts evaluate students and determine eligibility. *See* 34 C.F.R. §§ 300.304-306.

1. *Group of Qualified Professionals and Parent*

The IDEA requires that a "group of qualified professionals and the parent of the child" determine whether the child is eligible for special education. 34 C.F.R. § 300.306(a)(1). This group must be "knowledgeable about the child and about the meaning of the evaluation data" and must include: "[a]t least one teacher or other specialist with knowledge in the area of the child's suspected

disability," other qualified professionals as necessary, and the parent of the child. ECEA Rule 4.02(6)(b)(i). The MDT must also include either the special education director or, at the director's discretion, their designee. *Id*. at 4.02(6)(b)(ii).

Here, Parent's first concern is that Coordinator signed as the director designee. (FF # 70.) An MDT including Parent, Special Education Teacher, Case Manager, School Psychologist, OT, Teacher, and Coordinator met to determine Student's eligibility in May 2026. (*Id*.) Per District practice, coordinators frequently act as the director designee in eligibility meetings and that is what occurred in this case. (FF #s 8, 70.) Director had discretion to designate another individual—in this case Coordinator—to attend in his place. ECEA Rule 4.02(6)(b)(ii).

Parent's second concern is that Nurse was not part of the MDT. (FF # 70.) District generally addresses health concerns via a health plan separate from the IEP process. (FF # 9.) District only involves nurses when students have more complex health needs the IEP Team needs to consider. (*Id*.) Student had several health concerns which were recorded in the FBA. (FF #s 66-69.) Given the nature of those concerns, District did not observe need for a nurse to attend the May 2026 eligibility determination. (FF # 70.) Nothing in the Record suggests that Student's health would prevent him from benefitting from general education without school nursing services. The MDT included individuals knowledgeable about Student, including those who were currently direct service providers like Special Education Teacher, Case Manager, and OT. (FF # 70.) It also included School Psychologist who could interpret any evaluation data the other MDT members could not. (*Id*.) As providers working with Student, they were all also knowledgeable about his suspected areas of disability. (*Id*.) ECEA Rule 4.02(6)(b)(i).

For all these reasons, the CDE finds and concludes that District complied with 34 C.F.R. § 300.306(a)(1) and ECEA Rule 4.02(6)(b).

2. *Documenting and Carefully Considering Information*

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, an MDT must "[d]raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior." 34 C.F.R. § 300.306(c)(1)(i). The MDT must also ensure that information "is documented and carefully considered." *Id.* § 300.306(c)(1)(ii). The requirement that an MDT consider parent input in eligibility determinations, however, does not mean that school districts must agree with a parent's position or accede to a parent's requests. *El Paso 20 (Acad.) Sch. Dist.*, 125 LRP 2530 (SEA CO 2024) (finding a district properly considered parent's input during an IEP meeting despite parent's disagreement with IEP Team's decision). In reaching this determination, the CDE must, in part, determine whether there was a discussion about the characteristics exhibited by Student that support or refute the identification of a disability, and if so whether there is or continues to be an adverse impact on Student's educational performance. CDE, *IEP Procedural Guidance*, (2017), at p. 23, available at: www.cde.state.co.us/transportation/iepproceduralguide.

Here, Parent's position is that the MDT did not document and carefully consider her input during the May 2026 eligibility determination. (FF # 75.) The 2026 Reevaluation included social-emotional and physical motor assessments, teacher input, formal observations, and a review of Student's health information. (FF #s 42-69.) It also included results from the cognitive, social-emotional, motor, and communication assessments completed in 2024. (FF #s 42-47.) Parent and Student's private providers had a very different perspective on Student's current level of functioning as compared to District staff. (FF #s 14-21, 48-64.) However, Parent did not complete the parent rating scales, so that information could not be included in the Reevaluation. (FF #s 56-57.) During the meeting, Parent brought up Student's ability to use the bathroom independently. (FF # 73.) District staff noted that Student had the fine motor skills to use the bathroom. (*Id*.) Parent also voiced concerns about his ability to make safe choices in the building. (FF # 75.) District did not share this concern and explained that School was a safe place for Student to practice independence. (*Id*.) Children may perform differently across environments. The Record shows that Parent did not share much information for the MDT to consider and that it considered the information she did share. (FF #s 70-78.) Thus, the CDE finds and concludes that District documented and carefully considered Parent's concerns in May 2026, as required by 34 C.F.R. § 300.306(c)(1)(ii).

C. Consistent with Student-Specific Data

The CDE next considers whether the eligibility determination was consistent with Student-specific data in the Record.

According to the IDEA, OHI "means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to a chronic or acute health problem, including but not limited to asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, leukemia, kidney disease, sickle cell anemia or Tourette syndrome." 34 C.F.R. § 300.8(c)(9); ECEA Rule 2.09(7).

The IDEA defines an ASD as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance." 34 C.F.R. §300.8(c)(1); *see also*, ECEA Rule 2.09(1). "[E]ngagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences" are often associated with autism. *Id*. To be eligible for special education, the ASD must "preven[t] the child from receiving reasonable educational benefit from general education as evidenced by at least one characteristic in each of the following three areas":

(i) The child displays significant difficulties or differences or both in interacting with or understanding people and events. Examples of qualifying characteristics include, but are not limited to: significant difficulty establishing and maintaining social-emotional reciprocal relationships, including a lack of typical back and forth social conversation;

and/or significant deficits in understanding and using nonverbal communication including eye contact, facial expression and gestures;

(ii) The child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively. Examples of qualifying characteristics include, but are not limited to: an absence of verbal language or, if verbal language is present, typical integrated use of eye contact and body language is lacking; and/or significant difficulty sharing, engaging in imaginative play and developing and maintaining friendships; and

(iii) The child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics.

ECEA Rule 2.09(1)(a).

A medical diagnosis does not automatically qualify a student for special education and related services. *See Consideration of Clinical Diagnoses in the Educational Identification of Disabilities in Accordance with IDEA* (CDE Dec. 2015), *available at* https://www.cde.state.co.us/cdesped/ta_clinicaldiagnoses. Doctors cannot prescribe special education or even determine a student's eligibility for special education. *Id.* Such eligibility can only be determined by an MDT. 34 C.F.R. § 300.306(a).

Here, Student was diagnosed with an ASD and ADHD. (FF # 25.) Both Teacher and Special Education Teacher reported elevated concerns for attention and hyperactivity. (FF #s 53-54.) They also reported at-risk concerns for behaviors that were "detrimental to his academic success" and "likely to interfere with achievement." (FF # 55.) During OT, Student "required maximal cues to write one sentence" and his behavior impacted his fine motor skills (FF #s 59.) Student also exhibited sensory seeking behaviors during unstructured times. (FF #s 62-65.)

However, overall, District concluded that these concerns were not having an educational impact on Student. (FF #s 77-78.) Specifically, District concluded that Student could "stay on task, and follow directions similarly to other students his age." (FF # 77.) Although Student struggled some with attention, he was performing at grade level on most academic assessments. (FF #s 48-49.) He also made progress on his prior social and emotional goals and responded well to redirections. (FF #s 50-52.) Though Student still had a disability, his ability to make progress on his annual goals and in the general education curriculum, despite significant absences, supported District's conclusion that he did not, require special education and related services as a result of that disability. (FF #s 34-39, 48-52.); 34 C.F.R. § 300.8(a)(1). For these reasons, the CDE finds and concludes that District made the eligibility determination consistent with the IDEA's procedures, the 2026 Reevaluation, and other data in Student's record. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013).

<u>Conclusion to Allegation No. 4</u>: District imposed conditions related to obtaining an IEE in May 2026, inconsistent with 34 C.F.R. § 300.502(e). This resulted in a denial of FAPE.

A. <u>IEE Requirements</u>

An "IEE" is an evaluation conducted by a qualified examiner who is not employed by the child's school district. 34 C.F.R. § 300.502(a)(3)(i). The IDEA provides a parent the right to seek an IEE at public expense—that is, paid for by the district or provided at no cost to the parent—if the parent disagrees with an evaluation completed by the school district. *Id.* §§ 300.502(a)(1), (b)(1). "This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability." *Letter to Carroll*, 116 LRP 46076 (OSEP 2016); *see also Sch. Dist. 49*, 75 IDELR 27 (SEA CO 2019) (finding that a parent had a right to an IEE where they disagreed with a district evaluation because it did not assess the child in all areas of suspected disability and refusal to include those additional areas in an IEE amounted to refusing to grant an IEE); *Letter to Baus*, 65 IDELR 81 (OSEP 2015).

Once a parent requests an IEE, the district must "without unnecessary delay" either: (1) file a due process complaint to request a hearing to show that the district's evaluation was appropriate; or (2) provide the IEE at public expense. 34 C.F.R. § 300.502(b)(2). "There is no third option that allows the district to simply conduct the missing assessments." *Letter to Carroll*, 116 LRP 46076 (OSEP 2016). The parent can seek only one IEE for each district evaluation. 34 C.F.R. § 300.502(b)(5). The IDEA provides no time limitation on when a parent can request an IEE. *See id*. § 300.502. If the IEE is paid for by the district, "the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner" must match the criteria the district uses to initiate an evaluation. *Id*. at § 300.502(e)(1). Other than those requirements, the district cannot "impose conditions or timelines related to obtaining" an IEE. *Id*. at § 300.502(e)(2).

B. <u>Parent's IEE Request</u>

In this case, District evaluated Student in the areas of social and emotional and motor function. (FF #s 40-69.) District did not evaluate him in all areas of suspected disability, specifically communication and writing. Parent disagreed with the 2026 Reevaluation, in part, because she said it did not assess all areas of Student's suspected disability, including academic, functional and safety needs. (FF # 81.) Based on that disagreement, in May 2026, Parent requested an IEE. (FF # 79.) District agreed to grant an IEE, but Director and Compliance Coordinator told Parent the IEE would be limited to the areas assessed in the 2026 Reevaluation. (FF #s 79-80.) This position was consistent with District's IEE Guidelines, which limit IEEs to only those areas previously assessed by District. (FF #s 11-13.) When Parent objected to that limitation, District reiterated its position and treated her objection as a new request for evaluation. (FF #s 81-86.) In June 2026, District issued the June PWN, refusing to conduct additional assessments. (FF #s 86-88.) District's options, when faced with Parent's request for an IEE, were to either grant the IEE or file a due process complaint. *Sch. Dist. 49*, 75 IDELR 27 (SEA CO 2019); *Letter to Carroll*, 116 LRP 46076 (OSEP 2016); 34 C.F.R. § 300.502(b)(2). District ultimately did not provide an IEE or file

for due process. (FF #s 79-89.) Instead, District limited the scope of the IEE it agreed to provide to areas included in the 2026 Reevaluation, thereby placing impermissible conditions on Parent's right to an IEE. Thus, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.502(e)(2).

C. Denial of FAPE

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 noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema*, 538 F.3d 1306.

Here, Parent disagreed with District's 2026 Reevaluation and the determination that Student was no longer eligible as a child with a disability. (FF #s 76, 79.) Parent contended that District had not evaluated Student in all areas of suspected disability. (FF # 81.) Parent requested an IEE that included assessments that were not included in the 2026 Reevaluation. (FF #s 79-85.) District did not agree to grant the IEE Parent requested or file a due process complaint. (FF #s 79-89.) To date, no IEE has occurred. (FF # 89.)

IEEs "play a critical role in the IDEA framework." *Alex W. v. Poudre Sch. Dist. R-1*, 94 F.4th 1176, (10th Cir. 2024). School districts naturally have an advantage in terms of information and expertise compared to parents. *Id.* The IDEA "counterbalances this advantage by providing parents with the right to an IEE at public expense." *Id.* An IEE "ensures parents 'are not left to challenge the [school district] . . . without an expert with the firepower to match the opposition.'" *Id.* (quoting *Schaffer v. Weast*, 546 U.S. 49 (2005)).

Thus, the CDE finds and concludes that District's noncompliance significantly impeded Parent's right to participate in the decision-making process regarding the provision of a FAPE at the time, specifically to challenge both the sufficiency of District's evaluation and the resulting eligibility determination. 34 C.F.R. § 300.513(a)(2); *Alex W.*, 94 F.4th 1176; *Sytsema*, 538 F.3d 1306.

Systemic IDEA Noncompliance: This investigation demonstrated noncompliance that will likely impact the future provision of services for other children with disabilities in District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in BOCES. 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. 46,601 (Aug. 14, 2006).

Here, District has practices and procedures in place that are consistent with the IDEA's requirements for reevaluations. (FF #s 4-9.) Based on the Record, the noncompliance in that area is individualized to Student and limited to the specific circumstances of this investigation. (FF #s 40-69.) However, District's IEE Guidance, including the Updated IEE Guidance, formalizes the impermissible limitation of IEEs to only areas previously evaluated by District. (FF #s 11-13.) This limitation was also reiterated by both Director and Compliance Coordinator when Parent disagreed with it. (FF #s 81-83.) Thus, the CDE finds and concludes that the noncompliance with respect to Parent's request for an IEE is likely to impact the future provision of services if not corrected. 34 C.F.R. § 300.151(b)(2).

REMEDIES

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

1. Evaluating Student in all areas related to the suspected disability, as required by 34 C.F.R. § 300.304(c)(4); and

2. Imposing impermissible conditions on Parent's request for an IEE, inconsistent with 34 C.F.R. § 300.502(e).

To demonstrate compliance, District is ORDERED to submit a corrective action plan ("CAP") by **Thursday, October 8, 2026** that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

1. Final Decision Review

a. Director, Compliance Coordinator, Coordinator, Case Manager, Special Education Teacher, School Psychologist and OT must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.304 and 300.502, by **Thursday, October 22, 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 **Thursday, October 29, 2026.**

2. Revision of Written Procedures

a. By **Thursday, November 5, 2026**, District must submit a revised or new written procedure outlining how District ensures compliance with 34 C.F.R. § 300.502.

b. At a minimum, the procedure must make clear that parents can request an IEE when they disagree with a District evaluation, including when they disagree with the scope of the evaluation for not assessing the child in all areas related to the suspected disability. Further, the procedure must not indicate that IEEs are limited to only those areas already assessed by District.

c. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized.

d. Upon approval, District must ensure that all coordinators and any other District staff who handle IEE requests receive copies of the revised or new procedures.

e. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, and a signed assurance from Director verifying that all required staff were included in the distribution of the procedure must be provided to the CDE no later than **Friday, December 11, 2026**.

3. IEE

a. District must provide Parent the opportunity to obtain an IEE at public expense, consistent with 34 C.F.R. § 300.502 and District's criteria for IEEs.

b. If District and Parent cannot agree on an evaluator, District must notify the CDE by **Monday, October 26, 2026**. The CDE will then choose the evaluator. If Parent does not agree with the evaluator selected by the CDE, District shall be excused from providing the IEE at public expense.

c. If District and Parent cannot agree on the scope of the proposed IEE, District must notify the CDE by **Monday, October 26, 2026**. The CDE will then determine if the proposed IEE is consistent with this Decision. If Parent does not agree with the scope of the IEE as determined by the CDE, District shall be excused from providing the IEE at public expense.

d. A copy of this IEE—or a written explanation as to why District is excused from providing the IEE at public expense—shall be provided to the CDE within one week of completion and no later than **Friday, January 22, 2027**.

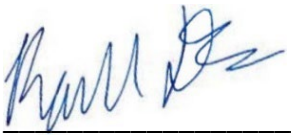
NOTE: CDE Special Education Monitoring and Technical Assistance Consultant will contact District with specific instructions for securely submitting the documentation detailed above. The CDE will approve or request revisions that support compliance with the CAP. After approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's 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 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.

Dated this 10th day of September, 2026.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-28

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence
- Exhibit 3: IEPs
- Exhibit 4: PWNs
- Exhibit 5: ABA Report
- Exhibit 6: Progress Report
- Exhibit 7: Work Samples
- Exhibit 8: Prior Incident

Response, pages 1-14

- Exhibit A: IEP
- Exhibit B: Evaluation
- Exhibit C: Consent
- Exhibit D: PWNs
- Exhibit E: Eligibility Determination
- Exhibit F: Progress Report
- Exhibit G: Student Detail
- Exhibit H: District Calendars
- Exhibit I: District Policy and Procedures
- Exhibit J: Correspondence
- Exhibit K: Verification of Delivery

Reply, pages 1-17

- Exhibit 9: Explanations
- Exhibit 10: Evaluation and Correspondence
- Exhibit 11: Miscellaneous

Telephone Interviews

- OT: July 21, 2026
- Case Manager: July 21, 2026
- Teacher: July 21, 2026
- Parent: July 22, 2026
- Coordinator: July 23, 2026
- Compliance Coordinator: July 23, 2026
- Private BCBA: August 3, 2026
- Private Respite Provider: August 5, 2026