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

State Complaint SC2026-624
Colorado Charter School Institute

DECISION

INTRODUCTION

On August 5, 2026, an individual filed a state complaint ("Complaint") against Colorado Charter School Institute ("District") on behalf of a parent ("Parent") of a student ("Student") identified as a child with a disability under the Individuals with Disabilities Education Act ("IDEA").[1] The Colorado Department of Education ("CDE") determined that the Complaint identified three 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 timeline due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1)(i).

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 August 5, 2025. Information prior to August 5, 2025 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint, as amended, raises the following allegations subject to the CDE's jurisdiction under 34 C.F.R. § 300.153(b) of the Individuals with Disabilities Education Act ("IDEA"):[2]

[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] For readability and clarity, the CDE has renumbered the allegations in this Decision. The substance of the allegations remains unchanged.

1. District did not determine Student's eligibility and educational need consistent with the evaluation data at a meeting in December 2025, as required by 34 C.F.R. § 300.306(c)(1).

2. District did not develop an IEP from February 18, 2026 to present that considered the use of positive behavioral interventions and supports and other strategies to address behavior impeding Student's learning or that of others, as required by 34 C.F.R. § 300.324(a)(2)(i).

3. District did not implement Student's Individualized Education Program ("IEP") as soon as possible following its development—specifically between February 18, 2026 and March 31, 2026—as required by 34 C.F.R. § 300.323(c)(2).

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. During the 2025-2026 school year, Student attended eighth grade at a charter school ("School") authorized by District. *Complaint*, p. 1. District is responsible for providing FAPE to all IDEA-eligible children with disabilities attending a charter school it authorizes. ECEA Rule 2.03. Student currently qualifies for special education under the disability categories of Specific Learning Disability ("SLD") and Other Health Impairment ("OHI"). *Response*, p. 4.

2. Student is an honest, social, and polite child who is interested in boxing. *Interviews with School's Dean of Student Services ("Dean") and Student's special education teacher and case manager ("Case Manager").* At school, Student struggles with maintaining attention, completing classwork, and writing. *Interviews with Parent, Dean, Case Manager, and Student's general education composition and grammar teacher ("Writing Teacher")*.

3. The Complaint contains allegations related to an eligibility determination, behavioral supports in an IEP, and implementation of Student's IEP between February 18 and March 31 after its development. *Complaint*, pp. 10, 13; *Amended Complaint*, p. 1.

B. District's Policies, Practices, and Procedures

4. To ensure compliance with the IDEA, District maintains a comprehensive Special Education Manual ("District Manual"). *Exhibit L*, pp. 87-164.

5. District Manual outlines requirements for initial special education evaluations consistent with the IDEA. *Exhibit L*, pp. 96-97.

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

6. Relevant here, the District Manual requires the eligibility meeting and determination to take place within 60 days of receiving parental consent for the evaluation. *Id*. at p. 104. At the eligibility meeting, the multidisciplinary team ("MDT") must ensure the evaluation is comprehensive, review and consider all assessment data, consider the student's strengths and needs, and determine eligibility. *Id*. If the MDT finds the student eligible, then the MDT must obtain parental consent for the initial provision of special education and related services. *Id*. at p. 105.

7. After a student is found eligible, the student's IEP Team, including parents, will meet to develop a student's IEP. *Id*. at p. 116. Following the IEP meeting, District must provide the parent with the finalized IEP, PWN, the date services will begin, and a copy of procedural safeguards. *Id*. A student will begin receiving special education and related services as soon as possible following the development of the IEP, given the parent has also provided consent for the initial provision of services. *Id*.

C. Fall Semester and Private Evaluation

8. Student was new to School in the fall of 2025. *Response*, p. 2. From the start of the school year, he struggled to engage in class and complete his work. *Interviews with Case Manager and Writing Teacher*. He would, at times, disrupt the class or fall asleep in class. *Id.; Response*, p. 3. His behavior log showed eight entries for Fall 2025; the behaviors ranged from work refusal to classroom disruption to dress code violations. *Exhibit F*, pp. 3-4. Student was not making academic progress despite receiving interventions in class, such as preferential seating and extended time on paper submissions. *Interview with Writing Teacher*; *Exhibit G*, p. 1; *Exhibit E*, p. 1.

9. Due to Student's difficulties with maintaining attention and behavior, Parent sought a private evaluation in October 2025. *Exhibit J*, p. 1. A private provider ("Private Evaluator") evaluated Student on October 2 and provided an evaluation report ("Private Evaluation") to Parent. *Id.* at pp. 1-12; *Interview with Parent*.

10. As part of the Private Evaluation, Private Evaluator completed assessments such as a mental status examination, Parent interview, Student interview, record review, Children's Memory Scale (CMS), Conners-4, Wechsler Intelligence Scale for Children ("WISC-V"), Conners Continuous Performance Test ("CPT-3"), Wechsler Individual Achievement Test ("WIAT-4"), and ADHD Rating Scale. *Exhibit J*, p. 5.

11. The WISC-V showed essay composition scores below the 0.1 percentile, written expression at the 0.6 percentile, and sentence composition at the 4th percentile. *Id*. at p. 12. His word reading, reading compression, and reading scores were all average. *Id*. On the WIAT-4, Student's full scale IQ fell within the average range. *Id*. at p. 2. Student's testing also showed mildly impaired processing speed and average verbal comprehension, visual spatial, fluid reasoning, and working memory. *Id*. at p. 12.

12. On the ADHD Rating Scale, Parent indicated Student "[a]lways or [v]ery [o]ften or [o]ften experience[d] many inattentive symptoms of ADHD and few hyperactive symptoms of ADHD." *Id.* at p. 2. On the Conners-4, Parent's responses resulted in a very elevated score in schoolwork and elevated scores in inattention/executive dysfunction, depressed mood, and ADHD inattentive symptoms. *Id.* at pp. 2, 10. Additionally, Student had a very high ADHD index. *Id*. at p. 10.

13. Private Evaluator diagnosed Student with "Attention-Deficit Hyperactivity Disorder, Predominantly Inattentive Presentation, Mild." *Id*. at p. 2. Private Evaluator explained that Student might benefit from accommodations such as preferential seating, extended time to complete assignments, visual aids, and using a daily or weekly progress report to manage behaviors. *Id*. at p. 3.

14. Private Evaluator explained that Student met the criteria for a "provisional" diagnosis for SLD in writing. *Id*. at p. 2. The provisional nature of the diagnosis was because Student had not yet received formal interventions that targeted the difficulties in writing and because, for the diagnosis to be confirmed, his difficulties would need to persist for at least six months. *Id*.

D. Student's Initial Evaluation

15. Due to concerns about Student's academic progress and behaviors affecting his learning, District referred him for an initial special education evaluation on October 16, 2025. *Response*, p. 3; *Exhibit P1*, p. 4. District sought consent to evaluate in the areas of general intelligence, academic performance, social and emotional status, and health. *Exhibit E*, p. 1. Parent provided written consent on October 24. *Supplemental Response*, p. 3; *Exhibit E*, p. 1; *Exhibit P1*, p. 4.

16. Student's initial evaluation included vision and hearing screenings; general intelligence assessments, such as the Kaufman Assessment Battery for Children ("KABC-II"), a classroom observation, and a review of the Private Evaluation's WISC-V; academic performance assessments, such as a review of the Private Evaluation's WIAT-4, academic records review and teacher input; and social and emotional assessments, such as the Behavior Assessment System for Children ("BASC-3") and a student interview. *Exhibit J*, pp. 21-30.

17. Student's scores on the KABC-II demonstrated cognitive abilities within the average range. *Id.* at p. 22. The KABC-II evaluator noted that Student's performance on the assessment was significant for "quick" and "impulsive" answers, and that Student's scores might have been higher with more consideration given to answers. *Id*. at p. 21.

18. Student's classroom observation took place during Algebra 1 while he was sitting in the front row. *Id.* at p. 22. The observer, Dean, noted that when it came to engaging with peers Student was alert and animated, but when it came to academic output Student was shut down, closing his eyes, leaning back in his chair, and not engaging in class. *Interview with Dean; Exhibit J*, p. 21. During the 25-minute observation, Student struggled to keep his eyes open. *Id*. The

observer asked Parent if there was any medical or environmental reason that Student would be fatigued, but Parent reported no known explanation. *Id*.

19. The review of the Private Evaluation's WISC-V assessment noted the average full scale IQ, verbal comprehension, visual spatial, fluid reasoning, and working memory. *Id*. at p. 23. It was also noted that the cognitive scores gathered from the KABC-II were slightly higher than the WISC-V done as part of the Private Evaluation. *Id*. The review of the Private Evaluation's WIAT-4 assessment noted Student's average achievement in the areas of reading (comprehension, fluency, and basic reading) and mathematics, while also acknowledging his very low written expression, essay composition, and sentence composition scores. *Id*.

20. Student's academic records review demonstrated that first semester grades included five failing grades, one C minus, and one D minus. *Id*. at p. 25. Student's attendance record showed consistence absences, particularly from composition and grammar class, as well as consistent tardies. *Id*. at pp. 25-26.

21. The BASC-3 used ratings scales completed by Parent, Student, and two of his teachers. *Id.* at p. 65. This assessment showed that Student displayed concerns across conduct problems, externalizing problems, school problems, learning problems, attention problems, study skills, and withdrawal. *Id*. at pp. 28-29. However, Student did not display overall concerns for hyperactivity. *Id*. at p. 28. Student's self-report indicated at-risk scores for sensation seeking, attitude to school, attitude to teachers, and school problems. *Id*. at p. 29. However, Student's self-report did not indicate concern for inattention/hyperactivity. *Id*. Further, Student reported to school staff that he did not wish to stay at School or do homework. *Id*.

22. District compiled the data and findings from the above assessments into an evaluation report dated December 16, 2025 ("Evaluation Report"). *Id.* at pp. 21-30.

E. December 2025 Eligibility Determination

23. The MDT met on December 16, 2025, to review Student's initial evaluation and determine his eligibility. *Exhibit C*, pp. 10-11; *Supplemental Response*, p. 3; *Response*, p. 3. The MDT included Student's general education teachers, Dean, a school psychologist, Case Manager, an art teacher, a Latin teacher, Student, and Parent. *Supplemental Response,* p. 3; *Interviews with Dean, Case Manager, and Parent*.

24. At the meeting, the MDT, including Parent, discussed the Evaluation Report and agreed the evaluation was sufficiently comprehensive to identify Student's special education and related service needs. *Supplemental Response,* p. 3; *Exhibit 2*; *Interviews with Dean and Case Manager*.

25. After determining the comprehensiveness of the evaluation, the MDT solicited some insight from Student. *Exhibit 2*, 11:03-11:20. Student shared that he does not want special education or related services, and when asked whether he does not complete his work because it is

difficult for him, he said "I don't really have a hard time with anything." *Id.* at 11:26-29, 11:39-42. He also indicated that he does not complete his work "because he does not want to be at this school." *Id.* at 11:59-12:03. Parent asked Student why he was failing his classes, and Student explained that it is because he "just does not try." *Id.* at 13:27-13:30.

26. Based on the initial evaluation results, including consideration of the Private Evaluation and eligibility criteria, the MDT determined Student could receive reasonable educational benefit from general education alone and, therefore, found he was not eligible for special education. *Supplemental Response*, p. 3; *Exhibit D*, p. 11; *Exhibit 2*; *Interviews with Case Manager and Dean*. Though his written language scores were low, the MDT discussed how his refusal to write could have negatively impacted his scores. *Exhibit 2*, 2:37-3:00; *Exhibit D*, p. 11. Additionally, the MDT, except for Parent, shared input on why he could receive reasonable educational benefit from general education. *Exhibit 2*, 17:08-19:37. The MDT acknowledged Student could produce thorough work on occasion, which supported his ability to receive reasonable benefit from general education. *Exhibit 2*; *Exhibit D*, p. 11. The MDT also discussed his main challenges, namely the inability to stay engaged in class and writing and determined that the best way to support him was through a Section 504 Plan ("504 Plan"). *Id.* at 20:40-22:25; *Supplemental Response*, p. 3; *Interviews with Case Manager and Dean.*

27. District issued a PWN to Parent on December 19 noting the eligibility determination, the data relied on, the disability categories considered, the reasons for the decision, and other factors considered, including the fact that District was considering a Functional Behavioral Assessment ("FBA") to understand Student's behaviors. *Exhibit D*, pp. 11-12; *Supplemental Response*, p. 3; *Exhibit M*, p. 85.

F. Student's Second Evaluation and February 2026 Eligibility Determination

28. On January 8, 2026, District held a meeting to develop a 504 Plan for Student. *Response*, p. 3; *Interview with Dean*. However, the next day, January 9, Parent indicated that she did not yet agree to the 504 Plan and requested "continued IEP consideration" instead. *Exhibit M*, p. 87.

29. In response, District initiated another special education evaluation. *Response*, p. 4; *Interview with District Special Education Coordinator* ("Coordinator").

30. Parent provided consent for the second evaluation on January 14. *Exhibit D*, p. 3. The areas to be evaluated included: general intelligence, communicative status, academic performance, social and emotional status, health, and motor abilities. *Id*. at p. 1. This second consent added communicative status and motor abilities as additional areas to be evaluated. *Id*.

31. The additional communicative status assessments results showed that Student's formulated sentences, word definitions, sentence assembly, and semantic relationships all fell within the average range. *Exhibit E*, p. 58. Additionally, Student completed several subtests of the Kaufman Test of Education Achievement ("KTEA") that showed his written expression and writing fluency fell below average. *Id*. at pp. 60-61. Student also completed an informal

writing assessment. *Id*. at p. 61. While Student demonstrated awareness of paragraph structure, his essay lacked a clear introduction, thesis statement, and conclusion. *Id*. Further, Student demonstrated difficulty with written conventions. *Id*.

32. For the additional motor assessments, Student demonstrated skills in the average range on the visual-motor and visual perception subtests. *Id*. at p. 68. However, Student's motor coordination score fell below the average range. *Id*.

33. The MDT reconvened on February 18 to review the additional assessments and reconsider Student's eligibility. *Exhibit C*, pp. 3-4; *Response*, p. 4. The MDT found Student eligible for special education under OHI and SLD in written expression. *Exhibit E*, pp. 52-53; *Interviews with Parent, Dean, and Coordinator*.

G. Student's IEP

34. Following the eligibility meeting, Student's IEP Team met and discussed a draft IEP. *Exhibit A*, p. 17. Over the next few weeks, District and Parent discussed various components of the IEP. *Id.* On March 6, District sent Parent a Notice of Meeting for an IEP Team meeting scheduled for March 16. *Exhibit C*, p. 6; *Exhibit M*, p. 83.

35. On March 11, Parent requested that an "IEP facilitator" be present at the meeting. *Exhibit M*, p. 116. The next day, Parent clarified her request and asked that "CDE be involved as a facilitator" for the meeting. *Id*. at p. 117. District sent Parent the link to request a CDE facilitator and indicated that they would need to reschedule the March 16 IEP meeting to accommodate the facilitation request. *Id*. at pp. 117-18.

36. The IEP meeting was rescheduled to March 30. *Exhibit C*, p. 7. During the March 30 meeting, the IEP Team finalized Student's initial IEP. *Interviews with Dean, Parent and Coordinator*.

37. Student's IEP identified his primary disability as SLD in written expression and his secondary disability as OHI. *Exhibit A*, p. 1. The IEP discussed Student's present levels of performance, noting that he currently had three C's, four D's, and one F. *Id.* at p. 4.

38. The IEP indicated Student's disabilities impacted his sustained focus, concentration, and task initiation, and affected his ability to learn and complete coursework. *Id.* at p. 8. Additionally, his deficits in written expression impacted his progress on written work and might have impacted his work completion and participation. *Id.*

39. The IEP stated that, at the time, he did not exhibit behavior that required a Behavior Intervention Plan ("BIP"). *Id*.

40. The IEP included three annual goals: two in writing and one in self-determination. *Id.* at pp. 9-11. Relevant here, the self-determination goal stated that, "when provided with executive functioning supports (prompting, check-ins, planner, etc.), [Student] will track and submit

assignments using an organizational system in 80% of opportunities, as measured by assignment tracking data." *Id.* at p. 11.

41. The IEP listed more than a dozen accommodations including, in part, assistance with note taking, copies of notes provided in print, preferential seating near the point of instruction to allow for quick check-ins, frequent check-ins for understanding, extra time on assignments, extra time for written assignments across content areas, use of speech to text and keyboarding for written work production, shortening longer writing assignments, use of graphic organizers, and breaks to re-regulate and focus between classes. *Id.* at p. 12.

42. The IEP required 90 minutes of direct writing instruction per week outside of the general education classroom in individual or small group environment and 30 minutes of direct instruction in executive functioning per week, like organization, task planning, and work completion. *Id*. at p. 15. Student's IEP also outlined 30 minutes per month of indirect consultative services to monitor his progress. *Id*.

43. The IEP indicated he spent at least 80% of the school day in a general education classroom. *Id.* at p. 16.

44. Parent provided her consent for the provision of special education and related services on March 30. *Exhibit D*, p. 10. District was prepared to implement Student's IEP the next day, on March 31; however, Student was absent. *Exhibit I*, p. 4.

H. Student's FBA and BIP

45. Parent provided her consent for an FBA on March 27, and District completed the FBA on April 14. *Exhibit J*, p. 13. The FBA identified three target behaviors: late arrival to class, refusal to engage in learning tasks, and refusal to comply with adult direction. *Id*. at p. 16. The FBA hypothesized that Student engaged in the target behaviors to "avoid engagement with the learning task," especially non-preferred subjects. *Id.* at p. 17. Further, the FBA found that Student is likely to chat with peers despite reminders to focus on a learning task. *Id*.

46. District developed a BIP for Student that was finalized on April 28. *Exhibit B*, pp. 1-5; *Exhibit C*, pp. 8-9. Student's BIP targeted his avoidance of learning tasks, often demonstrated by looking away from the teacher, putting his head on his hands, closing his eyes, and chatting with peers. *Exhibit B*, p. 1. The BIP included goals for the desired behavior related to independently initiating and completing work assignments and arriving on time to class with proper class materials. *Exhibit B*, p. 2. To support these goals, the BIP included strategies like supporting Student's connection to the task, providing clear and specific expectations and follow up with affirmation for engagement and effort, and providing weekly positive affirmation for effort to complete classwork. *Id*. at p. 3.

CONCLUSIONS OF LAW

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

<u>Conclusion to Allegation No. 1</u>: District determined Student's eligibility and educational need consistent with the evaluation data at a December 2025 meeting, as required by 34 C.F.R. § 300.306(c)(1). District complied with the law.

I. 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 2.09. 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). If the child has a qualifying disability "but only needs a related service and not special education, the child is not a child with a disability" under the IDEA. *Id.* § 300.8(a)(2).

The IDEA requires that a multidisciplinary team determine "whether the child is a child with a disability." *Id*. § 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).

II. 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.

A. *Drawing upon Information from a Variety of Sources*

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).

Here, the Record shows that the MDT drew upon a wide range of sources in making the initial eligibility determination in December 2025. (FF # 16.) Student's initial evaluation included vision and hearing screenings, general intelligence assessments, including KABC-II and classroom observation, and a review of the Private Evaluation's WISC-V. (*Id.*) The initial evaluation also considered academic performance assessments, such as the review of the Private Evaluator's WIAT- 4. (*Id.*) Additionally, the initial evaluation involved an academic records review, teacher

input, and social and emotional assessments, such as BASC-3 and a student interview. (*Id.*) Finally, Parent and Student's teachers participated as a rater for the BASC-3. (FF # 21.)

Therefore, the CDE finds and concludes that District, in interpreting evaluation data for the purposes of determining Student's eligibility for special education in December 2025, drew upon information from a variety of sources, as required by 34 C.F.R. § 300.306(c)(1)(i).

B. *Documenting and Carefully Considering Information*

The MDT must also ensure that the information from a variety of sources "is documented and carefully considered." 34 C.F.R. § 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). 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 education performance. *CDE IEP Procedural Guidance Manual*, p. 23 (CDE 2017), *available at* www.cde.state.co.us/transportation/iepproceduralguide.

Here, the Record reflects that the MDT documented the information gathered from Student's initial evaluation and carefully considered it. (FF #s 22, 24-26.) All data and findings from Student's initial evaluation were compiled into an Evaluation Report that was then discussed at the December 16, 2025 eligibility meeting. (FF # 22.) This Evaluation Report also included a review of the Private Evaluation. (FF # 19.) The MDT agreed that the initial evaluation was sufficiently comprehensive to identify Student's special education and related service needs. (FF # 24.) As part of the discussion, Student shared his input, and the MDT asked Student questions about his refusal to do his work. (FF # 25.)

The MDT then discussed Student's eligibility and determined he could receive reasonable educational benefit from general education alone and, therefore, was not eligible for special education services. (FF # 26.) The MDT discussed his challenges with engaging in class and writing and ultimately decided that the best way to support him would be through a 504 Plan. (FF # 26.)

Thus, the CDE finds and concludes that District, in interpreting evaluation data for the purposes of determining Student's eligibility for special education in December 2025, documented and carefully considered information from a variety of sources, as required by 34 C.F.R. § 300.306(c)(1)(ii).

III. Consistent with Student-Specific Data

Having determined that District adhered to IDEA's standards and procedures in its determination of Student's eligibility at the December 2025 meeting, as required by 34 C.F.R. § 300.306, the CDE

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

A. *SLD*

A specific learning disability ("SLD") "means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think speak, read, write, spell, or do mathematical calculations" and includes dyslexia. 34 C.F.R. § 300.8(c)(10); ECEA Rule 2.09(8).

To qualify for SLD in Colorado, there must be a body of evidence demonstrating that the child:

- (1) "does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) in [specified] areas" when provided appropriate learning experiences and instruction; and

- (2) "does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the [specified areas]," such as written expression, reading fluency skills, reading comprehension, mathematical calculation, and mathematical problem solving.

ECEA Rule 2.09(8)(b)(i)-(ii).

A medical diagnosis does not automatically qualify a student for special education and related services. *R.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007) (explaining that a diagnosis of depression, standing alone, does not establish IDEA eligibility absent evidence that the condition satisfies the IDEA eligibility criteria and adversely affects the student's educational performance); *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). While districts must consider the results of a private evaluation when determining eligibility, they do not have to defer to the opinions of the private evaluation. *Miller v. Charlotte-Mecklenburg Schs. Bd. of Educ.,* 64 F.4th 569 (4th Cir. 2023).

Here, the Record reflects that the MDT considered the initial evaluation, including formal assessments documented in the Evaluation Report, the Private Evaluation, and input from Parent and Student in determining that Student was not eligible under SLD. (FF #s 16, 24-26.) District's initial evaluation showed cognitive abilities within the average range and average full scale IQ, verbal comprehension, visual spatial, fluid reasoning, and working memory. (FF # 17.) The initial evaluation also showed average achievement in mathematics and reading comprehension, fluency, and basic reading. (FF # 19.) Student's scores in written expression, essay composition, and sentence composition, however, were very low. (*Id.*)

The CDE recognizes that the Private Evaluation provided a "provisional" diagnosis for SLD. (FF # 14.) However, as noted above, a medical diagnosis does not automatically qualify Student for special education. In determining his eligibility, the MDT considered this provisional diagnosis and acknowledged Student's writing deficits; however, the MDT found Student ineligible based on other information available regarding the basis for Student's work refusal. (FF # 26.) Ultimately, the MDT determined that Student could receive reasonable educational benefit from general education alone. (*Id.*) The MDT acknowledged Student might benefit from the support of a 504 Plan and initiated that process. (FF #s 26, 28.)

For these reasons, the CDE finds and concludes that District made the December 2025 eligibility determination consistent with the IDEA's procedures and the information in Student's record at the time. District complied with the law.

B. *OHI*

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." 34 C.F.R. § 300.8(c)(9); ECEA Rule 2.09(7). A chronic condition is a "health condition or disease that is persistent or otherwise long-lasting in its effects or a disease that comes with time", such as ADHD, diabetes, or epilepsy. *CDE's Guidance for Determining Eligibility for Special Education Students with Other Health Impairments*, p. 2 (CDE August 2020), *available at* https://www.cde.state.co.us/cdesped/guidance_determiningeligibility_sped_students_ohi. Generally, an illness must last three months or longer to be considered chronic. *Id.* An acute health problem "begins abruptly and with marked intensity, then subsides or has rapid onset, severe symptoms, and a short course." *Id.* A medical diagnosis is not necessary, nor by itself sufficient to establish OHI eligibility. *Id.* at p. 3.

Here, the Record reflects that the MDT considered the initial evaluation, including observations, formal assessments, the Private Evaluation, and input from Parent and Student in finding student ineligible under OHI. (FF #s 16, 24-26.) District's initial evaluation showed that Student displayed concerns across conduct problems, externalizing problems, school problems, learning problems, attention problems, study skills, and withdrawal. (FF # 21.) However, Student did not display overall concerns for hyperactivity. (*Id*.) Student's self-report indicated at-risk scores for sensation seeking, attitude to school, attitude to teachers and school problems. (*Id*.) However, Student's self-report did not indicate concern for inattention/hyperactivity. (*Id*.)

The CDE recognizes the Private Evaluation diagnosed Student with ADHD. (FF # 13.) However, as noted above, a medical diagnosis alone is not sufficient to establish OHI eligibility. In determining his eligibility, the MDT considered information from both the District's initial evaluation and the Private Evaluation and discussed Student's difficulties engaging in class and completing his work. (FF #s 16, 22, 25-26.) However, based on the Student-specific data considered by the MDT, these difficulties did not support a determination that Student was eligible for special education in this case. (FF # 26.) Ultimately, the MDT determined that Student could receive reasonable

educational benefit from general education alone and, therefore, determined he was not eligible for special education services. (*Id*.)

For these reasons, the CDE finds and concludes that District made the December 2025 eligibility determination consistent with the IDEA's procedures and the information in Student's record at the time. District complied with the law.

Conclusion to Allegation No. 2: District developed an IEP between February 2026 to present that considered Student's behavior needs, as required by 34 C.F.R. § 300.324(a)(2)(i). District complied with the law.

I. Legal Standard for IEP Development

The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). The IDEA requires districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Id.*, 137 S. Ct. at 999.

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 answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.*

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., ex rel. Desiree 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.

Complainant's allegation relates only to the substantive adequacy of Student's IEP, so the CDE need not address the first prong of the *Rowley* standard.

II. Substantive Adequacy of Student's IEP

Regarding the second prong, Complainant alleges that the IEP is not substantively adequate, because it did not appropriately address Student's behavioral needs. (FF # 1.)

If a child's behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior when developing the child's IEP. 34 C.F.R. § 300.324(a)(2)(i). This includes where the consequences of a child's behavior, including "violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures" impede the child's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Disciplinary Provisions*, 122 LRP 24161 (OSERS 07/19/22). A student's need for behavioral interventions and support must be decided on an individual basis by the student's IEP Team. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540, 46691 (Aug. 14, 2006). The IDEA does not require districts to develop a BIP for all students with disruptive behavior; instead, it is enough for the IEP Team to outline any behavioral supports and strategies in the student's IEP. *Id.* at 46683.

If a district chooses to develop a BIP, the BIP can document the "use of positive behavior interventions, supports and other strategies to address the behavior of a child whose behavior impedes the child's learning or that of others." *CDE IEP Procedural Guidance Manual*, p. 121 (CDE 2017), *available at* www.cde.state.co.us/transportation/iepproceduralguide. To be effective, a BIP should detail the target behaviors and the motivation behind these target behaviors. *Id.* If a student displays unsafe behaviors, a BIP should also include a crisis intervention plan to address positive intervention and de-escalation strategies. *Id.* Districts typically conduct an FBA prior to developing a BIP, but the IDEA does not require that positive behavioral supports be based on an FBA. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46683 (Aug. 14, 2006).

Here, Student struggled during Fall 2025 with arriving late to class, not completing coursework, and not engaging in class. (FF # 8.) In February 2026, Student was found eligible for special education, and his IEP was finalized in March 2026. (FF #s 33, 36.) That IEP included accommodations that were focused on Student's behaviors. (FF #s 41-42.) To address Student's tendency to fall asleep in class and refusal to engage in class, Student's IEP included accommodations like: assistance with note taking, copies of notes provided in print, frequent check-ins for understanding, preferential seating near the point of instruction to allow for quick check-ins, and breaks to re-regulate and focus between classes. (FF # 41.) Additionally, he received 30 minutes per week of direct instruction in areas of executive functioning, such as task planning and work completion. (FF # 42.) Also, the IEP reflected that many of these behaviors were the result of Student's disabilities. (FF # 38.) He lacked sustained focus and concentration and had deficits in written expression. (*Id.*) Combined together, these disabilities impeded his ability to learn and made him resistant to participating—either through coursework or during

class. (*Id.*) The written expression deficit is especially notable for a child in eighth grade, where nearly all classwork requires written work. The IEP itself was designed to address Student's behavior by ensuring he received the specially designed instruction he needed to access his education. The Record does not reflect any other behaviors beyond the scope of the IEP.

Additionally, at the time Student's IEP was being developed, his FBA was in progress. (FF # 45.) District finished the FBA and then developed a BIP for Student on April 28. (FF # 46.) The FBA identified similar target behaviors as Student's IEP, and the BIP contained two goals related to his ability to engage in coursework and arrive on time to class with necessary materials. (*Id.*) This BIP was finalized only four weeks after developing Student's IEP and addressed the same behaviors already identified in his IEP. (*Id.*)

As detailed above, District considered and added accommodations, as well as direct and indirect support, to Student's IEP to address his behaviors, specifically his work refusal and tendency to disengage during class. (FF #s 40-42.) For these reasons, the CDE finds and concludes that District developed an IEP that considered the use of positive behavioral interventions and supports and other strategies, including a BIP, to address behavior impeding Student's learning or that of others February 2026 to present, as required by 34 C.F.R. § 300.324(a)(2)(i).

Conclusion to Allegation No. 3: District ensured Student's IEP was implemented as soon as possible following its development on March 30, as required by 34 C.F.R. § 300.323(c)(2). District complied with the law.

Complainant's concern is that District did not implement Student's IEP as soon as possible after it was developed, specifically between February 18, 2026 and March 31, 2026. (FF # 3).

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). A district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." § 300.323(c)(2). However, "as soon as possible" does not necessarily mean immediately. *See D.D. ex rel. V.D. v. N.Y.C. Bd. of Ed.,* 465 F.3d 503, 514-15 (2nd Cir. 2006). The IDEA imposes a "flexible requirement" for implementation that "permits some delay between when the IEP is developed and when the IEP is implemented." *Id*. at 514. However, the basis for the delay matters. *Id*. The factors to be considered include, amongst others: (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP. *Id*.

Here, the Record shows that District stood ready to implement Student's IEP the day after it was finalized. (FF# 44.) After Student was found eligible for special education services on February 18, District scheduled an IEP Team meeting for March 16 to develop Student's IEP; however, the meeting was rescheduled to March 30 to accommodate Parent's request for CDE Special Education Facilitation. (FF #s 35-36.) The IEP was finalized at the meeting on March 30, and Parent

provided her consent for the provision of services that same day. (FF #s 36, 44.) The next day, on March 31, District was ready to implement Student's IEP; however, he was absent. (FF # 44).

For these reasons, the CDE finds and concludes that District implemented Student's IEP as soon as possible following its development on March 30. Accordingly, District complied with 34 C.F.R. § 300.323(c)(2).

REMEDIES

The CDE concludes that District complied with the IDEA. Therefore, no remedies are ordered.

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 ("SCO").

Dated this 14th day of October, 2026.



Haley Solomon
State Complaints Officer

APPENDIX

Complaint, pages 1-19

- Exhibit 1: December 16, 2025 Meeting Transcript
- Exhibit 2: December 16, 2025 Meeting Audio Recording
- Exhibit 3: March 5, 2026 Meeting Transcript
- Exhibit 4: March 5, 2026 Meeting Audio Recording
- Exhibit 5: December 16, 2025 PWN
- Exhibit 6: December 2025 Evaluation Report Draft
- Exhibit 7: December 2025 Signed Determination of Eligibility
- Exhibit 8: March 2026 Signed Consent for Provision of Special Education Services
- Exhibit 9: Student's February 2026 IEP
- Exhibit 10: February 2026 Signed Determination of Eligibility
- Exhibit 11: January 2026 Email Clarifying IEP Team
- Exhibit 12: February 2026 Email Follow Up Summary
- Exhibit 13: February 2026 Parent Email Clarifying Accommodations
- Exhibit 14: February 2026 Email IEP and BIP
- Exhibit 15: March 2026 Parent Email, Composition Class
- Exhibit 16: March 2026 Parent Emails, 504 Plan
- Exhibit 17: March 2026 Email Clarifying No Accommodations
- Exhibit 18: March 2026 Parent Emails, PE
- Exhibit 19: March 2026 Emails
- Exhibit 20: CDE Credential Search
- Exhibit 21: CDE Credential Search
- Exhibit 22: April 2026 BIP Draft
- Exhibit 23: Student February 2026 IEP
- Exhibit 24: Parent February 2026 FBA and BIP Request
- Exhibit 25: February 2025 Parent Email, Composition Class
- Exhibit 26: April 28 FBA and BIP Email
- Exhibit 27: Parent FERPA Request
- Exhibit 28: May 2026 Parent Email
- Exhibit 29: May 2026 Parent Email
- Exhibit 30: May 2026 Parent Email
- Exhibit 31**:** Timeline
- Exhibit 32: Doctor Letter
- Exhibit 33: December 2026 NOM
- Exhibit 34: January 2026 Email, Timeline Clarification
- Exhibit 35: May 2026 ISS Email
- Exhibit 36: January 2026 Draft 504 Plan Email
- Exhibit 37: January 2026 Draft 504 Plan Email
- Exhibit 38: Draft 504 Plan
- Exhibit 39: January 2026 Email 504 Plan

- Exhibit 40: February 2026 NOM
- Exhibit 41: March 2026 NOM
- Exhibit 42: March 2026 Email Student Behavior
- Exhibit 43: March 2026 NOM Rescheduled
- Exhibit 44: February 2026 Evaluation Report
- Exhibit 45: February 2026 Emails Poem Incident
- Exhibit 46: February 2026 Emails Poem Incident
- Exhibit 47: Parent Email Record Request
- Exhibit 48: March 2026 NOM Email
- Exhibit 49: May 2026 Email Student Behavior
- Exhibit 50: May 2026 Parent Email
- Exhibit 51: April 2026 Email Scheduling FBA Meeting
- Exhibit 52: May 2026 Email Confirming Records
- Exhibit 53: April 2026 Email
- Exhibit 54: May 2026 Emailing Confirming BIP
- Exhibit 55: May 2026 Parent Email Confirming BIP
- Exhibit 56: Student Discipline Log
- Exhibit 57: Correspondence

Amended Complaint, pages 1-2

- Exhibit 58: Parent Evaluation Request
- Exhibit 59: Supplemental Documentation

Response, pages 1-8

- Exhibit A: Student's IEP
- Exhibit B: Student's BIP
- Exhibit C: NOMs
- Exhibit D: PWNs
- Exhibit E: Other IEP Information
- Exhibit F: Student's Discipline Records
- Exhibit G: Student's Grades and Attendance
- Exhibit H: Progress Monitoring
- Exhibit I: Service Log
- Exhibit J: Evaluation, FBA, and Outside Evaluation
- Exhibit K: District's Calendar 2025-2026
- Exhibit L: District Policies and Procedures
- Exhibit M: Correspondence
- Exhibit N: Contact Information
- Exhibit O: Verification of Delivery to Complainant
- Exhibit P: Section 504 Documentation

Supplemental Response to Amended Complaint, pages 1-6

- Exhibit P1: Consents for Evaluation

Reply to Response, pages 1-16

- Exhibit 60: Photo of Student's Planner
- Exhibit 61: Photo of Student's Planner
- Exhibit 63: December 2026 Signed Determination of Eligibility

Reply to Supplemental Response, pages 1-16

- Exhibit 64: CDE Guidelines for SLD

Telephone Interviews

- Parent: September 14, 2026
- Dean: September 15, 2026
- Writing Teacher: September 16, 2026
- Coordinator: September 16, 2026
- Case Manager: September 16, 2026