

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

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**State-Level Complaint 2022:521  
Denver Public Schools**

**DECISION**

**INTRODUCTION**

On April 27, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”).<sup>1</sup> The State Complaints Officer (“SCO”) determined that the Complaint identified four (4) allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from April 27, 2021, through April 27, 2022, for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether the District denied the Student a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to conduct a re-evaluation of the Student after Parent consent was provided in July 2021, consistent with the IDEA and its implementing regulations at 34 C.F.R. § 300.303, and ECEA Rule 4.02(5).

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<sup>1</sup> 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. Failed to have in effect an IEP for the Student at the beginning of the 2021-2022 school year consistent with the IDEA and its implementing regulations at 34 C.F.R. § 300.323, and ECEA Rule 4.03(1)(a).
3. Failed to develop an IEP for the 2021-2022 school year, based on a recent evaluation, that was reasonably calculated to address the Student's unique educational and functional needs and enable the Student to be involved in and make progress in the general education curriculum as required by 34 C.F.R. §§ 300.320 and 300.324, and ECEA Rule 4.03.
4. Failed to reimburse the Student and Parent for expenses of private evaluations and education, including specialized instruction and related services, consistent with the IDEA and its implementing regulations at 34 C.F.R. § 300.148, and ECEA Rule 5.01(9).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. There is a longstanding dispute between the District and Parent regarding the Student's disabilities and educational needs that provide context for understanding and determining this Complaint.
2. The Student was first determined eligible for special education on March 21, 2019, with a primary disability of Other Health Impairment (OHI) on the basis of diagnoses of postural orthostatic tachycardia syndrome (POTS), delayed sleep phase (DSP), and periodic limb movement disorder (PLMD). *Exhibit 2*, p. 20.
3. Since initial provision of special education services, the Student was enrolled in three separate District schools but did not attend school more than a couple of days at any school. *Id.* at p. 81.
4. The Student was enrolled at one school on October 11, 2019 but did not attend school. *Id.*
5. On October 16, 2019, the District offered to provide the Student thirty minutes of weekly psychological services through remote instruction if he was not in attendance at school, but despite scheduling sessions the Student never participated. *Id.*
6. On October 26, 2019, the Student's IEP Team discussed the Parent's request for

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire record.

homebound instruction and the District declined to make a significant change to the Student's placement without reevaluation. *Exhibit 5*, pp. 24-27.

7. On October 29, 2019, the District proposed to conduct a reevaluation of the Student in the areas of health, social-emotional status, motor abilities, and academic performance, including a Functional Behavioral Assessment (FBA) to better understand the Student's lack of consistent school attendance. *Id.* at pp. 36-37.
8. On November 6, 2019, the District continued to offer to provide virtual psychological services to the Student for thirty minutes weekly, and to provide audio recordings of missed instruction pending completion of the reevaluation underway. *Id.* at pp. 36-37.
9. While the District attempted to schedule assessments at mutually agreeable times and locations, including in the Student's home, the Student was not made available by the Parent for all scheduled activities and completion of the reevaluation was delayed and derailed. *Id.* at pp. 18-23.

#### **B. January 14, 2020 Reevaluation**

10. A special education re-evaluation was partially completed on January 14, 2020 without a FBA, physical therapy, or occupational therapy assessments for which consent was revoked or assessment activities cancelled or missed by the Parent. *Exhibit 2*, pp. 16-36 and 72-77; *Exhibit 3*, pp. 1-13.
11. Little academic data were available for consideration in reevaluation due to the Student's lack of attendance at one school and lack of response from Parent to attempts to test at home or a neutral location, so the District relied primarily on a record review of previous evaluations reflecting no academic performance concerns. *Exhibit 3*, pp. 1-13.
12. A review of records reflected declining performance on various measures of intellectual ability between 2012 and 2016, from the 95<sup>th</sup> percentile to the 65<sup>th</sup> percentile, without explanation. *Id.* at pp. 1, 4.
13. A review of records also reflected concerns with somatization and anxiety in 2018, and with somatization, atypicality and adaptability in 2019. *Id.* at pp. 4-5.
14. The Student was given a medical diagnosis of unspecified anxiety disorder from his private medical service provider in the fall of 2018, with recommendations for physical therapy treatments as well as behavioral interventions and supports to address cognitive distortion and avoidant behavior. *Id.* at p. 9.
15. A review of records also reflected opinions and recommendations from treating medical

providers that the Student should attend school, practice good sleep hygiene, follow recommendations for the treatment and management of POTS, develop coping strategies through behavioral interventions and cognitive therapy, and receive support to adhere to routines and schedules. *Id.* at pp. 5-8.

16. Alternatively, a past private psychological service provider offered an opinion that the Student had no mental health problems and recommended homebound placement based only on the POTS diagnosis, completing a homebound authorization form on October 28, 2019. *Id.* at p. 5.
17. The District's school psychologist recommended disregarding the recommendation of the past private psychological service provider due to the lack of foundation and lack of any psychological or behavioral treatment goals or recommendations. *Id.* at p. 6.
18. The District's school psychologist attempted to complete evaluation activities of the Student to reconcile the divergent opinions of outside providers but parental consent to proceed was revoked by Parent. *Id.* at pp. 7-8.
19. The District's Evaluation Report indicated that the Student may need behavior interventions and supports to address school avoidance but focused exclusively on the provision of parent training rather than direct provision of services and supports to the Student. *Id.* at pp. 8, 13.
20. The District's school nurse concluded that the Student can and should attend school and did not observe stress or anxiety in her meeting with him at home, but provided no recommendations for how to support his attendance. *Id.* at p. 10.
21. The District concluded that the Student's medical condition did not preclude in-school attendance and that his social-emotional functioning was "relatively within normal limits," but did not explain why the Student was chronically absent from school. *Id.* at p. 13.

### **C. Review of the January 14, 2020 Reevaluation**

22. On January 14, January 28, and January 30, 2020, the Student's IEP Team convened to review evaluation data and develop an IEP for the Student dated January 30, 2020. *Exhibit 5*, pp. 18-23.
23. From October 11, 2019, to January 30, 2020, the Student was scheduled for home instruction for thirty minutes twice weekly, but only attended at the rate of 43%, completing nine of one hundred eighty assignments during Block 2, and two of twenty-six assignments, modified from a standard load of fifty-two assignments. *Exhibit 2*, pp.

81-82.

24. During that same period the Student also did not participate in scheduled mental health services offered by the District. *Id.* at p. 81.
25. The Student's IEP Team considered the opinions of his treating medical professionals that it was important for the Student to be educated outside of his home, to develop skills to overcome discomfort associated with leaving his home to attend school, that his physical condition did not preclude in-school attendance, and that he should attend school in-person for four hours daily. *Exhibit 5*, pp. 18-23.
26. The Student's IEP Team also considered the Student's need to learn with typical peers. *Id.*
27. The Student's IEP Team also considered conflicting opinions of his treating medical professionals that he should receive instruction in a homebound setting based on his physical condition caused by POTS. *Id.*
28. The Student's IEP Team also considered Parent input from a Mayo Clinic publication: "Teens and Dysautonomic Function" that included information consistent with the opinions of most of his medical providers that "students with POTS generally benefit from getting out of the house, having structure in the day, and continuing to attend school." *Id.*
29. On February 7, 2020, the District proposed an IEP for the Student at one school dated January 30, 2020. *Id.*

#### **D. The January 30, 2020 IEP**

30. The January 30, 2020 IEP identifies that the Student needs accommodations to minimize the impact of POTS symptoms at school, and "structure in his day and needs to get out of the house to support him feeling better . . . [and] to develop skills to manage his symptoms by utilizing appropriate interventions." *Exhibit 2*, p. 85.
31. The January 30, 2020 IEP also identifies that the Student "needs a structured incentive attendance program at school . . . [and] a structured incentive and consequence program for attendance at home." *Id.*
32. The January 30, 2020 IEP reflects Parent requests for in home support and enrollment in school with a shortened schedule of four hours and shortened assignments. *Id.*
33. The January 30, 2020 IEP reflects Parent input that the Student has "a strong desire to

attend school and be successful” and misses school and peer experiences. *Id.*

34. The January 30, 2020 IEP reflects the Parent’s belief that the crux of the dispute with the District is whether or not the Student should be placed at home for services. *Id.*
35. Despite the Student’s chronic and persistent absenteeism without a clearly established medical basis, the January 30, 2020 IEP indicates that “the student does not exhibit behavior that requires a Behavior Intervention Plan.” *Id.* at p. 86.
36. The January 30, 2020 IEP contained one annual goal for the Student to self-identify and rate the severity of his health symptoms, and implement strategies to manage and minimize their impact to allow for sustained attendance in school for four hours daily. *Id.*
37. The January 30, 2020 IEP provided thirty minutes daily of specialized instruction, sixty minutes per month of individual mental health supports, one hundred twenty minutes per month of parent counseling and training to establish new expectations for the Student’s attendance (although not included in the services grid), and sixty minutes per month of nursing consultation. *Id.* at pp. 90-91.
38. The January 30, 2020 IEP also provided a modified four-hour school schedule. *Id.* at p. 90.
39. The January 30, 2020 IEP did not provide supports or services to the Student at home in order to increase his capacity to attend school or maintain his learning while out of school. *Id.* at pp. 78-94.

#### **E. The September 18, 2020 IEP**

40. The Student’s IEP Team developed an annual IEP dated September 18, 2020. *Id.* at pp. 48-68.
41. The September 18, 2020 IEP identified that the Student needs accommodations to minimize the impact of POTS symptoms at school, and “structure in his day and needs to get out of the house to support him feeling better . . . [and] to develop skills to manage his symptoms by utilizing appropriate interventions.” *Id.* at p. 58.
42. The September 18, 2020 IEP also identified that the Student “needs a structured incentive attendance program at school . . . [and] a structured incentive and consequence program for attendance at home.” *Id.*
43. The September 18, 2020 IEP indicated that “the student does not exhibit behavior that

requires a Behavior Intervention Plan.” *Id.* at p. 60.

44. The September 18, 2020 IEP contained one annual goal: to self-identify the severity of his symptoms from a scale of zero to ten using a health impairment rating scale and to implement strategies to manage his symptoms to minimize their impact and allow for sustained attendance in the school building for four hours daily. *Id.* at pp. 61-62.
45. The September 18, 2020 IEP provided thirty minutes daily of specialized instruction, sixty minutes per month of individual mental health supports, one hundred twenty minutes per month of parent counseling and training to establish new expectations for the Student’s attendance [although not included in the services grid], and sixty minutes per month of nursing consultation. *Id.* at p. 65.
46. The September 18, 2020 IEP also provided a modified four-hour school schedule. *Id.*
47. The September 18, 2020 IEP reflected discussion of a FBA to help the IEP Team “understand reasons for [the Student’s] nonattendance to appropriately tailor interventions and develop an attendance goal” and the District’s request for consent to complete an FBA. *Id.* at p. 67.
48. The September 18, 2020 IEP reflected a start date for services of 9/21/20 and an end date of 9/17/21. *Id.* at p. 65.

#### **F. Continued Attempts to Reevaluate Student**

49. On October 5, 2020, the District again proposed to conduct an FBA to identify the reasons for Student’s lack of participation and engagement in school and to assess the appropriateness of interventions related to his absenteeism, based on his Parent’s comment that the reason was lack of motivation. *Exhibit 5*, pp. 5-7.
50. The Parent declined to provide consent to reevaluation. *Id.* at p. 1.
51. On November 29, 2020, the Parent provided notice of intent to withdraw the Student from the District and claim private school reimbursement. *Id.* at pp. 28-29.
52. On November 30, 2020, the District again proposed to reevaluate the Student, to which the Parents declined to provide consent. *Id.*; *Exhibit 5*, pp. 1-4.
53. On December 15, 2020, the Parent withdrew the Student from the District. *Exhibit 5*, pp. 28-29.
54. Over the 2020-2021 and 2021-2022 school years the District staff made numerous

efforts to engage, assess and provide instruction to the Student through remote instruction, via email and phone, in-person at school, in-person at home, and in-person in neutral locations. *Exhibits 2-5.*

55. From January 5, 2021 to July 31, 2021, the Student was enrolled at a private program (“Private Program 1”) with a projected cost of \$9,786 per month. *Exhibit E.*
56. Private Program 1 services ended on April 30, 2021. *Id.*
57. The Student received private one-to-one instruction from another private program (“Private Program 2”) from February 2, 2021 to August 17, 2021. *Exhibit 2*, p. 9 and *Exhibit E.*
58. On March 12, 2021, the Parent provided the District with additional records including a homebound application and letter from a private physician’s assistant dated December 9, 2020, and a letter from the Student’s former psychologist, recommending homebound instruction for the Student. *Exhibit 5*, pp. 28-29.
59. Contrary to her homebound recommendation, the homebound application and letter from the private physician’s assistant indicated that the Student needs flexible school hours and that he “may attend part-time programming in a school setting at this time.” *Id.* at pp. 33-35.
60. In response, the District continued to offer reevaluation of the Student as proposed on November 30, 2020, to which Parent consent had not been provided, in order to make a determination regarding his current placement. *Id.* at pp. 28-29.
61. On March 26, 2021, the District continued to offer to provide services to the Student pursuant to the September 18, 2020 IEP. *Id.*

#### **G. The April 23, 2021 Reevaluation Proposal**

62. On April 23, 2021, the District again proposed to reevaluate the Student including an FBA and additional information from the Student’s medical providers to consider homebound placement and sought Parent consent, revising its previous proposal to conduct a health assessment, to which the Parent objected. *Exhibit 2*, pp. 72-77.
63. Parent consent to reevaluate was withheld and the Parent requested reevaluation be limited to a record review by private providers. *Id.* at pp. 69-71.

#### **H. The June 2, 2021 IEP Amendment**

64. The Student's IEP Team agreed to amend his IEP on June 2, 2021, to provide: thirty minutes daily of specialized instruction in the general education classroom to identify health impairment symptoms and management during breaks and check-ins, teacher training regarding POTS, and the development and use of a symptom rating scale; sixty minutes per month of mental health support outside the general education classroom to support school attendance and the IEP goal to manage symptoms with identified strategies; one hundred twenty minutes monthly of Parent counseling and training to establish and implement expectations for the Student's regular school attendance; and sixty minutes per month of nursing services to consult with staff on health conditions, health care plans, and reaching his health care goal at school. *Id.*
65. The amended IEP also provided a modified afternoon school schedule with hourly scheduled breaks. *Id.*

#### **I. Continued Reevaluation Dispute**

66. On July 9, 2021, the Parent provided consent with limitations to the District's proposed reevaluation of the Student, objecting to an FBA and further assessment of his medical condition as "unwarranted." *Exhibit 4*, pp. 220-21.
67. The District offered many opportunities to schedule evaluation activities at various times and places, including the Student's home, that could not be coordinated with the Parent and could not be completed despite numerous District efforts and offers. *See e.g., Id.* at pp. 325, 419, 452, 456, 495, 622, 650, 670, 700, 745, 783, 815, 837, 847, 857, and 924; *Exhibits 2-5*.

#### **J. Private School Placement**

68. From August 1, 2021 to July 31, 2022, the Student was enrolled at a third private program ("Private Program 3") for the eleventh grade. *Exhibit E*.
69. The Private Program 2 Transition Summary Report indicated that the Student's academic success is often hindered by mental health factors including social anxiety, that online learning was not successful, and that he is unable to attend school due to disabilities. *Id.*

#### **K. Continued Reevaluation Dispute**

70. On August 31, 2021, the Parent submitted a letter from the Student's sleep clinic dated August 19, 2021, indicating that he needs 1:1 assistance at home to accommodate a sleep disorder, but that did not specifically exclude in-school instruction or recommend

in-home instruction. *Exhibit 2*, p. 9; *Exhibit 5*, p. 31.

71. The District concluded that it could not assess the Student's current health needs with incomplete medical information and an unfinished evaluation. *Exhibit 2*, p. 9.
72. On August 31, 2021, the Parent wrote to the District to indicate that she would not provide additional information from the Student's medical providers regarding his health condition despite a previous agreement to do so. *Id.* at pp. 8-9.
73. On September 10, 2021, the District notified the Parent of the need to complete a reevaluation of the Student, of the continuing offer to provide services in accordance with the current IEP, and the continuing request for additional information regarding the Student's health condition in order to complete its reevaluation and consider the Parent's request for significant changes to his IEP. *Id.* at pp. 8-10.
74. On September 13, 2021, the Parent provided written responses to the District's questions regarding the Student's health from a second private physician's assistant reporting that the Student's sleep disorder "wouldn't necessarily prevent him from physically attending but it may be difficult to get there in time for early morning classes . . . and he may fall asleep in class." *Exhibit 5*, p. 30.
75. In an IEP Team meeting on November 17, 2021, the Parent reported that the cause of the Student's lack of attendance at school was "a lack of trust of individuals in the District." *Exhibit 2*, p. 47.
76. On December 6, 2021, the Parent reported that the Student "is unable to participate in [District] testing at this time due to the limitations of his disabilities" and "[y]ou are not going to be able to meet with [the Student] . . . due to his medical condition." *Exhibit 4*, pp. 325, 419, 452, and 495.

#### **L. The December 9, 2021 IEP**

77. The Student's IEP Team met on October 14, November 17 and December 9, 2021 to review and revise his IEP with the Parent. *Exhibit 2*, p. 17.
78. Progress was reported at the December 9, 2021 meeting as follows: "Due to attendance and not being enrolled, no progress has been made on this goal." *Id.* at pp. 20-21.
79. At the time of the December 9, 2021 IEP Team meeting, the Student was receiving 1:1 services and supports for two hours daily at home from Private Provider 1. *Id.* at p. 22.
80. Current assessment information, including academic, social and emotional and

- transition assessments, was incomplete due to lack of District access to the Student. *Id.*
81. The December 9, 2021 IEP identified that the Student does not exhibit behavior that requires a Behavior Intervention Plan. *Id.* at p. 27.
  82. The December 9, 2021 IEP contained one Annual Goal: to develop trusting relationships with at least two adults in the educational setting through 1:1 and small group interactions around areas of academic and social interests. *Id.* at p. 28.
  83. The December 9, 2021 IEP contained nineteen accommodations and modifications and a modified four-hour school day in the afternoon with scheduled breaks. *Id.* at pp. 29-32.
  84. The District offered homebound services to the Student for three days a week for three weeks as part of the evaluation process to gather information regarding the Student's "willingness to interact with a provider and direct information regarding his academic needs" but Parent consent was withheld. *Id.* at p. 22.
  85. The December 9, 2021 IEP provided thirty minutes daily of specialized instruction in the general education classroom to identify and develop positive adult relationships focused on responsibility management during scheduled breaks and check-ins; sixty minutes per month of psychological services outside the general education classroom to support school attendance and the IEP goal; one hundred twenty minutes monthly of parent support and training to support expectations for regular school attendance; and sixty minutes per month of nursing services to consult with staff on health conditions, health care plans, and reaching his health care goal at school. *Id.* at p. 32.
  86. The Student's Post-School Transition Goals were to attend a four-year college, be competitively employed in a career that incorporates his interests in writing or architecture and live independently. *Id.* at p. 27.
  87. At the IEP Team meeting on December 9, 2021, the IEP Team discussed the Student's placement in school and at home, the information provided to the District from medical providers, and the incomplete evaluation information available. *Id.* at pp. 33-35.
  88. One of the Student's private providers reported that the Student has developed "behavioral habits that have been engrained that impact his personal motivation to attend" school. *Id.* at p. 22.
  89. A reevaluation was not completed due to lack of District access to the Student. *Id.* at pp. 44-46.

90. The District concluded that insufficient evaluation or medical information existed to warrant a significant change to homebound instruction. *Id.* at pp. 33-35, 46.

91. The District continued to propose that the evaluation of the Student be completed when the Parent made the Student available. *Id.* at p. 47.

92. The Parents were engaged in family therapy that recommended parenting supports and coaching to “establish clear boundaries and expectations, consequences and accountability, and less responsibility on them” for the Student’s daily living, and for “parent coaching that supports [the Student’s] school engagement, provides him structure and expectations, and natural consequences for failing to engage in programming meant to support changes to his routines.” *Exhibit D.*

93. The Parent has incurred significant expenses to provide in-home instruction to the Student from April 27, 2021 to April 27, 2022. *Id.*

94. The Parent asserts that the Student has always been made available to the District to complete the reevaluation. *Parent Interview, 6/13/22.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District did not violate 34 C.F.R. § 300.303 or ECEA Rule 4.02(5).**

An initial evaluation must be completed within sixty days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301(c)(1). However, the timeline *does not* apply if the “parent of a child repeatedly fails or refuses to produce the child for the evaluation.” *Id.* § 300.301(d)(1) (emphasis added). A school district must reevaluate a student with a disability in two situations:

- (1) if the [school district] determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) if the child’s parent or teacher requests a reevaluation.

*Id.* § 300.303(a). Such a reevaluation must occur at least once every three years and may not occur more than once a year, unless the parent and school district agree otherwise. *Id.* § 300.303(b).

A reevaluation must 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.” *Id.* § 300.304(c)(6). Thus, school districts must be permitted to complete a comprehensive special education evaluation of the student. *M.T.V. v. DeKalb Cty. Sch. Dist.*, 446 F.3d 1153, 1160 (11th Cir. 2006) (noting that “[e]very court to consider the IDEA’s reevaluation requirements has concluded ‘[i]f a student’s parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation’”); *Dubois v. Connecticut State Bd. of Educ.*, 727 F.2d 44, 48 (2nd Cir. 1984) (noting that “[b]efore a school system becomes liable under [IDEA] for special placement of a student, it is entitled to up-to-date evaluative data[, and . . . ] the school system may insist on evaluation by qualified professionals who are satisfactory to the school officials”); *Andress v. Cleveland Ind. Sch. Dist.*, 64 F.3d 176, 178 (5th Cir. 1995) (noting “[i]f a student’s parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student”).

Here, the Parent either failed or refused to produce the Student for evaluation despite diligent District efforts to identify his special education and related service needs by offering evaluations in-person, remotely, and at home. The Parent consented—then revoked and refused consent—to an evaluation proposed by the District which was designed to understand the Student’s needs in light of contradictory medical and mental health information from the Parent as to the cause of his inability to attend school. The Parent provided partial consent at times and then obstructed completion of the evaluation by failing or refusing to produce the Student for assessments. The District was left without an ability to conclusively establish the reason for the Student’s non-attendance and consequently was deprived of the capacity to develop and deliver supports and services to ensure his progress. As a result, the Student has not attended public school in person or received the special education services the District stood ready to deliver over the past year. Despite its ardent efforts, the District has not been able to evaluate, understand, and propose services tailored to support his instruction either in school or at home.

Again, any determination of a child’s disability-related needs must be based on sound evaluation information. Because of the Parent’s actions in thwarting the District’s attempts to complete the evaluation necessary to determine the Student’s disability-related needs, the IEP Team was deprived of recent, critical data to determine the Student’s needs. For these reasons, the SCO finds and concludes that the District did not violate 34 C.F.R. § 300.303 or ECEA Rule 4.02(5).

**Conclusion to Allegation No. 2: The District did not violate 34 C.F.R. § 300.323 or ECEA Rule 4.03(1)(a).**

A school 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.” 34 C.F.R. § 300.323(c)(2).

Here, the Student had an IEP dated June 2, 2021, in effect at the beginning of the 2021-2022 school year that reflected his disability and educational needs to the extent the Parent cooperated with the District's repeated attempts to complete a comprehensive reevaluation—including a FBA and definitive medical information—to inform its contents. The District at all times stood willing to implement that IEP in the event the Student re-enrolled in the District, and to review and revise that IEP based on completion of a comprehensive reevaluation. This was true even when, on November 29, 2020, December 15, 2020, and August 1, 2021, the Student was withdrawn from the District and attended a private school. Moreover, despite the Student's withdrawal the District continued to propose and urge the Parent to cooperate to complete the Student's reevaluation without success. For these reasons, the SCO finds and concludes that the District did not violate 34 C.F.R. § 300.323 or ECEA Rule 4.03(1)(a).

**Conclusion to Allegation No. 3: The District did not violate 34 C.F.R. §§ 300.320 or 300.324, or ECEA Rule 4.03.**

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. *Andrew 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.*

An IEP Team must determine a child's need for special education and related services on an individual basis, given the child's unique needs. 34 C.F.R. § 300.320. When developing an IEP, the IEP Team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. *Id.* § 300.324(a)(1). Placement decisions must be made by individuals with knowledge of the child, including the child's parents, and the meaning of evaluation data. *Id.* § 300.116. A significant change in placement must be made upon consideration of a re-evaluation. ECEA Rule 4.03(8)(b)(ii). A change between in-school and homebound instruction is a significant change of placement. *Id.*

Here, the Parent's repeated requests for a change in the Student's placement from in-school to homebound instruction was a request for a significant change in placement. When the Parent obstructed the District's ability to complete its reevaluation by not making Student available for assessments the IEP Team was deprived of the capacity to consider the required reevaluation data in order to make a proper determination on placement. The Parent's actions effectively prevented the District from developing an IEP based on recent information about the Student's unique needs—as required by the law—despite District's unwavering efforts to do so. Still, the

District developed and updated an IEP for the Student based on assessments it was able to complete and information made available. For these reasons, the SCO finds and concludes that the District did not violate 34 C.F.R. §§ 300.320 or 300.324, or ECEA Rule 4.03.

**Conclusion to Allegation No. 4: Parent is not entitled to reimbursement consistent with 34 C.F.R. § 300.148 and ECEA Rule 5.01(9).**

Parents may be entitled to private school tuition reimbursement where “the court or hearing officer finds that the [school district] had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.” 34 C.F.R. §300.148(c). Reimbursement may be reduced or denied if parents fail to make the child available for an evaluation. *Id.* § 300.148(d).

Here, as described in the conclusions to allegations one through three, the District offered the Student a FAPE (or attempted to and was denied access to the Student by Parent) in a timely manner over the period of this Complaint. Moreover, even if the District had not offered the Student a FAPE, Parent did not make the Student available to the District for reevaluation. For these reasons, the SCO finds and concludes that Parent is not entitled to reimbursement consistent with 34 C.F.R. § 300.148 and ECEA Rule 5.01(9).

**REMEDIES**

The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

**CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; *see also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 26th day of June, 2022.

/s/ CDE Contract State Complaints Officer  
CDE Contract State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-97**

#### **Response, pages 1-20**

- Exhibit 1: Response
- Exhibit 2: Records
- Exhibit 3: Records
- Exhibit 4: Emails
- Exhibit 5: Records

#### **Reply, pages 1-5**

- Exhibit A: Response and Complaint Documents
- Exhibit B: Emails
- Exhibit C: Homebound Documents
- Exhibit D: Medical Records
- Exhibit E: Miscellaneous Documents
- Exhibit F: Complaint Edits
- Exhibit G: Emails

#### **Telephone Interviews**

- Parents: June 13, 2022