

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

---

**State-Level Complaint 2023:599  
El Paso 20 (Academy) School District**

**DECISION**

**INTRODUCTION**

On October 23, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against El Paso 20 (Academy) School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 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 October 23, 2022 to the present 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 District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to determine Student’s educational placement in accordance with 34 C.F.R. §§ 300.114-300.116, from August 10, 2023 to present, specifically by:
  - a. Failing to ensure the availability of a continuum of alternative placements to meet Student’s needs, including home instruction, as required by 34 C.F.R. § 300.115(b)(1); and

---

<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.

- b. Failing to ensure that the placement decision was made by a group of persons that includes Parents and other persons knowledgeable about Student, the meaning of the evaluation data, the placement options, and in conformity with the least restrictive environment provisions, as required by 34 C.F.R. § 300.116(a).

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is ten years old, in fourth grade, and resides with Parents within District. *Complaint*, p. 2; *Exhibit A*, p. 2. She is enrolled in a District elementary school (“School”) but does not attend. *Interview with Parents; Exhibit A*, p. 2; *Exhibit C*, p. 2. Student qualifies for special education under the disability categories of Multiple Disabilities and Other Health Impairment. *Exhibit A*, p. 2.
2. Student is very bright and eager to learn. *Interviews with Parents and School Psychologist (“Psychologist”)*. She demonstrates an enthusiasm and aptitude for spelling and music, and has taught herself, by ear, to play tunes on the piano. *Interview with Parents*.
3. Student is a medically complex child, with several conditions that impact her day-to-day life. *Complaint*, pp. 2-3; *Interviews with Parents and District Nurse 1; Exhibit F*, p. 2. These impacts include but are not limited to the use of a ventilator and tracheostomy tube to aid in breathing, the use of a wheelchair for mobility, frequent catheterization, the use of an assistive technology device for communication, increased vulnerability to common respiratory infections, and the need for persistent monitoring to maintain stable vital functions. *Id.* Student requires skilled nursing care at all times while in a school environment. *Complaint*, p. 3; *Exhibit A*, p. 14; *see Exhibit F*, p. 2.
4. This investigation involves the determination of Student’s educational placement in meetings leading up to the establishment of an IEP dated September 29, 2023 (the “2023 IEP”). *Exhibit A at p. 2*. This IEP was developed following a District evaluation of Student completed September 12, 2023. *Id.* at p. 35.

#### **B. The 2023 IEP**

5. The 2023 IEP documents Student’s strengths, including her aptitude for reading, her intelligence, her enthusiasm for learning, and her energy. *Id.* at p. 3.

---

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

6. The 2023 IEP's present levels of performance section describes the results of Student's evaluations in academics, speech-language, communication, occupational therapy, physical therapy, and completion of functional tasks in a school setting. *Id.* at pp. 4-14. This section also contains a report from District Nurses 1 and 2 describing Student's health conditions and her medical needs in a school environment. *Id.* at p. 4.
7. This section describes Student's needs and impact of disability, stating that Student "requires continuous supports across settings to address both her medical and academic needs," including direct nursing care, adaptive equipment, and assistance with mobility. *Id.* at p. 15. It also describes the need for specially designed instruction across all academic areas, prompting to maintain attention, and support in communication. *Id.*
8. The present levels of performance section also includes seven paragraphs of detailed input from Parents, describing Student's medical needs, her history in the education system, and their desire that she receive instruction in a home-bound setting. *Id.* at p. 16.
9. In the consideration of special factors section, the 2023 IEP notes that Student has unique communications needs, uses assistive technology, requires specialized transportation, and has a Health Care Plan available in both the health room and the significant support needs room ("SSN room"). *Id.* at pp. 18-19.
10. The 2023 IEP contains seven annual goals, one each in the areas of Fine and Visual Motor, Expressive Language/Pragmatic Language, Receptive Vocabulary, Reading Comprehension, Math Computation, Writing, and Access/Physical Therapy. *Id.* at pp. 19-24.
11. The 2023 IEP lists 17 accommodations, and notes that Student's general education curriculum standards will be modified to meet her needs. *Id.* at pp. 24-25.
12. The 2023 IEP's service delivery statement identifies the following services:
  - 1,140 minutes per week of direct specialized instruction services;
  - 60 minutes per month of direct occupational therapy services;
  - 60 minutes per month of direct physical therapy services; and
  - 180 minutes per month of direct speech-language services.

*Id.* at pp. 27-28. In addition, the service delivery statement notes that she receives services from a private duty nurse, but if the private duty nurse is not available, she will receive 2,100 minutes per week of nursing services from a trained District staff member. *Id.* at p. 27.

13. The 2023 IEP reflects that it was appropriate for Student to be in general education between 40% and 79% of the time. *Id.* at p. 28. This section noted that two other placement options were considered: general education classroom less than 40% of the time, and home/hospital setting. *Id.* In summarizing the IEP Team’s discussion of placement options, the 2023 IEP stated that Parents disagreed with the remainder of the IEP Team because they indicated the home/hospital setting was the only acceptable placement due to her medical needs. *Id.* The 2023 IEP states that the IEP Team “took the parents’ concerns into consideration but believe [Student]’s access to a meaningful education, in light of her individual set of circumstances and medical needs, is best provided through the SSN program with service provisions provided in the general education 40-79% of the time.” *Id.* at pp. 28-29.
14. The 2023 IEP contained a Prior Written Notice (“PWN”) section, describing the disagreement between Parents and the remainder of the IEP Team regarding Student’s placement, and the IEP Team’s decision to make an offer of FAPE including a placement in the general education classroom between 40% and 79% of the time. *Id.* at p. 29-30.

**C. Least Restrictive Environment (LRE): District’s Policies, Practices and Procedures**

15. District Special Education Director (“Director”) described District’s responsibility to educate students in the least restrictive environment, stating that District expects IEP team members to promote inclusion for students with IEPs, only resorting to a more restrictive setting if necessary to ensure that the student can receive a FAPE. *Interview with Director.*
16. She acknowledged that IDEA requires a school district to provide a continuum of alternative placements ranging from full inclusion in the general education classroom at the least restrictive end of the continuum, to separate schools and hospital/homebound instruction at the most restrictive. *Id.* While extreme circumstances may warrant a restrictive placement, if District can enable a student to succeed in a more inclusive setting, that setting should be chosen. *Id.*
17. District offers home or hospital instruction via two processes. *Id.* First, any student, whether in general or special education, may apply for District’s Temporary Homebound Support program (“temporary homebound instruction”). *Id.* The application for temporary homebound instruction used by District describes the service as being “for students who have a documented medical condition and are unable to participate in any activities outside the home beyond appointments, medical tests, and therapy.” *CDE Exhibit 2*, p. 3. To determine need for this program, a District nurse reviews the application submitted by parents, the student’s medical records, and consults with the student’s physicians to decide whether the student can access education within the school. *Interviews with Director and District Nurse 1.* Typically, this program serves students during limited periods in which the student is hospitalized or otherwise unable to attend school due to a medical condition. *Id.*

18. Second, District makes available home/hospital instruction as a special education placement (“home/hospital placement”) for those students with IEPs who are unable to access their education in a school building. *Interview with Director*. Although the services provided under this placement are like those provided by temporary homebound instruction, the determination of need for this placement requires a special education evaluation and the decision of a properly constituted IEP team. *Id.* A student may be assessed for both home instruction options simultaneously, and a finding that a student does not require one option is not binding upon the other. *Id.*
19. As part of the special education evaluation required to determine a student’s need for home/hospital placement, a District nurse reviews the student’s medical records and consults with the student’s physicians to prepare a report about the student’s potential medical needs in a school environment. *Interviews with Director and District Nurse 1*. This report is presented to the IEP team as part of the IEP meeting to determine the student’s placement. *Id.* At that IEP meeting, District expects the IEP team to consider multiple placement options and choose the least restrictive environment appropriate for the student. *Interview with Director*.
20. Director stated that although the nurse’s report should be carefully considered by the IEP team, it is not binding. *Id.* For example, if the nurse’s report indicates that the student can safely attend the school building, but the remainder of the IEP team finds that the student cannot obtain educational benefit in that setting, the IEP team might decide upon a home/hospital placement. *Id.*
21. The SCO finds, in consultation with CDE Specialist, that this process for determining a student’s need for home/hospital placement conforms to IDEA’s requirements for determining LRE for medically complex students. *Consultation with CDE Specialist*.

#### **D. District’s Capacity to Serve Medically Complex Students**

22. School districts are expected to have the capacity to safely educate students who use a ventilator and tracheostomy tube in the school environment. *Consultation with CDE Specialist*. District has previously served students with similar medical concerns to Student. *Interviews with District Nurse 1, Special Education Teacher, and Director*. Specifically, two other students who use a ventilator and tracheostomy tube are presently involved in in-person learning. *Interviews with District Nurse 1 and Director*.
23. For a school district, the primary concern for a student with similar medical issues to Student is ensuring that the student has access to one-to-one services from a registered nurse trained in the use of a ventilator and trained to monitor vital signs. *Id.* Parents hired a private duty nurse for Student (“PDN”) and insist that PDN always be with Student in school. *Interview with Parents*. District agreed, subject to a background check, for PDN to be present in School, and PDN has already been cleared through that process. *Interview with District Nurse 1*.

24. To provide effective service, District must ensure the availability of other qualified nursing staff in case PDN is unavailable. *Consultation with CDE Specialist*. All of District's registered nurses have been trained on ventilators and tracheostomy care, and a nurse is available on call if PDN were unavailable. *Interview with District Nurse 1*. The 2023 IEP's service delivery statement commits to provide Student with 2,100 minutes per week of nursing services if PDN is unavailable. *Exhibit A*, p. 27.
25. Due to Student's vulnerability to infection, District should remain vigilant regarding the presence of respiratory illness and notify Parents if at any time there are more than two students in Student's class with a respiratory illness. *Consultation with CDE Specialist*. Special Education Teacher monitors her classroom and the general education classroom for potential illnesses. *Interview with Special Education Teacher*. If she learns that another student has been sick or is showing signs of infection, her practice is to work one-on-one with the vulnerable student to reduce the risk of contagion. *Id.*
26. If Student were to develop an infection and suffered a longer illness, District should have homebound or hospital instruction available to ensure Student does not fall behind. *Consultation with CDE Specialist*. District Nurse 1 stated that while each application for temporary homebound instruction should be considered individually, a hospitalization or acute illness due to a respiratory infection would be among the circumstances under which a student could likely receive such services. *Interview with District Nurse 1*.

#### **E. Student's Educational History**

27. From 2018 to 2022, Student attended school in another state, where Parents report that she received homebound instruction for five hours per week. *Complaint*, pp. 4-5; *Interview with Parents*.
28. In 2022, Student moved to Colorado and enrolled in the school district corresponding to her residence ("Prior District"). *Id.* In March 2023, Prior District created an IEP for Student which changed her primary educational environment from "Home" to "Inside the Regular Class 40% to 79% of the Time." *Exhibit N*, p. 11. Parents state that despite the apparent assignment of a less restrictive educational setting in this IEP, the understanding between Prior District and Parents was that Student was to receive homebound instruction. *Interview with Parents*.
29. On March 3, 2023, the same date the IEP was issued, Prior District issued a PWN. *CDE Exhibit 1*. The PWN stated that while Student was eligible for "Homebound Tutoring," Prior District was at that time unable to find a tutor and proposed that Student receive instruction and academic services inside the school. *Id.*
30. For the remainder of the 2022-2023 school year, Parents brought Student to school, where she received three hours of one-on-one instruction per week in a private conference room.

*Interview with Parents*. “This modified system successfully provided [Student] her educational services [...]” *Complaint*, p. 5.

31. In May 2023, Student and Parents moved into District and over the summer, enrolled Student. *Interview with Parents*.

#### **F. District’s Reevaluation**

32. On August 10, 2023, Parents met with District and School staff to discuss Student’s IEP and educational needs. *Interviews with Parents, Psychologist, School Principal (“Principal”), and District Nurse 1; Exhibit A*, p. 33. During the meeting, Parents described Student’s medical concerns and her educational history. *Interview with Parents; Exhibit A*, p. 33.
33. At the meeting, Parents requested that Student receive homebound instruction. *Id.* Special Education Teacher stated that because homebound instruction represents a significant change in placement, Student would need to be re-evaluated. *Interviews with Parents and Special Education Teacher*. Parents agreed to a re-evaluation and were comfortable bringing Student to school for 1-2 hours per day for the purposes of evaluation. *Interview with Parents; Exhibit A*, p. 33. That day, Parent signed a consent to evaluate allowing District to evaluate Student in speech-language, occupational therapy, physical therapy, health, and cognitive. *CDE Exhibit 5*.
34. The reevaluation, completed September 19, 2023, included Parents’ input, a report from District Nurses 1 and 2 on Student’s health needs, a summary of Student’s most recent evaluation from Prior District, a report from Psychologist on Student’s cognitive abilities, a report from a District speech-language pathologist on Student’s communication abilities, a report from Special Education Teacher on Student’s academic abilities, and a report from a District physical therapist (“Physical Therapist”) regarding Student’s physical/motor skills. *Exhibit A*, pp. 35-49. Each report summarized the assessments and observations collected during the reevaluation. *Id.*
35. During the initial evaluation phase, which took place between August 15, 2023 and August 23, 2023, Student, transported in a stroller, and Parent, met with the above-described evaluators in a private conference room similar to that used for her instruction in Prior District. *Interviews with Parents and Special Education Teacher*. During these evaluations, Student’s pulse rate and oxygen level was monitored by a pulse oximeter. *Exhibit B*, p. 9; *Interview with Special Education Teacher*. Throughout the evaluation process, Student’s pulse and oxygen level remained stable and Student showed no visible sign of distress. *Interviews with Special Education Teacher and Psychologist*.
36. From August 28-29, 2023, Student was introduced, with Parents’ consent, into School’s SSN room with PDN’s support. *Interviews with Parents and Special Education Teacher; Exhibit B*, pp. 8-10. During these two days, Student continued to participate in testing, and participated

with peers in “circle time” to discuss the days of the week and months of the year. *Exhibit B*, p. 8.

37. Special Education Teacher reports that while Student struggled to hold attention due to the distractions of the new environment, she engaged well with one-on-one reading and comprehension exercises, and appeared to enjoy being in the presence of other students. *Interview with Special Education Teacher*. Parents report that the environment was loud and distressing to Student and stated that they would no longer make Student available in the SSN room. *Interview with Parents*.
38. On September 1, 2023, Student returned to the private conference room with her wheelchair for a physical therapy evaluation. *Exhibit B*, p. 9. PDN noted to Physical Therapist that she had never seen Student using her wheelchair. *Id.* Student, using her wheelchair, navigated the school hallways, peering through windows into music and physical education classes. *Id.* at pp. 9-10. Using her assistive communication device, Student requested to go outside, and with assistance from Physical Therapist and PDN, used the playground swing for two minutes. *Id.* In the hallway on the return to the conference room, Student encountered her general education teacher, who introduced herself to Student. *Id.* at p. 10. When encouraged by Physical Therapist and PDN to transition back from her wheelchair to her stroller, Student resisted and attempted to roll her wheelchair away. *Id.* Student remained in her wheelchair for her next phase of academic testing. *Id.*

#### **G. District Nurse 1’s Report**

39. District Nurse 1, to prepare her report, reviewed Student’s medical records, letters from two of Student’s physicians recommending home instruction, and a student information document created by Parents which described Student’s medical needs. *Interview with District Nurse 1; Exhibit F*, pp. 10-16.
40. After reviewing the letters from Student’s physicians, on August 15, 2023, District Nurse 1 contacted each physician to ask three questions: whether their recommendations were based on Student’s use of a ventilator and tracheostomy tube, whether Student has an immunodeficiency, and whether Student has a low white blood cell count. *Interview with District Nurse 1; Exhibit J*, p. 54. Both physicians responded that their recommendations were based on Student’s use of a ventilator and tracheostomy tube, that the student does not have an immunodeficiency, and that her white blood cell count has not been tested. *Id.*
41. During District Nurse 1’s conversation with one physician, it was reported that her primary medical concern was Student’s use of a ventilator and tracheostomy tube. *Interview with District Nurse 1*. District Nurse 1’s communication log notes, dated August 15, 2023, read in response, “I made her aware that we have other students being cared for in the school setting that are on ventilators, several students with tracheostomies, catheterization and many students with parallel diagnosis being cared for during school.” *Exhibit F*, p. 54.



42. On October 6, 2023, Parents requested that physician's notes from the August 15, 2023 conversation. *CDE Exhibit 3*. Those notes, provided by the physician via email, read: "I spoke to the school district nurse. She notes that they have two other students on vents and can do I/O catheters. Also [Student]'s nurse can attend school with her." *Id.*
43. Parents indicate this communication shows that District predetermined Student's placement prior to the IEP development meeting on September 29, 2023. *Interview with Parents*.
44. Based on a review of records and consultation with the Student's physicians, District Nurse 1, in collaboration with District Nurse 2, prepared a report, which was included in the evaluation completed September 19, 2023. *Interview with District Nurse 1; Exhibit A*, p. 36. That report describes Student's health information but does not contain recommendations regarding Student's placement. *Exhibit A*, p. 36.

#### **H. 2023 IEP Development and Educational Placement Determination**

45. Student's IEP was developed over the course of a two-part meeting, on September 19 and 29, 2023. *Interviews with Parents, Special Education Teacher, Psychologist and Principal; Exhibit A*, pp. 31-32, 52-55.
46. The first part focused on determining Student's eligibility for special education services. *Exhibit A*, pp. 52-55. Participants in this meeting included Parents, Psychologist, Special Education Teacher, District Nurses 1 and 2, Principal, Physical Therapist, Student's speech-language pathologist, Student's occupational therapist, Student's general education teacher, District's director for compliance, a District meeting facilitator, and a CDE special education facilitator. *Id.* at p. 52. District staff responsible for Student's evaluations presented the results of their evaluations and Parents were offered the opportunity to ask questions or provide input. *Id.* at pp. 52-55.
47. With respect to the District Nurses' health report, Parent requested the addition of information regarding the repair of Student's ventriculoperitoneal shunt and information regarding an eye condition that required care at school. *Id.* at p. 52. Parents also provided additional input on the speech-language, physical therapy, and fine motor reports. *Id.* at pp. 52-54.
48. The IEP Team determined that Student qualified for special education and agreed on the eligibility categories under which Student qualified. *Id.* at p. 55. The IEP Team agreed to reconvene on September 29, 2023, to complete development of the IEP. *Id.*
49. Prior to the next meeting, Parents were sent a draft IEP. *Interview with Parents*.

50. The IEP Team reconvened on September 29, 2023, with all previous attendees present except District Nurse 1, who was unavailable. *Exhibit A*, p. 31. The IEP Team reviewed the draft IEP's sections regarding present levels of performance, student needs and impact of disability, parent input, consideration of special factors, annual goals, accommodations, and service delivery statement. *Id.* During this review, IEP Team members answered Parents' questions, and solicited Parents' input. *Id.*
51. The IEP Team identified three placement options: "General education class 40% to 79% of the time," "General education class less than 40% of the time," and "homebound/hospital." *Id.* at p. 28. The IEP Team discussed the advantages and disadvantages of each placement option. *Interviews with Psychologist, Special Education Teacher, and Principal.* District Nurse 2 noted that other students with similar medical needs to Student have been successful in the school environment and have not experienced more absences than students without ventilators. *Exhibit A*, p. 32; *Interview with Special Education Teacher.* Other IEP Team members noted that while they considered the input of the District Nurses, they did not understand it to be binding on them in making their decision. *Interviews with Psychologist, Special Education Teacher, and Principal.*
52. Parents adamantly stated that home instruction was the only setting in which Student could be educated and emphasized that Student's pediatrician and ophthalmologist recommended home instruction. *Id.*; *Interview with Parents.* IEP Team members stated that they considered Student's medical information, but that given her needs, a meaningful education is best provided in a less restrictive environment. *Exhibit A*, pp. 28-29, 32; *Interviews with Psychologist and Special Education Teacher.*
53. Parents stated that Student would not attend School under this IEP, and that they intended to file legal action. *Exhibit A*, p. 32. Since the end of Student's in-person evaluations in September 2023, Student has not returned to School. *Interviews with Parents, Special Education Teacher, and Principal.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The IEP Team determined Student's educational placement in the LRE consistent with 34 C.F.R. §§ 300.114-300.116. No IDEA violation occurred.**

Parents position is that homebound instruction is the least restrictive environment in which Student can receive a meaningful educational benefit. (FF # 52). Additionally, Parents are concerned that the process by which the IEP Team reached its decision was inappropriate and reflected a predetermined placement. (FF # 43).

### **A. District’s Continuum of Alternative Placements**

School districts must have available a continuum of alternative placements to meet the needs of IDEA-eligible children. 34 C.F.R. § 300.115(a). This continuum must include “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” *Id.* at § 300.115(b). To ensure students are educated in their LRE, school district’s must, as necessary, make “arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).” *Id.* at § 300.118.

Here, staff described District’s capacity and practice to offer alternative placements across a continuum of restrictiveness, including a homebound/hospital placement. (FF #s 16-18). During the September 29, 2023 IEP meeting, consistent with District practice, the IEP Team identified three placement options, including the homebound/hospital placement requested by Parents, and discussed the advantages and disadvantages of each. (FF # 51).

For these reasons, the SCO finds and concludes that District ensured the availability of a continuum of alternative placements, consistent with 34 C.F.R. § 300.115.

### **B. Student’s Educational Placement Determination**

Placement—a term used to denote the provision of special education and related services—is determined by the IEP Team, including parents, and must be individualized, as well as based on the IEP. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Andrew F. v. Douglas County School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). School districts must also ensure that the placement decision is “made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” 34 C.F.R. § 300.116(a).

Related to this requirement is the IDEA’s prohibition on predetermination: by requiring that the placement decision be made by the IEP Team at the IEP meeting, the IDEA prohibits a school district from unilaterally deciding a student’s educational placement in advance of an IEP meeting. Indeed, the IDEA’s procedural requirements for developing a student’s IEP are designed to provide a collaborative process that “places special emphasis on parental involvement.” *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008). Although the emphasis on parental involvement does not mean that a parent has veto power over an IEP team decision, meaningful parent participation is prevented when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. See *Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (noting that “[a] district may not enter an IEP meeting with a ‘take it or leave it’ position”).

In this case, prior to making any significant change to Student’s placement from her previous IEP, District ensured she underwent a comprehensive evaluation to assess her needs. (FF #s 19, 28-

29, 33-44). As part of that evaluation, District Nurse 1 reviewed Student’s medical records and consulted with Student’s physicians to prepare a report describing Student’s medical needs in the school setting. (FF #s 19, 33-44).

A properly composed IEP Team—which included among others Student’s general and special education teachers, Psychologist, Principal, two District nurses, Physical Therapist, a speech-language pathologist, and an occupational therapist—collectively reviewed and considered Student’s evaluations and reports, and incorporated Parents’ input into those findings. (FF #s 46-47, 50). Parents asked, and received answers to, questions. (FF # 50). The IEP Team considered Student’s medical information, but ultimately determined that considering her needs, her education could be provided in an environment less restrictive than the homebound placement requested by Parents. (FF # 52). Although Parents’ requested placement was not the decision reached by the IEP Team, the IEP Team documented Parents’ disagreement in the IEP and explained the rationale for its decision. (FF #s 13-14).

Parents indicated that the IEP Team’s placement decision was predetermined, or made prior to the September 29, 2023 meeting, based on their understanding of a telephone conversation between Student’s physician and District Nurse 1 on August 15, 2023. (FF # 43). The Record here includes District Nurse 1’s contemporaneously recorded communication log documenting the conversation, as well as the physician’s report on October 6, 2023 of her notes recorded the day of the conversation. (FF #s 41-42). The two accounts of the conversation substantially accord with one another, reporting that District Nurse 1 described to the physician that District has served students with ventilators and tracheostomy tubes. *Id.* Although the fact that other students with medical concerns like Student was considered as part of the IEP Team’s decision, IEP Team members did not feel bound by that fact. (FF # 51). Accordingly, the SCO finds and concludes that the IEP Team’s placement decision was not predetermined.

For these reasons, SCO finds and concludes that District ensured that the placement decision was made by an IEP team knowledgeable about Student, the meaning of the evaluation data, and the placement options, consistent with 34 C.F.R. § 300.116(a).

### **C. Student’s Placement in the LRE**

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116.

Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii). However, if a more restrictive program provides a student a FAPE while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008), *accord Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988, 999. A child should only be assigned to a more restrictive placement if education in a less restrictive environment cannot be accomplished satisfactorily. 34 C.F.R. § 300.114(a)(2)(ii).

Here, the Record shows that Student can receive a FAPE from an educational placement less restrictive than home instruction.

During her evaluation, Student successfully interacted with evaluators in a private conference room (a setting less restrictive than home instruction) and did not show signs of distress or impact to her vital signs. (FF # 35). Moreover, on multiple days of her evaluation, she was introduced into the SSN classroom alongside peers, she participated with peers in a class discussion, and she appeared to enjoy social interaction with peers. (FF #s 36-37). During this evaluation, Student also had the opportunity to navigate the school and playground environment using her wheelchair, an opportunity in which PDN had not previously seen Student engage. (FF # 38). In a variety of environments less restrictive than homebound placement, Student was observed to engage in social and skills development that home instruction does not afford. (FF #s 35-38).

Parents indicate that Student’s medical needs prevent her from receiving adequate education in any environment aside from a home placement. (FF # 52). However, District described a variety of medical supports that can be provided to protect Student’s health in the school environment, which conform to recommendations made by a content-area specialist. (FF #s 22-26). The IEP Team considered the medical information provided by Parents and Student’s physicians, but determined that with the provision of supports, Student can safely attend School. (FF #s 51-52).

Parents urge that Student’s history in the education system shows that homebound instruction is the appropriate LRE. (FF #s 27-30). Though Parents indicate that Student was assigned a homebound placement at Prior District, this is not supported by the IEP developed by Prior District, which on its face reflected a placement involving between 40% and 79% of the time in the general education environment. (FF # 28). The PWN issued by Prior District indicates that Student was eligible for “Homebound Tutoring,” but there is insufficient information in the Record to clarify whether that phrase refers to a special education home/hospital placement, or a general education temporary homebound support similar to that offered by District. (FF #s 29, 17). Parents’ description of the services provided by Prior District indicates that Student received instruction in the school building, albeit in a private conference room setting, which is a less restrictive setting than home instruction. (FF # 30). Indeed Parents, in their Complaint, assert that this less restrictive setting successfully provided Student her educational services. *Id.*

For these reasons, the SCO finds and concludes that the IEP Team made its placement decision in conformity with the least restrictive environment provisions of 34 C.F.R. § 300.114(a)(2)(ii).

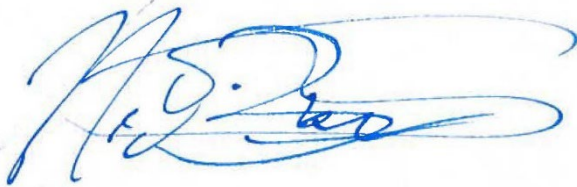
### REMEDIES

The SCO concludes that District has not violated 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 19th day of December, 2023.



---

Nick Butler  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-13

#### Response, pages 1-23

- Exhibit A: IEPs and Meeting Notes
- Exhibit B: Service logs and other documentation of services
- Exhibit C: Report cards, progress monitoring data, and progress reports
- Exhibit D: Prior Written Notices
- Exhibit E: Notices of Meetings
- Exhibit F: Documentation regarding District's efforts to locate an appropriate placement
- Exhibit G: Attendance Records
- Exhibit H: District calendars
- Exhibit I: District policies and procedures relevant to the Complaint allegation
- Exhibit J: Correspondence involving District/School staff regarding the Complaint allegation
- Exhibit K: Name and title of each District and School staff member with knowledge of the facts underlying the Complaint allegation
- Exhibit L: Verification of delivery of Response to Parents
- Exhibit M: Complaint and Complaint Procedures
- Exhibit N: Prior District IEP and related paperwork
- Exhibit O: Student Schedule

#### Reply, pages 1-12

#### CDE Exhibits

- CDE Exhibit 1: PWN dated March 3, 2023
- CDE Exhibit 2: Temporary homebound support application
- CDE Exhibit 3: Emails between Parent and Pediatrician on October 6, 2023
- CDE Exhibit 4: Special Education Parent Handbook published on District's website
- CDE Exhibit 5: Signed Consent to Evaluate form dated August 10, 2023

#### Telephone Interviews

- Parents: November 21, 2023
- Special Education Teacher: November 21, 2023
- School Principal: November 21, 2023
- District Psychologist: November 27, 2023
- District Special Education Director: November 27, 2023
- District Nurse 1: November 27, 2023