

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

**State-Level Complaint 2024:531
Adams 12 Five Star Schools**

DECISION

INTRODUCTION

On March 15, 2024, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Adams 12 Five Star Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two 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 March 15, 2023 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 the District denied Student a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to conduct an initial evaluation to determine whether Student qualified as a child with a disability under the IDEA—as requested by Parent on September 14, 2023—or provide Parent with prior written notice explaining its decision to not evaluate Student, in violation of 34 C.F.R. §§ 300.301 and 300.503(a).
2. Failed to conduct an initial evaluation of Student within 60 days of receiving parental consent during the 2023-2024 school year, in violation of 34 C.F.R. § 300.301.

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.

FINDINGS OF FACT

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

A. Background

1. Until late April 2024, Student attended sixth grade at a District middle school (“School”). *Interview with Parent*.
2. Student does not currently qualify for special education and related services; however, she qualified under the speech or language impairment disability category from preschool through second grade. *Id.*
3. Student struggles with math. *Id.* According to Parent, math triggers Student’s anxiety. *Id.* When Student feels like she does not understand the material, she becomes anxious, and it becomes even harder for her to complete her assignments. *Id.* Outside of school, Student enjoys swimming, singing, and playing the piano. *Id.*

B. Parent’s Request to Evaluate

4. A few weeks into the 2023-2024 school year, Parent became concerned about how Student was doing at school. *Id.* On September 13, 2023, Parent told School Counselor that Student was having trouble understanding math concepts and spending a lot of extra time on her work. *Interviews with Parent and School Counselor*. Parent asked School Counselor about a 504 Plan. *Id.*
5. School Counselor told Parent he would share Parent’s request for a 504 Plan with Assistant Principal, who served as the School’s Coordinator for 504 Plans. *Interview with School Counselor*. That same day, School Counselor emailed Assistant Principal to inform her that Parent “asked about starting a 504 [Plan].” *Exhibit N*, p. 102.
6. Over the next few days, School Counselor discussed Parent’s concerns with Student’s teachers. *Interview with School Counselor*. At that time, Student’s teachers did not share Parent’s concerns and felt Student was performing at grade level. *Id.* School Counselor relayed this information to Parent on September 15. *Id.*; *Exhibit N*, pp. 168, 222.
7. On September 26, Parent sent two emails to the District’s Title I Coordinator with the subject “Hello help with diagnosing.” *Exhibit F*, p. 8. In the first email, Parent indicated she suspected Student had ADHD and dyslexia and requested “guidance as to how to get [a] proper diagnosis.” *Id.* The second email followed four hours later and simply stated: “Can I request an IDP evaluation for my daughter [Student]”. *Id.*

² The appendix, attached and incorporated by reference, details the entire Record.

8. Later that day, Parent spoke with School Counselor in person at School. *Exhibit N*, pp. 170-171. Parent reiterated her concerns about Student's performance in math and indicated she had been working with Student on math for three hours each day. *Id.* School Counselor shared this information with Math Teacher. *Id.*
9. School Counselor does not recall Parent ever asking him about an IEP. *Interview with School Counselor*. Indeed, School Counselor shared Parent's concerns with Assistant Principal because Parent asked about a 504 Plan. *Id.* Had Parent asked about an IEP, School Counselor would have emailed a member of School's special education team instead. *Id.*
10. At some point in September, Assistant Principal met with Parent in person to discuss her concerns. *Interview with Assistant Principal*. Assistant Principal explained the differences between 504 Plans and IEPs, as well as School's multi-tiered system of supports ("MTSS") process. *Id.* Assistant Principal left the conversation with the understanding that Parent wanted to pursue a 504 Plan. *Id.*
11. On October 3, Parent provided the District with a letter from one of Student's medical providers. *Exhibit F*, pp. 1-2. That letter stated, in relevant part, as follows:

Patient and mother have concerns regarding accommodations for school. The patient is undergoing formal diagnosis and in the meantime it's my recommendation that she be allowed to have these supports in place for math: a white board, a quite [sic] place to work/noise cancelling headphones, and extra time on assignments/tests outside of her lunch hour. Her mother will also be providing a formal letter requesting an IEP.

Id. Parent also informed Assistant Principal that Student was on a waitlist for a private evaluation. *Id.*
12. Assistant Principal assured Parent that School staff would provide Student the requested supports. *Id.* On October 14, Assistant Principal reached out to schedule a meeting with Parent to discuss her concerns related to a 504 Plan or an IEP. *Id.* Parent suggested they meet on October 27. *Id.* at p. 3.
13. However, on October 19, Parent told Assistant Principal that Private Evaluator recommended waiting to meet after the private evaluation was complete, "more toward [the] beginning [of] December." *Id.*
14. The District honored Parent's request to wait until the private evaluation was finished. *Interview with Assistant Principal*. Waiting on the private evaluation meant that Student would not be undergoing two simultaneous evaluations. *Interview with School Psychologist*. It also ensured that the results would not be invalidated by Private Evaluator and District staff administering the same assessments within a short time period. *Id.*

15. Parent acknowledged asking the District to wait on the private evaluation; however, Parent believed that the District could not determine Student's eligibility without the private evaluation. *Interview with Parent*. That is, Parent thought she was responsible for providing the District an evaluation and that the District would abide by whatever evaluation she provided. *Id.* Even now, it is clear that Parent does not fully understand the special education evaluation and eligibility determination processes. *Id.*
16. Parent emailed Assistant Principal on December 14, letting her know that the private evaluation had been completed: "[Student's] result[s] came in and we are ready to schedule her IEP meeting[.] December 19 works in our schedule[.] [W]hat time[s] are available that day?" *Exhibit F*, p. 6. Assistant Principal proposed scheduling the meeting on December 19 at 1:00 p.m. *Id.*

C. Student's Initial Evaluation

17. On December 19, Assistant Principal, Principal, School Psychologist, and Student Support Services Coordinator ("Coordinator") met with Parent and Private Evaluator to discuss her concerns, the private evaluation, and next steps. *Response*, p. 4; *Interview with School Psychologist*. School Psychologist oversees the child find process at School. *Id.*
18. Parent allowed Private Evaluator to share limited information from the private evaluation, including the overall diagnoses and some of the assessments administered. *Interviews with Parent and School Psychologist*. Parent did not provide the District with a complete copy of the private evaluation. *Id.* Even though Student's teachers did not share Student's concerns, the District agreed to move forward with an initial evaluation for special education. *Interview with School Psychologist*.
19. On December 22, the District sought consent to evaluate Student's communicative status, academic performance, social and emotional status, health, and motor abilities. *Exhibit G*, p. 1; *Exhibit N*, pp. 86-87.
20. Parent provided consent to evaluate on January 9, 2024. *Exhibit G*, p. 1.
21. The District completed Student's initial evaluation on February 6, 2024. *Interview with School Psychologist*.
22. On February 6, the District convened a multi-disciplinary team ("MDT") to determine Student's eligibility for special education and related services. *Interviews with Director of Student Support Services ("Director") and School Psychologist*; *Exhibit C*, p. 2; *Exhibit N*, p. 84.
23. That day, Parent provided the District with screenshots of information from the private evaluation. *Interview with School Psychologist*; *Exhibit N*, p. 172. That information was later incorporated into the evaluation report; the revised evaluation report was dated March 5, 2024. *Interview with School Psychologist*; *Exhibit I*, pp. 1-35.

24. The MDT convened again on February 26 and March 5. *Response*, p. 4. Ultimately, the MDT found Student ineligible for special education and related services. *Interviews with Director and School Psychologist; Exhibit C*, p. 2. On March 5, the District issued a prior written notice (“PWN”) explaining the team’s decision. *Exhibit C*, pp. 1-3.

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 temporarily delayed its initial evaluation of Student based on Parent’s request to wait for a private evaluation to be completed. Once the private evaluation was finished, the District completed Student’s initial evaluation, consistent with 34 C.F.R. § 300.301.

In her Complaint, Parent asserted that the District failed to evaluate Student to determine whether she qualified as a child with a disability even after Parent requested an evaluation.

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

An initial evaluation seeks to determine whether a child has a disability within the scope of the IDEA and, as a result of that disability, requires special education and related services to access their education. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). The IDEA requires school districts to complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a).

An initial evaluation may be prompted by a referral from one of the student’s teachers or a parent may request an initial evaluation. *Id.* § 300.301(b). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the student and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with prior written notice explaining its decision. *Id.* § 300.503(a); *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 05/17/19). Neither the IDEA nor the ECEA requires parents to request evaluations in writing or use magic language in the request. *Charlotte-Mecklenburg Bd. of Ed. v. Brady*, 2022 WL 989231, 122 LRP 11445 (W.D.N.C. 2022) (collecting cases) (finding notice of student’s diagnoses and request for information about available resources sufficient to constitute a request for an evaluation).

A. Parent's Request for Evaluation

Here, Parent requested Student be evaluated for both a 504 Plan and IEP in September and October 2023. (FF #s 4-12.) Parent contacted at least three staff members—Assistant Principal, School Counselor, and Title I Coordinator—to request Student be evaluated. (*Id.*) The District was responsive to Parent's concerns: School Counselor informed Assistant Principal about Parent's request for a 504 Plan, gathered information from Student's teachers, and followed-up with Parent. (FF #s 5, 6, 8.) Separately, Assistant Principal explained 504 Plans, IEPs, and the MTSS process to Parent. (FF # 10.) Assistant Principal contacted Parent to schedule a meeting with School staff to discuss her concerns and determine next steps. (FF # 12.) After the meeting was scheduled for October 2023, Parent informed Assistant Principal that Private Evaluator recommended meeting after the private evaluation was complete. (FF #s 13, 14.) The District honored Parent's request and waited to meet until the private evaluation was complete in December 2023. (FF # 14.) Once Parent informed District staff that the evaluation was complete, the meeting was scheduled within five days and consent to evaluate was provided within eight days. (FF # 16.)

The District delayed moving forward with an evaluation based solely on Parent's request to wait for the private evaluation. (FF #s 14-16.) At that time, Parent's concerns were the only reason the District was considering evaluating Student. (FF # 6.) None of Student's teachers shared Parent's concerns or suspected Student was a child with a disability who needed special education. (*Id.*) Even if Parent's request was based on a misunderstanding, the District ultimately honored a request made by Parent. (*Id.*) Had the District chosen to move forward with an evaluation, there was no guarantee that Parent would have provided consent to evaluate based on Private Evaluator's recommendation to wait.

Waiting for the private evaluation also benefited Student. Doing so avoided Student undergoing two separate evaluation processes at once and ensured the results would not be invalidated. (FF # 14.) The private evaluation would have provided the District additional information to consider when determining Student's eligibility (had it been provided to the District).

For these reasons, the SCO finds and concludes that the District completed an initial evaluation based on Parent's request, consistent with 34 C.F.R. § 300.301. No violation of the IDEA occurred.

Conclusion to Allegation No. 2: The District completed Student's initial evaluation within 60 days of receiving parental consent, consistent with 34 C.F.R. § 300.301. No violation of the IDEA occurred.

In her Complaint, Parent also contends the District failed to complete Student's initial evaluation within 60 days as required by the IDEA.

Once a parent provides consent for an initial evaluation, the school district must complete the evaluation within 60 days. 34 C.F.R. § 300.301(c)(1)(i).

Here, the Findings of Fact show that the District completed Student's initial evaluation within the required time period. Parent provided consent for the initial evaluation on January 9, 2024. (FF # 20.) The District completed the evaluation on February 6. (FF # 21.) The District revised the evaluation to include additional information received from Parent. (FF #s 22, 23.) Those revisions were completed no later than March 5, 2024. (*Id.*) Based on these Findings of Fact, it is clear that the initial evaluation was completed well within the 60-day time period. Accordingly, the SCO finds and concludes that the District completed Student's initial evaluation within 60 days of Parent's consent, consistent with 34 C.F.R. § 300.301. No violation of the IDEA occurred.


REMEDIES

The SCO concludes that the District did not violate any requirements of the IDEA. Thus, no remedies have been 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 14th day of May, 2024.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-6

- Exhibit A: Blank
- Exhibit B: Notices of Meeting
- Exhibit C: Prior Written Notices
- Exhibit D: MTSS Documentation
- Exhibit E: Documentation Received from Parent
- Exhibit F: Requests to Evaluate
- Exhibit G: Requests for Consent to Evaluate
- Exhibit H: Documentation Regarding Need to Evaluate
- Exhibit I: Evaluation Results
- Exhibit J: Eligibility Determinations
- Exhibit K: Grade, Progress, & Attendance Reports
- Exhibit L: District Calendar
- Exhibit M: District Policies & Procedures
- Exhibit N: Correspondence
- Exhibit O: Witness List
- Exhibit P: Verification of Delivery of Response to Parent

Telephone Interviews

- Assistant Principal: April 23, 2024
- Director of Student Support Services: April 23, 2024
- Parent: April 30, 2024
- School Counselor: April 23, 2024
- School Psychologist: April 23, 2024