

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

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**State-Level Complaint 2024:582**  
**Arapahoe County School District 5 (Cherry Creek)**

**DECISION**

**INTRODUCTION**

On July 29, 2024, the parent (“Parent”) 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 Arapahoe County School District 5 (Cherry Creek) (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three 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 CDE has jurisdiction to resolve the Complaint.

The CDE’s goal with this investigation and written decision is to build capacity among all participants in the special education process and to provide opportunities for professional growth to educators. The CDE views the state complaint process as an opportunity for participants in the IEP process to learn about special education, identify points for improvement, and tap available resources, all to improve outcomes for students with disabilities.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after July 29, 2023. Information prior to July 29, 2023 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)<sup>2</sup> of the IDEA:

1. The District did not properly determine Student’s educational placement in November 2023 because the District did not ensure that Parent was included in the group of persons

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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.

<sup>2</sup> The CDE’s state complaint investigation will determine if the District complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

making the placement decision—specifically to revoke the interim plan set forth in the Prior Written Notice dated August 24, 2023—as required by 34 C.F.R. § 300.327;

2. The District did not include all required IEP Team members at the IEP Team meeting held in April 2024, specifically by:
  - a. Not including a nurse, school nurse, or “other individuals who have knowledge or special expertise,” as required by 34 C.F.R. § 300.321(a)(6).
3. The District did not develop an IEP that was tailored to Student’s individualized needs between April 2024 to present because the District:
  - a. Did not consider the concerns of Parent in determining Student’s need for school health services and school nurse services, as required by 34 C.F.R. § 300.324(a)(1)(ii);
  - b. Did not include school health services and/or school nurse services designed to enable Student to receive a FAPE, as required by 34 C.F.R. §§ 300.34(c)(13); 300.320(a)(4)(ii)-(iii); and
  - c. Did not include paraprofessional services designed to enable Student to receive a FAPE, as required by 34 C.F.R. § 300.320(a)(4)(ii)-(iii).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. During the 2023-2024 school year, Student attended sixth grade at a District middle school. *Interview with Parent.*
2. Student qualifies for special education and related services under the disability category of Multiple Disabilities. *Exhibit A*, p. 1. Specifically, he is eligible under the categories of Autism Spectrum Disorder, Intellectual Disability, Other Health Impairment, and Speech or Language Impairment. *Id.*
3. Student enjoys technology and hands-on activities. *Interviews with Parent and Special Education Teacher.* He has a sweet and easygoing personality. *Interview with Parent.* He is great at asking questions and thinking outside the box. *Interview with Special Education Teacher.* At school, Student sometimes becomes frustrated when he does not understand something. *Id.*

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

4. Student has several complex health challenges. *Interview with Parent; Exhibit A*, p. 31. Student has a genetic neuro-metabolic disease that inhibits his ability to make dopamine or serotonin. *Interview with Parent*. This puts Student at increased risk for autonomic dystonic crises. *Id.* During a dystonic crisis, Student’s vitals need to be assessed. *Exhibit G*, p. 3. If his vitals are outside the normal range, he takes two glucose gummies and uses oxygen for fifteen minutes. *Id.* Student more frequently experiences dystonic crises in the afternoon as his medicine wears off or when he becomes hot or overly tired. *Interview with Parent*.

#### **B. Student’s 2023 IEP**

5. On April 19, 2023, the District convened Student’s IEP Team to complete his annual IEP review. *See Exhibit A*, pp. 1-21. The IEP Team meeting resulted in an IEP dated April 19, 2023 (“2023 IEP”). *Id.* The 2023 IEP was in effect when the 2023-2024 school year began. *Interview with Special Education Teacher*.
6. The 2023 IEP reviewed Student’s present level of performance, noting that Student made progress on his annual goals and met several of the objectives related to his communication goal. *Exhibit A*, pp. 3-4. Staff reported that Student enjoyed being at school and with his peers. *Id.* at pp. 4-5. Student experienced two dystonic crises during the 2022-2023 school year. *Id.* at p. 6. However, staff followed Student’s individual health plan and Student was able to continue his school day after rest and recovery. *Id.*
7. Student’s disabilities necessitated a “high level of structure and adult support to access the curriculum in general education and gain new skills.” *Id.* at p. 7. His ability to access the curriculum was impacted, in various ways, by his impulsivity, inattention, executive functioning skills, cognitive ability, language delays, and social-emotional challenges. *Id.*
8. The 2023 IEP contained seven annual goals in the areas of reading, writing, mathematics, communication, independent living skills, and social/emotional wellness. *Id.* at pp. 8-13.
9. The 2023 IEP included numerous accommodations grouped into three categories: learning and language accommodations, social/emotional/behavioral accommodations, and health/transportation accommodations. *Id.* at pp. 13-14. The accommodations also identified steps to take when Student demonstrated protesting behavior. *Id.* at p. 14.
10. Under the 2023 IEP, Student received the following specialized instruction and related services:
  - **Specialized Instruction:**
    - 500 minutes per week of direct specialized math instruction provided by a special education teacher outside the general education classroom;
    - 500 minutes per week of direct specialized literacy instruction provided by a special education teacher outside the general education classroom; and

- 900 minutes per week of direct specialized instructional support provided by a paraprofessional inside the general education classroom.
- Mental Health:
  - 15 minutes per week of direct mental health services provided by a mental health provider outside the general education classroom; and
  - 60 minutes per month of indirect mental health services provided by a mental health provider outside the general education classroom.
- Occupational Therapy:
  - 180 minutes per month of direct occupational therapy provided by an occupational therapist outside the general education classroom; and
  - 60 minutes per month of indirect occupational therapy provided by an occupational therapist outside the general education classroom.
- Speech/Language Services:
  - 240 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education classroom.
- Physical Therapy:
  - 60 minutes per month of indirect physical therapy provided by a physical therapist outside the general education classroom.

*Id.* at pp. 17-18. The service delivery statement made clear that it was “[b]ased on a full school day of instruction.” *Id.* at p. 17.

11. Per the 2023 IEP, Student spent 40-79% of his time in the general education classroom. *Id.* at p. 19. This placement allowed Student to receive specialized instruction in a special education classroom, while also attending some general education classes. *Id.*

### **C. Student’s Modified Schedule**

12. Before the 2023-2024 school year began, District staff, including Director of Special Education (“Director”), met with Parent to discuss Student’s schedule. *Interviews with Director and Parent.* During the meeting, Parent expressed concern about Student’s upcoming transition to middle school and the impact that transition might have on his health. *Interview with*

*Director.* Parent worried Student would be unable to tolerate a full day of school. *Id.*; *Interview with Parent.*

13. Parent advocated that Student attend School for two class periods five days per week and receive additional 1:1 instruction in core content areas from the District's Home/Hospital program ("H/H program"). *Exhibit B*, p. 7. Student also participated in the H/H program during the 2022-2023 school year. *Interview with Parent.*
14. The District acknowledged Parent's concerns and partnered with her to develop a modified schedule for Student. *Interview with Director; Exhibit B*, pp. 7-8. The modified schedule was designed to be an interim solution as Student transitioned to middle school and built-up capacity for a longer school day. *Interview with Director.* It was never intended to be a long-term option. *Id.*
15. On August 24, 2023, the District issued a prior written notice ("PWN") documenting Student's interim schedule. *Id.* at pp. 7-8. Per the PWN, Student would attend School in-person Monday through Thursday from 8:45 a.m. to 10:30 a.m. *Id.* at p. 7. On Fridays, Student stayed an extra 30 minutes for speech/language services. *Id.* In addition, Student received six hours per week of instruction in core classes through the H/H program. *Id.* The PWN specifically stated: "This is an interim plan with the goal to get [Student] back into full day programming." *Id.*

#### **D. District's H/H Program**

16. The District's H/H program "provides temporary, part-time interim services to students deemed too ill to attend school." *Exhibit L*, p. 22. The purpose of the H/H program is "to assist the student in maintaining continuity in the educational curriculum during the period of temporary extended illness or injury." *Id.*
17. The H/H program is open to any student in the District with a new-onset health diagnosis that prevents them from attending a regular school day. *Interview with Director of Health Services.* A parent must apply for the H/H program. *Exhibit L*, p. 23. Once the parent applies, a Home/Hospital specialist ("H/H specialist") will "contact the treating licensed medical provider for a medical recommendation regarding the nature of the illness, its likely duration and other details necessary for the development of an educational plan." *Id.*
18. The application includes a release which, if signed, allows District staff to discuss the student's medical condition and needs with the medical provider. *Id.* District policy cautions that "[d]ue to this program being based on medical recommendations, the application process cannot proceed until the District is able to secure appropriate information and releases." *Id.*
19. The H/H specialist reviews the application packet, including information received from the medical provider, to determine the student's eligibility for the H/H program. *Id.*
20. The District's Board Policies repeatedly emphasize the important role a student's medical provider plays in the H/H program:

- “The District will regularly and periodically ask the licensed medical provider to update the student’s health status and recovery period.”
- “The student and the student’s family and licensed medical provider are partners in H/H instruction and shall provide the District timely and accurate information regarding the medical status of the student.”
- “The school will communicate with the licensed medical provider in accordance with applicable state and federal law.”

*Id.* at p. 22.

21. Students in the H/H program receive instruction in core classes, either online or in-person depending upon the student’s needs. *Interview with Director of Health Services.*
22. The District aims for students in the H/H program to return to a regular school day after four to six weeks. *Id.* For situations where a student’s return to school might be delayed—such as a cancer diagnosis—the District requires feedback from a medical provider every four to six weeks in accordance with District policy. *Id.*
23. Separately, the District offers homebound instruction (known as “home FAPE”) for students with disabilities who cannot access their education through the school environment. *Id.* Students receiving a home FAPE have access to special education and related services required by their IEPs. *Id.*

#### **E. End of Student’s Instruction from the H/H Program**

24. During Fall 2023, Student attended School for two periods per day and received six hours per week of Home/Hospital instruction (“H/H instruction”). *Interviews with Director and Parent.* Student never extended his school day. *Id.*
25. In November, Student’s Home/Hospital Instructor (“H/H Instructor”) had to take a leave of absence due to medical reasons. *Interview with Complex Nurse Case Manager.* On November 20, 2023, Complex Nurse Case Manager emailed Parent to tell her that H/H Instructor’s last day with Student would be that day, November 20. *Exhibit M, p. 294.*
26. After Thanksgiving break, the District would assign a new instructor to work with Student. *Id.* However, due to scheduling needs, the instruction would be virtual instead of in person. *Id.; Interview with Complex Nurse Case Manager.*
27. At the same time, Complex Nurse Case Manager informed Parent that she would need to reapply for the H/H program if Parent felt Student would need H/H instruction during second semester “due to a new acute/temporary health condition.” *Exhibit M, p. 294.* Complex Nurse Case Manager clearly stated that Parent would need to sign a release of information so she could contact Student’s medical provider. *Id.* Without the application and release of

information, Complex Nurse Case Manager cautioned that the District would “not be able to move forward with the process for second semester.” *Id.*

28. In response, Parent sent the PWN to Complex Nurse Case Manager, indicating that no additional documentation of Student’s need for the H/H program was necessary. *Id.* at p. 293. Complex Nurse Case Manager reminded Parent that the PWN indicated H/H instruction was part of an interim plan designed to get Student back to a full day of school: “If he is not working back up to full day programming then we do require the application and ROI for this schedule to start second semester.” *Id.* Earlier in the school year, Parent asserted that she was “exempt” from the H/H program’s application process. *Id.* at p. 377.
29. On November 27, 2023, Complex Nurse Case Manager let Parent know that a replacement teacher was available and ready to provide Student’s H/H instruction virtually. *Id.* at pp. 291-92.
30. Parent rejected this option in an email dated November 28, 2023. *Id.* at pp. 290-91. She, again, refused to reapply for the H/H program or provide a release of information. *Id.* Parent also asserted that Complex Nurse Case Manager did not have the authority to make decisions regarding Student’s H/H services: “Let me be very clear that you do not dictate the level of home hospital teacher services as any changes require an IEP meeting and educational decisions are made based on [Student’s] unique and individual needs.” *Id.* at p. 291.
31. Complex Nurse Case Manager offered to have an in-person instructor come for a couple of weeks to get to know Student before transitioning his H/H instruction to virtual, but Parent did not respond to that email. *Id.* at pp. 287, 290.
32. Parent did not reapply for the H/H program, so Student received no H/H instruction after November 20, 2023. *Interviews with Complex Nurse Case Manager and Parent.* The District did not issue a new PWN or otherwise document the end of the interim plan, and no changes were made to Student’s IEP. *Interview with Director; see Exhibit B*, pp. 1-8.
33. In her Complaint, Parent contends the District changed Student’s educational placement when it ended his H/H instruction without Parent’s participation. *Complaint*, pp. 4-7.

#### **F. Composition of IEP Team at Spring 2024 IEP Team Meetings**

34. On April 16, 2024, the District convened Student’s IEP Team to complete his annual review. *Response*, p. 4. This meeting continued on May 23, 2024. *Id.* The following individuals attended both IEP Team meetings: Assistant Director of Health Services, Director, General Education Teacher 1, General Education Teacher 2, Occupational Therapist, Parent, Partner of Health Services, Physical Therapist, School Psychologist, Special Education Teacher, Speech Language Pathologist, Speech Language Pathology Liaison, and Social Worker. *Id.* at pp. 4-5; *Exhibit A*, p. 23.

35. Though School Nurse did not attend, two District nursing representatives—Assistant Director of Health Services and Partner of Health Services (collectively, “Health Services team members”)—were at both IEP Team meetings. *Response*, p. 4.
36. The Health Services team members are trained nurses. *Interviews with Director of Health Services and Partner of Health Services*. During the 2023-2024 school year, Partner of Health Services oversaw Student’s deskside nurse. *Interview with Partner of Health Services*. At the time of the IEP Team meetings, the deskside nurse—who was a contractor—had been reassigned by her employer to another site and was no longer serving Student. *Id.* For that reason, the deskside nurse did not attend the IEP Team meetings. *Id.* However, the deskside nurse provided notes to Partner of Health Services detailing the support she provided to Student during the school year. *Id.*; *Exhibit P*, pp. 1-3. Partner of Health Services also familiarized herself with the most recent orders from Student’s physician. *Interview with Partner of Health Services*. Though Partner of Health Services had not directly cared for Student, she felt knowledgeable about Student’s nursing needs given the information provided to her. *Id.*
37. Similarly, District members of the IEP Team found the Health Services team members to be knowledgeable about Student’s need for nursing services. *Interviews with Case Manager, Director, and Partner of Health Services*.
38. Parent did not request that School Nurse (or any other nurse) attend the IEP Team Meetings. *See Exhibit M*, p. 250; *Interview with Parent*. In her Complaint, Parent now asserts that the IEP Team was not properly composed because it lacked School Nurse. *Complaint*, pp. 7-8.

#### **G. Discussion at Spring 2024 IEP Team Meetings**

39. The IEP Team meetings in April and May 2024 meetings were held virtually, which allowed the District to use automated transcription software to document the discussion at the meetings. *See Exhibit D*, pp. 1-168. Both parties provided copies of the transcripts during this investigation. *Id.*; *see Exhibit 1*, pp. 53-175.
40. During the meeting on April 16, the IEP Team allowed Parent to share her concerns during discussion of the parental concerns section of the IEP. *Exhibit D*, pp. 60-65. The IEP Team spent several minutes reviewing Parent’s concerns—those shared before and during the meeting—and gave Parent an opportunity to voice any additional input. *Id.* When asked whether her parental input had been captured correctly, Parent responded “I believe so” before voicing a few extra thoughts regarding Student’s level of support and schedule. *Id.*
41. At that meeting, the IEP Team also spent approximately seven minutes listening to updated health information from Parent and asking follow-up questions. *Id.* at pp. 49-56.
42. While discussing Student’s accommodations during the meeting on May 23, Parent requested Student receive a 1:1 nurse and a 1:1 paraprofessional. *Id.* at p. 113. Parent indicated she had



a “prescription” for both a 1:1 nurse and a 1:1 paraprofessional and would file a complaint with the CDE if the IEP Team did not include them in Student’s IEP. *Id.* at p. 114.

43. Director reminded Parent that “doctors can talk about the medical needs of the student, [but] they can’t really prescribe what happens in a public-school setting.” *Id.* The IEP Team would consider the doctor’s orders but was not bound by them. *Id.* As a follow-up, Director asked whether Parent had been happy with the nursing and paraprofessional support provided to Student during the 2023-2024 school year, even though his 2023 IEP did not require 1:1 support. *Id.* Parent expressed that she was happy with Student’s level of support but felt it needed to be documented in his IEP as 1:1 support to ensure Student received it. *Id.* at p. 115.
44. After Parent continued to insist that a 1:1 nurse and paraprofessional be included in Student’s IEP, Director said the IEP Team would “draft an IEP based on [Student’s] current needs as we see them in the educational environment, and if that’s the recommendation of the team. . . then we will write that in.” *Id.* at pp. 115-18.
45. The IEP Team then discussed Student’s need for school health services and, specifically, a 1:1 nurse. *Id.* at pp. 119-124. Assistant Director of Health Services said that she did not think a 1:1 nurse was necessary based on the current provider orders and the services Student’s deskside nurse provided during the 2023-2024 school year. *Id.*
46. Later, while reviewing the service delivery statement, Parent reasserted her request for a 1:1 nurse, asking that nursing services be included. *Id.* at p. 153. Assistant Director of Health Services referred back to the nursing services Student was currently receiving, noting that the deskside nurse was always with Student but rarely had to perform nursing functions. *Id.* at p. 154. Based on this, a 1:1 nurse seemed unnecessary. *Id.*
47. Director offered to conduct a reevaluation to look more closely at Student’s health needs; however, Parent declined that option: “I am not in agreement with a reevaluation of any sort. His needs have not changed now.” *Id.* at pp. 155-56.
48. When discussing Student’s level of paraprofessional support, the IEP Team proposed Student receive 400 minutes per week of support from a paraprofessional or educational assistant inside the general education environment. *Id.* at p. 148. Parent asked a clarifying question but did not otherwise object to this level of support. *Id.* at pp. 148-49. The IEP Team then moved on to discuss Student’s remaining services. *Id.*

#### **H. 2024 IEP**

49. The IEP Team meetings in April and May 2024 resulted in an IEP dated April 16, 2024 (“2024 IEP”). *Exhibit A*, pp. 22-48.
50. The 2024 IEP reviewed Student’s present level of performance, noting that Student’s math and literacy skills were at a first-grade level. *Id.* at p. 26. Though Student had not met any of

his annual goals, he had made progress on each goal and was receiving A's in his classes. *Id.* at pp. 28-29. In Spring 2024, Student gradually increased his schedule so that, by April 2024, he was attending school from 8:45 a.m. to 12:15 p.m. each day. *Id.* at p. 31. Student experienced three dystonic crises during the 2023-2024 school year. *Id.* During each episode, his deskmate nurse monitored his vital signs, administered medication and oxygen, and notified Parent. *Id.*

51. Student's multiple disabilities required him to receive instruction at his ability level and access to modified curriculum and alternative assessments. *Id.* at p. 34. His communication needs had a significant impact on his acquisition of new academic content and his ability to respond to and recognize social cues. *Id.*
52. The 2024 IEP noted the information Parent shared during the two IEP Team meetings, including, in part, that Parent requested a 1:1 nurse and 1:1 paraprofessional for Student. *Id.* at p. 34.
53. The 2024 IEP contained seven annual goals in the areas of reading, writing, mathematics, physical motor, communication, and social/emotional wellness. *Id.* at pp. 35-40.
54. The 2024 IEP included numerous accommodations grouped into three categories: learning and language accommodations, social/emotional/behavioral accommodations, and health/transportation accommodations. *Id.* at pp. 41-42. The health-related accommodations noted, in part, that a nurse would "determine Student's healthcare needs during the school day based on his current diagnoses, provider orders, and parent input." *Id.* at p. 41. Additionally, "[s]taff working with [Student] should be trained on observations of his health status and when to report concerns to the nurse for nursing assessment and nursing judgment needs." *Id.* The accommodations also identified steps to take when Student demonstrated protesting behavior. *Id.* at p. 14.
55. Under the 2023 IEP, Student received the following specialized instruction and related services:
  - Specialized Instruction:
    - 240 minutes per week of direct specialized math instruction provided by a special education teacher outside the general education classroom;
    - 240 minutes per week of direct specialized literacy instruction provided by a special education teacher outside the general education classroom;
    - 500 minutes per week of direct specialized instruction provided by a special education teacher outside the general education classroom; and
    - 400 minutes per week of direct specialized instructional support provided by a paraprofessional or educational assistant inside the general education classroom.

- Mental Health:
  - 60 minutes per month of direct mental health services provided by mental health provider outside the general education classroom; and
  - 15 minutes per month of indirect mental health services provided by a mental health provider outside the general education classroom.
- Occupational Therapy:
  - 180 minutes per month of direct occupational therapy provided by an occupational therapist outside the general education classroom; and
  - 30 minutes per month of indirect occupational therapy provided by an occupational therapist outside the general education classroom.
- Speech/Language Services:
  - 150 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education classroom; and
  - 30 minutes per month of indirect speech/language services provided by a speech language pathologist outside the general education classroom.
- Physical Therapy:
  - 60 minutes per month of indirect physical therapy provided by a physical therapist outside the general education classroom.

*Id.* at pp. 44-45.

56. Per the 2024 IEP, Student spent 40-79% of his time in the general education classroom. *Id.* at p. 19. This placement allowed Student to access to grade-level curriculum and interact with same-age peers. *Id.* at p. 46. Student would “receive adult support across all school environments.” *Id.*

57. The 2023 IEP also contained an embedded PWN regarding Parent’s requests for 1:1 support from a nurse and a paraprofessional. *Id.* at pp. 46-48.

### **I. Prior CDE State Complaint**

58. In 2017, Parent filed a state-level complaint (“Prior Complaint”) against the District. *Arapahoe County Sch. Dist. 5*, 118 LRP 16350, (SEA CO 10/10/17) (hereinafter *Prior Decision*). In the Prior Complaint, Parent alleged that the District did not appropriately develop Student’s IEP. *Id.* at p. 1. Specifically, Parent asserted that the District did not include adequate nursing services

to allow Student to access a FAPE. *Id.* p. 5, ¶ 1. At the time, Student was in kindergarten. *Id.* at p. 2, ¶ 1.

59. In the Prior Decision, the CDE determined that the District did not appropriately tailor Student’s IEP to his individualized needs, resulting in noncompliance with the IDEA. *Id.* at p. 7, ¶ 6. Student’s IEP Team “developed a plan for School Nurse to train and delegate staff to provide health services for Student, yet School Nurse and Nurse, who were both essential to the creation and implementation of such a plan, were never consulted with nor were they at the IEP meeting.” *Id.* The nurses’ attendance at the IEP Team meeting was critical, because the District’s evaluation of Student’s health needs was inadequate, and no other member of the IEP Team had knowledge of Student’s health needs. *Id.*
60. To correct this noncompliance, the CDE ordered the District to complete training, provide Parent with an independent educational evaluation (“IEE”), and reconvene Student’s IEP Team to review his health needs and services in light of the IEE. *Id.* at pp. 8-9. Any determinations regarding Student’s health needs—such as the provision of a 1:1 nurse—were left up to Student’s IEP Team. *See id.* The Prior Decision made no finding regarding Student’s need for a 1:1 nurse at that time or going forward. *See id.*
61. In the past, Parent has argued that the Prior Decision determined that Student should “receive a 1:1 RN to attend school paid for by the school district.” *Exhibit M*, p. 85. Parent even relied on the Prior Decision during the May 2024 IEP meeting when advocating for a 1:1 nurse. *Exhibit D*, p. 153 (“You have a CDE ruling for a 1:1 RN.”).

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District included Parent in the group of persons that determined Student’s educational placement, as required by 34 C.F.R. § 300.327. No noncompliance occurred.**

The first allegation in Parent’s Complaint relates to the termination of Student’s H/H instruction in November 2023. Parent contends the District changed Student’s educational placement when it ended his H/H instruction without involving Parent in the decision-making process. (FF # 33.)

#### **A. Placement Determinations under the IDEA**

A child’s placement—a term used to denote the provision of special education and related services—must be determined by a group of persons, including parents, knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); *see also id.* §§ 300.321(a)(1), 300.322, 300.324, 300.327, 300.501(c). Decisions regarding a child’s

placement must be based on the child's IEP and consistent with the IDEA's least restrictive environment obligations. *Id.* § 300.116(a)(2), (b)(2).

In November 2023, Student's H/H instruction ended after H/H Instructor went on medical leave. (FF #s 26.) The District subsequently offered to have a new instructor meet with Student virtually, but Parent declined that option. (FF #s 27, 30-31, 33.) Parent also refused to reapply for the H/H program or sign a release granting District staff access to Student's medical providers. (FF #s 27-27, 30, 32.) Such a release would have allowed District staff to determine whether Student had a "temporary extended illness" that made him eligible for continued H/H instruction. (FF #s 17, 27.) Complex Nurse Case Manager was clear that Student could not remain in the H/H program unless Parent reapplied. (FF #s 27, 28.)

Parent now complains that she was excluded from the decision made regarding Student's placement. (FF # 33.) In reality, the District made no decision regarding Student's placement. (FF # 32.) But for H/H Instructor needing medical leave, Student might have received H/H instruction the remainder of the school year. (FF # 25.) Similarly, Student's H/H instruction might have continued if Parent reapplied for the H/H Program or acquiesced to a new instructor working with Student virtually. (FF #s 26-32.) Parent's actions resulted in Student no longer receiving instruction from the H/H program. (*Id.*)

Even though the H/H instruction ended, the District took no steps to invalidate the interim plan in the PWN or to return Student to his placement under the 2023 IEP. (FF # 32.) The District did not issue a new PWN or otherwise document the end of the interim plan, and no changes were made to Student's IEP. (*Id.*) An outsider reading Student's education file would have believed the interim plan was still in effect.

For these reasons, the SCO finds and concludes that the District did not make any decision regarding Student's placement in November 2023. Parent participated in discussions regarding Student's ability to remain in the H/H program and explicitly chose not to take the steps that could have allowed Student to continue to receive H/H instruction. (FF #s 26-32.) No noncompliance occurred with regard to 34 C.F.R. § 300.327.

While the IDEA emphasizes the importance of parent participation in placement decisions, the District must balance a parent's requests with its obligation to educate a child in the least restrictive environment possible. *See* 34 C.F.R. §§ 300.114, 300.116, 300.327. Parent has relied on the District's H/H program for at least two years, even telling District staff that she was "exempt" from the H/H application process. (FF #s 13, 28.) During the same period, Student's IEP Team repeatedly developed IEPs that exclusively offered FAPE in a school setting. (FF #s 5-11, 49-56.) Student either has a "temporary extended illness" that prevents him from attending a full school day, or he does not. The District cannot continue to make a full offer of FAPE and then allow Parent to pick what she wants and substitute H/H instruction for the rest. If Student has a chronic medical condition that precludes him from attending a full school day, the IEP Team should consider what placement best meets his needs. Extended use of the H/H program is not appropriate without a qualifying temporary illness.

**Conclusion to Allegation No. 2: The District included all required IEP Team members at the IEP Team meetings held in April and May 2024, consistent with 34 C.F.R. § 300.321(a)(6). No violation of the IDEA occurred.**

The second allegation in Parent’s Complaint relates to the composition of the IEP Team at IEP Team meetings held in April and May 2024. Specifically, Parent contends the District erred by not including a nurse or school nurse in the meetings. (FF # 38.)

Under the IDEA, an IEP Team must include:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) at least one special education teacher of the child;
- (4) a representative of the school district who:
  - i. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - ii. is knowledgeable about the general education curriculum; and
  - iii. is knowledgeable about the availability of resources of the public agency;
- (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6);
- (6) at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a). As such, the IDEA differentiates between mandatory and discretionary members of an IEP Team. *See Douglas Cty. Sch. Dist.*, 75 IDELR 237 (SEA CO 7/22/19). Individuals with knowledge or special expertise regarding the child are classified as discretionary members. 34 C.F.R. § 300.321(a)(6).

The IDEA empowers both school districts and parents to invite “other individuals” with “knowledge or special expertise regarding the child, including related services personnel” to an IEP Team meeting. *Id.* The inviting party—whether it be the district or the parent—determines whether the individual has knowledge or special expertise regarding the child. *Id.* § 300.321(e).

Mandatory IEP Team members may be excused from attending an IEP Team meeting if the parent and district agree in writing. *Id.* § 300.321(e)(a). However, neither consent nor a written agreement are required to excuse discretionary members from an IEP Team meeting because “such individuals are not required members of an IEP Team.” 71 Fed. Reg. 46,675 (Aug. 14, 2006).

Here, Parent contests only the absence of a nurse or a school nurse at the IEP Team meetings and has not, otherwise, challenged the membership of the IEP Team. (FF # 38.) Indeed, as detailed in the Findings of Fact, the District included all mandatory IEP Team members at the meetings held in April and May, consistent with 34 C.F.R. § 300.321(a)(1)-(5). (FF # 34.)

Here, the SCO finds and concludes that the District was not obligated to include School Nurse or another nurse at the IEP Team meetings in Spring 2024. Two Health Services Team members—both trained as nurses—attended the IEP Team meetings. (FF #s 35-36.) Though these individuals had not worked directly with Student, they had notes detailing the nursing services Student’s deskmate nurse provided to him during the 2023-2024 school year. (FF # 36.) Additionally, Complex Nurse Case Manager oversaw Student’s deskmate nurse during the school year. (*Id.*) Both Health Services Team members were familiar with Student’s medical orders and the nursing services available in the District. (*Id.*) Other District members of the IEP Team felt that they were able to appropriately consider Student’s nursing needs at the meetings. (FF # 37.) For these reasons, the SCO finds and concludes that the IEP Team contained two representatives of the District who were able to speak to Student’s need for school health services or school nursing services, in compliance with 34 C.F.R. § 300.321(a)(4).

Though Parent could have invited School Nurse or another nurse of her choice to Student’s IEP Team meetings under 34 C.F.R. § 300.321(a)(6), the Findings of Fact indicate that Parent did not exercise her discretion to do so. (FF # 38.) However, even if Parent had invited School Nurse to the IEP Team meetings, Parent would not have been able to compel School Nurse’s attendance. *See* 71 Fed. Reg. 46,675 (“The public agency determines the specific personnel to fill the roles for the public agency’s required participants at the IEP Team meeting. Whether other teachers or service providers who are not the public agency’s required participants can attend an IEP Team meeting is best addressed by state and local officials.”); *Pikes Peak BOCES*, 2016:507, 116 LRP 29302 (SEA CO 4/19/16). In the *Pikes Peak BOCES* decision, the CDE found the BOCES acted consistent with the IDEA and the ECEA when the BOCES denied parents’ request for paraprofessionals to attend an IEP Team meeting. *Pikes Peak BOCES*, 116 LRP 29302. Neither federal nor state law gives parents the authority to “compel a school district to make a particular school district employee available for IEP [Team] meetings.” *Id.*

Accordingly, the SCO finds and concludes that the District convened a properly composed IEP Team at the meetings held in April and May 2024, as required by 34 C.F.R. § 300.321(a).

**Conclusion to Allegation No. 3: The District developed an IEP that was tailored to Student’s individualized needs in April 2024, consistent with 34 C.F.R. §§ 300.324(a)(1)(ii), 300.34(c), and 300.320(a)(4)(ii)-(iii). No noncompliance occurred.**

The third allegation in Parent’s Complaint concerns the development of Student’s IEP in Spring 2024. Specifically, Parent argued that the IEP did not contain the school health services, school nurse services, or paraprofessional support Student required to receive a FAPE. Parent also asserted that the IEP did not consider her concerns regarding Student’s need for school health or school nurse services.

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

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.*

Parent’s allegation challenges both the development of the IEP and the substantive nature of the IEP. The SCO will address each of Parent’s concerns below.

#### **A. IEP Development Process**

In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). The IDEA requires that parent participation be meaningful, to include carefully considering a parent’s concerns for enhancing the education of the child in the development of the child’s IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). However, the IDEA does not require a parent input section. *See id.* § 300.320. Instead, the IEP, considered in its entirety, must be reflective of meaningful participation. Meaningful participation occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the child. *O’Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Parent has not alleged that she was, in any way, denied meaningful parent participation during the IEP Team meetings. The transcripts of the meetings demonstrate that Parent was able to share her concerns. (*See* FF #s 39-48.) The IEP Team listened and responded to Parent’s concerns,



even though they may not have agreed with Parent. (*Id.*) The final version of the 2024 IEP also reflects Parent’s participation in the meeting. (FF # 52.) The parental concerns section of the IEP reflected the information Parent shared during the meetings, and her disagreements were noted in the embedded PWN. (FF #s 52, 57.) Even if the final IEP did not encompass everything shared by Parent, the Findings of Fact make clear that the IEP Team considered Parent’s concerns. For this reason, the SCO finds and concludes that the District’s development of the 2024 IEP was consistent with 34 C.F.R. § 300.324(a) and did not result in a violation of the IDEA.

### **B. Substantive Adequacy of the IEP**

An IEP must identify the special education and related services that will be provided to the child to allow the child to make progress on his or her annual goals and to be involved and make progress in the general education curriculum. 34 C.F.R. § 300.320(a)(4). The IDEA only requires related services to be provided to “assist a child with a disability to benefit from special education.” *Id.* § 300.34(a).

Parent contends the 2024 IEP did contain the school health services, school nurse services, and paraprofessional support Student needed to receive a FAPE.

### **School Health and School Nurse Services**

School health services and school nurse services are related services. *Id.* School health services and school nurse services are both “health services that are designed to enable a child with a disability to receive FAPE as described in the child’s IEP.” *Id.* § 300.34(c)(13). While a nurse provides school nurse services, school health services may be provided by either a school nurse or other qualified person. *Id.*

This allegation relates specifically to the IEP Team’s decision not to include a 1:1 nurse in the 2024 IEP. In developing the 2024 IEP, the IEP Team considered the orders on file from Student’s medical providers and information from Student’s deskmate nurse during the 2023-2024 school year. (FF #s 42-47.) During that school year, Student had a deskmate nurse assigned to him throughout his school day. (FF #s 45-46.) She performed very few true nursing services, suggesting some of her other services could have been delegated to a qualified person. (*Id.*)

The District offered to reevaluate Student’s health needs to determine whether he truly required a 1:1 nurse. (FF # 47.) However, Parent flatly declined a reevaluation. (*Id.*) Parent’s refusal to provide consent prevented the District from gathering information it needed to determine whether Student’s health needs had changed or whether they warranted a 1:1 nurse. Therefore, the SCO finds and concludes that Parent waived her right to challenge the substantive adequacy of the school health and nursing services in Student’s 2024 IEP. *See Denver Pub. Schs.*, 2023:525, 124 LRP 34353 (SEA CO 8/27/23).

Relatedly, Parent’s reliance on CDE’s 2017 Prior Decision is misplaced. The Prior Decision made no determination regarding Student’s need for a 1:1 nurse at the time of the decision or going

forward. (FF # 60.) Only an IEP Team can determine a Student's need for school health services and school nurse services. 34 C.F.R. §§ 300.320, 300.321, 300.324.

### **Paraprofessional Support**

During the IEP Team meetings, Parent requested Student's IEP require 1:1 paraprofessional support. (FF #s 42-43.) Though the IEP Team considered this option, the team ultimately decided to continue the same level of paraprofessional support Student received in the 2023-2024 school year. (FF #s 42-43, 48, 55.) At the IEP Team meetings, Parent indicated she was pleased with the current level of support but worried that Student would not receive adequate support unless the IEP specifically required a 1:1 paraprofessional. (FF # 43.)

Student succeeded during the 2023-2024 school year. He made progress on all his annual goals and had good grades. (FF # 50.) He enjoyed being at School and was able to extend his school day to 12:15 p.m. (*Id.*) Nothing in the record indicated that Student needed *more* paraprofessional support than he already had. For these reasons, the SCO finds and concludes that the paraprofessional support provided in the 2024 IEP was sufficient to allow Student to access his education, as required by 34 C.F.R. § 300.320(4).

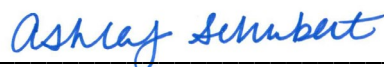
### **REMEDIES**

The CDE concludes that the District complied with the IDEA requirements at issue in this Complaint. Accordingly, no remedies are ordered.

### **CONCLUSION**

The Decision of the CDE 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 State Complaints Officer ("SCO").

Dated this 27th day of September, 2024.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-24**

- Exhibit 1: Miscellaneous documents

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

- Exhibit A: IEPs
- Exhibit B: PWNs
- Exhibit C: Notices of Meeting
- Exhibit D: Transcripts from IEP Team meetings
- Exhibit E: Notes from IEP Team meetings
- Exhibit F: Health-related documents
- Exhibit G: Individual Health Plans
- Exhibit H: Progress reports
- Exhibit I: Evaluations
- Exhibit J: Report cards and attendance
- Exhibit K: District's calendar
- Exhibit L: Policies and procedures
- Exhibit M: Email Correspondence
- Exhibit N: Blank
- Exhibit O: Verification of delivery to Parent
- Exhibit P: Nurse's notes
- Exhibit Q: Job posting

### **Reply, pages 11**

- Exhibit 2: Applicable laws
- Exhibit 3: Miscellaneous documents from 2024-2025
- Exhibit 4: Miscellaneous documents from 2023-2024
- Exhibit 5: Miscellaneous documents from 2022-2023
- Exhibit 6: Nursing guidelines
- Exhibit 7: Miscellaneous documents
- Exhibit 8: Email correspondence
- Exhibit 9: Videorecording

### **Telephone Interviews**

- Complex Nurse Case Manager: September 12, 2024
- Director of Health Services: September 11, 2024
- Director of Special Education: September 12, 2024
- Parent: September 25, 2024

- Partner of Health Services: September 10, 2024
- Special Education Teacher: September 11, 2024