

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

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**State Complaint SC2025-542**  
**Cherry Creek School District No. 5**

**DECISION**

**INTRODUCTION**

On April 11, 2025, an attorney (“Complainant”) filed a state complaint (“Complaint”) on behalf of a parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> against Cherry Creek School District No. 5 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred 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 April 11, 2024.<sup>2</sup> Information prior to April 11, 2024 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)<sup>3</sup> of the IDEA:

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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> Complainant contends the proper filing date of the Complaint is April 8, 2025. *Reply*, pp. 2-3. This contention is addressed in the legal conclusions of this Final Decision.

<sup>3</sup> The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. District did not identify and evaluate Student—from April 11, 2024, to on or around May 20, 2024—when it was on notice that Student may have a disability and need special education and related services, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>4</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. Student is sixteen years old and recently completed tenth grade at a District high school (“School”). *Complaint*, p. 2; *Exhibit A*, p. 8. Student is eligible for special education and related services under the disability category of a specific learning disability (“SLD”) in the areas of math calculation and math problem solving. *Response*, p. 5; *Exhibit A*, pp. 1, 6. During the 2023-2024 school year, Student was a ninth grader at School. *Response*, p. 2; *Reply*, p. 1.
2. Student is described as kind and cheerful with a great sense of humor, and she enjoys socializing with friends and family. *Reply*, p. 1; *Exhibit A*, p. 10; *Interview with Parent*. She struggles with self-confidence, focus, and math. *Complaint*, p. 4; *Exhibit A*, pp. 11-12; *Interview with Parent*.
3. Complainant alleges District did not timely refer Student for an initial IDEA evaluation despite Student’s demonstrated struggles in math since Fall 2023 and her expressed anxiety around those struggles. *Complaint*, p. 4; *Reply*, p. 2. District asserts it did not have a reason to suspect a disability and a need for special education until March 2024, after which time it evaluated Student and determined she was IDEA-eligible. *Response*, pp. 3-4.

#### **B. District’s Policies, Practices, and Procedures**

4. District’s Director of Special Education (“Director”) described District’s practices and procedures as it relates to child find obligations, initial evaluations, and eligibility determinations. *Interview with Director*; see *Exhibit L*, pp. 358-69, 420-40. District schools have an established child find process that may begin with the Multi-Tiered System of Support (“MTSS”) framework, a general education process that identifies students who may be struggling and provides evidence-based interventions to support those students. *Id.*
5. District begins the MTSS process when school staff identify a student who is performing at a lower level than they should be under the circumstances and implement general education interventions, in coordination with parents, to target the student’s areas of struggle. *Interview with Director*. If School staff, or parents, observe that general MTSS is not resulting

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<sup>4</sup> The appendix, attached and incorporated by reference, details the entire Record.

in improvement or if the student continues to struggle, staff then notify the School's student support team—including deans, counselors, school psychologists, and others—to initiate child find. *Interviews with Director and School's Assistant Principal*. The student support team reviews the interventions being implemented, historical grades, any behavioral issues, and other data to determine whether to refer the student for an evaluation. *Interviews with Director, Assistant Principal, School's Social Worker, and Student's school counselor ("Counselor")*; see *Exhibit L*, p. 420. It is the responsibility of District staff to decide if a referral is needed "[w]hen gathering data via MTSS." *Exhibit L*, p. 420; *Interviews with Director, Social Worker, and Counselor*.

6. MTSS is not the only way District may initiate a special education evaluation. *Interviews with Director, Assistant Principal, and Counselor*. Teachers and other School staff may also refer a student to the student support team for a special education referral outside the MTSS process if they have an indication the student may need specially designed instruction to benefit from general education, and parents may also request an evaluation at any time. *Id.*
7. General education teachers, special education teachers, and related services providers are informed of their child find responsibilities via a special education handbook and various professional development opportunities, including yearly training on staff's responsibilities regarding child find, initial special education evaluations, and eligibility determinations. *Interview with Director, Student's special education case manager ("Case Manager"), Social Worker, and Counselor*; see *Exhibit L*, pp. 420-22.

### **C. Fall 2023: Student's First Semester of 9th Grade**

8. Student began her freshman year at School in August 2023 and was assigned to a standard ninth-grade Algebra 1 class. *Response*, p. 2. On October 13, 2023, Student's Algebra 1 teacher ("Math Teacher") emailed Counselor expressing concern about Student's struggles in math. *Response*, p. 2; *Exhibit M*, p. 148. On October 30, Math Teacher emailed Parent expressing those same concerns, noting she was failing Algebra 1 "due to a combination of doing poorly on quizzes and tests and lately missing class" because of a concussion she suffered on October 22 playing soccer. *Response*, pp. 2-3; *Exhibit M*, p. 115.
9. Math Teacher recommended Student either "attend regular tutoring (at least twice a week)" or "move down to a lower-level math class but still a grade-level math class called Integrated Math, for students struggling in Algebra 1." *Response*, p. 2; *Exhibit M*, p. 115; *Interview with Math Teacher*. Parent responded that "integrated math may be the best path for [Student] right now," noting it had been "a difficult year as a family." *Exhibit M*, p. 114; *Interview with Parent*. Specifically, among other external issues, Student's sibling received a major medical diagnosis and had been through a rigorous treatment process, and a close friend of the family was also undergoing medical treatment and later passed away. *Interview with Parent*.
10. Math Teacher reported that Algebra 1 is often difficult for students who are transitioning to high school, due to the increased difficulty of the concepts and volume of information

involved. *Interview with Math Teacher*. School's Integrated Math class "uses research-based instructional methods, including concrete-representational-abstract sequences, explicit modeling and scaffolding, direct instruction and metacognition problem-solving strategies" to support students struggling in Algebra 1. *Exhibit A*, p. 11. Additionally, it is not uncommon for high school freshmen to struggle at School with stress and anxieties as a general matter, given the sheer number of students and the higher expectations that accompany an increase in freedoms and rigorous academic coursework. *Interviews with Assistant Principal, Social Worker, and Counselor*.

11. Given this difficulty, it is common for Math Teacher to provide tutoring to some students, and it is not unusual for School to attempt a class change from Algebra 1 to Integrated Math as a first-level intervention to address those challenges. *Interviews with Math Teacher and Case Manager*. School staff reported often seeing improved performance from students after a class change to Integrated Math to fill gaps in learning. *Id.*
12. On November 1, 2023, with the agreement of Parent and Student, Student moved from Algebra 1 to Integrated Math. *Response*, p. 3.
13. Complainant asserts District "was on notice of [Student's] disabilities the moment her teacher emailed [Parent] informing him she was struggling in math class." *Reply*, p. 3; (FF # 8).

#### **D. Fall 2023: Attendance and Grades**

14. Student attended School regularly in Fall 2023 and passed all of her classes. *Exhibit J*, pp. 1-3. She earned B's, C's, and D's, with a C in Integrated Math. *Response*, p. 8; *Exhibit J*, pp. 1-3.
15. Student's grades in Fall 2023 were consistent with Student's historical grades from the 2021-2022 and 2022-2023 school years across all subjects. *Response*, p. 3; *Exhibit P*, pp. 1-2. In math, Student's grade of C was consistent with her math grades from the two prior school years, during which Student earned grades ranging from C to D. *Exhibit P*, pp. 1-2.
16. Parent reported that math had not been a concern for Parent or struggle for Student prior to beginning ninth grade at School. *Interview with Parent*. District staff confirmed that grades of C's and D's can be considered average and that for Student here, especially without any indicators to suspect a disability, they did not give rise to initiate a special education evaluation. *Interviews with Director, Case Manager, and Math Teacher*.

#### **E. February 2024 Disciplinary Incident**

17. On February 21, 2024, Student was involved in an incident in which she threatened a school shooting on social media, specifically referencing her math teacher, after becoming upset about a poor grade in math class. *Complaint*, p. 5; *Exhibit I*, p. 31. Student was suspended from School and expulsion proceedings were commenced based on District disciplinary policy. *Response*, p. 2; *Exhibit I*, pp. 31-34.

18. On April 1, 2024, District held an expulsion hearing and—by letter dated April 8, 2024—Student was expelled from School effective April 1, 2024, through April 1, 2025, with an opportunity for early readmission. *Response*, p. 2; *Exhibit I*, pp. 23-25. Parent appealed the expulsion, which District’s Board of Education (“BOE”) upheld, though it found Student may be readmitted to District effective May 29, 2024. *Response*, p. 2; *Exhibit I*, pp. 27-29. Parent appealed the expulsion to a state district court, which affirmed the BOE’s determination, and Parent is currently appealing the expulsion to the Colorado Court of Appeals. *Response*, p. 2.
19. Prior to this incident, Student had no disciplinary record, School staff had not observed any behavioral or social-emotional concerns regarding Student, and neither Parent nor Student had expressed any concerns related to Student’s behavior or social-emotional functioning at School. *Response*, pp. 4-5; *Interviews with Case Manager, Math Teacher, Social Worker, Counselor, Assistant Principal, and Parent*.
20. Specifically, Counselor and Social Worker were familiar with Student’s family, given the medical diagnosis of Student’s sibling—also a student at School at the time—and the resulting challenges for the family that accompanied that diagnosis and treatment. *Interviews with Counselor and Social Worker*. In providing support to the family during that time, Counselor and Social Worker were not made aware of any social-emotional or academic issues with Student, and Student did not exhibit any behaviors or actions at School that were concerning to School staff, outside of her identified struggles in math. *Id.*
21. Complainant asserts District should have conducted a manifestation determination review (“MDR”) prior to Student’s expulsion. *Complaint*, p. 5; *Reply*, p. 5.

**F. Parent’s Request for Evaluation**

22. On March 12, 2024, approximately three weeks after the disciplinary incident, then-counsel for Parent provided District with a letter from a private therapist, which noted Student was being treated for generalized anxiety disorder and possible attention-deficit hyperactivity disorder (“ADHD”). *Response*, p. 4; *Exhibit M*, p. 130. The letter noted Student was being treated for “support around her transition to high school, struggling with friendship changes and anxiety,” and the possibility of ADHD “after her struggles with last semester finals.” *Exhibit M*, p. 130.
23. District asserts it did not have a reason to suspect a disability and a need for special education earlier than March 12, 2024. *Response*, p. 6. “Prior to this therapist letter, the District had no knowledge and there was no indication that Student suffered from anxiety or that she was being treated for or experiencing ADHD.” *Id.* at p. 4; *Interviews with Social Worker and Counselor*. Student and Parent had not expressed to School staff any concerns in these areas, and staff had observed none. *Response*, pp. 4-5, 8; *Interviews with Social Worker and Counselor*; (FF # 19).

24. District collects health information from parents of all students each school year, and Parent did not indicate on Student’s form for the 2023-2024 school year that Student struggled with anxiety, ADHD, or any other condition. *Response*, pp. 3-4; *Exhibit Q*, pp. 1-2; *Interview with Parent*. Student began seeing the private therapist in January 2024, and Parent did not have cause or occasion—prior to the incident in February 2024—to inform School staff of Student’s social-emotional challenges for which she was seeing the therapist. *Interview with Parent*.
25. Complainant asserts Student “sought help” from the School nurse twice during the 2023-2024 school year for her anxiety. *Reply*, p. 4. In the first instance—during which Student took a “Brain Break” with the nurse—Student was under School’s concussion protocol and the break was in relation to that protocol. *Interview with Counselor*; see *Response*, p. 2; *Reply*, p. 4. In the second instance, Student expressed stress around “grades . . . classes and missing soccer.” *Reply*, p. 4. District staff reported it is common for students to take breaks from the learning environment or express stress to a trusted adult, which may include the nurse, a dean, or a counselor, as Student did here. *Interviews with Assistant Principal, Counselor, and Social Worker*.
26. On March 26, then-counsel for Parent requested that District conduct an initial special education evaluation of Student. *Response*, p. 4; *Exhibit F*, p. 8. Parent had not previously requested a special education evaluation for Student, and Student had not otherwise been referred for an evaluation by School staff; outside of Student’s struggles in math, staff had not observed any other indication that Student may be a student with a disability based on academic performance or behavioral concerns. *Response*, p. 4; *Interviews with Director, Case Manager, Counselor, Social Worker, and Parent*.
27. On April 3, Social Worker emailed Parent and provided Prior Written Notice (“PWN”) of District’s agreement to evaluate Student and a form seeking Parent’s consent. *Response*, p. 5; *Exhibit M*, p. 68; see *Exhibit F*, pp. 1-3. Social Worker indicated District would “expedite this process” and suggested conducting the evaluation on April 9, 2024. *Exhibit M*, p. 68.
28. Parent verbally consented to the evaluation after receipt of PWN but did not sign the consent to evaluate until April 22. *Response*, p. 5; *Exhibit F*, pp. 4-6; *Interview with Parent*. The consent to evaluate indicated Student would be evaluated in general intelligence, communicative status, academic performance, social and emotional status, and health. *Exhibit F*, p. 4.
29. Student’s evaluation was completed on April 24, 2024—in all areas identified in the consent to evaluate—and an evaluation report was prepared. *Response*, p. 5; see *Exhibit E*, pp. 1-21; see *Exhibit F*, p. 4.
30. On May 20, 2024, a properly convened multidisciplinary team (“MDT”), including Parent, met to determine Student’s eligibility for special education and related services. *Response*, p. 5; *Exhibit G*, pp. 1-6; *Exhibit E*, pp. 19-21. The MDT determined Student was IDEA-eligible under the disability category of SLD in math calculation and math problem solving. *Exhibit E*, pp. 19-21. “The team considered the initial concerns regarding the reported ADHD but did not find

sufficient information that Student qualified in other areas of disability under the IDEA.” *Response*, p. 5; *Interviews with Case Manager and Social Worker*.

#### **G. 2024-2025 School Year**

31. Student re-enrolled in District and School at the start of the 2024-2025 school year. *Response*, p. 5. Student completed the 2024-2025 school year with an IEP in effect, and there were no reported behavioral or social-emotional challenges with Student during this school year. *Interviews with Assistant Principal and Counselor*. By all accounts, Student appears to have done well at School her tenth-grade year, both academically and social-emotionally, despite last year’s challenges. *Interviews with Case Manager, Counselor, and Parent*.

#### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District satisfied its child find obligation between April 11, 2024 and May 20, 2024, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3). District complied with IDEA.**

Complainant asserts District had a reason to suspect Student might have a disability and a need for special education as early as October 2023. (FF # 13).

#### **A. Statute of Limitations**

As an initial matter, Complainant asserts the Complaint was properly filed on April 8, 2025, rather than April 11, 2025, and that the CDE must therefore investigate noncompliance beginning on April 8, 2024. (FN # 2 of Final Decision).

The CDE may only investigate alleged noncompliance “that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.” 34 C.F.R. § 300.153(c). To meet the IDEA’s minimum filing requirements, in part, the “party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.” 34 C.F.R. § 300.153(d). This requirement is reflected in the CDE’s state complaint procedures in effect at the time this Complaint was filed. *CDE’s State Complaint Procedures*, ¶ 4 (indicating “a complete copy of the Complaint, including any attachments, must also be mailed or hand-delivered to: the special education director of the IDEA Part B public agency serving the child”).

In this case, the CDE received the Complaint on April 8, 2025, and District received the Complaint on April 11, 2025. This means the Complaint, as it had otherwise met all other minimum filing requirements, was received in accordance with 34 C.F.R. § 300.153 and the CDE’s State Complaint Procedures on April 11, 2025. Thus, any findings of noncompliance for this investigation are limited to events occurring after April 11, 2024. Nevertheless, even if the Complaint was properly

filed on April 8, 2025, the CDE's conclusion to Allegation No. 1 would remain unchanged as reflected in the ensuing analysis.

### **B. The Child Identification Process under the IDEA**

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).

Under the “special education referral” component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(c). The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Hi. 2001). The appropriate inquiry by a school district is “whether the child should be referred for an evaluation, not whether the child actually qualifies for the services.” *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18).

“The child find duty is triggered when the school district has reasonable suspicion to believe that a student is a child with a disability.” *D.T. ex rel. Yasiris T. v. Cherry Creek Sch. Dist.*, 55 F.4th 1268, 1274 (10th Cir. 2022). Suspicion “may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation.” *Cheyenne Mountain Sch. Dist.*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)). However, “not any one red flag alone is generally sufficient to trigger a special education referral.” *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 05/17/19).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist.*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe Cnty. Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(c); see also *Letter to Delisle*, 62 IDELR 240 (OSEP 2013) (indicating it would be inconsistent with the IDEA for a child, regardless of whether the child is gifted, to be found ineligible for special education).

However, “child find does not demand that schools conduct a formal evaluation of every struggling student,” and “schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities,” especially at a time when students are



acclimating to a new school environment. *D.K. ex rel. Stephen K. v. Abington Sch. Dist.*, 696 F.3d 233, 254 (3d Cir. 2012) (finding no child find violation where student was exhibiting behaviors typical of his age and district responded by implementing general education interventions with parents' cooperation); *Cherry Creek Sch. Dist. No. 5*, 125 LRP 10301 (SEA CO 01/11/23) ("[T]he child find obligation does not extend to testing every student who is not successful when factors other than a disability would also explain the failure to progress." (citing *J.N. v. Jefferson Cnty. Bd. of Educ.*, 421 F. Supp. 3d 1288 (N.D. Ala. 2019))). And "mixed academic success does not—in itself—trigger a school district's obligation to evaluate." *Leigh Ann H. ex rel. K.S. v. Riesel Indep. Sch. Dist.*, 18 F.4th 788, 797 (5th Cir. 2021) (finding no child find violation where neither parent or school staff expressed academic or behavioral concerns before parent requested an evaluation, and student was "an average student"); *Brighton 27J Sch. Dist.*, 119 LRP 37633 (SEA CO 06/24/19) (finding no child find violation where student's performance was average and his behavior and academic performance were not sufficient to put the district on notice that student may have an IDEA-qualifying disability).

A school district may attempt pre-referral interventions before initiating an IDEA evaluation. *See, e.g., M.G. v. Williamson Cnty. Schs.*, 720 F. App'x 280, 285 (6th Cir. 2018) (finding district "effectively utilized general intervention strategies" before evaluating student); *Denver Pub. Schs.*, 123 LRP 33002 (SEA CO 03/10/23) (finding no child find violation where district did not have reasonable suspicion that student may be a student with a disability, even given certain behaviors, which district addressed via general education interventions). However, a response to intervention ("RTI") or MTSS process cannot be used to delay or deny an evaluation. *Letter to Ferrara*, 60 IDELR 46 (OSEP 2012). School districts must act within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. *D.T.*, 55 F.4th at 1274.

### **C. District's Child Find Obligation to Student**

To decide whether District fulfilled its child find obligations here beginning April 11, 2024, the CDE considers the individual circumstances of this case to determine whether District had a reason to suspect that Student needed to be evaluated for special education. *D.T.*, 55 F.4th at 1275; *Cherry Creek Sch. Dist. No. 5*, 119 LRP 30204 (SEA CO 05/17/19).

In this case, former legal counsel for Parent requested a special education evaluation on March 26, 2024. (FF # 26). District issued Parent PWN of its proposal to evaluate Student on April 3, 2024. (FF # 27). Therefore, by April 11, 2024 (and even April 8, 2024)—the date relevant to this Complaint for purposes of District's child find obligation—District had initiated the initial evaluation process consistent with IDEA. (FF #s 27-28). District completed Student's evaluation on April 24, 2024—29 days after Parent's request for evaluation but only two days after Parent consented to the evaluation—and found Student eligible for special education and related services on May 20, 2024—55 days after the request. (FF #s 29-30). Accordingly, the CDE finds and concludes District satisfied its child find obligations between April 11, 2024 and May 20, 2024, as required by 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

The Complainant has urged the CDE, in correspondence with the state complaints officer (“SCO”) and in pleadings, to investigate noncompliance around an obligation by District to conduct an MDR prior to Student’s expulsion—which was finalized on April 8, 2024, but was effective on April 1, 2024. (FF # 21). The CDE cannot investigate that issue due to the IDEA’s statute of limitations. *See* 34 C.F.R. § 300.153(c). The IDEA affords certain disciplinary protections for a student who has not yet been identified as eligible for special education. 34 C.F.R. § 300.534. Under such circumstances, a child who has not yet been determined eligible for special education services may assert the disciplinary protections—including the right to an MDR—if the school district had knowledge of the disability *before the behavior that precipitated the disciplinary action occurred*. *Id.* § 300.534(a) (emphasis added).

In this case, Student’s behavior that precipitated her expulsion occurred in February 2024. (FF # 17). To determine if the disciplinary protections applied to Student, the CDE would be required to investigate District’s knowledge of Student’s disability prior to the February 2024 incident, a timeframe well beyond the one-year statute of limitations. *See id.* §§ 300.153(c), 300.534(b). And again, even if the Complaint was properly filed on April 8, 2025, as Complainant contends, any findings of noncompliance would be limited to events occurring after April 8, 2024. *See id.* § 300.153(c). The CDE reminds Complainant, as it did when this concern was raised during the investigation, that the statute of limitations for a due process complaint is two years. 34 C.F.R. § 300.507. Regardless, while it is understandable that Parent is concerned with an expulsion being on Student’s permanent record based on challenges in state court, the CDE does not have the authority to expunge a student’s permanent record via a state complaint investigation or a due process hearing.

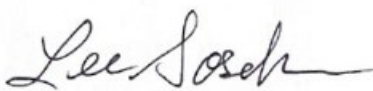
### **REMEDIES**

The CDE concludes District has complied with the requirements of the IDEA. Accordingly, no remedies are ordered.

### **CONCLUSION**

The Decision of the CDE is final and is not subject to appeal. *CDE’s State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (Aug. 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 10th day of June, 2025.



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Lee Sosebee, Esq.  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-8**

### **Response, pages 1-9**

- Exhibit A: Services Plan and IEP
- Exhibit C: Notices of Meetings
- Exhibit D: PWNs
- Exhibit E: Evaluation Report
- Exhibit F: Requests for Evaluation
- Exhibit G: Eligibility and IEP Meeting Documents
- Exhibit H: Meeting Notes
- Exhibit I: Disciplinary Records
- Exhibit J: Schedule, Grades Reports, Attendance
- Exhibit K: District Calendars
- Exhibit L: Policies and Procedures
- Exhibit M: Correspondence
- Exhibit N: Staff Information
- Exhibit O: Verification of Delivery
- Exhibit P: Prior Grades Reports

### **Reply, pages 1-6**

### **Telephone Interviews**

- Case Manager: May 13, 2025
- Math Teacher: May 15, 2025
- Director: May 15, 2025
- Parent: May 22, 2025
- Social Worker: May 27, 2025
- Assistant Principal: May 27, 2025
- Counselor: May 27, 2025