

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

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**State-Level Complaint 2020:533**  
**Douglas County School District RE-1**

**DECISION**

**INTRODUCTION**

On September 8, 2020, the parent (Father) of a student (Student) not currently 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 Douglas County School District RE-1 (District).

The State Complaints Officer (SCO) granted extensions of the 60-day investigation timeline to allow for mediation. Mediation resulted in an impasse on October 23, 2020, and the SCO thus resumed the investigation.

The SCO determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 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), 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 September 8, 2019 through September 8, 2020 for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether District denied Student a Free Appropriate Public Education because the District:

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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.

1. Failed to conduct an initial evaluation, as requested by Father on or around May 28, 2020, to determine if Student qualified as a child with a disability under the IDEA, in violation of 34 C.F.R. § 300.301.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is a ten-year-old who was found ineligible for special education and related services on October 29, 2020. *Exhibit M*, pp. 1-2. Student currently attends the fourth grade at a charter school (School) located in District. *Exhibit L*, p. 1.
2. On May 28, 2020, Father requested a special education evaluation of Student after receiving notice that Student would be retained in the fourth grade. *Interviews with Father and School Director; Complaint; Exhibit F*, pp. 1-2. Father alleges that District failed to evaluate Student following his request. *Interview with Father; Complaint*.

#### **B. District Policies Regarding Requests for Special Education Evaluations**

3. District policy provides that a special education referral is initiated when a parent requests a special education evaluation. *Exhibit O*, pp. 17-18. Once a referral is received, staff “must review the referral and existing information regarding the student. Based on the review, [staff] must determine the appropriateness of the referral.” *Id.* at p. 18.
4. Additionally, District policy requires that when a parent requests a special education evaluation, staff must provide the parent with prior written notice (PWN) and consent for evaluation, as well as procedural safeguards. *Id.* at p. 19. If staff determine that an evaluation should not be completed, then staff must provide the parent with PWN “stating the refusal to initiate the evaluation process.” *Id.*
5. District procedures further require that PWN, procedural safeguards, and consent be provided to the parent within a reasonable timeframe following the request for an evaluation. *Interview with Director of Special Education*.
6. The District completes special education evaluations throughout the calendar year, securing staff to conduct evaluations over the summer as needed. *Id.* Charter schools within District are responsible for securing and compensating staff to complete evaluations over the summer. *Id.*

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

7. The District employs special education coordinators to act as liaisons between charter schools and the Director of Special Education. *Interviews with Director of Special Education and Special Education Coordinator*. Special education coordinators play a “collaborative and consultative” role in all District schools, monitoring compliance and assisting as needed in areas such as IEP development and evaluations. *Id.* Special education coordinators also provide professional development, attend staff and IEP meetings, and ensure that school staff understand their responsibilities. *Id.*
8. In addition, Director of Special Education sends all District special education providers a biweekly newsletter containing updates on guidance and procedures. *Interview with Director of Special Education*.
9. District policy during the COVID-19 pandemic provides that IEP teams “must continue with special education processes, including conducting informal assessments or formal assessments of the student...” *Exhibit P*, p. 2. Pursuant to District policy, if an evaluation requires a face-to-face meeting or observation, “the evaluation can be delayed until school reopens.” *Id.* Evaluations that do not require face-to-face assessments or observations “may take place while schools are closed, if the parent consents.” *Id.*

### **C. Father’s Request for a Special Education Evaluation**

10. On May 15, 2020, Father received an email from Vice Director of Academics (Vice Director) notifying Father that Student would be retained in the fourth grade for the 2020-2021 academic year. *Exhibit F*, p. 1.
11. On May 28, 2020, the last day of the 2019-2020 academic year at School, Father called School Director to object to Student’s retention. *Interviews with Father and School Director*. During the phone call, Father requested a special education evaluation for Student, and School Director agreed to complete an evaluation. *Id.* However, School Director informed Father that the evaluation could not be completed until School resumed in the fall due to a lack of staffing over the summer. *Id.*
12. School Director asked Father to send his request for an evaluation in writing, and on May 28, 2020, Father emailed School Director with his request. *Id.*; *Exhibit F*, p. 2. Specifically, Father wrote, “When school returns in the fall I would like my daughter to undergo the i.e.p. exam.” *Id.*
13. Father requested an evaluation in the fall because he wanted the evaluation completed as soon as possible, and he understood, based on his conversation with School Director, that an evaluation could not be completed until the fall. *Interview with Father*.

14. School Director replied to Father's email the same day, "We will tee up the process for [Student] in August." *Exhibit F*, p. 2. School Director copied Vice Director and Learning Specialist on her reply. *Id.* School Director did not provide Father with PWN and consent for evaluation, nor did any other School staff. *Interviews with Father and School Director.*
15. On June 1, 2020, Father emailed Board of Education President and Board of Education Member and objected to Student being retained without an "I.E.P. assessment." *Exhibit F*, pp. 3-4, 9-10. Board of Education President replied the same day and referred Father to Director of Choice Programming. *Id.* at p. 3. Board of Education Member replied on June 2, 2020 that District personnel would be reaching out to Father, and she encouraged Father to work with School leadership. *Id.* at pp. 9-10.
16. Special Education Coordinator received notice of Father's correspondence, and on June 3, 2020, she reached out to School Director to offer assistance with reviewing data to make sure there was "no suspicion of an underlying disability impacting [Student's] ability to master grade level content." *Interview with Special Education Coordinator; Exhibit F*, p. 16. School Director replied the same day that she had agreed to evaluate Student in the fall, per Father's request. *Exhibit F*, p. 19. Based on School Director's email, Special Education Coordinator understood that Father agreed with conducting the evaluation in the fall. *Interview with Special Education Coordinator.*
17. On June 2, 2020, Father emailed School Board of Directors President, and he repeated his objection to Student's retention without an "I.E.P. assessment." *Exhibit 2*, p. 1. Father asserted that Student should advance to the fifth grade until the District completed a special education evaluation. *Id.* Father forwarded his email to Director of Choice Programming on June 4, 2020. *Id.*
18. In response to Father's emails, School Director emailed Father on June 7, 2020 and reiterated the agreement to evaluate Student when staff returned in the fall:

When we last spoke at the end of May, you requested [Student] be tested for a possible learning disability. I agreed that [School] would be happy to provide a full and complete educational assessment once school resumes in August, and I promptly emailed both [Vice Director and Learning Specialist] your request so that they would be ready to begin testing once school reopens in August.

*Exhibit F*, pp. 25-26.

19. On June 8, 2020, Father emailed Director of Choice Programming again to express his frustrations with Student's retention. *Id.* at p. 27. Director of Choice Programming and School Board of Directors President responded to Father on June 8, 2020, and both

highlighted the School Director's agreement to evaluate in the fall. *Id.*; *Exhibit 2*, p. 2. Father replied to both emails and shared his intention to seek legal representation. *Exhibit F*, p. 28; *Exhibit 2*, pp. 2-3.

20. On June 17, 2020, Father emailed School Director and Director of Choice Programming to provide further information about why he believed Student would benefit from special education, and Father restated his objection to retention without a special education evaluation. *Exhibit F*, p. 32.
21. School Director replied to Father's email on June 18, 2020. *Id.* at p. 34. In her email, School Director emphasized that an evaluation could not be completed until the fall, "At this point, [Student] does not have an IEP, and the [School special education] team cannot complete the special education assessment you requested until school resumes in August." *Id.*
22. On June 23, 2020, Father, Mother, and Stepfather met in-person with School Director, Vice Director, Fourth Grade Teacher, and English as Second Language Teacher to further discuss Student's retention. *Interviews with Father, School Director, and Vice Director*; *Exhibit K*, p. 1. At the end of the meeting, School staff reviewed the plan to move forward with an evaluation in the fall. *Id.*
23. When asked about School's practices for completing special education evaluations over the summer, School Director and Vice Director shared that School does not complete evaluations over the summer due to a lack of staffing, and they were not aware that evaluations should be completed over the summer. *Interviews with School Director and Vice Director*. According to Vice Director, this practice was not related to the COVID-19 pandemic, but rather, it had never been their practice to conduct evaluations over the summer. *Interview with Vice Director*.
24. However, School Director also shared that this was the first time in the 19 years that she has served as director that a parent requested an evaluation on the last day of the school year, necessitating the completion of an evaluation over the summer. *Interview with School Director*. Vice Director echoed this statement. *Interview with Vice Director*.
25. Director of Special Education reported that School's practice of not completing evaluations during the summer is inconsistent with District policy and the regular practice of other District schools. *Interview with Director of Special Education*. According to Director of Special Education, the District completed evaluations throughout the 2019-2020 academic year, including during the summer of 2020. *Id.*

#### **D. Student's Initial Special Education Evaluation and Eligibility Determination**

26. The 2020-2021 academic year at School began on August 17, 2020. *Exhibit G*, p. 3.
27. On August 31, 2020, Vice Director emailed Father, Mother, and Stepfather regarding the need to obtain written consent to complete the initial evaluation of Student. *Interview with Vice Director; Exhibit F*, p. 37.
28. School staff sent a request for consent for an initial evaluation and PWN home with Student on September 8, 2020, over three months after Father's initial request for evaluation. *Interview with Learning Specialist; Exhibit A*, pp. 1-4. Mother returned a signed consent on September 9, 2020. *Id.*; *Exhibit F*, p. 38.
29. School Director, Vice Director, and Learning Specialist acknowledged that it was inconsistent with District policy and their regular practice to provide a parent with consent and PWN over three months after the request for evaluation. *Interviews with School Director, Vice Director, and Learning Specialist*. Instead, School staff generally respond to a parent's request for evaluation by immediately scheduling a referral meeting with the parent, typically within a couple of days, at which time they explain the evaluation process and if an evaluation is warranted, provide the parent with consent and PWN. *Interviews with Vice Director and Learning Specialist*.
30. Learning Specialist expressed her understanding that school districts are required to complete evaluations throughout the calendar year. *Interview with Learning Specialist*. However, in this case, Learning Specialist did not initiate the evaluation and provide consent until the fall because it was her understanding, based on Father's email, that Father specifically requested the evaluation be completed in the fall. *Id.*
31. Student's initial evaluation included general intelligence assessments, such as the Wechsler Intelligence Scale for Children, Fifth Edition and the Universal Nonverbal Intelligence Test 2; communicative assessments, such as the Comprehensive Assessment of Spoken Language, Second Edition; academic performance assessments, such as the Woodcock Johnson IV Tests of Achievement A Revised; and social and emotional assessments, such as the Behavior Assessment System for Children, Third Edition and the Behavioral Observation of Students in Schools. *Exhibit L*, pp. 1-22. The evaluation also included health and motor assessments. *Id.*
32. On October 29, 2020, District convened a properly constituted multidisciplinary team (MDT) to discuss the initial evaluation data and determine whether Student was eligible for special education and related services. *Interviews with Father, School Director, Vice Director, and Learning Specialist; Exhibit B*, pp. 1-2; *Exhibit M*, pp. 1-3; *Exhibit N*, pp. 1-2.

33. The MDT reviewed the results of the evaluation and found that, based on the available data, Student did not meet the eligibility criteria for Specific Learning Disability. *Id.* Father agreed with the eligibility determination. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District failed to request parental consent for an initial evaluation within a reasonable time after Father requested an evaluation on May 28, 2020, in violation of 34 C.F.R. §§ 300.300(a) and 300.301.**

The parent of a child may request an initial IDEA evaluation, the purpose of which is: (1) to determine whether the child has a disability, and because of the disability needs special education and related services, and (2) to help the IEP team determine the child's specific needs. 34 C.F.R. §§ 300.301(b) and 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(3)(a). If a parent requests an evaluation, the school district has two options: (1) agree to evaluate the child and obtain parental consent to conduct the evaluation, or (2) deny the request to evaluate and provide parent with written notice explaining its decision. *Poudre School District*, 118 LRP 28104 (SEA CO 2/5/18).

A school district “must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.” 34 C.F.R. § 300.300(a)(iii). The IDEA does not require school districts to seek parental consent within a specific timeframe; however, the U.S. Department of Education cautions that “delays of several months are generally unacceptable.” *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008); *see also* 71 Fed. Reg. 156, 46637 (August 14, 2006) (noting “it would generally not be acceptable for an LEA to wait several months to . . . seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability”). Thus, school districts “would be well-advised to request parental consent for evaluations as soon as possible.” *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

CDE guidance issued during the COVID-19 pandemic emphasized that the U.S. Department of Education did not permit “waivers for initial evaluation timelines.” *Special Education & COVID-19 FAQs* at [www.cde.state.co.us/cdesped/special\\_education\\_faqs](http://www.cde.state.co.us/cdesped/special_education_faqs). Thus, CDE recommended that school districts complete evaluations that do not require face-to-face assessment in a timely manner. *Id.* CDE guidance further provided that “schools and parents may also work together to reach mutually agreeable extensions of time to allow for the completion of a sufficiently comprehensive initial evaluation for which a face-to-face assessment is necessary,” and agreements to extend the timeline for the completion of the initial evaluation “should be well documented.” *Id.*

In this case, FF #s 11-25 and 27-28 show that District failed to provide parental consent for an initial evaluation within a reasonable time after Father requested an evaluation. On May 28, 2020, Father requested a special education evaluation during a phone call with School Director. Instead of providing Father with PWN and consent for an initial evaluation, School Director informed Father that an evaluation could not be completed until the fall due to a lack of staffing over the summer.

District argues that School staff acted in accordance with CDE guidance by determining a mutually agreeable time for the completion of Student’s initial evaluation during the COVID-19 pandemic. *Response*, pp. 7-9. However, FF #s 11-22 demonstrate that there was no mutual agreement. Father was never provided with the option to complete an evaluation at an earlier date. Instead, he was repeatedly told that it was not possible to complete an evaluation until school resumed in the fall. Father sent an email requesting an evaluation in the fall only because School Director told him that was the soonest it could be completed. Moreover, the decision to offer an evaluation in the fall was not related to circumstances surrounding the COVID-19 pandemic. (FF #23-24). On the contrary, School Director and Vice Director stated that it has never been School’s practice to complete evaluations over the summer.

As shown in FF #28, School staff did not provide Parents with consent for an initial evaluation and PWN until September 8, 2020—three months and 12 days after Father made his initial request for evaluation. A delay of several months, such as the one in this case, is inconsistent with the IDEA. Indeed, conducting evaluations “during extended breaks, such as the typical school’s summer vacation, can be challenging for school districts, particularly if fewer staff members are available. Nevertheless, the IDEA contemplates that the initial evaluation of a child suspected of having a disability not be unreasonably delayed so that eligible children with disabilities are not denied a FAPE.” *Letter to Reyes*, 59 IDELR 49 (OSEP 2012). Thus, District’s obligation to evaluate students under the IDEA remains in effect throughout the calendar year, including during a school’s summer break. *Id.*

Upon receipt of Father’s request for an evaluation, School Director should have provided Father with PWN and consent and secured staff to timely complete an evaluation of Student. School Director failed to make reasonable efforts to obtain consent, and her response was inconsistent with District policy and the IDEA. (FF #3-6, 9, 11-22, 25). Accordingly, the SCO finds and concludes that District failed to request parental consent for an initial evaluation within a reasonable time after Father requested an evaluation on May 28, 2020, in violation of 34 C.F.R. §§ 300.300(a) and 300.301.

The failure to comply with a procedural requirement amounts to a denial of FAPE only if the procedural violation (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996).



In this case, FF #s 26-28, and 31-33 show that the procedural violation did not amount to a denial of FAPE. Consent was provided to Parents on September 8, 2020, just three weeks after the start of the 2020-2021 academic year. Parents returned a signed consent on September 9, 2020, and an evaluation was timely completed on October 29, 2020. Student was found ineligible by the MDT at an eligibility meeting held on October 29, 2020.

Therefore, the SCO finds and concludes that District's procedural violation did not amount to a denial of FAPE.

**Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).**

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

In this case, the SCO finds and concludes that the procedural violation was not systemic in nature. As discussed in FF #s 3-6 and 25, District policies and procedures require that staff provide parents with PWN and consent following a parent's request for a special education evaluation. It is District practice to provide those documents within a reasonable time frame. District completes evaluations throughout the calendar year, requiring staff to complete evaluations over the summer as needed, and District charter schools are responsible for securing staff to complete evaluations over the summer. Director of Special Education reported that School's practice of not completing evaluations over the summer was inconsistent with the practice of other District schools, and District employs special education coordinators to offer support to charter schools, monitor compliance, and ensure that staff understand their responsibilities. (FF #7, 16, 25).

As shown in FF #s 23-24 and 29-30, this was the first time that School staff had received a request for an evaluation on the last day of the school year. In fact, School Director stated that during her 19 years as director, she had never received a request for an evaluation on the last day of the school year. School Director, Vice Director, and Learning Specialist reported that they typically respond to a parent's request for evaluation immediately, by scheduling a referral meeting with the parent, at which time they explain the evaluation process and provide the parent with consent and PWN if an evaluation is warranted. Thus, the SCO finds and concludes that this was an isolated incident.

Nothing in the record indicates that District regularly fails to timely respond to parental requests for special education evaluations or regularly declines to complete evaluations over the summer. These facts support finding that this violation is not systemic.

### **REMEDIES**

The SCO concludes that the District has violated the following IDEA requirements:

- a) Failing to request parental consent for an initial evaluation within a reasonable time after Father requested an evaluation, in violation of 34 C.F.R. §§ 300.300(a) and 300.301.

To remedy this violation, the District is ORDERED to take the following actions:

1. By **January 15, 2021**, the District must submit to CDE a proposed corrective action plan (CAP) that effectively addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to reoccur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

- a. School Director, Vice Director, Learning Specialist, and any other School staff in the position to receive and respond to a parental request for a special education evaluation must review this Decision in its entirety and the requirements of 34 C.F.R. §§ 300.300 and 300.301 with District's legal counsel, no later than **January 29, 2021**. In the event that these individuals are no longer employed, the District may substitute individuals in the same roles.

A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **February 5, 2021**.

- b. At the close of the 2020-2021 school year, no later than **May 21, 2021**, Vice Director must send an email to relevant School staff reminding them of their obligations as outlined in this Decision and under 34 C.F.R. §§ 300.300 and 300.301.

The District shall provide a copy of the email to CDE no later than **May 28, 2021**.

The Department will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Beth Nelson  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

**NOTE:** Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 11th day of December, 2020.



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Lindsey Watson  
State Complaints Officer

## Appendix

### **Complaint, pages 1-10**

- Exhibit 1: Retention letter
- Exhibit 2: Email correspondence
- Exhibit 3: Additional email correspondence

### **Response, pages 1-11**

- Exhibit A: Request for parent consent
- Exhibit B: PWN
- Exhibit C: Notices of meeting
- Exhibit D: Evaluations and assessments from the 2019-2020 academic year
- Exhibit E: Grade progress and attendance reports
- Exhibit F: Correspondence
- Exhibit G: Academic calendars
- Exhibit H: District policies and procedures
- Exhibit I: Contact information for District staff
- Exhibit J: Proof of delivery
- Exhibit K: June 23, 2020 meeting notes
- Exhibit L: Student's 2020 evaluation report
- Exhibit M: Eligibility determination
- Exhibit N: October 29, 2020 meeting notes
- Exhibit O: Additional District policies and procedures
- Exhibit P: District guidance regarding the COVID-19 pandemic
- Exhibit Q: Policies regarding District oversight of charter schools

### **Telephonic Interviews with:**

- School Director: November 16, 2020 and November 23, 2020
- Vice Director: November 16, 2020
- Director of Special Education: November 17, 2020 and December 2, 2020
- Special Education Coordinator: November 17, 2020
- Learning Specialist: November 17, 2020
- Director of Choice Programming: November 18, 2020
- School Board of Directors President: November 18, 2020
- Father: November 19, 2020