

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

**State-Level Complaint 2024:560
El Paso 20 (Academy) School District**

DECISION

INTRODUCTION

On May 16, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso 20 (Academy) School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

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 May 16, 2023. Information prior to May 16, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to educate Student in the Least Restrictive Environment (“LRE”) from February 18, 2024 to April 26, 2024 by not offering a full continuum of alternative placements—specifically agreed upon homebound instruction—in violation of 34 C.F.R. §§ 300.115-116.
2. Failed to protect the confidentiality of Student’s personally identifiable information (“PII”) and disclosed Student’s PII to other parties without Parent’s consent, specifically by disclosing Student’s name and other identifying information on social media on or about May 7, 2024, in violation of 34 C.F.R. §§ 300.622-623.

FINDINGS OF FACT

¹ The IDEA is codified at 20 U.S.C. § 1400, et seq. The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, et seq. The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

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

A. Background

1. Student is 14 years old and, during the 2023-2024 school year, was an eighth grader at a District school (“School”). *Response*, p. 4. He has not attended School in person since January 25, 2024. *Response*, p. 4; *Exhibit T*, p. 4. Student qualifies for special education and related services under the eligibility categories of Autism Spectrum Disorder (“ASD”) and a specific learning disability (“SLD”). *Response*, p. 4; *Exhibit T*, p. 1.
2. Student is creative and funny and loves to tell jokes. *Interview with Parent; Exhibit T*, p. 3. He struggles with impulsivity, anxiety, and exhibiting appropriate safety behavior while desiring independence as a teenager. *Id.*
3. Parent is concerned that District did not provide agreed-upon homebound instruction and therefore that Student has not received educational services in his LRE since February 2024. *Complaint*, p. 4; *Reply*, pp. 2-3. Parent is further concerned that District disclosed Student’s PII on social media without her consent. *Complaint*, p. 5; *Reply*, pp. 3-6. District asserts that it offers a full continuum of alternative placements, including home instruction, and that Student was at all times educated in his LRE. *Response*, pp. 6, 9-10. District denies that it disclosed Student’s PII on social media. *Id.* at pp. 14-16.

B. 2023 IEP

4. Student’s IEP in effect in January 2024 was an IEP dated November 30, 2023 (“2023 IEP”), which was developed at a properly convened IEP Team meeting, including Parent, in consideration of a November 17, 2023 evaluation of Student. *Exhibit U*, pp. 1, 4-5; *see Exhibit T*, p. 4.
5. The IEP notes Student’s disabilities “impact [his] ability to independently navigate typical academic demands without support”; for instance, Student requires “frequent verbal and visual prompts, models, and role playing to initiate and maintain topics.” *Exhibit U*, p. 9. Student also requires specialized instruction to support his language and social skills. *Id.*
6. The 2023 IEP contains six annual goals, one each in the areas of Pragmatic Language, Social Emotional, Social Awareness, Written Expression, Reading Comprehension, and Math Fluency. *Id.* at pp. 15-22.
7. The 2023 IEP includes numerous accommodations in the areas of presentation, response, timing and scheduling, setting and environment, state/district testing, and nonstandard sensory strategies. *Id.* at p. 23.

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

8. Special education and related services included:

- 1900 minutes per week of special education services to support academics and behavior, inside and outside general education;
- 90 minutes per month of direct speech-language therapy, inside and outside general education; and
- 120 minutes per month of direct mental health services, inside and outside general education.

Id. at p. 26.

9. Student spends between 40% and 79% of his time in general education. *Id.* at p. 27. The IEP Team “discussed the [District’s] placement options . . . and the advantages/disadvantages of those service delivery models” and determined this placement was “the most appropriate option as it allows access to the general instruction and participation with peers to the highest extent possible,” with pull-out/push-in support from the special education department in the areas of academics and behavior. *Id.* The service delivery statement notes Student’s services “are based on an in person learning environment.” *Id.* at p. 26

C. January 2024 Incident

10. On January 25, 2024, Student was involved in a behavior incident in which he became dysregulated, eloped from School, and became physically aggressive with staff. *Complaint*, p. 4; *Response*, pp. 5-6; *Exhibit N*, pp. 456-57. Student has not returned to school since the incident on January 25. *Complaint*, p. 4; *Exhibit T*, p. 4.
11. On January 28, Parent notified School that she was keeping Student at home the remainder of the week and requested a packet of assignments be prepared for Student to complete at home. *Exhibit N*, pp. 363-64; *Exhibit E*, p. 123. Student’s case manager (“Case Manager”) prepared the requested assignments, which were picked up by Student’s grandfather. *Exhibit N*, pp. 363, 554; *Interview with Case Manager*. A second packet of assignments was prepared the following week at Parent’s request, which was again picked up by Student’s grandfather at the same time he returned the first completed packet. *Exhibit E*, p. 123; *Interviews with Parent and Case Manager*.
12. There was some miscommunication around the preparation of weekly assignments at this point. *Interviews with Parent and Case Manager*. Case Manager understood Parent’s request to be for weekly assignments going forward and continued to prepare them. *Exhibit T*, p. 46; *Interview with Case Manager*; see *Exhibit E*, p. 123. After several weeks passed without assignments picked up or returned, Case Manager emailed Parent noting that “per [her] request” weekly assignments had been prepared for Student to complete at home; Case Manager also provided a digital copy of all assignments prepared since February 7. *Exhibit J*,

pp. 172-73; *Interview with Case Manager*; see *Exhibit T*, p. 46. Parent asserts she was not notified additional weekly assignments had been prepared prior to this email from Case Manager. *Exhibit 7*, p. 20; *Interview with Parent*. Case Manager received only one week of completed assignments from Student, returned on February 7. *Exhibit T*, p. 46; *Interviews with Case Manager and Principal*.

13. On February 2, Parent emailed District’s Executive Director of Special Education (“Director”) to discuss Student’s “next steps,” specifically referencing “a homebound or virtual option.” *Exhibit N*, p. 149. In response, Director advised Parent that the next step would be an IEP Team meeting. *Id.* at p. 419. Director further noted that, based on Student’s current IEP—which designated his appropriate LRE as between 40% and 79% in general education—his placement options were School or another District school. *Id.* Director understood Parent’s reference to a “homebound option” to mean home instruction as an IEP placement and wanted to reiterate to Parent that Student’s placement was based on his IEP and any change to Student’s placement would be an IEP Team decision. *Interview with Director*. Parent was dissatisfied with Director’s response and reported she would relay the information to her legal team and be in touch. *Exhibit N*, p. 427.

D. District’s Policies, Practices, and Procedures: LRE and Homebound Instruction

14. Director described District’s obligation to educate students with disabilities in their LRE, including with nondisabled peers to the maximum extent appropriate. *Interview with Director*. Director reported District offers a full continuum of alternative placements to meet the needs of students with disabilities, including home instruction. *Id.*; see *Response*, pp. 6-13. Along the continuum of placements offered, home instruction is one of the most restrictive and is only appropriate for those students who are unable to access their education in any way other than inside the home. *Interview with Director*. Students’ special education placement decisions are made solely by the IEP Team, including parents, and any significant change in placement must be made in consideration of an evaluation. *Id.*
15. Separate and distinct from its continuum of alternative placements offered for students with disabilities, District also offers temporary homebound support (“THBS”) to all students, whether in the general education or special education setting. *Id.* THBS “is a service for students who have a documented medical condition and are unable to participate in any activities outside the home beyond appointments, medical tests, and therapy” on a temporary basis. *Exhibit Q*, p. 1091. While receiving THBS, students are eligible to receive up to 5 hours of support per week in the four core subject areas of English, math, science, and social studies. *Id.*
16. District’s application for THBS includes a physician statement form and medical release form that must be completed by a student’s parent and physician in order for the application to be considered. *Id.* at pp. 1091-96. The expectation for students receiving THBS is that they will be back to in-person schooling in relatively short order. *Interview with Director*. District reviews the status of each student receiving THBS every six weeks and, depending on the

progress of student's medical condition and in consultation with parents and medical providers, either extends THBS or transitions the student back to in-person schooling. *Id.*

17. For students with disabilities receiving special education services, THBS is not a significant change of placement, but rather temporary support provided until a student can return to his or her appropriate placement in the LRE as designated in the student's IEP. *Id.* The IEP Team would only consider a change of placement to home instruction, as opposed to THBS, in consideration of a reevaluation. *Id.* As with a change of placement, though, a student's IEP Team is responsible for making the determination as to whether THBS is appropriate. *Id.* The IEP Team also determines the special education and related services a student will receive in accordance with his or her IEP, considering student's unique needs and specific medical condition(s), and in consultation with parents. *Id.*

E. District's Offer of THBS

18. On February 9, in response to Parent's decision that Student remain at home after the January 25 incident, District provided prior written notice ("PWN") to Parent of District's refusal to change Student's educational placement. *Exhibit E*, p. 117. The PWN noted Student's "current IEP . . . denotes the team's offer for the provision of FAPE based on a full-day schedule. The parental decision to have [Student] not return to school . . . may impact his ability to access the services outlined on his IEP as scheduled." *Id.* The PWN further noted that the "Special Education Team and school stands ready and able to provide services in accordance [with] the FAPE offer in the IEP as written." *Id.*
19. On February 12, Parent notified School that Student would be remaining at home through March 1 "for mental health trauma" stemming from the January 25 incident. *Exhibit N*, p. 365; *Exhibit E*, p. 145. The following day, School staff received a note from Student's private mental health provider ("Provider 1") which indicated Student was "experiencing increased anxiety regarding the incident at school" and excused him from February 1 to March 1. *Exhibit N*, p. 333; *Exhibit G*, p. 161; *Exhibit E*, p. 145.
20. In response to receiving Provider 1's note, on February 16 Case Manager provided Parent PWN and Consent for Reevaluation. *Exhibit J*, p. 172; *Exhibit E*, pp. 115-16. The purpose of District's proposed reevaluation was to "consider [Student's] FAPE and his [LRE] and the appropriate educational setting" given "updates to [Student's] mental health, including consideration of a note from [Student's] physician indicating increased anxiety." *Exhibit E*, p. 115.
21. In addition to the PWN, Case Manager also provided Parent a packet of information regarding THBS, including the application. *Exhibit J*, p. 172; *Exhibit N*, p. 1079. Case Manager advised Parent to reach out with any questions after she had reviewed the packet and included the contact information for District's Special Education Administrator ("Administrator") for additional questions. *Id.*

22. On February 20, Parent acknowledged receipt of the THBS application and consent for reevaluation, questioned why THBS was not offered sooner, and stated Student’s legal team would review the documents. *Reply*, p. 1; *Exhibit N*, pp. 1074-76. Director reiterated to Parent that THBS was only now a consideration for the IEP Team due to Student’s recent change in health, as described in Provider 1’s note, and that THBS was “not a replacement for center-based programming.” *Exhibit N*, p. 1074. Administrator advised Parent that if she chose to complete the THBS application, the next step in the THBS process would be an IEP Team meeting “to review the application and discuss how support may be delivered.” *Id.* However, at the same time, District had also issued PWN to Parent regarding its proposal to reevaluate Student and consider his appropriate LRE. (FF # 18). THBS was simply an interim option during the period between Parent’s decision to keep Student home from School and the completion of the proposed reevaluation. *Interviews with Director and Case Manager.*
23. Parent did not sign the consent for reevaluation or complete the THBS application at that time. *Reply*, p. 1; *Interview with Parent.* Parent elected not to complete the application or consent for reevaluation because of the necessity of, and time involved in, an IEP Team meeting and the upcoming expiration of Student’s doctor’s note. *Id.*
24. On February 28, Provider 1 extended Student’s medical leave to April 1 for the same anxiety-related reasons. *Exhibit E*, p. 146.
25. On March 4, Parent emailed Director requesting “to have a conversation with [her] regarding possible alternative options regarding [Student’s] educational setting for the remainder of this school year.” *Exhibit 7*, p. 15. Parent advised that she and her advocates were available to meet on March 18. *Id.* at p. 17. Director agreed to meet with Parent on March 18, but reiterated that this would not be an IEP Team meeting, that Director was not an IEP Team member, and that they “could not make decisions or recommendations regarding [Student].” *Id.*; *Interview with Director.*

F. Student’s THBS Process

26. On March 18, Director, Parent, and Parent’s advocates met at Parent’s request. *Reply*, p. 1; *Interviews with Parent and Director.* Parent signed the THBS application and consent for reevaluation at this meeting. *Complaint*, p. 4; *Exhibit Q*, pp. 1099-1100; *Interviews with Parent and Director*; see *Exhibit E*, p. 116. There was no decision made at this meeting approving or rejecting THBS for Student, only the initiation of the THBS process based on Parent’s signed application. *Interview with Director.*
27. Based on a discussion with Director at the March 18 meeting, Parent’s understanding was that Student’s then-current note from Provider 1—excusing Student from school through April 1—was sufficient to begin THBS and would be valid for approximately six weeks, though an updated note may later be required to provide Student services through the end of the school year. *Reply*, p. 1; *Interview with Parent.* Director confirms this was her understanding

as well, and that District immediately initiated the next steps in the THBS process despite the upcoming expiration of Student's note. *Exhibit 7*, p. 37; *Interview with Director*.

28. On March 20, Case Manager confirmed receipt of Parent's signed THBS application and noted District would be in touch on next steps after spring break the following week. *Exhibit J*, p. 173; *see Exhibit I*.
29. At this time, Administrator initiated the search for a tutor to provide Student's academic services pursuant to THBS. *Exhibit N*, p. 858; *Interview with Administrator*. Director and District staff assert Parent refused to allow School staff to tutor Student; Parent contends she strongly preferred that School staff not tutor Student but did not outright refuse. *Interviews with Parent, Director, Principal, and Administrator*. In any event, District abided by Parent's preference and expanded its search for a tutor District-wide. *Interviews with Director, Principal, and Administrator*.
30. On March 21, as part of District's standard THBS application process, the school nurse ("Nurse") received and reviewed Student's THBS application. *Exhibit 7*, p. 27. Nurse emailed Parent noting that while the THBS application was signed, there was no medical provider information listed on the necessary medical release form. *Id.*; *Interview with Nurse*. Nurse requested Student's provider information from Parent, and Parent provided the name and phone number of Provider 1. *Exhibit 7*, pp. 27, 29.
31. On April 1, Nurse submitted a request for information and the THBS provider paperwork to Provider 1. *Exhibit J*, p. 204.
32. On April 4, in response to receiving a phone call from Provider 1, Parent asked Nurse for clarification on what records he was requesting from Provider 1. *Exhibit J*, p. 204; *Exhibit 7*, p. 31. Nurse explained that he was requesting information from Provider 1 as part of the THBS application, specifically "information regarding [Student's] inability to leave the home, excluding medical appointments, that is preventing him from coming to school" and "any recent changes to treatment." *Id.*
33. Nurse also requested from Parent an updated note for Student's excusal from school, noting Provider 1's note expired April 1. *Exhibit 7*, pp. 31, 34. Parent was surprised and frustrated by this request, given her understanding following the March 18 meeting that Student's then-current doctor's note would be "good for the remainder of the year per [Director]." *Exhibit 7*, p. 36; *Interview with Parent*. Parent stated she could get an updated note, but it would require an appointment. *Exhibit 7*, p. 36. Director responded that Provider 1's note allowed the Team to initiate THBS, but at the March 18 meeting they also discussed Student's upcoming medical appointment and having an updated note; in any event, Director noted, Nurse needed "the most up to date information on how [Student] is doing to plan the tutoring appropriately." *Id.* at p. 37.

34. The State Complaints Officer (“SCO”) finds and concludes that despite the miscommunication regarding the validity of Student’s then-current doctor’s note, District promptly initiated the process for THBS despite the note’s upcoming expiration. Specifically, once Parent signed the THBS application, District immediately began searching for a tutor for Student and shared the application with Nurse to complete the next steps in the process. (FF #s 26-27). Nurse then promptly requested an updated note from Parent. (FF # 30). This misunderstanding did not cause any undue delay.
35. On April 8, Provider 1 declined to complete the THBS application or extend Student’s medical leave, stating that she would like Student to return to school. *Exhibit J*, pp. 204-05; *Exhibit N*, p. 1083. Parent reports that Nurse did not inform her of Provider 1’s refusal. *Interview with Parent*. Nurse documented Provider 1’s refusal but concedes he did not contact Parent at that time. *Exhibit N*, p. 860; *Interview with Nurse*. Nurse reports it was his understanding that Provider 1 would be discussing the matter with Parent herself at an upcoming appointment. *Interview with Nurse*.
36. On April 19, Parent provided Nurse updated information regarding another private mental health provider of Student’s (“Provider 2”). *Exhibit J*, p. 206. That same day, District received the completed THBS information from Provider 2 and an updated note extending Student’s leave from school to June 1. *Id.* at p. 174; *Exhibit Q*, p. 1102. Nurse confirmed receipt of the documentation that same day, noting he “did not know there was a change in the provider overseeing [Student] nor did [he] have permission to speak with them.” *Exhibit 7*, p. 39. An IEP Team meeting was scheduled for May 1 to finalize the offer of THBS. *Reply*, p. 2; *Exhibit B*, p. 37.
37. Upon completion of the THBS paperwork, but prior to the scheduled May 1 IEP Team meeting, Student’s Social Worker and Speech-Language Pathologist (“SLP”)—the same providers responsible for Student’s services while he attended School in person—reached out to Parent regarding the virtual mental health and speech services they were offering to provide as part of Student’s THBS. *Exhibit J*, pp. 206-07; *see Exhibit A*, p. 23; *Exhibit T*, p. 3. Each offered to provide 30 minutes of virtual services once per week; Parent agreed. *Exhibit J*, pp. 206-07.
38. On April 26, Student received his first virtual mental health and speech services. *Reply*, p. 2; *Exhibit B*, p. 32. District recognizes this first session of virtual services was provided to Student prior to the scheduled May 1 IEP Team meeting to finalize the offer of THBS, in the interest of providing Student services as soon as possible. *Interview with Director*. In total, Student received five, thirty-minute virtual sessions of mental health and speech services through the end of the school year on May 22. *Exhibit F*, pp. 2-5.
39. On May 1, a properly convened IEP Team meeting was held, in part, to finalize the offer of THBS. *Exhibit E*, p. 23; *see Exhibit B*, p. 32. The Team confirmed that Student had received his first virtual mental health and speech services on April 26 and confirmed Parent preferred virtual academic services as well. *Id.* Parent agreed to District’s offer of THBS, though expressed frustration that it was not started sooner. *Exhibit B*, p. 32.

40. At this meeting, the Team reported they had thus far been unable to locate a tutor for Student. *Id.* at p. 32. District concedes it was ultimately unable to secure a tutor for Student before the end of the school year. *Interviews with Administrator, Principal, and Case Manager.* However, District credibly asserts the constraints Parent put on Student’s prospective tutor—specifically, by refusing to allow School staff to tutor Student—greatly inhibited its ability to secure one, even though it opened its search District-wide. *Id.*
41. Following the IEP meeting, District issued PWN to Parent of its proposal to change Student’s provision of FAPE to THBS. *Exhibit E*, p. 140. Specifically,

the District’s offer of FAPE is currently at temporary homebound services through the end of the school year on May 22, 2024 based on the new doctors [sic] note dated 4-18-24. Service provisions as outlined through temporary homebound will be offered and provided virtually in the areas of mental health, and speech and language. [Student] will receive up to 5 hours per week of special education support through providing work in his core classes for him to complete at home from a licensed special education teacher.

Exhibit E, p. 136. The Team “considered not providing temporary homebound support but declined that option as the District stands ready and able to provide [Student] [a] FAPE in the LRE whether it’s temporary homebound or full in person learning as outlined in his current IEP.” *Id.* at p. 137.

G. District’s Policies, Practices, and Procedures: PII and Staff Social Media Use

42. District policies address both protecting confidential student information and staff’s use of social media. *See Exhibit M*, pp. 216-23. The policies define student education records and PII, provide measures for safeguarding them, and direct staff to ensure confidential information in student education records is disclosed only to officials who have a legitimate educational interest. *Id.* at pp. 19-23. “The district shall provide periodic in-service trainings to appropriate district staff members to inform them of their obligations under applicable law and district policy concerning the confidentiality of student education records.” *Id.* at p. 222. The SCO finds that District’s policies around protecting confidential student information align with the IDEA’s requirements.
43. District also has a policy covering “[s]taff members’ personal social media pages, not hosted and/or maintained by the District.” *Id.* at p. 216. That policy directs that staff “not use their personal social media accounts/pages to communicate directly with students and/or their families.” *Id.* It also provides that, “[w]hen utilizing personal social networking sites, staff should consider the impacts of their posts and if it impairs the staff member’s professional effectiveness and/or professional reputation.” *Id.*
44. District staff reported receiving and signing off as understanding all District policies during their initial onboarding process, as well as receiving annual training on District policies around

protection of confidential student information at the beginning of each school year. *Interviews with Principal, Assistant Principal, Case Manager, Administrator, Lead Security Officer, and Dean*. Overall, staff reported a general understanding of District policies around both protection of confidential student information and staff social media use. *Id.*

H. Social Media Comments

45. Due to Student’s January 25 incident, Parent created a social media account on TikTok to “document the issues [she] and other parents are currently having with [District] and [School].” *Complaint*, p. 4. Earlier in the school year, Parent had posted on other social media platforms regarding other concerns with District. *Exhibit N*, p. 610; *Interviews with Director and Principal*.
46. When Parent arrived to pick up Student at School after the January 25 incident, she filmed the encounter with School staff and Student on her cell phone. *Reply*, p. 3; *Exhibit S*. Parent states Student’s full name and disability status and Student appears in the video. *Exhibit S*. On or around March 18, 2024, Parent posted the video to her TikTok account. *Complaint*, p. 5; *Reply*, p. 3; *Interview with Parent*. Parent reports her TikTok account has 15,000 followers and her videos have been viewed millions of times. *Complaint*, p. 4.
47. On or around May 7, 2024, an anonymous user on TikTok (“User”) sent direct messages to individuals who had commented on Parent’s post regarding the January 25 incident. *Complaint*, p. 5; *Reply*, pp. 5-6. User self-identifies as a School employee with “first knowledge experience of what happened [on January 25]” who was “reaching out to all that responded to [Parent’s] video so they can get the full picture.” *Exhibit 3*. In addition to providing a detailed narrative of the January 25 incident, including using some of the same language staff used in their witness statements, User mentions that Student was “kicked out” of his last school due to aggression towards staff and references another incident at School where Student was aggressive. *Exhibit 3; Exhibit 5; see Reply*, pp. 3-6. Several individuals who received these messages from User then passed the messages along to Parent. *Reply*, p. 3.
48. Due to User’s detailed description of the January 25 incident and specific references to Student’s transfer from his prior school and a separate incident involving physical aggression at School—which Parent asserts were not mentioned by her publicly—it is Parent’s position that User is a member of Student’s IEP Team. *Complaint*, p. 5; *Reply*, p. 6; *see Exhibit T*, p. 31. Specifically, Parent identifies three individuals who have knowledge of all references made by User who she suspects authored the messages. *Reply*, p. 6.
49. Parent notified District of the anonymous messages on or around May 9. *Interviews with Parent, Director, and Principal*. Upon receiving this notice, Principal began an investigation into the anonymous comments. *Response*, p. 15; *Interview with Principal*. As part of the investigation, Principal interviewed seven staff members “who were potentially in the vicinity of the” January 25 incident who may therefore have knowledge of the information referenced by User. *Id.*

50. All District staff interviewed by Principal denied authoring or having knowledge of the authorship of the anonymous posts during District’s internal investigation. *Id.* Principal credibly reported that, as a cautionary measure, she reminded staff of their obligation to protect confidential student information and directed that any staff discussing students on social media cease doing so immediately. *Interview with Principal.* All District staff interviewed by the SCO during this investigation, including the three persons specifically identified by Parent, also denied authoring or having knowledge of the authorship of the anonymous posts. *Interviews with Principal, Assistant Principal, and Dean.*
51. District argues that it did not disclose Student’s PII on social media, instead attributing any disclosure of Student’s PII to Parent, citing the Parent-posted video that states Student’s full name, disability status, video of his person, and information around the January 25 incident. *Response*, p. 14. District recognizes that the IDEA protects the disclosure of PII from Student’s education records; however, District argues that when students or parents make such information available by sharing it through social media or word of mouth, there is no violation, even when the same information is also contained in education records. *Id.* at pp. 14-15. Therefore, given the anonymous nature of User’s posts—and the resulting inability to determine whether the information User references was obtained from Student’s education records or another source—District contends there is “no evidence to support the allegation that a District staff member disclosed Student’s PII in violation of applicable laws or regulations.” *Id.* at p. 16.

I. Student’s Reevaluation and Change of Placement

52. On May 17, 2024, District completed a reevaluation of Student, including a Functional Behavioral Assessment (“FBA”), and held an IEP Team meeting to review the results. *Exhibit D*, pp. 60-108; *Exhibit T*, p. 4. The purpose of the reevaluation was to “consider [Student’s] FAPE and his [LRE] and the appropriate educational setting.” *Exhibit D*, p. 60. Student continued to qualify for special education services under the categories of ASD and SLD. *Exhibit D*, p. 60; *Exhibit T*, p. 4.
53. On May 31, the IEP Team held a properly convened meeting to develop Student’s IEP (“2024 IEP”) based on the May reevaluation. *Exhibit T*, p. 1; *see Exhibit E*, p. 139. “Representatives from the continuum of programs available in [District] were present at the meeting to share information about the different program options and answer any questions [Parent] had.” *Exhibit T*, p. 50. At the agreement of the IEP Team, including Parent, Student’s placement was changed from between 40% and 79% general education to a separate school (“Separate School”). *Id.* at pp. 1, 50. The Team determined Separate School was the most appropriate placement “as it allows more specialized instruction to the greatest extent possible” and will “help[] minimize any potential harmful effects from missing general grade level instruction and time spent away from non-disabled peers.” *Id.* at p. 50.
54. Under the 2024 IEP, Student will receive the following special education and related services at Separate School during the 2024-2025 school year:

- 2000 minutes per week of direct special education services in the areas of reading, written expression, mathematics, behavior, mental health and transition;
- 120 minutes per month of direct mental health services; and
- 120 minutes per month of direct speech-language therapy.

Exhibit T, p. 49.

55. It is District’s position that Student was at all times educated in his LRE, that the record shows Student could receive a FAPE from an educational placement less restrictive than home instruction, and that it otherwise followed the IDEA’s procedures regarding Student’s placement. *Response*, pp. 6-9; *Interview with Director*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District provided a full continuum of alternative placements and educated Student in his LRE, consistent with 34 C.F.R. §§ 300.115-116.

Parent’s concern is that District has not educated Student in his LRE since February 2024, specifically by failing to provide agreed-upon homebound instruction.

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

A student’s placement—a term used to denote the provision of special education and related services—is determined by the IEP Team, including parents, and must be individualized, as well as based on the IEP. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Endrew F. v. Douglas Cnty. Sch. Dist.*, 71 IDELR 68 (EDU 12/07/17).

School districts must have available a continuum of alternative placements to meet the needs of IDEA-eligible children. 34 C.F.R. § 300.115(a). This continuum must include “instruction in regular classes, special classes, special school, home instruction, and instruction in hospitals and institutions.” *Id.* § 300.115(b). Along the continuum of alternative placements, home instruction is one of the most restrictive. *Gwinnett Cnty. Sch. Dist.*, 114 LRP 43625 (SEA GA 09/10/14); *Mt. Zion Unified Sch. Dist. No. 3*, 111 LRP 51317 (SEA IL 04/04/11). Students with disabilities should only be placed in separate schooling, or otherwise removed from the regular education environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. §

300.114(a)(2)(ii). If a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

Any significant change in placement, such as a move to a homebound setting, must be made by the IEP Team and in consideration of a reevaluation. ECEA Rule 4.03(8)(b)(ii)(B); *see Weld RE-5J Sch. Dist.*, 77 IDELR 148 (SEA CO 07/14/20) (holding that a move to a placement where student was completely removed from the general education environment and taught one-on-one by a special education teacher constituted a significant change in placement). Whenever a district proposes to change a student's educational placement, it must issue PWN to the student's parent, including, among other things, a description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of other options the IEP Team considered and the reasons those options were rejected. 34 C.F.R. § 300.503(a).

Here, the SCO finds and concludes that District followed IDEA's requirements related to educating Student in the LRE.

First, at the time Parent began keeping Student home from School, the 2023 IEP designated his appropriate LRE as between 40% and 79% in general education at School. (FF # 9). The IEP Team, including Parent, determined this placement was appropriate after considering the full continuum of alternative placement options and a November 2023 evaluation (FF #s 4, 9). Following the January 25 incident, Parent chose to keep Student home from School. (FF # 11). Based on Parent's decision, District issued Parent PWN refusing to change Student's offer of FAPE and the reasons why, specifically noting Student's IEP provides for an in-person educational setting between 40% and 79% in general education. (FF # 18).

Second, upon receiving Provider 1's first note excusing Student from school temporarily and noting his increased anxiety, on February 16 District issued Parent PWN of its proposal to reevaluate Student to consider his LRE and educational placement in light of his recent change in health. (FF # 20). After Parent ultimately signed the consent for evaluation, District completed Student's reevaluation and held a properly convened IEP Team meeting to review the results. (FF #s 26, 52-53). In consideration of the reevaluation, the IEP Team, including Parent, agreed to change Student's placement to Separate School, where he will start high school in August. (FF # 53).

Finally, to ensure Student was able to receive services given Parent's decision to keep Student home, and during the interim until Student could be reevaluated, District also provided Parent information regarding District's THBS services—services available for both general and special education students, separate and distinguishable from the IDEA's requirements around review and revision of a Student's IEP and/or a significant change of placement. (FF #s 15-16, 21). Parent chose not to complete the THBS application at the time District initially provided it, but once Parent completed it District promptly initiated the process for providing THBS to Student. (FF #s 23, 26-27, 29-30, 34).

In sum, District made an appropriate offer of FAPE in November 2023 in consideration of an evaluation and the full continuum of available placement options, and Parent agreed with that placement determination (FF #s 4, 9); it was Parent's decision to keep Student home from school following the January 25 incident, which took Student out of his LRE as designated by his IEP (FF # 11); and upon receiving Provider 1's note, District promptly issued PWN proposing a reevaluation to consider Student's LRE and educational placement in light of this change in health. (FF # 20).

For these reasons, the SCO finds and concludes that District followed the IDEA's requirements regarding Student's placement in his LRE, consistent with 34 C.F.R. §§ 300.115-116.

Conclusion to Allegation No. 2: District did not disclose Student's PII, consistent with 34 C.F.R. §§ 300.622-623.

Parent's concern relates to the purported disclosure of Student's PII on social media by an anonymous School staff member.

The IDEA requires school districts to protect the confidentiality of any personally identifiable data, information, and records it collects or maintains. 34 C.F.R. §§ 300.610-627. "PII" refers to information that contains:

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student's number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Id. § 300.32. Parental consent must be obtained before a student's PII is disclosed, with exceptions that are not relevant here. *Id.* § 300.622(a).

The IDEA, however, "does not protect the confidentiality of information in general, and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information." *Letter to Anonymous*, 117 LRP 42289 (OSEP 2017) (finding insufficient factual basis to reasonably believe a district had disclosed a student's PII on social media, "as one could also reasonably conclude that the information was disclosed by individuals who obtained the information through personal knowledge or hearsay"). As a general rule, information obtained through personal knowledge or hearsay, and not from a student's education record, is not protected from disclosure under the IDEA. *Id.*

Here, Parent created a TikTok account to document the issues she was having with District following the January 25 incident. (FF # 45). Parent reports she has thousands of followers on social media and her posts have been viewed millions of times (FF # 46). On or around March 18, Parent posted to that account the video she filmed after the January 25 incident, during which

she discloses, among other things, Student’s full name and disability status. (FF # 43). In May, User sent direct messages to individuals who had commented on Parent’s TikTok post of the video challenging Parent’s account of the incident. (*Id.*). User’s messages included a detailed account of the January 25 incident, mentioned Student being “kicked out” of his prior school for aggressive behavior, and referenced a separate incident at School. (FF # 47). District denies disclosing Student’s PII and instead attributes any PII disclosure to Parent. (FF # 51). Further, due to the anonymous nature of User’s messages, District argues it is impossible to determine whether the information User referenced was obtained from Student’s education records, personal information, or hearsay. (*Id.*).

While it is clear, and District concedes, that User had detailed knowledge of the January 25 incident and at least general knowledge of Student’s transfer to School and the separate prior incident, it is wholly unclear whether User gleaned that knowledge from Student’s education records or from, for instance, personally observing or hearing about those incidents via word of mouth. (*Id.*). This is particularly complicated by the fact of Parent’s own social media posts regarding Student and District, which made information about Student common knowledge throughout District and the public generally. (FF #s 45-46). Indeed, it was Parent who initially disclosed Student’s PII—including his full name, disability status, video of his person, and other information that would make it possible to identify Student with reasonable certainty—via her own TikTok account. (*Id.*). Though it is certainly Parent’s right to do so, disclosing Student’s information on a public forum invites an inevitable exchange of information about Student that cannot be attributed to District.

For these reasons, the CDE finds and concludes, based on a preponderance of evidence, that the information disclosed by User could have reasonably been obtained from a source other than Student’s education records. District complied with the IDEA’s requirements at 34 C.F.R. §§ 300.622-623.

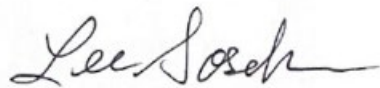
REMEDIES

The CDE concludes that 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 State-Level Complaint Procedures*, 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, 13; see also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 15th day of July, 2024.



Lee Sosebee, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Amendment: May 21, 2024
- Exhibit 1: Clarification Email
- Exhibit 2: Screenshots
- Exhibit 3: Screenshots
- Exhibit 4: Screenshots
- Exhibit 5: Screenshots
- Exhibit 6: Screenshots

Response, pages 1-19

- Exhibit A: May 2023 IEP
- Exhibit B: IEP Meeting Notes
- Exhibit C: BIPs
- Exhibit D: Evaluation Results
- Exhibit E: PWNs
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: Report Cards and Progress Monitoring
- Exhibit I: School Calendar
- Exhibit J: Communication Logs
- Exhibit K: Incident Reports
- Exhibit L: Correspondence
- Exhibit M: District Policies and Procedures
- Exhibit N: Correspondence
- Exhibit O: Staff Contact Information
- Exhibit P: Verification of Delivery to Parent
- Exhibit Q: Homebound Paperwork
- Exhibit R: School Security Camera Footage [redacted]
- Exhibit S: Parent Tik Tok Video
- Exhibit T: May 2024 IEP
- Exhibit U: November 2023 IEP

Reply, pages 1-6

- Exhibit 7: Emails
- Exhibit 8: IEP Meeting Notes
- Exhibit 9: Staff Statements
- Exhibit 10: Screenshots

Telephone Interviews

- Parent: June 11 and 27, 2024
- Director: June 19, 2024
- Principal: June 17, 2024
- Assistant Principal: June 13, 2024
- Dean: June 17, 2024
- Case Manager: June 13, 2024
- Administrator: June 13, 2024
- Lead Security Officer: June 17, 2024
- Nurse: June 26, 2024