

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

**State-Level Complaint 2024:586
Arapahoe County School District 6**

DECISION

INTRODUCTION

On August 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 Arapahoe County School District 6 (Littleton Public Schools) (“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.

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

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after August 16, 2023. 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

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

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.

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

1. The District did not properly determine Student’s educational placement between August 2023 and October 2023 because the District:
 - a. Did not ensure the placement decision was made by a group of persons that included Parent, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8).
2. The District did not fully implement Student’s IEP because the District:
 - a. Did not provide the special education and related services listed in the IEP from August 2023 to October 2023, as required by 34 C.F.R. § 300.323(c); and
 - b. Did not provide the special transportation listed in the IEP from October 2023 through present, as required by 34 C.F.R. §§ 300.34 and 300.323(c).

FINDINGS OF FACT

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

A. Background

1. Student is a twenty-one-year-old young woman enrolled in the District’s secondary transition program. *Interviews with Parent and Director of Student Support Services (“Director”)*.
2. Student is eligible for special education and related services under the disability category of autism spectrum disability (“ASD”). *Exhibit A*, p. 1
3. Student is funny, kind, and empathetic. *Interviews with Parent and Director*. She enjoys dance class and fiercely advocates for herself and her needs. *Id.* Student has delayed processing difficulties and anxiety that can sometimes produce non-epileptic seizures (“NES”) and increase the likelihood of elopements. *Id.* Her frequent seizures and elopement impact her ability to participate in transition programming. *Interviews with Assistant Superintendent of Learning Services (“Assistant Superintendent”) and Director*. Her NES can happen several times per day, especially when she is active, and can be triggered by “tiredness, loud noise, large crowds, increased stress and anxiety.” *Exhibit 4*, p. 3.

B. Prior State-Level Complaints

4. Over the last year, Parent has filed three state-level complaints against District. *See Arapahoe Cty. Sch. Dist. 6*, 2023:594, 124 LRP 34385 (SEA CO 12/08/23) (amended 04/23/24) [hereinafter *First Decision*]; *Arapahoe Cty. Sch. Dist. 6*, 2024:524, 124 LRP 15412 (SEA CO

³ The appendix, attached and incorporated by reference, details the entire Record.

04/23/24) (hereinafter *Second Decision*); *Arapahoe Cty. Sch. Dist. 6*, 2024:541, 124 LRP 22118 (SEA CO 06/03/24) (hereinafter *Third Decision*).

5. The First Complaint alleged, in part, that District did not properly implement Student’s IEP during the 2022-2023 and 2023-2024 school years. *First Decision*, pp. 1-2. As to that allegation, the CDE determined that District did not fully implement Student’s IEP during Spring 2023 and Fall 2023. *Id.* at pp. 12-13. This noncompliance stemmed from District’s decision to educate Student in a more restrictive environment than required by her IEP. *Id.* Though Student’s IEP required her to spend time in a general education environment through community outings, Student was excluded from those outings. *Id.* This resulted in a denial of FAPE. *Id.* To remedy the denial of FAPE, the CDE awarded Student 200 hours of transition services. *Id.* at pp. 14, 21.
6. With this Complaint, Parent now asserts that District did not provide Student the specialized instruction and related services required by her IEP between August 2023 and October 2023. *Complaint*, pp. 1-6; *Exhibit 1*, pp. 1-2. Parent also claims the District has not provided Student special transportation from August to present. *Complaint*, pp. 1-6. Additionally, Parent contends District unilaterally changed Student’s placement in Fall 2023. *Complaint*, pp. 1-6; *Exhibit 1*, pp. 1-2. To remedy the alleged noncompliance, Parent has requested compensatory services and reimbursement of costs related to transporting Student. *Complaint*, p. 6.
7. More background information on Student, as well as more details regarding the outcome of Parent’s prior complaints, can be found in the First Decision, Second Decision, and Third Decision. See *First Decision*, *Second Decision*, and *Third Decision*.

C. Student’s IEP

8. At the beginning of the 2023-2024 school year, Student’s IEP originally dated October 7, 2022 and amended on April 11, 2023 (“2022 IEP”) was in effect. *Exhibit 2*, pp. 1-27; *First Decision*, p. 10, ¶ 44. As relevant to this Complaint, the 2022 IEP required Student to receive the following specialized instruction and related services:
 - Transition Services
 - 1,300 minutes per week of direct transition services provided by a special education teacher or paraprofessional inside the general education classroom; and
 - 413 minutes per week of direct transition services provided by a special education teacher or paraprofessional outside the general education classroom.

- Speech Language Services
 - 120 minutes per month of direct speech language services provided by a speech language pathologist outside the general education classroom; and
 - 30 minutes per month of indirect speech language services provided by a speech language pathologist inside the general education classroom.
- Social Emotional Services
 - 120 minutes per month of direct social emotional services provided by a social worker outside the general education classroom; and
 - 30 minutes per month of indirect social emotional services provided by a social worker inside the general education classroom.
- Physical Motor Services
 - 600 minutes per semester of direct physical motor services provided by an occupational therapist or certified occupational therapy assistant outside the general education classroom.

Exhibit 2, pp. 23-24.

9. Per the 2022 IEP, Student spent 72% of her time in the general education classroom. *Id.* at p. 24. Activities outside of the transition headquarters were considered general education time. *Id.* Such activities included community-based vocational activities, social activities, leisure activities, and community awareness activities. *Id.* at pp. 23-24. The 2022 IEP identified Student’s school of attendance as “Transition Services.” *Id.* at p. 1.
10. Additionally, the 2022 IEP specified that Student needed curb-to-curb special transportation to Transition Services. *Id.* at p. 16.

D. Transition Program

11. District’s transition program operates primarily out of a single building (“Transition Headquarters”). *Interview with Director.* There are about 45-50 students in the District’s transition program. *Id.* Each student who participates in the transition program has an individualized schedule based off the services included in their IEP, their personal interests and career goals, and health and safety needs. *Id.* The District also considers how a particular location will allow students to maintain meaningful connections with their peers. *Id.*
12. In addition to the Transition Headquarters, the District utilizes several other locations, including outside agencies, for transition students. *Id.*

13. Many students spend their entire day or most of their day on a job site if their transition plan includes work opportunities. *Id.* Those students may be placed in one of District’s several transition locations based on a variety of factors, including proximity to a major bus route or a student’s job site. *Id.*
14. Other students participate in day programs at outside agencies or in small group instruction at the Transition Headquarters. *Id.* A small number of students receive their services and instruction at District’s North Campus (“North Campus”). *Id.* Related service providers serve students at each of the District’s transition locations, including North Campus. *Id.*
15. North Campus was a new site for District’s transition program during the 2023-2024 school year. *Interview with Assistant Superintendent.* As a result, teachers and other service providers were still being hired at the start of the school year. *Id.*
16. Student has utilized various locations throughout her time in District, including Transition Headquarters. *See Exhibit A, p. 1.* Student also utilized a day program (“Day Program”) for services. *Interviews with Parent, Assistant Superintendent, and Director.*

E. Selection of Student’s Location for Transition Services

17. District determines the location of a student’s transition services during individualized back-to-school conversations which take place before school starts and include the student, parents, and members of a student’s IEP Team. *Id.* These meetings also determine a student’s schedule for the upcoming school year. *Id.*
18. On July 31, 2023, Parent, Student, Assistant Superintendent, and Director met for a back-to-school transition meeting. *Exhibit D, pp. 1-3; Interviews with Parent, Assistant Superintendent, and Director.* District scheduled the meeting to obtain updates from Student and Parent regarding the summer and to plan for the upcoming school year. *Exhibit D, p. 1.* Specifically, District sought to understand Student’s NES activity at her summer programs and use that information to develop a new health care action plan (“HCAP”) for Student. *Interviews with Assistant Superintendent and Director.* This meeting was not scheduled as an IEP Team meeting. *Id.*
19. During the meeting, Assistant Superintendent informed Parent that District would be contracting with agencies to fill vacancies to meet student needs for the 2023-2024 school year. *Interview with Assistant Superintendent; Exhibit K, p. 136.* Parent expressed concern that Assistant Superintendent could not specifically name who and what agency would be working with Student for the upcoming school year. *Exhibit 3, p. 1.* Parent identified certain staff whom she wanted to work with Student and those whom she did not want to work with Student. *Interview with Director.*
20. At this meeting, Parent and Student expressed a strong interest in having Student return to the Transition Headquarters so that Student could be around other transition peers and

access a variety of programming including community outings. *Interviews with Parent, Director, and Assistant Superintendent; Exhibit 10*, at 00:21:46-27:28. District staff shared that District was expanding its programming and would begin to utilize other locations as satellite classrooms once construction was complete. *Exhibit 10*, at 00:24:30. All parties agreed that the location of Student's services should provide: (1) access to similar peers that were a mix of verbal and non-verbal; (2) access to meaningful programming that Student enjoyed; and (3) a schedule with five full days of services and programs. *Id.* at 00:25:00-31:35.

21. The meeting ended without a decision being made regarding Student's schedule or service location(s). *Interviews with Director and Assistant Superintendent*. At the end of the July 31, 2023 meeting, District requested a follow-up meeting with Parent on August 16, 2023. *Exhibit K*, p. 1.
22. In an August 15, 2023 email exchange, Parent asked Director to clarify who Student's service providers would be and to confirm that Student would be based out of the Transition Headquarters. *Exhibit K*, p. 239. In response, Director informed Parent that Student would not be at the Transition Headquarters. *Id.* Based on all parties agreeing that services and access to peers were more important than service location at the July meeting, Director determined that Student would receive her transition programming at a site other than the Transition Headquarters. *Id.* at p. 238.
23. Though Parent initially accepted an invitation to meet on August 16, she later declined to meet and, instead, requested a response to several inquiries through email in lieu of an in-person or virtual meeting. *Id.*
24. In an email dated August 16, 2023, Parent requested clarification on Director's August 15 email. *Id.* Specifically, Parent stated, "When we received [Director's] email last night, we realized that [Student] is not going to be part of the Transitions [sic] Services Program at all. Rather, [District] is creating a new, separate program for her. That information should've have been made clear to us long before yesterday." *Exhibit 3*, p. 13. Assistant Superintendent reminded Parent that in addition to providing Student with the required services in her IEP by utilizing contracted staff throughout District's various locations, District's determination that Student would attend North Campus was also the result of staff vacancies and an effort to avoid further conflict with transition services staff. *Exhibit K*, p. 8.
25. By August 16, 2023, District had confirmed service providers and a schedule for the upcoming year; however, District did not allow Student to start her transition services until her HCAP could be updated. *Interview with Assistant Superintendent; Exhibit K*, p. 15. Classes for transition students were scheduled to start on August 17, 2023. *Exhibit 3*, p. 10.
26. Parent and Student met with several staff at the North Campus for a tour on August 23, 2023. *Interview with Assistant Superintendent; Exhibit 5*, p. 1. According to Assistant Superintendent, the meeting at the North Campus ended abruptly when Parent became upset with staff and service providers. *Interview with Assistant Superintendent*. Parent

expressed dissatisfaction with the North Campus as an option for Student's transition services and with District delegating IEP implementation to third parties. *Interview with Director*.

27. Under District's plan, Student had access to community-based services at Day Program, as well as programming at North Campus. *Id.* At Day Program, Student had community access and skill development on Thursdays and Fridays from 8:00 a.m. to 3:00 p.m. *Response*, p. 3. Day Program has a licensed special education teacher and Board-Certified Behavior Analysts ("BCBAs") who provide direct services to participants. *Id.*
28. The District selected Day Program as a location because it could meet Student's service requirements and provided Student with continuity (given that she attended Day Program during Summer 2023). *Id.* The ability to have positive interactions with preferred peers was also a factor in identifying Day Program as a service location. *Id.*
29. Furthermore, the District reiterated that there was a shared priority of community instruction for Student and that in order to continue community instruction, District would utilize community-based services at Day Program as well as North Campus. *Id.* at p. 4. Student's schedule at Day Program consisted of one full day which was dedicated to community outings with peers and half of her other day included a small group of instruction for young adults with disabilities. *Interview with Director*. The other half of the day was a class open to the community and which constituted general education time. *Id.*

F. Student's Health Care Action Plan

30. A copy of Student's HCAP dated January 26, 2022 ("2022 HCAP"), was attached to Student's 2022 IEP. *Exhibit A*, at pp. 35, 79; *Exhibit 2*, pp. 35-36. The 2022 HCAP was signed by all parties on January 29 and 30, 2023. *Id.* at p. 36.
31. The 2022 HCAP indicated that Student's seizures "are not caused by epileptic brain activity and do not need medical attention because they are not dangerous in the same way as an epileptic seizure." *Id.* at p. 35.
32. The 2022 HCAP laid out various responses for Student's NES activity, including ensuring Student is in a position where she will not get hurt, ensuring Student is not moved or restrained during an NES unless it is for safety concerns, giving Student reassurance, not giving medications, not sending Student away, not calling paramedics, and not encouraging Student to avoid activities in response to the NES. *Id.*
33. In July 2023, the District notified Parent that Student's HCAP would need to be updated before the 2023-2024 school year due to NES incidents in Spring 2023. *Interview with School Nurse*.
34. At the July 31 meeting, Parent provided District with a copy of a draft HCAP that Assistant Superintendent and School Nurse had reason to believe was altered. *Interviews with Assistant Superintendent, Director, and School Nurse; Exhibit 3*, p. 24 There were various

discrepancies between what Parent told District staff regarding how to handle Student's NES, what the 2022 HCAP stated, and what District staff felt like they could appropriately implement. *Id.* Assistant Superintendent expressed the critical need to get an updated HCAP so that School Nurse could ensure District staff were trained, and duties were delegated to ensure Student's safety. *Id.*

35. On August 17, 2023, a District staff member reached out to Student's neurologist ("Doctor") to gain clarity about the portions of the draft HCAP that were believed to be altered. *Interviews with Assistant Superintendent, Director, and School Nurse.* According to District staff, Doctor did not fully agree with the portions of the draft HCAP that had been altered, and he asked that a meeting take place to finalize an HCAP that everyone agreed on. *Id.* Director also noted that it was District practice, due to expertise and licensure, that school nurse consultants write the plan in consultation with medical providers and parents. *Exhibit K*, p. 15. Evidence in the record shows that District first requested to meet with Doctor on August 10, 2023. *Exhibit 3*, p. 10.
36. On August 23, 2023, School Nurse returned the August 17 draft HCAP to Parent with instructions and comments to remove language indicating that severe injury had never happened, that Student had never turned blue, and that if Student was not transported to the ER there was no need to send her home. *See Exhibit 4*, p. 19. School Nurse made additional requests for removal which were included in this draft HCAP. *Id.*
37. Despite District's requests, Student's HCAP did not get updated until Fall 2023 because Parent did not cooperate with requests for medical information. *Interviews with Assistant Superintendent, Director, and School Nurse.*
38. In an email dated August 29, 2023, Parent stated she would not contact Doctor to schedule a meeting "until we come to some agreement on what [School Nurse's] expectation is. I don't want to waste his time. I also don't want you included in the meeting." *Exhibit 3*, pp. 3, 36; *see Exhibit K*, p. 143. District informed Parent that she was responsible for setting up a meeting between all parties to finalize the HCAP ("HCAP Meeting"). *Interviews with School Nurse and Assistant Superintendent.* Parent also did not agree with allowing Director to speak to Doctor, but she signed a release indicating that School Nurse could communicate with Doctor. *Interviews with Parent and School Nurse.*
39. Assistant Superintendent told Parent, "I understand that you do not want me in that meeting and I do not need to be there. [School Nurse, Transition Coordinator, and Director] are able to work with you on the HCAP." *Exhibit 3*, p. 2. Director reported that Assistant Superintendent was not interested in further delaying Student receiving services, so Assistant Superintendent did not object to being told by Parent that she did not want her in the HCAP Meeting. *Interview with Director.*
40. Parent reached out to School Nurse's supervisor ("Supervisor") to inquire about why School Nurse would not sign previous versions of the draft HCAPs and was informed by Supervisor

that School Nurse wanted to discuss the draft HCAP further with Parent and Doctor at a forthcoming HCAP Meeting. *See Exhibit K*, p. 142; *Exhibit 3*, pp. 4-8.

41. On September 15, 2023, Assistant Superintendent acknowledged three remaining questions regarding Student’s HCAP and stated that “without an opportunity to better understand in conversation what additional information you need, I feel it is better to focus on the urgency that we share for [Student] to have services.” *Exhibit 3*, p. 1.
42. Parent acknowledged that one issue with getting an updated HCAP was that Assistant Superintendent was “requiring us to set up a meeting with [Doctor] that includes her or Director. . . [and] it is my belief that Student has a right to medical privacy through HIPAA on the medical side, and that we don’t have to allow them access to Student’s medical provider.” *Exhibit K*, p. 143.
43. Parent initially scheduled the HCAP Meeting with Doctor for October 13, 2023. *Id.* at p. 140; *Interview with School Nurse*. The HCAP Meeting was postponed until October 16, 2023. *Exhibit K*, pp. 138, 327-328. On October 16, 2023, School Nurse, Supervisor, and Parent had a phone meeting with Doctor to discuss the HCAP. *Reply*, p. 28.
44. Following that meeting, all parties signed the HCAP on October 24, 2023 (“2023 HCAP”). *Exhibit 4*, p. 9. Student started transition services at the North Campus on October 24, 2023. *Complaint*, p. 1; *Reply*, p. 28; *Exhibit K*, p. 461.
45. The state complaints officer (“SCO”) finds that District did everything that it possibly could to get Student started in her transition program at North Campus, but Parent obstructed District’s efforts by not promptly scheduling an HCAP meeting to assess Student’s medical needs.
46. Meanwhile, District was informed that Student started attending Day Program on Thursdays and Fridays around August 31, 2023 without District’s knowledge. *See Exhibit 3*, pp. 1, 32; *Exhibit 5*, p. 2; *Interviews with Director and Assistant Superintendent*. District agreed to pay for the services Student received at Day Program and to compensate Parent for mileage to and from Day Program retroactively to August 31, 2023, even though District was unaware Student was attending Day Program. *Interview with Director*; *Exhibit 3*, p. 3.

G. IEP Implementation

Special Education and Related Services

47. Parent expressed concern that Student did not receive special education and related services at North Campus from August 2023 through October 2023. *Interview with Parent*; *Complaint*, p. 1. Student did not begin attending North Campus until Tuesday, October 24, 2023. *Complaint*, p. 1; *Reply*, p. 28; *Exhibit K*, p. 461.

48. The 2022 IEP required 1,300 minutes per week of direct transition services provided by a special education teacher or paraprofessional inside the general education classroom and 413 minutes per week of direct transition services provided by a special education teacher or paraprofessional outside the general education classroom. *Exhibit 2*, p. 23. The 2022 IEP also required direct speech-language, social-emotional, and motor services. *Id.* at pp. 23-24.
49. District contracted with Day Program's BCBA's to provide special education services to Student at North Campus on Monday through Wednesday during Fall 2023. *Response*, p. 4; *Interview with Director*. Director noted that the special education teacher that was hired and ready to support Student at the beginning of the school year ended up leaving prior to October to fulfill another contract because she had not started at North Campus. *Interview with Director*. District also contracted a speech-language pathologist, a paraprofessional, and an occupational therapist at the beginning of the school year. *Id.*
50. The SCO finds that Student was not able to access her special education and related services at North Campus until October 24, 2023 as a result of Parent's unwillingness to collaborate with District staff and Doctor to ensure that Student had an updated HCAP for her safety. This delayed Student's start date.

Transportation Services

51. Parent also expressed concern that Student did not receive transportation services to and from North Campus during the time that Student did not attend from August 2023 through October 2023. *Interview with Parent; Complaint*, p. 1.
52. Student's IEP required curb-to-curb transportation to and from North Campus on Monday, Tuesday, and Wednesday and curb-to-curb transportation to and from Day Program on Thursday and Friday. *Exhibit 1*, p. 1; *Exhibit 2*, p. 16.
53. Between August 2023 and October 2023, Student did not receive curb-to-curb transportation on Monday, Tuesday, and Wednesday due to the delay to Student's start date. *Interview with Director*. The SCO finds that Student did not receive transportation services until October 24, 2023, due to Parent's inability to collaborate with relevant parties to update Student's HCAP for her safety.
54. Once the HCAP was signed, the District finalized Student's transportation plan on October 25, 2023. *Id.* The plan included notes about morning and afternoon pick-ups for Student's transportation, including scheduled locations, drivers, and bus routes. *Reply*, p. 31.
55. Parent transported Student to Day Program on Thursdays and Fridays throughout the 2023-2024 school year. *Response*, p. 4; *Interviews with Parent and Director*. It is District's position that Parent was agreeable to reimbursement from the Transportation Department due to District not providing curb-to-curb transportation to Day Program as written in Student's IEP. *Interview with Director; Response*, p. 4. However, Parent expressed concern that "mileage

reimbursement does not make [her] whole” and that with the driving distance between Student’s home and Day Program, as well as the wear and tear on their vehicles and missed work due to the 4-hour commute, the District should pay for more than mileage. *Complaint*, pp. 1, 6; *Interviews with Parent and Director*.

56. District reimbursed Parent for 43 miles each day at a rate of 65.5 cents per mile. *Interview with Assistant Superintendent; Response*, pp. 4-5; *Exhibit N*, pp. 1-22. The total sum of receipts provided by District’s Transportation Department show that Parent was reimbursed in the amount of \$1,934.57 from August 2023 through March 2024. *Exhibit N*, pp. 1-22; *Exhibit O*, p. 1. For April and May 2024, Student received transportation from Company One through a District contract. *Exhibit O*, p. 1. At the beginning of the fall term of the 2024-2025 school year, Student was provided transportation on a District school bus when she attended North Campus, and she received transportation via Company Two through a District contract when she attended Day Program. *Id.*
57. The SCO finds that there is no disagreement between the parties that District has not provided transportation to Student on Thursdays and Fridays to Day Program from August 2023 to March 2024. The SCO further finds that Student did not receive curb-to-curb transportation to and from home and Day Program on Thursdays and Fridays from August 2023 through March 2024, consistent with her IEP. *Exhibit N*, p.2.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District’s determination of the location of Student’s transition services in August 2023 did not constitute a change of placement, and Parent had the opportunity to meaningfully participate, consistent with 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8). District complied with the law.

A. Legal Requirements

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 Andrew F. v. Douglas County School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). Specifically, school districts must ensure that the placement decision is made by a group of persons, including parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); *see also* 34 C.F.R. §§ 300.321(a)(1), 300.327 and 300.501(c)(1).

Placement means the provision of special education and related services and not “a specific place, such as a specific classroom or specific school.” ECEA Rule 4.03(8)(a). In Colorado, “decisions regarding the physical location in which a child’s IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special

Education or designee, subject to the limitations in this section 4.03(8).” *Id.* To that end, decisions “changing location or building should be made with due consideration for the impact on the child’s total education program and must include parent participation.” *Id.* at 4.03(8)(b)(iii).

However, a change in building or location that is not a change in placement as described in Rule 4.03(8)(b) may be accomplished without convening the child’s IEP Team or conducting a reevaluation. *Id.* While parents have a right to participate in decisions about the type of program their IDEA-eligible children will attend, they cannot select the specific school. *J.T. v. Dist. of Columbia*, 80 IDELR 62 (D.C. Cir. 2022). A district complies with the IDEA so long as it selects a school that can implement the student’s IEP. *Id.*

B. Student’s Change from the Prior Transition Program to the Current Transition Program(s) was a Change in Location

With this allegation, Parent contends the District unilaterally determined Student’s placement in August 2023, without giving Parent the opportunity to participate in the decision-making process. (FF # 6.) Student’s IEP focused heavily on Student’s access to peers and opportunities for community outings. (FF # 5.) At the back-to-school meeting, District staff listened to Parent and Student and provided feedback regarding their desired location for Student’s transition services. (FF #s 17, 20.) Director determined Student’s transition locations based off the fact that Student would be able to engage with peers and participate in programs that aligned with her IEP objectives and personal interests. (FF # 28.) Director also considered Student’s prior conflicts with transition staff at the Transition Headquarters, Student’s health and safety, and District’s utilization of qualified contract staff to fulfill Student’s IEP requirements. (FF #s 20-24.)

In determining the location for Student’s transition services, Parent was present at the July 31, 2023 back-to-school meeting and had an opportunity to express her concerns and opinions related to location (FF #s 17-21.) District showed a willingness to work with Parent and address her concerns by offering a variety of locations (FF #s 16, 20-24, 27-29.) It must be noted that Director had to make the determination as to the best location for Student to receive her transition services while also balancing the District’s priority to maintain a safe environment for Student. (FF #s 16, 20-24, 27-29.)

For these reasons, the SCO finds that District’s determination as to the location of Student’s transition services programs did not constitute a change of placement. Furthermore, Parent was not excluded from the process of determining a location despite District not acquiescing to her demand that Student receive her services at Transition Headquarters, because she was still given the opportunity to meaningfully participate. Overall, the SCO finds and concludes that District determined the location of Student’s services when it selected Day Program for Student’s transition services in August 2023. No change of placement occurred under the IDEA or the ECEA.

Conclusion to Allegation No. 2(a): Parent’s actions prevented the District from implementing Student’s IEP from August 2023 to October 2023, as required by 34 C.F.R. § 300.323(c). As a result, the District complied with the law.

A. Legal Requirements

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). A district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

B. 2022 IEP: Accessibility and Responsibilities

Ordinarily, the CDE would determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d) to ensure Student’s IEP was available to staff responsible for its implementation. Here, however, the parties do not dispute that Student never attended North Campus between August and October 2023. The question is not whether staff were aware of their obligations but, instead, why Student’s start at North Campus was delayed. For that reason, no analysis of 34 C.F.R. § 300.323(d) is necessary.

C. 2022 IEP: Implementation of Special Education Services

The SCO must determine whether District fully implemented Student’s IEP consistent with 34 C.F.R. § 300.323(c)(2). Parent’s concern is that Student was not provided with special education services, related services, and transportation services on Mondays, Tuesdays, and Wednesdays from August 2023 through October 2023. (FF #s 47-49, 51, 52.) District does not dispute that Student did not attend North Campus until October 24, 2023, more than two months after the school year began. (FF #s 47-50.) District contends Parent’s unreasonable delay and noncooperation in updating Student’s HCAP led to Student’s late start at North Campus and justified the missing services. (FF # 50.) The SCO agrees that District has a right to insist on proper health care precautions when a student has a medical condition that can pose a risk if not properly managed. (FF #s 30-46.) Not only did District proactively instruct Parent to schedule an HCAP meeting as early as July 31, 2023 at the back-to-school meeting, but District made multiple efforts at encouraging and assisting Parent to schedule this meeting. (FF #s 33-39, 42-44.)

Parent agreed to meet with District but then canceled the meeting, instead demanding that District answer questions through email. (FF # 23.) District reiterated its practices and procedures with regard to updating HCAPs, and Parent fought those practices under the assumption that she could exclude Director and Assistant Superintendent from conversations related to Student’s

health and safety but still work collaboratively to get Student's services started on time. (FF #s 33-39, 42-46.)

The SCO finds, in consultation with CDE Content Specialist, that it is appropriate for School Nurse, as the health care provider at the school, to make the determination about whether Student could receive services with an invalid HCAP. (FF #s 24, 33-39.) School Nurse could not appropriately train staff and service providers on Student's invalid HCAP and therefore it was determined that Student would not attend North Campus until an updated HCAP was delivered and signed. (FF #s 34, 35.)

Accordingly, the SCO finds and concludes that Parent's failure to cooperate by providing necessary medical information or access to Doctor caused the delay in Student receiving her services. (FF #s 33-39.) The District's actions complied with 34 C.F.R. § 300.323(c).

Conclusion to Allegation No. 2(b): District did not fully implement Student's IEP from October 2023 through March 2024, because it did not provide the special transportation listed in the IEP, as required by 34 C.F.R. § 300.323(c). A denial of FAPE did not occur.

A. 2022 IEP: Implementation of Transportation

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2). Parent's concern is that Student was not provided with transportation services consistent with Student's IEP on Thursday and Friday to and from Day Program from October 2023 to present. (FF #s 51-52.) Here, the District acknowledged that it did not transport Student to Day Program from October 2023 to March 2024. (FF #s 53, 57.) Instead, Parent transported Student to Day Program under an agreement with the District whereby she would be reimbursed for mileage. (FF #s 55-57.) Furthermore, Student received transportation from Company One from April to May and from Company Two from August 2024 to present. (FF # 56.) In her Complaint, Parent argued that the mileage reimbursement was inadequate and requested reimbursement for her time and wear and tear on her vehicle. (FF # 55.) The IDEA only requires that districts pay for the "actual expenses of transportation." *A.S. v. Harrison Twp. Bd. of Educ.*, 67 IDELR 207 (D.N.J. 2016) (declining to award the parents minimum wage for the time they spent driving their child to and from his private elementary school).

Because the District did not provide special transportation from October 2023 to March 2024, the SCO finds and concludes that District did not implement Student's IEP as required by 34 C.F.R. § 300.323(c)(2). This resulted in noncompliance with IDEA.

B. 2022 IEP: Materiality of Noncompliance

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252,

260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App'x 202, 205 (2d Cir. 2010).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

For instance, delay in providing transportation may be a "material" if it interferes with a student's ability to derive an education benefit. *Cherry Creek Sch. Dist.*, 119 LRP 37631 (SEA CO 6/25/19); *Wilson v. Dist. of Columbia*, 56 IDELR 125 (D.D.C. 2011) (finding a district's delay in arranging transportation to be material where a student missed three weeks of a four-week extended school year program); *see also Dist. of Columbia Pub. Schs.*, 110 LRP 22777 (SEA DC 11/23/08) (ordering compensatory education for a student who missed 14 days of his extended school year program due to a lack of transportation).

Here, Student still attended transition programming at North Campus on Thursdays and Fridays from October to present although Parent had to transport her. (FF #s 55-57.) Her ability to derive an educational benefit was not impacted, because she did not miss any services due to lack of transportation. (FF #s 55-57.) Nevertheless, reimbursement may be appropriate if a parent drives a student to school or pays for alternative transportation services because of a school district's failure to provide transportation as required. *See, e.g., Fremont Union Sch. Dist.*, 74 IDELR 302 (SEA CA 2018) (ordering a California district to reimburse a student's parent for transportation expenses he incurred when the bus driver refused to enter the family's gated community to provide curb-to-curb transportation).

District reimbursed Parent in the amount of \$1,934.57 from August 2023 through March 2024 for transporting Student on Thursday and Friday. (FF # 56.) District arranged for a combination of school bus and contracted third-party transportation for Student from April 2024 through present. (FF # 56.) This arrangement satisfied the requirements of her IEP. (FF # 10.) District has shown a willingness to reimburse Parent in instances where Parent transports Student herself (FF # 56.) For these reasons, the SCO finds and concludes that the District has adequately remedied its noncompliance related to providing transportation services, and no further remedy is warranted.

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

Pursuant to its general supervisory authority, the 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 State Educational Agency’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).

Here, there is nothing in the Record to demonstrate that District’s noncompliance with 34 C.F.R. § 300.323 is systemic in nature. The noncompliance appears limited to Student’s specific situation. For that reason, the SCO finds and concludes that the noncompliance is not systemic.

REMEDIES

The CDE concludes that District did not comply with the following IDEA requirement:

1. Implementing Student’s IEP, as required by 34 C.F.R. § 300.323.

As detailed in the legal conclusions, District has adequately remedied the noncompliance and thus no further remedy is warranted.

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 October, 2024.



Tiera Brown
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Exhibit 1: Email Attachment

Response, pages 1-5

- Exhibit A: IEPs for 2023-2024 school year
- Exhibit B: IEP amendments and meeting notes
- Exhibit C: Meeting notices
- Exhibit D: Meeting notes
- Exhibit E: Prior written notices
- Exhibit F: Progress monitoring data and reports for the 2022-2023 and 2023-2024 school years
- Exhibit J: District policies and procedures
- Exhibit K: Correspondence
- Exhibit M: Verification of delivery of the response to Parent
- Exhibit N: Transportation reimbursement receipts
- Exhibit O: Email re transportation 2024

Reply, pages 1-40

- Exhibit 2: IEP
- Exhibit 3: Emails
- Exhibit 4: NES plans
- Exhibit 5: FAPE letter
- Exhibit 6: School calendar
- Exhibit 7: Emails re transportation 2024
- Exhibit 8: Recording of 12.20.23 meeting
- Exhibit 9: Recording of conversation w/ parties
- Exhibit 10: Recording of 7.31.23 planning meeting
- Exhibit 11: Supporting Documentation

Telephone Interviews

- Parent: September 16, 2024
- Director of Student Support Services: September 17, 2024
- Assistant Superintendent of Learning Services: September 17, 2024
- School Nurse: September 17, 2024
- CDE Consultant: September 23, 2024