

SETTLEMENT AGREEMENT STATE COMPLAINT 2026-525

This Settlement Agreement and Release (“agreement”) is entered into on March 11, 2026, between Paul Foster, on behalf of the Colorado Department of Education (“CDE”), and Emily Harvey, on behalf of Disability Law Colorado (“DLC”). In this Agreement, CDE and DLC are referred to collectively as “the parties” and individually as a “party.”

DLC filed a state complaint (“the complaint”) alleging violations of the Individuals with Disabilities Education Act (“IDEA”) and Exceptional Children's Educational Act (“ECEA”) by CDE. The parties enter into this agreement to fully resolve all matters related to the complaint (State Complaint 2026-525). By entering into this Agreement, CDE does not admit a violation of the IDEA or ECEA or any other law.

Settlement Terms

The parties agree to the following:

I. Stakeholder Engagement

- A. CDE will conduct transparent and collaborative stakeholder engagement to discuss and attempt to address issues impacting IDEA-eligible students in approved facility schools in Colorado. The stakeholders will provide input about the rulemaking and agreement described in Term II and Term III of this agreement, respectively. CDE will engage with, at a minimum:
 - i. the Governor’s Office;
 - ii. the Facility Schools Board (“FSB”);
 - iii. the Colorado Department of Human Services (“CDHS”);
 - iv. the Colorado Department of Health Care Policy and Financing (“HCPF”);
 - v. the Colorado Behavioral Health Administration;
 - vi. regional accountable entities;
 - vii. county human or social services offices;
 - viii. facility schools;
 - ix. administrative units (“AUs”);
 - x. associations of children’s agencies; and
 - xi. disability advocacy organizations.

- B. CDE will commit funding for an independent, professional facilitator to support the engagement processes.

II. Rulemaking

A. Within one calendar year from the date this agreement is signed, CDE will recommend to the State Board of Education (“SBE”) revisions to the “Rules for the Administration of the Exceptional Children’s Educational Act” (1 CCR 301-8) and to the Facility Schools Board revisions to the “Rules for the Administration of the Facility Schools Act” (1 CCR 304-1). CDE will engage stakeholders about retaining, clarifying, or adding the following requirements:

i. **AU Placements:**

- a. Before an AU may place an IDEA-eligible student in a facility school, the AU must convene the student’s individualized education program (“IEP”) team to discuss whether placement in the facility school is the least restrictive environment (“LRE”) for the student and whether the facility school can provide the student with a free appropriate public education (“FAPE”).
- b. If the team determines that the facility school is not the LRE for the student or cannot provide the student with a FAPE, the AU must not place the student in the facility school.

ii. **Public Placements:**

- a. **Non-emergency placements:** When a public agency, such as CDHS or a county human or social services office, begins the process of placing an IDEA-eligible student in a facility, the public agency must notify the AU responsible for ensuring that a FAPE is made available to the student (hereinafter, “the responsible AU”). A designee from the responsible AU should be included in any best interest determination processes or, to the extent possible, in the approval processes of the regional accountability entity (RAE). The student’s IEP team in the responsible AU must determine whether the school or educational services in the proposed facility placement is the LRE and can provide a FAPE to the student.
 1. If the IEP team finds that the facility’s school or other education program is the LRE for the student and can provide a FAPE to the student, the IEP team must update the student’s IEP to reflect placement in the facility and the responsible AU must, within five calendar days of the IEP team meeting, provide a copy of the student’s updated IEP to the facility.
 2. If the IEP team finds that the facility’s school or other education program is not the LRE for the student or cannot provide a FAPE to the student, the responsible AU: (a) must not change the student’s IEP to reflect placement in the facility; (b) must make an offer of FAPE in the LRE, as determined by the student’s IEP team; and (c) is not responsible for tuition or other costs related to placement of the student in the facility. Anyone, including CDHS or a county human or

social services, may file a state complaint with CDE alleging that the IEP developed by the IEP team is not designed to provide the student with a FAPE in the LRE. Additionally, the student's parent or guardian, or the student's educational surrogate parent or guardian ad litem (as applicable), may file a due process complaint with CDE to challenge the IEP team's decision.

- b. **Emergency Placements:** When a public agency, such as CDHS or a county human or social services office cannot coordinate a placement ahead of time with the responsible AU, the public agency must notify the responsible AU and a CDE designee of the placement within five calendar days of the placement. Within 10 calendar days of receiving notice of the placement, the responsible AU must convene the student's IEP team to discuss whether the facility's school or other education program in the facility is the LRE for the student and can provide the student with a FAPE.
 1. If the IEP team finds that the facility's school or other education program is the LRE for the student and can provide a FAPE to the student, the IEP team must update the student's IEP to reflect placement in the facility and the responsible AU must, within five calendar days of the IEP team meeting, provide a copy of the student's updated IEP to the facility.
 2. If the IEP team finds that the facility's school or other education program is not the LRE for the student or cannot provide a FAPE to the student, the responsible AU: (a) must not change the student's IEP to reflect placement in the facility; (b) must make an offer of FAPE in the LRE, as determined by the IEP team; and (c) is not responsible for tuition or other costs related to placement of the student in the facility. If the public agency has legal custody of the student, the public agency may challenge the IEP team's decision by filing a state complaint or due process complaint with CDE.
- iii. For the duration of a student's placement in a facility school where the IEP team determined that the facility's school or education program is the LRE and a FAPE can be provided, the responsible AU must monitor compliance with the student's IDEA and ECEA rights, including the right to receive a FAPE in the LRE. This responsibility includes ensuring that at least one responsible AU representative attends each IEP team meeting for the student. Additionally, the responsible AU, in collaboration with the facility school, must convene the student's IEP team, within the first 90 to 120 calendar days of the student's placement in the facility, to: (a) discuss implementation of the student's IEP and the student's academic and behavioral progress and progress toward their IEP goals since being placed in the facility; and (b) to adjust the student's IEP as necessary. Subsequently, the responsible AU, in collaboration with the facility school, must convene the student's IEP team

as often as necessary to ensure the student is receiving a FAPE in the facility and that the facility school continues to be the LRE for the student.

- iv. Approved facility schools must follow formal, written processes for discharging or exiting an IDEA-eligible student.
- v. A state complaint or due process complaint may be filed against an approved facility school that fails to implement a student's IEP.

III. Agreement for Interagency Cooperation and Coordination

- A. CDE will effort to, within a year of this agreement being signed, enter an interagency agreement with CHDS and HCPF that is designed to ensure that all special education and related services needed to ensure a FAPE are provided to IDEA-eligible students in facility schools. CDE will effort to include in the interagency agreement, at a minimum:
 - i. joint and respective responsibilities, including financial responsibility;
 - ii. ongoing collaboration, communication, and coordination, including regarding the timely provision of a FAPE for IDEA-eligible students;
 - iii. regular training for system actors (e.g., human services caseworkers, approved facility schools staff, AU staff, etc.) and other stakeholders;
 - iv. records maintenance and inspection;
 - v. data collection and sharing;
 - vi. monitoring and accountability; and
 - vii. procedures for resolving interagency disputes.

IV. Oversight and Accountability

- A. Beginning January 1, 2027, at least once every two years for each approved facility school, CDE will audit the approved facility school's policies and practices related to serving IDEA-eligible students. The audits will include, at a minimum, records reviews, interviews, and observations to assess:
 - i. comprehensive plans for serving students with disabilities;
 - ii. written policies and procedures;
 - iii. staffing;
 - iv. identification and evaluations;
 - v. IEPs and implementation of IEPs, including the provision of special education and related services in the LRE;
 - vi. progress monitoring;
 - vii. annual reviews;
 - viii. reevaluations;
 - ix. IEP team composition and meetings; and

- x. the provision of procedural safeguards to parents and guardians.
- B. If CDE determines, upon completion of an audit, that an approved facility school is out of compliance with any applicable IDEA or ECEA requirement, CDE may issue a corrective action plan (“CAP”) to the approved facility school and then monitor implementation of the CAP. If the approved facility school does not comply with the CAP and fully comply with the IDEA and ECEA, CDE may remove the approved facility school’s authorization and cease providing funding to the approved facility school.
- C. Beginning during the 2026-27 school year, CDE’s special education General Supervision and Monitoring Office will incorporate into its regular monitoring of AUs compliance with IDEA and ECEA requirements with respect to students in approved facility schools.

V. Training and Technical Assistance

- A. By June 30, 2026, CDE will produce and disseminate a “Facility Schools Manual” that more clearly and comprehensively addresses IDEA- and ECEA-related requirements related to approved facility schools. Dissemination will include, at a minimum, posting the manual on the OFS’ website and emailing the manual to all approved facility schools and AUs in Colorado.
- B. By December 31, 2026, CDE will produce and disseminate a handout about the educational rights of students in facility schools, including their rights under the IDEA and ECEA. Dissemination will include posting the handout on the OFS’ website and directing all approved facility schools to provide the handout to their students and their parents and guardians.
- C. By December 31, 2026, and annually thereafter, CDE will make training about IDEA-eligible students in approved facility schools available for:
- i. CDE personnel;
 - ii. CDHS personnel (including Division of Youth Services personnel);
 - iii. local human and social services personnel;
 - iv. approved facility schools personnel;
 - v. AU personnel;
 - vi. Colorado Office of Respondent Parents’ Counsel personnel;
 - vii. Colorado Office of the Child’s Representative personnel;
 - viii. guardians ad litem;
 - ix. educational surrogate parents; and
 - x. judges.

- D. Beginning in April 2026, and on an ongoing basis thereafter, CDE will provide technical assistance to approved facility schools and AUs that inquire about compliance with the IDEA and ECEA related to students in approved facility schools.

VI. Corrective Action Plan

- A. CDE will convert the terms of this agreement into a CAP that CDE will monitor and enforce. See 34 C.F.R. §§ 300.149, 300.600. Some terms in this agreement may require more than one year to complete due to their interdependent nature and the necessary involvement of other agencies, the SBE, and the FSB. CDE will provide DLC with monthly status updates on any activities that have exceeded the timelines set forth in this agreement.

VII. Release of Claims

- A. This agreement constitutes the complete agreement between the parties. The parties agree that the fulfillment of the above terms and conditions will satisfy the allegations in the complaint. In consideration of the terms and conditions set forth above, DLC agrees to withdraw the complaint within 48 hours of signing below.

VIII. Modification

- A. This agreement may be modified only upon the written consent of both parties.

IX. Enforcement

- A. This agreement is a binding contract and enforceable in any court of competent jurisdiction pursuant to state contract law. Once the CAP is created pursuant to Term VI above, this agreement may also be enforced using CDE's state complaint system.

Signatures

By signing below, the individuals affirm that they have the authority to bind the party they represent to the terms of this agreement and that their execution of this agreement is knowing, voluntary, deliberate, and informed.

For Disability Law Colorado:

Emily Harvey, Co-Legal Director

Date

For the Colorado Department of Education:

Paul Foster, Assistant Commissioner,
Exceptional Student Services

Date