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

State-Level Complaint 2019:508
Brighton School District 27J

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on February 20, 2019, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).

Based on the written Complaint, the SCO determined that the Complaint identified 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. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 20, 2018, through February 20, 2019, for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

1. Failing to evaluate Student when the District was on notice that Student may have a disability and be in need of special education and related services from February 20, 2018 to May 2018, pursuant to 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)(a).

2. Changing Student's placement pursuant to a disciplinary removal on May 10, 2018, and subsequently failing to:

a. Conduct a manifestation determination, pursuant to 34 C.F.R. § 300.530(e) and 34 C.F.R. § 300.534;

b. Notify Parent of the removal and provide Parent with a copy of the procedural safeguards, pursuant to 34 C.F.R. § 300.504(a)(3), 34 C.F.R. § 300.530(h), and 34 C.F.R. § 300.534; and

c. Provide educational services to Student, pursuant to 34 C.F.R. § 300.530(b)-(d) and 34 C.F.R. § 300.534.

FINDINGS OF FACT

After a thorough and careful analysis of the entire record, the SCO makes the following FINDINGS:

1. Student is [age] years old, and has continuously resided within the District's boundaries. Student is currently enrolled in a different school district, and attends an online charter school. (Response at 4.) Student has been identified as eligible for special education and related services as a student with Autism Spectrum Disorder (ASD) and Serious Emotional Disability (SED). (Ex. 7.)

2. Student attended Elementary School in the District during the 2015-16 school year as a 5th grader. At this time he had not been identified as eligible for special education. However, based on diagnoses of [other disabilities], Student was identified as a student with a disability under Section 504, and had a 504 Plan in place. (Ex. C.)

3. On March 9, 2016, during the spring semester of Student's 5th grade year, Parent requested a special education evaluation for Student. The District conducted an evaluation, and convened an eligibility meeting on May 3, 2016. Based on the evaluation, the team determined that Student was not eligible for special education and related services. (Ex. D at 10.)

4. Student completed 6th grade at Middle School during the 2016-17 school year. Parent felt that Middle School did not properly implement Student's 504 Plan and that Student suffered as a result. Parent was particularly concerned with the large class sizes at Middle School, and felt other students picked on Student. In her opinion, staff was not responsive to these concerns. (Interview with Parent.) Special Education Director told the SCO that Parent did not report any concern that Student's 504 Plan was not being followed during this time period. (Interview with Special Education Director.)

5. Due to Parent's concerns that Student's needs were not being met at Middle School, Parent enrolled Student in Private School for the 2017-18 school year. Private School was located within the boundaries of a school district adjacent to the District. (District map).

6. According to Parent, Private School had much smaller class sizes, and Student subsequently received more individualized attention and was more successful in that setting. (Interview with Parent.) However, Private School shut down in the middle of the spring semester, and Parent subsequently reenrolled Student in the District at Middle School in March of 2018. (Ex. A.)

Parent's request for evaluation and subsequent eligibility determination

7. On March 19, 2018, during the process of reenrolling Student at Middle School, Parent requested a special education evaluation based on Student's "history of emotional and behavioral struggles at school." (Ex. H at 1; interview with School Psychologist.)

8. According to School Psychologist, Parent stated that Student had a positive experience at Private School, and did not have any behavioral issues while enrolled there. Parent attributed this to smaller class sizes and more individualized attention. (Interview with School Psychologist.)

9. On March 19, 2018, School Psychologist left a Prior Written Notice (PWN) and Consent for Evaluation at the front desk for Parent, stating the areas to be evaluated as: "formal cognitive, formal and informal social and emotional, informal academics. Observation. Health History. Review of Records. Formal pragmatic language." (Ex. H at 1.) Parent signed and returned the consent form on April 4, 2019.

10. The District conducted an initial evaluation of Student in early May 2018. (Ex. H at 3.) An IEP team convened on May 18, 2018. The team determined that Student is IDEA eligible as a child with a disability under the Autism Spectrum Disorder (ASD) and Serious Emotional Disability (SED) categories. (Ex. H at 13-16.)

11. Immediately following the eligibility determination, the IEP team developed an IEP that included three annual goals: (1) conflict resolution, (2) peer interaction/social skills, and (3) paragraph development. (Ex. H at 25-26.) The IEP also provided for 120 minutes per month of direct mental health support from the School Psychologist, and 60 minutes per month of indirect support from Special Education Teacher to assist Student with "written expression and other needs, as well as to monitor progress of [Student's] writing goal." (Ex. H at 29.)

12. On May 18, 2018, at Student's IEP meeting, Parent was provided a copy of the procedural safeguards. (Ex. H at 33; interview with School Psychologist.) The team also decided that School Psychologist would create a behavior intervention plan (BIP) at the beginning of the 2018-19 school year. (Ex. H at 32.)

Disciplinary removals during May 2018

13. In early May 2018, during the same period of time the District was evaluating Student, Middle School disciplined and suspended Student for two separate incidents of misconduct. On

May 3, 2018, Student was suspended for 4 days for possessing a scissor blade fashioned to look like a weapon. Then again on May 10, 2018, Middle School suspended Student for 11 days when other students claimed Student threatened to shoot up the school if he didn't get a girlfriend. (Ex. E at 1.)

14. On May 3, 2018, several students alerted Dean that Student had a knife-like object and was showing it to other students. The students explained that Student was not threatening anyone in any way, but they were concerned that Student had a weapon and felt the need to alert school staff. Dean contacted Student who admitted possessing part of a scissor blade and showing it to other students. (Ex. E at 1; interview with Dean.) Student was suspended for 4 days, and returned to Middle School on Wednesday May 9th. (Ex. K.)

15. On May 10, 2018, two students approached Dean stating that the previous day they had heard Student say "I'm going to shoot up the school if I don't get a girlfriend." The first student said she was sitting in front of Student in science class and overheard Student make the comment to Student's friend. Dean questioned the friend, who said that Student made the comment, but he believed Student was joking. Dean could not recall the details of what the second student had told him about hearing Student make the alleged threat, only that it was similar to what the first student had said. Dean confronted Student, who denied making the comment. (Interview with Dean.)

16. Dean then met with Student and Parent to explain that Student was being suspended while Middle School conducted a Threat Assessment. Dean memorialized this conversation in a contact log maintained by Middle School, stating in part: "Met with [Parent] and Student to inform them of the fact that [Student] was going to be suspended for making comments about shooting up the school if he didn't get a girlfriend." (Ex. O at 2; interview with Dean.) It is Dean's recollection that he did not initially give Parent and Student a set number of days Student would be suspended, but rather that Student would be suspended until the threat assessment process was completed. Dean did not provide Parent with a copy of the procedural safeguards at that time. (Interview with Parent and Dean.) Parent recalls that Dean did not tell her a specific number of days of suspension, just that Student was suspended. (Interview with Parent.)

17. Following the May 10th suspension, Middle School conducted a threat assessment. The stated purpose of a threat assessment is to "determine whether an attack or other planned violence is imminent and to identify factors that may increase or decrease potential violence." (Ex. J at 5.) The assessment included an initial screening device, as well as interviews with Parent, Student, other Middle School students, and teachers. On May 22, 2018, the threat assessment team determined Student did not pose a threat, and developed a plan to search Student's person and belongings whenever he entered and exited the school. (Ex. J at 17.)

18. According to Dean, he called Parent on May 22nd and told her that Student was free to come back to Middle School, and explained the proposed safety plan. Part of that plan

included having the School Resource Officer search Parent's house for weapons. (Interview with Dean.) Parent told the SCO that on this date Dean called and said Student could return to School if the SRO was allowed to search her home. Both parties agree that Parent adamantly refused to allow the SRO to search her house. This conversation was memorialized in a contact log maintained by Middle School. (Ex. O.)

19. While there is some dispute as to the duration of the May 10th suspension, the SCO finds that Student was suspended from midday May 10th through May 24th. For the following reasons, the SCO finds that Student was suspended for a total of 14.5 days in May of 2018 (5/3/18-5/8/18 and 5/10/18-5/24/18). (Ex. K.) The majority of the documents in the record indicate Student was suspended through May 24th. In Student's "Behavior Detail Report" the duration of the suspension is listed as 11 days. (Ex. E at 1.) Also, on a calendar maintained by Middle School, Student's status is shown as "sus" from mid-day May 10th through the 24th. (Ex. K at 1.) When asked about this discrepancy, Dean did not know why May 23rd and May 24th were marked as suspended. He said that Principal had entered the suspension in the program this way, and that Principal also could not remember why the calendar said Student was suspended on those days. Dean stated that Student was free to return on May 22nd and was not suspended on the 23rd or 24th. However, on the Response, Management, and Support Plan (RMS Plan) created in conjunction with the Threat Assessment, Dean wrote: "Student was suspended for 10 days as we completed this assessment and RMS plan." (Ex. J at 17.)

20. Because there are conflicting accounts, the SCO relies on the documents created at the time of the suspensions. Because the majority of these documents show Student was suspended through the end of the year, the SCO finds that Student was suspended through May 24th.

21. There is no dispute that the District did not conduct a Manifestation Determination Review (MDR). Dean stated that he was aware Student was undergoing a special education evaluation at the time because School Psychologist contacted him and explained that she was in the middle of the evaluation and needed Student to return to Middle School to complete part of the evaluation. (Interview with Dean.) School Psychologist told the SCO that she would have held an MDR had she known Student had accumulated 11 days of suspension. (Interview with School Psychologist.)

22. Though the District did not conduct an MDR in this matter, Special Education Director explained to the SCO that there is District-wide training every July centered on disciplinary procedures. Principals and Assistant Principals are all required to attend this training and disseminate the information to their staff. Special Education Director also stated that her teams are knowledgeable about IDEA disciplinary procedures. The SCO finds Special Education Director credible, and has no concerns there is a systemic problem with IDEA disciplinary procedures in the District based on the record in this Complaint.

23. Based on the information below, the SCO finds that the District did not provide Student with any educational services during the period of his disciplinary removals. School Psychologist does not believe educational services were provided to Student during these periods of suspension. (Interview with School Psychologist.) Dean stated that typically teachers would connect with students after they are suspended in order to provide homework, though he was not certain whether that happened here. (Interview with Dean.) Parent told the SCO that no educational services were provided during either of Student's suspensions. (Interview with Parent.) Due to the lack of documentation of any educational services being provided, combined with Parent's and School Psychologist's recollection that no educational services were provided, the SCO finds that Middle School did not provide Student with educational services during the period of his disciplinary removals.

24. In June 2018, the District received a Colorado Open Records Act (CORA) request from Parent's Counsel for Student's academic records. (Interview with Special Education Director.) Parent confirmed to the SCO that she "first met with an attorney way back when all this happened." (Interview with Parent.)

25. Special Education Director left Parent a voicemail on August 17, 2018, asking whether Student would be reenrolled in the District for the 2018-19 school year. (Ex. I at 1.) Parent did not return the call, and has not spoken to Special Education Director or Dean about the decision to enroll Student outside of the District. (Interviews with Special Education Director and Dean.)

26. Student did not return to Middle School for the 2018-19 school year. Student is currently enrolled in an online charter school administered by a different school district. (Interview with Parent.)

CONCLUSIONS OF LAW

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

Conclusion to Allegation One: The District fulfilled its Child Find obligation by promptly responding to Parent's request for an initial evaluation on March 19, 2018, and timely completing an initial evaluation and determining Student eligible for special education and related services on May 18, 2018.

School Districts have an affirmative, ongoing obligation to identify, locate, and evaluate all children with disabilities residing within their jurisdiction that either have, or are suspected of having, disabilities and need special education and related services as a result. 34 C.F.R. § 300.111; ECEA Rule 4.02(1)(a). Either a parent or a district may initiate a request for an initial evaluation to determine if a child qualifies as a child with a disability pursuant to the IDEA. 34 C.F.R. § 300.301(b). If a parent requests an initial evaluation, and the district agrees an evaluation is necessary, the district must provide prior written notice of the evaluations it proposes to conduct, and must obtain parent's informed consent before conducting any

evaluations. 34 C.F.R. § 300.300(a). After parental consent is received, the district must complete the evaluation within 60 days. 34 C.F.R. § 300.301(c); ECEA Rule 4.02(3)(c)(ii). After the evaluation is completed, a group of professionals and the student's parents must determine whether the child has a disability and needs special education and related services. 34 C.F.R. § 300.306. If the child is determined IDEA eligible, an IEP must be developed "within 90 calendar days of the date that parental consent was obtained to conduct the initial evaluation." ECEA Rule 4.03(1)(d)(i).

The SCO must first determine when the District assumed responsibility for identifying whether Student was a child with a disability and in need of special education and related services. When students are placed in private schools, it is the administrative unit, or district where the private school is located that is responsible for Child Find. 34 C.F.R. § 300.131(a); ECEA Rule 4.02(1)(a)(ii). Here, the Private School that Student attended until March 2018 was not located within the boundaries of the District. Accordingly, the Child Find obligation belonged to the district in which Private School was located. Therefore, the SCO concludes that the District assumed Child Find responsibility in this matter when Student reenrolled in the District on March 19, 2018.

Having concluded the District's Child Find obligations began upon Student's reenrollment in the District, the SCO must next determine whether the District met this obligation after Parent requested an evaluation. After Parent formally requested an IDEA evaluation on March 18, 2018, School Psychologist immediately completed a PWN/Consent for evaluation form and left it at the front desk for Parent to pick up. Parent returned the signed consent form 17 days later on April 4, 2018. The District then had until July 3, 2018 (90 days) to complete Student's evaluation and develop an IEP if necessary. The District completed their evaluation, and the IEP team convened on May 18, 2018. At that meeting, the IEP team determined that Student was eligible for special education and related services, and developed an IEP. The District developed Student's IEP 45 days after receiving parental consent, which is within the 90 day timeline required under ECEA. ECEA Rule 4.03(1)(d)(i). Therefore, the District fulfilled its obligation to evaluate and develop an IEP, in accordance with ECEA and IDEA.

<u>Conclusion to Allegation 2:</u> Because the District was deemed to have knowledge that Student was IDEA eligible, Student was entitled to IDEA's disciplinary protections. The failure to provide these protections following a disciplinary change of placement resulted in procedural violations related to the manifestation determination, notification, procedural safeguards notice, and provision of services.

The IDEA provides extensive regulations governing the discipline of students with disabilities that are designed to prevent students from being punished for conduct that is the result of their disability and discourage the use of discipline to change educational placement. *See* 34 C.F.R. § 300.530. Three of these procedural protections are at issue in this case: (1) the right to a manifestation determination review, (2) parental notification of the removal and providing a

copy of the procedural protections, and (3) the delivery of educational services during the suspension.

Before analyzing whether the District failed to comply with the IDEA's disciplinary protections, the SCO must answer two preliminary questions: (1) was Student entitled to the IDEA disciplinary protections at the time of the disciplinary removals, even though he had not yet been found eligible, and (2) at what point did a disciplinary change in placement occur?

Parent's request for an evaluation entitled Student to the IDEA's procedural protections even though the eligibility determination occurred after Student's suspensions.

Because Student had not yet been found eligible for special education and related services, the SCO must first determine whether Student was entitled to the IDEA's procedural protections at the time of Student's suspensions. Under certain circumstances, students that have not yet been found eligible for special education and related services may be entitled to the IDEA's disciplinary protections. The question hinges on the District's knowledge at the time of the disciplinary action. A student not yet determined eligible "may assert any of the protections provided . . . if the public agency had knowledge . . . that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." 34 C.F.R. § 300.534(a). The IDEA specifies three circumstances where a district must be deemed to have knowledge that a Student facing disciplinary action who is not yet formally identified is a student with a disability: (1) when a parent expresses concern in writing that the student is in need of special education, (2) when a parent formally requests an evaluation, and (3) when a teacher or other district personnel expresses specific concerns about a student's behavior to the director of special education or other district supervisory personnel. 34 C.F.R. § 300.534(b).

Here, Parent requested an evaluation on March 19, 2018, and initiated the special education referral process. Prior to the conduct resulting in suspension on May 3 and May 10, the District was in the process of evaluating Student for eligibility, ultimately determining Student was IDEA eligible on May 18, 2018. Because Parent had formally requested an evaluation before the incidents that gave rise to Student's disciplinary removals, and the District was in the process of conducing that evaluation, the SCO concludes that the District had an adequate basis of knowledge that Student was a child with a disability. Consequently, Student was entitled to the protections provided by IDEA's disciplinary procedures.

In its Response, the District asserts that an exception applies that would excuse it from being deemed to have a basis of knowledge that Student was IDEA eligible. The SCO disagrees. Pursuant to 34 C.F.R. § 300.534(c)(2), a school district will not be deemed to have a basis of knowledge if the student has been evaluated and "determined not to be a child with a disability." The District contends that because Student was evaluated in May of 2016 and found ineligible, this exception applies, and therefore, the District should not be deemed to have had knowledge. For the reasons stated below, the SCO concludes that this exception does not

apply, and that the District is deemed to have knowledge that Student may have been a child with a disability.

First, the District agreed to conduct an evaluation when Parent made her request on March 19, 2018, which indicates the District agreed that an evaluation was appropriate to determine whether Student may have a disability and be in need of special education and related services. If the District did not suspect Student was IDEA eligible, it could have denied Parent's request and issued PWN. More importantly, the staff members involved in Student's disciplinary removals knew Student's evaluation was being conducted during the removals. As referenced in Finding of Fact #21, School Psychologist expressed her concern to Dean that she was in the middle of Student's evaluation, and that she needed him to return to school in order to complete it. Given these specific circumstances, the SCO concludes that the exception does not apply, and the District had an adequate basis of knowledge that Student was IDEA eligible, and was therefore entitled to the IDEA's disciplinary protections.

Student's educational placement was changed on May 18, 2018 due to a series of suspensions that constituted a pattern of removals.

The SCO must next determine on what date an educational change in placement occurred during these two suspensions. A change in placement due to disciplinary removals occurs either when a student is suspended for more than 10 consecutive school days, or when a series of removals establishes a pattern because: (1) the suspensions total more than 10 school days in a school year, and (2) the behavior involved in the suspensions is substantially similar, and (3) other factors including the length of each suspension, total amount of time suspended, and the proximity of suspensions to one another. 34 C.F.R. § 300.536(a). The Local Education Agency (LEA) or school district must determine whether or not a pattern of removals constitutes a change of placement on a case-by-case basis. 34 C.F.R. § 300.536(b)(1). The determination of whether two incidents are "substantially similar" inherently requires a subjective determination. 71 Fed. Reg. 46729 (August 14, 2006).

As a preliminary matter, the SCO concludes that Student's second suspension, which began midday on May 10 and ended on May 24, lasted for 10.5 school days, and therefore constituted a change in educational placement. Because Student was also suspended for four days prior this second suspension, the SCO next considers whether the two suspensions resulted in a series of removals that established a pattern to determine when the disciplinary change of placement occurred.

To determine whether these two removals constituted a pattern, the SCO considers the factors identified in 34 C.F.R. § 300.536(a)(2). The first factor asks whether the suspensions totaled more than 10 school days in the school year. 34 C.F.R. § 300.536(a)(2)(i). Because the two suspensions totaled 14.5 days (4 days beginning May 3rd and 10.5 day beginning May 10th), the first factor is met.

The SCO must next determine whether the two incidents were substantially similar. 34 C.F.R. § 300.536(a)(2)(ii). As stated above, this determination requires a subjective analysis, and is based upon the unique circumstances of this case. For the following reasons, the SCO concludes that the incidents were substantially similar, and therefore constituted a pattern of removals. Both incidents were premised on Student being a potential threat to others at the school, either by possessing a weapon, or by threatening violence. Had Student's suspensions been based on separate incongruent behaviors, such as theft in one instance and drug possession in another, the SCO would not determine them substantially similar. *See E. Metro Integration Dist. #6067*, 110 LRP 34370 (SEA MN 5/11/10)(finding separate removals for theft and weapon possession not substantially similar). However, both of these incidents are based on Student posing a safety threat towards others. Furthermore, separate incidents of misconduct need not be identical in order to be substantially similar. *See D. C. Pub. Sch.*, 110 LRP 30876 (SEA DC 4/24/09)(finding substantially similar circumstances for disruptive behaviors based on: walking the hallways and disrespecting staff, being out of the classroom and walking the hallways, being disorderly in the girls' locker room, and disobedience and walking the hallways) and *D.C. Pub. Sch.*, 113 LRP 22139 (SEA DC 5/2/13)(finding substantially similar circumstances for disrespectful or disruptive behaviors based on: refusal to comply, interference with school authorities or disruption of school operation, vandalism, and disruption in hall or building). Because both incidents of misconduct involved a perceived safety threat, the SCO concludes they were substantially similar.

Finally, the SCO must consider the third prong "other factors," i.e., the length of each removal, total amount of time of the removals, and the proximity of the removals, to determine whether the two removals constituted a pattern. 34 C.F.R. § 300.536(a)(2)(iii). First, the length of each removal weighs in favor of finding a pattern of removals. The May 10th 10.5 day suspension is a per se change of placement. Though not a change of placement on its own, the 4 day suspension on May 3rd is still substantial. Next, the total time of the two suspensions is significant. Out of 16 possible school days in May 2018, Student was suspended 14.5 of those days. Finally, the proximity of the suspensions weighs in favor of finding a pattern of removals. Student was first suspended on Thursday May 3rd, and returned to school Wednesday May 9th. May 10, the day following his return from the first suspension, Middle School suspended Student for 10.5 days through the end of the school year. Because these suspensions occurred virtually back-to-back, this factor weighs in favor of a conclusion that the suspensions constituted a pattern of removals.

Meeting all three factors, the SCO concludes that Student's May 3rd and May 10th suspensions constituted a pattern of removals, resulting in a change of educational placement on the 11th school day of suspension, which was May 18, 2018.

<u>The District was obligated to conduct an MDR within 10 school days of its decision to change Student's placement on May 18, 2018. The failure to do so resulted in a procedural violation of the IDEA.</u>

A district must conduct a manifestation determination review (MDR) within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. The MDR team must consist of district personnel, parents, and relevant members of a child's IEP team. The purpose of the MDR is to determine whether the student's behavior that led to a violation of a code of student conduct was either: (1) "caused by, or had a direct and substantial relationship to, the child's disability; or (2) if the conduct in question was the direct result of the [District's] failure to implement the IEP." 34 C.F.R. § 300.530(e).

Relevant here, is whether Student was entitled to an MDR, even though he had not been yet determined IDEA eligible at the time of the disciplinary removals. "If a child engages in behavior that violates a code of student conduct prior to a determination of his or her eligibility for special education and related services and the public agency is deemed to have knowledge of the child's disability, the child may assert the disciplinary protections under IDEA, including the manifestation determination review (MDR) provisions under 20 U.S.C. § 1415(k)(1)(E) and 34 C.F.R. § 300.530(e) even if the child has not been found eligible for special education and related services." *Letter to Nathan*, 119 LRP 4245 (OSEP 1/29/19). "Thus, within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team (as determined by the parent and the LEA) must conduct an MDR." *Id*.

In this case, the District was required to conduct an MDR within 10 school days of May 18, 2018, the date the District changed Student's educational placement through disciplinary removals. Because the school year ended on May 24, 2018, the 10-day timeline that the District had to conduct the MDR extended into the beginning of the 2018-19 school year.

This case presents a unique set of circumstances. Parent voluntarily withdrew Student from the District over the summer and enrolled him in an online charter school administered by a different school district. Consequently, Student was no longer attending the District at the time that the District's failure to conduct the MDR would have resulted in a procedural violation. Put another way, Parent's decision to withdraw Student from the District prevented this violation from fully ripening. In its Response, however, the District asserted that it was not required to conduct an MDR because Student had been evaluated in May 2016. Moreover, Middle School staff interviewed did not discuss or consider conducting an MRD in this instance. For these reasons it is evident that even if Student had remained enrolled in the District, an MDR would not have been conducted, and the SCO concludes that the failure to conduct an MDR resulted in procedural violation.

In accordance with IDEA, the District could have conducted the MDR in connection with the Eligibility Determination on May 18, 2018. "There is nothing in IDEA that would prevent the LEA from conducting the MDR in connection with its evaluation and eligibility determination, so long as the MDR is conducted within 10 school days of the decision to change the student's placement due to a violation of a student code of conduct." *Letter to Nathan*, 119 LRP 4245 (OSEP 1/29/19). Indeed, the parties had all the necessary information to conduct an MDR: "relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents . . ." 34 C.F.R. § 300.530(e)(1). Because Parent withdrew Student, the failure to conduct an MDR did not result in substantive harm.

Parent was not notified of the decision to change Student's placement based on disciplinary removals or provided a copy of the procedural safeguards in conjunction with the decision to change Student's placement. However these procedural violations did not cause substantive harm.

The IDEA requires that on the day a district makes the decision to remove a student with a disability based on a violation of a code of student conduct, and that removal constitutes a change of placement, the District must notify the parents of the decision and provide them with a copy of the procedural safeguards. 34 C.F.R. § 300.530(h). Here, Dean met with Parent the day of each suspension to explain why Student was being removed from School. However, when the suspensions exceeded 10 days or were about to exceed 10 days, Dean failed to notify Parent that the suspensions would result in a change of Student's educational placement. As noted above, Student's placement actually changed on May 18, 2018, the day of his IEP eligibility meeting. Also, Parent was not provided with a copy of the procedural safeguards notice pursuant to Student's suspensions, which is a procedural violation.

Having concluded that the failure to properly notify Parent of the change in Student's education placement and to provide the procedural safeguards notice resulted in a procedural violation, the SCO must determine if the violation resulted in a denial of FAPE. As stated above, a procedural violation results in a denial of FAPE if it "seriously impair[s] the parents' opportunity to participate in the IEP formulation process, result[s] in the loss of educational opportunity for the child, or cause[s] a deprivation of the child's educational benefits." *See* 34 C.F.R. § 300.513(a)(2). For two reasons, the SCO concludes that this procedural violation did not result in substantive harm. First, though the District did not provide Parent the procedural safeguards notice in connection to Student's disciplinary removal, it did provide the notice at Student's IEP eligibility determination meeting on May 18, 2018. Coincidentally, this is the 11th day Student was removed for a violation of a code of student conduct, and the day his educational placement changed. Because Parent received a copy of the procedural safeguards due to another triggering event, she was informed of her rights, and no substantive harm can be found. Second, the requirement that parents are given a copy of the procedural safeguards is to ensure they are informed of their procedural rights, including the right to file a state complaint. Parent acknowledged she retained counsel directly after Student's suspensions and

IEP meeting. Also, Parent's Counsel requested Student's records from the District in June of 2018. These records were used to file the Complaint in February 2019. Accordingly, the SCO finds that Parent knew her rights, and acted on them by retaining counsel and initiating the state complaint process. For the above reasons, the SCO does not find a substantive violation.

Student received no educational services after the disciplinary change of placement, however because there was only one week left in the school year, Student was not denied FAPE.

The IDEA requires that after a student is removed from their educational placement due to a violation of a code of student conduct for 10 days, the District must provide educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). If the removals resulted in a change in the student's placement, as happened here, the IEP team must determine what services are necessary for the student to progress towards meeting the goals in his or her IEP. 34 C.F.R. § 300.530(d)(5).

In this case, no services were provided to Student at any time during his removals. Because Student was entitled to educational services for the period of time after his placement was changed on May 18, 2018, the SCO finds a procedural violation.

Having concluded the failure to provide educational services resulted in a procedural violation, the SCO must determine if there was also a denial of FAPE. The U.S. Supreme Court defines FAPE as an education "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 991 (2017). On May 18, 2018, Student's IEP team met, found Student eligible for special education and related services, and crafted an IEP in order to help Student make progress appropriate in light of Student's circumstances. Here, Student's placement changed on Friday May 18, 2018. The next week of school was the last week in the school year at Middle School. The SCO concludes that one week alone was an insufficient period of time for Student to make progress on the goals in his newly developed IEP. Because Student was denied one week of IEP implementation, the SCO finds that the procedural violation was not material, and did not result in substantive harm.

REMEDIES

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

a) Failing to implement the IDEA's disciplinary procedural protections to a student not yet determined eligible, consistent with 34 C.F.R. §§ 300.530 and 300.534.

To remedy these violations, the District is ordered to take the following actions:

1. By May 15, 2019, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violations noted in this Decision. The CAP must

effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

a) Training that addresses the IDEA's disciplinary procedures, in accordance with this Decision, specifically when the disciplinary procedures apply to students not yet found eligible, must be provided to the District's school based administrators, and any other District staff deemed appropriate by the District, no later than August 1, 2019.

b) Evidence that such training has occurred must be documented (i.e. training schedule, agenda, materials, and legible attendee sign-in sheets, with roles noted) and provided to CDE no later than August 9, 2019. Additionally, the District may use alternate methods to provide this training, including an online presentation.

CDE will approve or request revisions to the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

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

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

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department.

CONCLUSION

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

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

Dated this 19th day of April, 2019.

____
Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-16

Ex. 1: 504 Plan - 2016
Ex. 2: 504 accommodations - 2016
Ex. 3: 7th grade transcript
Ex. 4: Behavior report
Ex. 5: 4/4/18 Notice of Meeting and 3/19/18 PWN/Consent for Evaluation
Ex. 6: 5/18/18 Evaluation Report
Ex. 7: 5/18/18 Eligibility Determination
Ex. 8: 5/18/18 IEP
Ex. 9: 5/18/18 PWN

Response, pages 1-9

Ex. A: Enrollment history
Ex. B: 504 Plan - 2013
Ex. C: 504 Plan - 2015
Ex. D: 3/9/16 PWN/Consent for Evaluation and 5/3/16 Evaluation
Ex. E: Behavior Report
Ex. F: 504 Plan - 2016
Ex. G: 7th Grade schedule
Ex. H: 3/19/18 PWN/Consent for Evaluation; 5/3/18 Evaluation Report; 5/18/18 IEP
Ex. I: Special Education Contact Log
Ex. J: Threat Assessment
Ex. K: 2017-18 Attendance and Behavior records
Ex. L: District calendar
Ex. M: 2017-18 Report card
Ex. N: Delivery confirmation of District's Response to
Ex. O: Contact log

Reply, pages 1-8

Exhibits

Interviews with:

School Psychologist
Special Education Director
Dean
Parent