

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

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**State-Level Complaint 2021:526**  
**Weld County School District RE-5J**

**DECISION**

**INTRODUCTION**

On November 5, 2021, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Weld County School District RE-5J (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified eight 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 SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from November 5, 2020 through November 5, 2021 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 denied Student a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to provide Parent with notice of meeting, in violation of 34 C.F.R. § 300.322(a)-(b) on the following occasions:

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

- a. For the IEP Team meeting held on September 22, 2021 or September 29, 2021, in violation of 34 C.F.R. § 300.322(a)-(b); and
  - b. For the IEP Team meeting held on October 6, 2021 following a manifestation determination review (“MDR”).
2. Failed to conduct an MDR within ten school days of the District’s decision to change Student’s placement on or around September 13, 2021, in violation of 34 C.F.R. § 300.530(e).
  3. Failed to provide educational services to Student after his tenth day of removal during the 2021-2022 academic year to enable Student to participate in the general education curriculum and progress toward meeting his IEP goals, in violation of 34 C.F.R. § 300.530(b)-(d).
  4. Deprived Parent meaningful participation in the IEP Team meeting held on October 6, 2021 following the MDR, in violation of 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii), and 300.501(b)-(c).
  5. Failed to allow Student’s IEP Team to determine the interim alternative educational setting (“IAES”) on or around October 6, 2021, in violation of 34 C.F.R. § 300.531.
  6. Failed to provide Parent with Prior Written Notice (“PWN”) following the MDR held on October 6, 2021, in violation of 34 C.F.R. § 300.503.
  7. Failed to either conduct a functional behavioral assessment or review Student’s behavior intervention plan (“BIP”) and modify it as necessary to address Student’s behavior, after determining that Student’s conduct was a manifestation of his disability, on or around October 6, 2021, in violation of 34 C.F.R. § 300.530(f)(1).
  8. Failed to place Student in an appropriate interim alternative education setting from October 11, 2021 to the present, in violation of 34 C.F.R. §§ 300.530(g) and 300.531.

### **FINDINGS OF FACT**

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

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

## **A. Background**

1. Student is a fourteen-year-old who is eligible for special education and related services under the disability categories of Serious Emotional Disability (“SED”) and Other Health Impairment (“OHI”). *Exhibit A*, p. 93. Student is currently enrolled in the District’s Online Academy. *Interview with Parent*.
2. Student enjoys video games and hockey. *Interviews with Parent and Online Learning Coach (“Learning Coach”)*. When he feels comfortable, he can be very polite and cooperative. *Interviews with Learning Coach and School Psychologist*. Academically, Student prefers math and dislikes writing. *Interview with Learning Coach*. Student struggles with stamina, especially with longer tasks. *Id.*

## **B. Beginning of 2021-2022 School Year**

3. Student began the 2021-2022 school year at Separate School. *Interviews with Special Education Director (“Director”) and Parent*. A different school district operates Separate School in partnership with a private education company. *Interview with Director*. Student resides in the District, but the District placed Student at Separate School in the 2020-2021 school year. *Id.*
4. At the beginning of the school year, Student’s IEP dated May 6, 2021 (“May IEP”) and its incorporated BIP (“May BIP”) were in effect. *Exhibit A*, pp. 1-29. The May IEP resulted from Separate School’s reevaluation of Student in May 2021. *Id.* at p. 1.
5. The portion of the May IEP regarding present levels of performance indicated that Student struggled with work refusal and required frequent prompting from teachers to stay on task. *Id.* at p. 3. On recent assessments, Student scored at third- and fourth-grade levels in reading and math, respectively. *Id.* Student had not met any of the annual goals under his prior IEP, which was from September 2020. *Id.*
6. The May IEP acknowledged that, as a result of his disabilities, Student struggled with impulsivity, regulating his emotions, and work refusal. *Id.* at p. 9. Student had difficulty “following adult directives in the school setting and [became] verbally aggressive when he [did] not agree with the directions given.” *Id.* His “difficulty comprehending and understanding new vocabulary at grade level text often [led] to work refusal.” *Id.*
7. The May IEP contained eight annual goals in the areas of reading, writing, math, and social-emotional skills. *Id.* at pp. 15-22.
8. The May IEP identified numerous accommodations designed to help Student access the curriculum, including taking breaks, reading grade-level materials aloud, providing oral and written instructions, and using a cool-down place when Student felt frustrated. *Id.* at p. 23.

9. Under the May IEP, Student received the following special education and related services:

- Specialized Instruction: 1,880 minutes per week of direct special education services in a separate school setting. These services were designed to help Student “fill in learning gaps” and meet his annual goals. *Id.* at p. 25.
- Social-Emotional Instruction: 60 minutes per week of direct social-emotional instruction provided by a social worker. The instruction should be provided through a weekly 20-minute individual session and a 40-minute social skills group. *Id.*

10. Per the May IEP, Student was placed in a separate school and spent no time in the general education environment. *Id.*

11. The May BIP was based on a functional behavior assessment completed in May 2021 and identified four target behaviors:

- Verbal Aggression: “In order to escape a non-preferred task or attempt to gain control over situations, [Student] will engage in verbal aggression in the school setting. This behavior is defined but not limited to, yelling, using profanity, name calling, insulting others and demanding what he wants.” *Id.* at p. 12.
- Eloping: “In order to escape a non-preferred task or gain attention from [ ] preferred staff, [Student] will elope from the classroom or building in the school setting. This behavior is defined but not limited to leaving the classroom and pacing in the hallway, leaving the building, leaving school property, walking around the community, trespassing on property, and entering businesses.” *Id.*
- Physical Aggression: “In order to escape a non-preferred task or attempt to gain control over situations, [Student] will engage in physical aggression in the school setting. This behavior is defined but not limited to throwing objects at peers/staff, attempting to hit or shove others and posturing toward others with the intent to intimidate others.” *Id.*
- Non-Compliance: “In order to escape a non-preferred task, [Student] will display non-compliance in the school setting. This behavior is defined but not limited to sleeping under his desk, laying down, refusing to return to class following a timeout.” *Id.*

12. Setting event strategies outlined by the BIP included, in part, structured transition times, cuing expected behaviors, and pacing long-term projects, among other strategies. *Id.*

13. Listed antecedent strategies designed to reduce the target behavior included, in part, mixing easy and difficult tasks, giving Student a preview of the work he needed to finish, and allowing Student to take breaks. *Id.*

14. The BIP also included behavior teaching strategies, such as reminding Student of Separate School's level system and modeling how to ask staff for help. *Id.*

15. As reinforcement strategies, the BIP identified sharing Student's points on the level sheets so he could see his own progress, giving Student incentive tickets during verbal praise to reinforce position behaviors, and redirecting Student to use his replacement behaviors. *Id.*

### **C. Behavioral Incident on September 13**

16. On September 13, Student arrived at Separate School around 9:00 a.m. *Exhibit E*, p. 1. Student refused to follow Separate School's normal check-in procedures, which included checking in his cell phone, and proceeded to the school's motor lab, a room for students to self-regulate. *Id.* Student started watching videos on his cell phone and ignored the staff's attempts to get him to check in his phone or go to class. *Id.*

17. Around 9:20 a.m., Student asked for breakfast. *Id.* Staff told Student he could have breakfast after he followed the check-in procedures. *Id.* Student threatened to beat up a male staff member ("Male Staff Member") and then closed the door to the motor lab, turning the lights off. *Id.* When a different staff member opened the door, Student pushed past the staff member and attacked Male Staff Member, punching him repeatedly. *Id.* Ultimately, staff members were able to separate Student and Male Staff Member but not before Male Staff Member sustained serious injuries. *Id.* Student remained in the motor lab until he was picked up around 11:00 a.m. *Id.*

18. Student received five days of out-of-school suspension from Separate School as a result of the incident. *Id.* Separate School notified Parent of Student's suspension on September 13, the same day as the incident. *Interview with Parent; Exhibit 3*, p. 1.

19. Criminal charges were brought against Student as a result of the incident. *Interview with Parent.*

20. On September 16—the fourth day of Student's suspension—Separate School notified the District and Parent that, effective immediately, Separate School was terminating its contract with the District and would no longer allow Student to attend Separate School. *Interviews with Director and Parent.* Separate School cited Student's pending criminal charges and Separate School's concerns over the safety of Male Staff Member as reason for the decision. *Id.* Student had not had any other behavioral incidents at Separate School during the 2021-2022 school year. *Exhibit D*, p. 2.

21. This decision by Separate School left Student without a school to return to following the end of his suspension. *Id.* The District did not have classes on September 17. *Exhibit L*, p. 1.

#### **D. September IEP Team Meeting**

22. Parent emailed Director on September 16 to ask what would happen next. *Exhibit O*, p. 2. On September 17, Director responded, telling Parent that the District would need to convene Student’s IEP Team. *Id.* Director also told Parent she was having difficulty finding another separate school for Student. *Id.*

23. Because Student had been in an out-of-district placement, Student no longer had a case manager in the District. *Interview with Director*. Director asked Teacher, a special education teacher at Student’s neighborhood high school (“High School”), to organize an IEP Team meeting. *Id.*; *see also Exhibit O*, p. 2.

24. On September 22, Parent reached out again to Director: “Any update on this? I haven’t been contacted by anyone?” *Id.* at p. 1. Director replied, copying Teacher on the email to “connect” Parent and Teacher so they could schedule the meeting. *Id.* At some point, Teacher called or emailed Parent separately to discuss possible dates and times. *Interview with Parent*.

25. On September 28, Director emailed Parent and Teacher indicating that she could meet “tomorrow at 2” and asking if that worked for Parent and Teacher. *Id.* All confirmed that September 29 at 2:00 p.m. worked for Student’s IEP Team meeting. *Id.*

26. The District produced a notice of meeting for the September 29 IEP Team meeting during this investigation. *Exhibit N*, p.1. The notice contains a Parent Contact Log with this single entry:

<b>Date</b>	<b>Type</b>	<b>Result</b>	<b>Description</b>
9/28/2021	Emailed	Will attend	Email was sent to parent and parent confirmed attendance at meeting.

*Id.* Parent, however, asserted that she never received the notice. *Interview with Parent*. In the past, Parent has not consistently received notices of meeting. *Id.*

27. During interviews, the District alleged it sent the notice to Parent via email. *Interviews with Director and School Psychologist*. But the District could not identify who authored the notice (even though it contains Director’s name) or who sent it to Parent. *Id.* And the District did not produce a copy of the email transmitting the notice. *See Exhibit O*, pp. 1-91.

28. District policy requires a student’s case manager or team leader to “send Notice of Meeting and a copy of Notice Procedural Safeguards/Parent and Child Rights in Special Education to the parent(s) **at least 10 days prior** to the annual IEP review meeting.” *Exhibit P*, p. 24 (emphasis in original). The policy does not specify how the Notice of Meeting should be sent or what content it should contain. *Id.*

29. The day of the meeting, Parent emailed Director to request that the District conduct an MDR: “In addition to today’s IEP meeting, I’d like to formally request an MDR.” *Exhibit O*, p. 1.

30. On September 29, Student’s IEP Team met as scheduled. *Interviews with Director, School Psychologist, and Parent. Exhibit F*, pp. 2-3. Director led the meeting. *Interview with Parent*. Per the meeting notes, “[t]he reason for the meeting was to discuss an interim placement option for [Student] following his dismissal from [Separate School].” *Exhibit F*, pp. 2-3. At that point, the IEP Team was hopeful that the District would locate another separate school for student and focused primarily on how the District could serve Student in the interim. *Id.* at p. 3; *Interviews with Director and Parent*.

31. The District offered Student a homebound placement with access to the District’s Online Academy. *Exhibit F*, p. 3; *Interview with Parent*. Parent expressed concerns about Student’s ability to access the classes given his reading ability; other team members were concerned about whether Student would engage in an online program. *Exhibit F*, p. 3; *Interview with Parent*.

32. Alternatively, Parent suggested a homebound placement with District staff providing services in the home. *Exhibit F*, p. 3; *Interview with Parent*. The District declined this option, citing the safety of staff members given the recent incident and Student’s history with physical aggression. *Exhibit F*, p. 3; *Interview with Parent*. The District offered to have a staff member provide Student’s special education services in a neutral location (like a library) but refused to provide any access to the general education in such a setting. *Exhibit F*, p. 3; *Interviews with Director and Parent*.

33. Finally, the District offered 2.5 hours per week of in-person special education services at the District’s Administration Office. *Exhibit F*, p. 3; *Interview with Parent*. Student could access general education through Online Academy with the help of a general education teacher at the Administration Office. *Exhibit F*, p. 3; *Interviews with Director and Parent*.

34. The IEP Team agreed that an MDR was appropriate and adjourned without finalizing any plans for Student’s interim services. *Exhibit F*, p. 3; *Interview with Parent*. Instead, the team agreed to reconvene following the MDR to finalize Student’s interim services. No changes were made to the May IEP or May BIP during the meeting. *Exhibit F*, p. 3; *Interviews with Director and Parent*.

#### **E. District’s MDR Procedures**

35. As written in the District’s Handbook of Special Education Procedures, the District’s procedure for MDRs states, in relevant part, as follows:

- Case managers and school psychologists will “receive monthly behavioral reports from the school secretary or administration to monitor for removals of students with disabilities.” *Exhibit P*, p. 84.

- “No later than the 10<sup>th</sup> day of removal[,] the case manager and school psychologist will contact the parent to set up a meeting to conduct an MDR within 10 days.” *Id.*
- “School Psychologist and case manager will gather necessary data to conduct MDR meeting. EXAMPLES about types of data.” *Id.*
- “School Psychologist will collaborate with the case manager and school administration to implement decisions, etc. as determined during the MDR meeting including but not limited to compensatory services, services to ensure a FAPE in the disciplinary setting, FBA, re-evaluation.” *Id.*

36. During her interview, Director stated that the District agreed to hold an MDR to “honor Parent’s request to have an MDR.” *Interview with Director*. Under the District’s procedures, Director did not believe an MDR was necessary because Student had not yet been suspended for more than ten days. *Id.*

37. The District does not have a separate procedure regarding providing services to students following the tenth day of removal in a school year. *See id.* at pp. 1-122.

#### F. October MDR

38. On September 30, Director and Parent exchanged emails to find a mutually agreeable date and time for the MDR. *Exhibit O*, p. 66-67. They agreed to conduct Student’s MDR on October 6 at 9:00 am. *Id.*

39. On October 1, Director sent Parent a notice of meeting for the MDR and a copy of the procedural safeguards. *Exhibit O*, p. 75. Prior to this email, Parent did not receive any notice from the District informing her that Student’s disciplinary removals constituted a change of placement. *Interview with Parent*.

40. The District convened an MDR team on October 6. *Exhibit D*, pp. 1-4. Parent and her Counsel attended the MDR, as well as Director, Online Learning Coach, Special Education Coordinator, Executive Director of Separate School, Director of Separate School, Separate School Social Worker, and the District’s Counsel. *Id.* at p. 4. Though School Psychologist’s name appears on the MDR documentation, School Psychologist said she did not attend the meeting. *Interview with School Psychologist*. Additionally, the invitees listed on the notice of the MDR meeting were inconsistent with the actual attendees at the meeting. *Exhibit D*, pp. 1-4; *Exhibit O*, p. 75.

41. The MDR team reviewed the information in Student’s file, including his IEP and his BIP, and noted that Student had annual goals related to behavior. *Exhibit D*, p. 2; *Interview with Director*. According to Director, the MDR team noted that Student had a history of verbal and physical aggression and, thus, concluded that his behavior was a manifestation of his disability. *Interview with Director*.

42. Parent and Counsel remember the discussion at the meeting differently. *Interview with Parent; see Complaint*, p. 7. Parent recalled the meeting taking an accusatory tone with the discussion focusing on whether Student knew what he was doing was wrong and whether his actions were premediated. *Interview with Parent*. Only after Counsel interjected, did the team get back on track and ask questions designed to determine whether Student’s behavior was a manifestation of his disability. *Id.*

43. The team briefly discussed Student’s BIP. *Interviews with Director and Parent*. Parent recalls the District asking brief questions of Separate School, such as “Do you believe the BIP is appropriate?” *Interview with Parent*. Counsel shared concerns about the BIP being tailored to Separate School and that items specific to Separate School (like the levels) needed to be removed. *Id.* District members of the team appeared to agree, though Student’s BIP was not revised at or after the MDR. *Id.*

44. The District sent Parent a copy of the MDR documentation via email on the following day. *Exhibit O*, p. 14.

### **G. October IEP Team Meeting and October IEP**

45. On October 4—two days before the MDR was held—Parent emailed Director asking when the “continuance” of the IEP Team meeting would be held. *Exhibit O*, p. 65. Director replied, indicating that the IEP meeting could be scheduled based on the outcome of the MDR. *Id.* Parent responded: “I think it is important to schedule that asap as [Student] will need services regardless of the outcome, correct?” *Id.* Director subsequently scheduled the IEP Team meeting for October 6 at 10:00, immediately following the MDR. *Id.*

46. During this investigation, the District produced a notice of meeting for the October 6 IEP Team meeting. *Exhibit N*, pp. 3-4. Unlike the notice for the September IEP Team meeting, this notice contains no Parent Contact Log. *Id.* Though this notice has School Psychologist’s name at the bottom, School Psychologist did not prepare the notice. *Id.*; *Interview with School Psychologist*. District staff could not recall who prepared the notice, and the District produced no documentation indicating that the notice was sent to Parent. *Interviews with Director and School Psychologist*.

47. On October 6, Student’s IEP Team met after the MDR concluded. *Interview with Director and Parent*. Parent and Counsel attended the meeting. *Interview with Parent*. The purpose of the meeting was to determine what changes, if any, needed to be made to Student’s IEP and what services the District could offer until it could locate a permanent placement for Student. *Interview with Director*.

48. As of the October 6 IEP Team meeting, the District had not been able to locate another separate school for Student. *Interview with Director*. Director had spoken with several schools,

some of which put Student on the waitlist, some of which rejected Student, and some of which were not taking applications. *Id.*]

49. Parent and Counsel recalled the District making a single offer for services at the outset of the meeting: “This is what we are willing to offer.” *Interview with Parent; Complaint*, p. 8. Under the District’s offer, Student could access Online Academy from the District’s Administration Office. *Interviews with Director and Parent*. Online Learning Coach would be physically present to support Student with Online Academy. *Id.* Special Education Resource Teacher (“Special Education Teacher”) and School Psychologist would provide Student’s special education and related services (either virtually or in person) while Student was at the Administration Office. *Id.*

50. Parent expressed concerns about the District’s offer. *Interview with Parent*. Namely, Parent was concerned that Student could not handle attending a full day at the Administration Office. *Id.* Parent had concerns about how staff at the Administration Office would handle Student if he were to become escalated while there and whether they could implement his BIP. *Id.* In response, the District indicated that staff would call the police if Student became escalated at the Administration Office. *Id.*

51. The IEP Team revisited some of the other options discussed during the September meeting, including: (a) a homebound placement with access to Online Academy; (b) a homebound placement with a District staff member providing services in Student’s home; and (c) transitioning Student to High School. *Interviews with Director, Parent, and School Psychologist*.

52. Director asked Parent what suggestions Parent had for Student’s placement. *Interview with Director*. Parent felt that the District immediately “shot down” any other option she suggested. *Interview with Parent*. Director and School Psychologist recalled the IEP Team discussing the options and listening to different points of view. *Interviews with Director and School Psychologist*.

53. Everyone on the IEP Team agreed that Student needed to be placed in a separate school long term, so the disagreement was on what his services should look like in the interim. *Interview with Director*.

54. Ultimately, the IEP Team decided to move forward with the District’s offer to provide Student services at the Administration Office. To address Parent’s concerns about a full day, the IEP Team agreed that Student would attend 3.5 hours per day to start and “that the time could increase as [Student’s] attendance and engagement increased.” *Exhibit A*, p. 85.

55. The IEP Team meeting resulted in an IEP dated October 6, 2021 (“October IEP”). *See id.* at pp. 64-86.

56. With regard to Student's present levels, the October IEP indicated that: "[Student] was previously attending [Separate School] until a behavior incident occurred and his placement was discontinued. [The District] met to discuss an alternative educational plan until another day treatment placement can be secured." *Id.* at p. 69.

57. Student's annual goals and accommodations were the same under the October IEP as the May IEP. *See id.* at pp. 77-82.

58. The October IEP required Student to receive the following special education and related services:

- Psychological Services: 240 minutes per month of direct psychological services outside the general education environment.
- Specialized Instruction: 150 minutes per week of direct specialized instruction from a special education teacher outside the general education environment.

*Id.* at p. 84. Though the psychological service minutes were consistent with those required under the May IEP, Student's psychological services were no longer provided in a small group but, instead, only one-on-one. *See id.* at pp. 26, 84. Student's specialized instruction was drastically decreased due to the change in his placement. *Id.* at p. 85. The Service Delivery Statement in the October IEP indicated that these services would be provided until Student could be placed in a separate school. *Id.* at p. 84.

59. The October IEP contained a prior written notice ("PWN") indicating that the IEP Team considered Student having full-day access to Online Academy, but that Parent chose for Student to access Online Academy part-time initially. *Id.* at p. 85. Per the PWN, homebound placement was also discussed; "however, the [D]istrict is unable to provide[ ] in-person in-home teachers at this time due to COVID restrictions and for the safety of the staff." *Id.* The PWN further stated that:

The team did not feel it would be appropriate to place [Student] back in the general public school setting at this time, due to him still being unsuccessful in the day treatment program. For the safety of others, [Student's] placement still needs to be in a restrictive environment. At this time, with no other day treatment facilities available the access to the on-line program at the district offices is the best alternative placement option.

*Id.*

60. Parent alleged she never received a copy of the October IEP until it was produced by the District in response to this investigation. *Reply*, p. 1. During interviews, neither Director nor School Psychologist knew who sent the October IEP to Parent. *Interviews with Director and School Psychologist*. Director guessed that someone from her office probably sent it via mail;

the District did not, however, keep any record showing that it was sent. *Interview with Director*. The day after Director's interview, the District mailed a copy of the October IEP to Parent. *Interview with Parent*.

#### **H. Services at the Administration Office**

61. The District did not provide Student with any services from September 13 through October 10. *Interviews with Director and Parent*. District schools were not in session on October 8. *Exhibit L*, p. 1.

62. On October 11, Student was scheduled to begin his interim placement at the Administration Office. *Interview with Parent*. The plan was for Student to attend Monday through Friday from 10:15 a.m. to 1:45 p.m. *Complaint*, p. 9. Student refused to attend on the first day but began attending on October 12. *Interview with Parent*.

63. The District enrolled Student in English I and World History courses in Online Academy for high school credit. *Interview with Online Learning Coach*. Student was not assigned any other courses, including math. *Id.* Director indicated these courses were chosen, because both courses are required credits, and Student said he did not want a math class. *Interview with Director*.

64. For the Online Academy courses, Student logged onto his account and could view a tab for each of his courses. *Interview with Online Learning Coach*. The courses are self-paced and contain instruction, assignments, and lessons in a variety of formats. *Id.* Online Learning Coach exempted Student from some of the assignments in each of his courses to make the courses more accessible to Student and because he began mid-way through the semester. *Id.*

65. When Student arrived each day, Online Learning Coach provided Student with a list of tasks to be completed that day and allowed Student to choose where he wanted to begin. *Id.* This was one of the strategies outlined in Student's BIP. *Exhibit A*, p. 12. While Student was working, Online Learning Coach was physically present in the room to provide any assistance Student needed. *Interview with Online Learning Coach*. During that time, Online Learning Coach sometimes met with other students in the Online Academy over the phone or via video conference. *Id.*

66. Special Education Teacher was available to meet with Student virtually. *Id.* Student did not have regularly scheduled meetings with Special Education Teacher but, instead, was expected to work with her at some point each day, although he did not always choose to do so. *Id.*

67. School Psychologist provided Student's psychological services in person at the Administration Office. *Interview with School Psychologist*. Because Student's attendance was irregular, School Psychologist would call to see if Student was present and then come over to meet with him. *Id.* School Psychologist started meeting with Student for 30-minute increments

and worked to build his stamina. *Id.* Once School Psychologist built rapport with Student, she focused on developing emotional regulation skills in accordance with his annual goal under the October IEP. *Id.*

68. On October 14—a few days into this placement—Online Learning Coach emailed Parent to let her know that Student had a B in both of his courses, commenting on how productive Student’s day was. *Exhibit 12*, p. 1. Parent responded, asking how Student was doing on his reading and writing goals and asking if they should consider extending Student’s day at Administration Office. *Id.* Director replied, affirming that Student was working on those goals with Special Education Teacher but that progress could not be measured after only two days of attendance. *Id.* Director also indicated:

I think we should continue the plan and allow [Student] and the team to continue to build relationships and have success at this time. We will continue to collect progress and data and can meet in a few weeks to evaluate what makes the most sense to ensure continued progress.

*Id.*

69. Counsel followed-up with an email on October 15 to District’s Counsel. *Exhibit 13*, p. 1.

Our understanding was that the team agreed during the meeting last week that a full day of school would be available to [Student], though the initial plan was to start him on a shortened day; however, it sounds like the District is no longer offering access to a full day at this time and instead requiring that [Student] prove he can be successful for a period of time prior to increasing his services.

*Id.* District’s Counsel replied on October 20, stating that the District believed Student needed to “build his tolerance to school as he gets quite fidgety when it gets close to the three-hour mark.” *Exhibit 14*, p. 1. District’s Counsel indicated that the District did not think Student was ready for a full day but was willing to provide it if that is what Parent wanted. *Id.*

70. On average, Student attended Administration Office 2-3 days a week between October 11 and November 12. *Exhibit K*, pp. 1-2. When Student refused to attend, he had the option to complete his Online Academy work from home but typically was not interested in doing so. *Interviews with Online Learning Coach and Parent.* While at the Administration Building, Student had no behavioral issues. *Interview with Online Learning Coach.*

### **I. November IEP Team Meeting and November IEP**

71. On November 5, Director emailed Parent to inquire about scheduling an IEP Team meeting to discuss extending Student’s school day. *Exhibit O*, p. 28. After exchanging emails,

Director and Parent agreed that the IEP Team meeting would be held on November 8 at 3:30 p.m. *Id.*

72. During this investigation, the District produced a notice of meeting for the IEP Team meeting scheduled for November 8. *Exhibit N*, pp. 5-6. This notice contained a Parent Contact Log which included one entry:

Date	Type	Result	Description
11/5/2021	Emailed	Will attend	Email communication occurred to select the date/time of the meeting that worked for all parties.

*Id.* Parent said she never received the notice of meeting. *Interview with Parent.* The District did not know whether the notice was sent to Parent and produced no evidence indicating it was sent. *Interviews with Director and School Psychologist.*

73. Student’s IEP Team met as scheduled on November 8. *Id.* Parent and Counsel attended the meeting. *Interview with Parent.*

74. During the meeting, the IEP Team agreed to extend Student’s school day by having Student attend two classes at High School in the morning. *Interviews with Director, Parent, and School Psychologist.* Under the plan, Student would arrive at High School around 9:30 and go to the resource room. *Interviews with Director and School Psychologist.* School Psychologist would provide Student’s psychological services in the resource room, occasionally with an affective needs teacher. *Interview with School Psychologist.* The goal was to help Student build a relationship with that teacher should he transition to more time at High School. *Id.*

75. Next, Student would attend two general education electives—art and P.E. *Id.* The IEP Team selected electives to decrease the likelihood that Student would be academically overwhelmed and, in turn, increase his chance for success with this placement. *Id.* Student was very excited about this plan—more excited than he had been about attending school in a long time. *Interview with Parent.*

76. The November IEP Team meeting resulted in an IEP dated November 8 (“November IEP”). *Exhibit A*, pp. 93-118. The portion of the November IEP regarding present levels of performance indicated that Student was “able to access the curriculum with support from the online instructor. [Student] [was] able to ask for help and breaks.” *Id.* at p. 101. This section also contained updates on Student’s progress on his annual goals noting, in part, that Student was “not currently doing math due to a refusal.” *Id.*

77. The November IEP acknowledged that, as a result of his disabilities, Student benefited from “a small group setting with structure, consistent reminders, and clear expectations.” *Id.* at p. 105. Student had difficulty regulating his emotions when he was upset and became verbally

aggressive when he did not want to follow adult directives. *Id.* Student’s deficits in reading comprehension and fluency levels affect his ability to read grade-level material in the general education curriculum, leading to work refusal. *Id.*

78. Student’s goals and accommodations under the November IEP remained unchanged from the October IEP. *Id.* at 107-112.

79. Student received the same special education and related services under the November IEP as he did under the October IEP. *Id.* at p. 114.

80. The November IEP Team meeting also resulted in a revised BIP dated November 9 (“November BIP”). *Exhibit A*, pp. 119-123. No substantive changes were made to the May BIP; instead, the IEP Team simply removed references to strategies that were specific to Separate School. *Id.*; *Interviews with Parent and School Psychologist*.

81. November 15 was Student’s first day in the new placement. *Interviews with Director and Parent*. Student was excited to go to High School and attended the first two days without issue. *Interview with Parent*. However, beginning on the third day, Student refused to attend. *Id.*; *Exhibit J*, p. 2. Student refused to attend every day since November 16, until he was returned to his prior placement (i.e. only at the Administration Office) around December 1. *Interview with Director*.

82. To date, the District has not been able to locate a separate school for Student. *Interview with Director*.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District failed to provide Parent proper notice of the IEP Team meetings held on September 29, October 6, and November 8, in violation of 34 C.F.R. § 300.322(a).**

The first allegation accepted for investigation concerns whether the District failed to provide Parent adequate notice of IEP Team meetings held on September 29, October 6, and November 8.

The IDEA requires school districts to notify parents of IEP Team meetings “early enough to ensure they have an opportunity to attend” and to schedule meetings at a mutually agreed on time and place. 34 C.F.R. § 300.322(a). Notice of the meeting must indicate: (i) the purpose, time and location of the meeting, (ii) the attendees, and (iii) inform parents that they may invite other individuals. 34 C.F.R. § 300.322(b)(i)-(ii).

Here, the District proactively worked with Parent to ensure the meetings held on September 29, October 6, and November 8 were scheduled on dates and times that worked for Parent. (FF #s 24, 25, 45, 70.) The email correspondence evidences that the District satisfied its obligation with regard to scheduling the meetings. (*Id.*) During this investigation, the District provided copies of notices of meeting that contained the required content, such as the specific purpose of the meeting, the attendees, and Parent’s right to invite other individuals. (FF #s 26, 46, 71.) However, nothing in the record evidences that the District ever sent the notices to Parent. (FF #s 26, 27, 46, 71.) Instead, it appears as if the District created the notices in its IEP management system but did nothing further with them. (*Id.*) Two of the notices contain a Parent Contact Log, indicating that the meetings were scheduled with Parent via email. (FF #s 26, 71.) Neither of the logs indicate that an actual notice of meeting was sent to Parent. (*Id.*) As a result, the SCO finds and concludes that the District violated the procedural requirements of 34 C.F.R. § 300.322(a).

### Procedural Violation

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

The District’s failure to provide proper notice of meetings had no effect on Student’s education. Because the District scheduled the meetings with Parent, Parent was not denied an opportunity to participate in the meetings as a result of the District’s deficient notice and, indeed, Parent attended the meetings. Parent was aware of her right to invite individuals to the meeting, as evidenced by Counsel’s attendance at the meetings on October 6 and November 8. For these reasons, the SCO finds and concludes that the procedural violation did not result in a denial of FAPE.

### Systemic IDEA Violation

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

Here, the District failed to provide Parent with proper notice of three meetings held within less than seven weeks. (FF #s 26, 27, 46, 71.) Parent indicated that, during Student's time in the District, she inconsistently received notices of meeting. (FF # 26.) During interviews, the District could not identify who prepared the notices or who sent the notices. (FF #s 26, 27, 46, 71.) And, even when the District did provide Parent notice of a meeting, the invitees on the notice were inconsistent with the actual attendees at the meeting. (FF # 44.) To the SCO, this suggests the District does not have a solid system in place regarding notices of meeting, at least for students in transitional placements.

The evidence in the record suggests that the District excels at working with parents to schedule meetings, but this collaborative effort does not excuse the District from providing formal notice in compliance with the IDEA. Even though providing such notice seems like a mere formality, it is absolutely required by the IDEA. Current District policy does not specify how a Notice of Meeting should be sent or what content it must contain. (FF # 28.) For these reasons, the SCO finds and concludes that the violation is systemic. The SCO has crafted a remedy, outlined below, that is designed to prevent recurrence of this violation.

**Conclusion to Allegation No. 2: The District conducted an MDR within ten school days of the District's decision to change Student's placement, consistent with 34 C.F.R. § 300.530(e). However, the District failed to notify Parent of the decision to change Student's placement based on disciplinary removals, in violation of 34 C.F.R. § 300.530(h).**

The second allegation accepted for investigation relates to whether the District timely conducted an MDR.

Discipline of a student with a disability may result in a change to the child's placement and entitle the student to procedural protections under the IDEA. *See* 34 C.F.R. §§ 300.530, 300.536. Within ten school days of a disciplinary change in placement, a school district must perform an MDR to determine whether the behavior at issue was a manifestation of the student's disability. *Id.* § 300.530(e)(1). The behavior must be determined to be a manifestation of the student's disability if: (1) the behavior in question was "caused by, or had a direct and substantial relationship to" the student's disability, or (2) the behavior in question was a result of the school district's failure to implement the student's IEP. *Id.* Such a determination triggers additional obligations for the school district. *Id.* § 300.530(f). If the behavior is a manifestation, the school district should return the student to his or her prior placement. *Id.* On the contrary, if the behavior is *not* a manifestation of the student's disability, the school district may discipline the student in the same manner as a non-disabled student. *Id.* § 300.530(c). The district must, however, ensure the student continues to receive educational services as specified in 34 C.F.R. § 300.530(d).

### Disciplinary Change of Placement

Before analyzing whether the District timely conducted an MDR, the SCO must determine whether a disciplinary change of placement occurred and, if so, the date the change of placement happened.

A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of short-term removals that total more than 10 school days and constitute a pattern. *Id.* § 300.536(a). Such a pattern exists where the removals involve “substantially similar” behavior and where other factors—such as the length of each removal, total amount of time removed, and the proximity of removals—support the existence of a pattern. *Id.* § 300.536(a)(2)(i)-(iii). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis; this determination is inherently subjective. *Id.* § 300.536(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

Here, the SCO finds that Student’s disciplinary change of placement occurred on September 28, 2021. Student received a five-day out-of-school suspension on September 13. (FF # 18.) The District had no school on September 17, which would have been the final day of Student’s suspension. (FF # 21.) Though it is unclear whether Separate School had classes on September 17, that fact does not affect the outcome. On September 16, Separate School terminated its contract with the District to provide services to Student and, at that point, Student was no longer a Separate School student and was a District student. (FF #s 20, 21.) Accordingly, September 17 does not count as a day of removal.

Therefore, Student’s tenth day of removal occurred on September 27. On September 28, Student had been removed from his current placement for more than 10 consecutive school days, resulting in a disciplinary change of placement.

### Timeliness of MDR

As noted above, a school district must hold an MDR within ten school days of a disciplinary change of placement. 34 C.F.R. § 300.530(e)(1). Because Student’s disciplinary change of placement occurred on September 28, 2021, the District needed to complete the MDR by October 13, 2021.

Here, the District held Student’s MDR on October 6, in compliance with the requirements of § 300.530(e)(1). However, the SCO notes that this compliance occurred purely by accident. The District held the MDR only to appease Parent, not because the District believed an MDR was required. (FF # 36.) Throughout this investigation, the District has asserted that, under the District’s procedures, no MDR was necessary. (*Id.*) Specifically, the District argues that Student

was only removed for five days—the length of his suspension from Separate School. (*Id.*) The District has not explained how it classifies the other days on which Student was not permitted to attend school.

The SCO disagrees with the District’s characterization of Student’s removal. After Student’s suspension ended, the District indisputably made *no offer* for Student to receive educational services until, at the earliest, September 29 (and, realistically, October 6). (FF #s 33, 54.) This was a *de facto* extension of Student’s suspension from Separate School that resulted in a disciplinary change of placement and triggered the MDR requirements in § 300.530. *See, e.g., Weld 5 Sch. Dist.*, 120 LRP 25001 (SEA CO 7/14/20); *Larimer Cnty. Sch. Dist.*, 115 LRP 36469 (SEA CO 7/14/15).

For the reasons above, the SCO finds and concludes that the District held an MDR within ten school days of Student’s disciplinary change of placement, consistent with § 300.530(e)(1).

#### Notice of Disciplinary Change of Placement

On the date a removal becomes a disciplinary change of placement, the school district must notify parents of the decision and provide parents a copy of the procedural safeguards notice. 34 C.F.R. § 300.530(h). Student’s disciplinary change of placement occurred on September 28. The District failed to notify Parent of the disciplinary change of placement or provide her with the procedural safeguards. (FF #38.) This resulted in a procedural violation of 34 C.F.R. § 300.530(h).

As discussed above, a procedural violation constitutes a denial of FAPE only where the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

Here, the SCO finds and concludes that the procedural violation did not result in a denial of FAPE. The failure to provide notice of the disciplinary change of placement likely had no impact on Student’s right to a FAPE and did not significantly impede Parent’s opportunity to participate in the decision-making process. Indeed, the transition between a removal and a disciplinary change of placement is an automatic one that requires no parent input. Finally, though other actions by the District deprived Student of an educational benefit, the failure to comply with 34 C.F.R. § 300.530(h) did not.

### MDR Team's Decision-Making Process

Ultimately, the MDR determined that Student's behavior was a manifestation of his disability. (FF # 40.) However, the SCO has concerns about how the MDR team reached its conclusion. Both Parent and Counsel indicated that the MDR team focused on whether Student knew what he was doing was wrong and whether his behavior was premeditated. (FF # 42.) Counsel reminded the MDR Team that such analysis is inappropriate. (*Id.*) The SCO agrees that this line of questioning by the MDR team was misguided. In determining whether a student's conduct was caused by had a direct and substantial relationship to the student's disability, the question is not whether the student knew right from wrong or whether the student chose to act a certain way. Instead, the focus must be directly on the relationship between the behavior and the student's disability.

Parent's Complaint initially raised concerns about the MDR team's decision-making process. However, this allegation was not accepted for investigation, because the improper questioning did not affect the outcome of the MDR or otherwise impact Student. Ultimately, Counsel was able to redirect the MDR team's focus; otherwise, this line of questioning could have resulted in a violation of the IDEA.

#### **Conclusion to Allegation No. 3: The District failed to provide Student educational services after his tenth day of removal during the 2021-2022 school year, in violation of 34 C.F.R. §§ 300.530(b)(2) and 300.530(d).**

In the third allegation accepted for investigation, the Parent alleges the District failed to provide Student with services after his tenth day of removal.

Once a student has been removed from his or her educational placement for ten school days in the same school year, the IDEA requires a school district to provide educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). Such educational services must allow the student "to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." *Id.* § 300.530(d)(1)(i). The student must also receive "as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur." *Id.* § 300.530(d)(1)(ii). After the tenth day of removal—for removals that are not a change of placement—school personnel, in consultation with at least one of the student's teachers, determine the "extent to which services are needed" to provide a FAPE. *Id.* § 300.530(d)(4). If the removals result in a change of student's placement, the IEP Team must determine what services are necessary for the student to progress toward meeting his or her IEP goals. *Id.* § 300.530(d)(5).

Here, September 27 was Student's tenth day of removal during the 2021-2022 school year. Because his ten days of removal were consecutive, Student's disciplinary change of placement occurred the following day, September 28. Therefore, beginning on September 28, the District

was obligated to provide Student educational services and behavioral services to allow Student to participate in the general education curriculum and progress towards his IEP goals. As a result of Student's disciplinary change of placement, the District was required to convene Student's IEP Team to determine what those services should look like.

The District conceded that Student did not receive any services between September 13 and October 11. (FF # 60.) The District appropriately convened Student's IEP Team on September 29—only one day after Student's disciplinary change of placement (though, apparently, by coincidence)—to discuss interim services for Student. (FF # 30.) However, the IEP Team failed to make a decision regarding those services and, instead, chose to wait until the MDR was completed. (FF #s 33, 34.) As a result, Student continued to go without services for an additional six school days. (FF # 60.) In total, the District failed to provide Student with any services for eight school days after his disciplinary change of placement. (*Id.*)

As a result, the SCO finds and concludes that the District violated 34 C.F.R. §§ 300.530(b)(2) and (d) by failing to provide Student educational services after his tenth day of removal during the 2021-2022 school year.

However, the District's failure to provide Student services extends beyond Student's first day at the Administration Office. The educational services provided during a removal must allow the student to participate in the general education curriculum and make progress on IEP goals. 34 C.F.R. § 300.530(d)(1)(i). Here, for reasons that are not completely clear, the District enrolled Student in two courses in Online Academy: English I and World History. (FF # 62.) Student's October IEP and November IEP both contained two math goals. (FF #s 7, 56, 77.) The progress notes in Student's November IEP indicated that Student was not making progress on his math goal due to work refusal, though Student was not even being offered a math course. (FF #s 62, 75.) Additionally, Online Learning Coach and Special Education Teacher allowed Student to determine when he needed assistance from Special Education Teacher. (FF # 66.) In doing so, staff placed the burden on the Student to know when he needed specialized instruction. For these reasons, the SCO finds and concludes that the services Student receives at the Administration Office fail to satisfy the requirements of 34 C.F.R. § 300.530(d)(1)(i).

No showing of educational harm is required to conclude that Student is entitled to compensatory services. Instead, it is sufficient to consider the timely provision of educational services, comparing the services Student should have received to the services Student actually received. *See Holman v. Dist. of Columbia*, 67 IDELR 39 (D.D.C. 2016) (stating that "[t]he 'crucial measure' under the materiality standard is the 'proportion of services mandated to those provided' and not the type of harm suffered by the student."). In this case, Student received no services between September 13 and October 11. (FF # 60.) As a result, Student was unable to participate in the general education curriculum or make progress on his IEP goals. The difference between what should have been provided and what was provided adequately demonstrates educational harm in this case. Consequently, the District's failure to provide

services resulted in a denial of FAPE, entitling Student to compensatory services. *See Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

### Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package designed to help place Student in the same position he would have been had he been provided educational services during his removal.

Here, the District failed to provide Student with any access to his education for eight school days following his disciplinary change of placement. Though eight school days may seem insignificant, the time without education is substantial when coupled with Student’s ten school days of disciplinary removal. Given the relatively short period of instruction missed, the SCO finds a calculation based on the amount of services missed to be appropriate. The SCO has based the amount of services missed on the October IEP, which was developed by Student’s IEP Team during the period in which Student was not receiving services. (FF # 57.) Therefore, the SCO awards (a) 96 minutes of direct psychological services and (b) 240 minutes of direct specialized instruction. Additionally, to compensate for the fact that Student has not received any math instruction since September 13, the SCO awards 270 minutes of direct specialized instruction in the area of math. This additional math instruction is designed to help Student make the progress he would have made but for the District’s failure to provide him with math instruction.

### Systemic IDEA Violation

As noted above, pursuant to its general supervisory authority, CDE must 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). In this case, the District has no procedure regarding providing educational services during periods of removal. (FF # 37.) And the District’s actions in this case demonstrate a flawed understanding of the requirements for providing services during removals. For example, had the District understood its obligations under § 300.530(b)(2), the IEP Team would have made a decision regarding Student’s services at the meeting on September 29. Instead, the meeting—which was led by Director—adjourned without a decision and left Student without access to his education. (FF # 34.) This mistake by the District is especially concerning given Director’s direct involvement. (FF # 30.) Such a misunderstanding by

Director coupled with the lack of procedure undoubtedly has the potential to impact all students receiving special education and related services in the District. The SCO, therefore, finds that the evidence supports a systemic violation regarding the provision of education services after the tenth day of removal. The SCO has created a remedy, detailed below, that aims to prevent recurrence of this violation.

**Conclusion to Allegation No. 4: Parent meaningfully participated in the October 6 IEP Team meeting, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).**

Parent's fourth allegation involves her ability to meaningfully participate in the IEP Team meeting held on October 6, immediately following the MDR.

The IDEA requires that parental participation be meaningful, to include carefully considering parents' concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful consideration does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.*

An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . ." *Id.*

Here, Parent had an opportunity to meaningfully participate in the IEP Team meeting on October 6. The SCO acknowledges Parent's concerns about the District presenting a single offer for services at the outset of the meeting. (FF # 49.) However, this unfortunate beginning to the meeting did not foreclose Parent's opportunity to meaningfully participate. The District asked Parent for her suggestions on placement options and, in response, identified why the District believed the suggested options were not possible. (FF # 52.) The IEP Team also revisited options initially discussed at the September 29 meeting. (FF # 51.) Ultimately, though the IEP Team proceeded with an option Parent did not like, the IEP Team modified that option to address Parent's concerns by reducing Student's time at the Administration Office from a full day to a partial day. (FF # 50.)

To the extent Parent feels as if the District failed to meaningfully consider her suggestions with its quick, seemingly cursory rejections (FF # 52), the SCO attributes that to the fact that the October 6 IEP Team meeting was essentially a continuation of the September 29 IEP Team meeting. (See FF #s 30-34.) Between September 29 and October 6, nothing changed other than the MDR team determining that Student’s behavior was a manifestation of his disability. There were no other options available for Student’s placement, so the IEP Team was essentially rehashing the options previously discussed and making a final decision.

For these reasons, the SCO finds and concludes that Parent meaningfully participated in the October 6 IEP Team meeting, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

**Conclusion to Allegation No. 5: Student was not placed in an IAES and, therefore, 34 C.F.R. § 300.531 did not apply.**

Parent’s fifth allegation asserts that the District failed to allow Student’s IEP team to determine his IAES during the IEP Team meeting on October 6. Parent contends the District determined Student’s IAES.

Under the IDEA, school personnel may remove a student to an IAES for certain types of behavior, regardless of whether the behavior is a manifestation of the student’s disability. 34 C.F.R. § 300.530(g). The student’s IEP Team determines the appropriate IAES. *Id.* § 300.531.

Here, the SCO finds Student was not placed in an IAES—either by School personnel or Student’s IEP Team—and, thus, 34 C.F.R. § 300.531 did not apply. Ordinarily, under § 300.530(f), Student would have returned to his prior placement following the MDR. However, because Separate School terminated its contract with the District, Student was unable to return to his prior placement. (FF #s 20, 21.) The District was unable to locate another separate school for Student. (FF # 22.) Thus, the District was forced to temporarily change Student’s placement. The record makes clear that School personnel did not unilaterally remove Student to an IAES. (FF # 22, 30, 53.) Instead, the District convened Student’s IEP Team to determine a temporary placement until a new separate school could be located. (*Id.*) The SCO finds and concludes that no violation of 34 C.F.R. § 300.531 occurred.

**Conclusion to Allegation No. 6: The District did not fail to provide Parent with PWN following the MDR held on October 6.**

The sixth allegation accepted for investigation concerns whether the District provided Parent with PWN after the MDR held on October 6, 2021. In her reply, Parent conceded this allegation and, as such, no analysis is necessary. *Reply*, p. 1. The SCO finds and concludes that no violation of 34 C.F.R. § 300.503 occurred.

**Conclusion to Allegation No. 7: The District did not fail to conduct an FBA or revise Student's BIP after the MDR determined that Student's behavior was a manifestation of his disability.**

Parent's seventh allegation relates to the District's obligation to conduct an FBA or revise Student's BIP after the MDR concluded that Student's behavior was a manifestation of his disability.

As noted above in the Conclusion to Allegation No. 2, a determination that a student's behavior was a manifestation of the student's disability can trigger additional obligations for school districts. If the district has not previously completed an FBA, the student's IEP Team must conduct an FBA and implement a BIP for the student. 34 C.F.R. § 300.530(f). Alternatively, where a BIP has already been developed, the IEP Team must review the BIP "and modify it, as necessary, to address the behavior." *Id.*

Here, neither an additional FBA nor a revision to Student's BIP was necessary following the MDR. The May BIP, which was in effect at the time of the incident, clearly identified physical aggression as a target behavior. (FF #s 4, 11.) The BIP noted that Student used physical aggression to escape a non-preferred task or to gain control over situations. (FF # 11.) The physical aggression Student demonstrated during the incident aligned with the description of his behavior in the May BIP. (FF #s 16, 17.) Student had no other behavioral incidents at Separate School during the 2021-2022 school year. (FF # 20.) District staff had no reason to believe that the BIP was no longer representative of Student's behaviors. (FF # 43.)

Counsel faulted the District for not amending Student's BIP to remove references to strategies specific to Separate School. Though Counsel made this request at the October 6 MDR meeting, Student's BIP was not amended until November 9. (FF #s 43, 79.) Ideally, the District should have amended Student's BIP sooner. But the District's delay did not result in a violation of 34 C.F.R. § 300.530(f). The purpose of § 300.530(f) is, in part, to prevent recurrence of the behavior that gave rise to the code of conduct violation. That might include identifying additional target behaviors or strategies that were not previously identified in a student's BIP. The extraneous information in Student's BIP did not impact the effectiveness of Student's BIP or the District's ability to implement the BIP. The BIP provided numerous additional strategies in each area that were not specific to Separate School, allowing it to be effectively implemented in Student's current placement. (FF #s 12-15.) This finding, however, has no bearing on the District's obligation to revise Student's BIP once the District locates a more permanent placement for Student.

For these reasons, the SCO finds and concludes that 34 C.F.R. § 300.530(f) did not require the District to conduct an FBA or revise Student's BIP following the MDR.

**Conclusion to Allegation No. 8: Student was not placed in IAES; therefore, no determination over the appropriateness of the IAES is necessary.**

As noted above, the IDEA allows a school district to remove a student to an IAES for certain types of behavior. 34 C.F.R. § 300.530(g). In Conclusion to Allegation No. 5, the SCO determined that Student had not been placed in an IAES. Instead, Student's placement was temporarily changed due to the District's inability to locate a new separate school for Student. Therefore, no analysis regarding whether or not the IAES was appropriate is required. The SCO finds and concludes that no violation of 34 C.F.R. § 300.530(g) occurred.

**REMEDIES**

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

- 1) Failing to provide Parent proper notice of IEP Team meetings, in violation of 34 C.F.R. § 300.322(a);
- 2) Failing to notify Parent of the decision to change Student's placement based on disciplinary removals, in violation of 34 C.F.R. § 300.530(h); and
- 3) Failing to provide Student educational services after his tenth day of removal during the 2021-2022 school year, in violation of 34 C.F.R. §§ 300.530(b)(2) and 300.530(d).

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

1. By **Tuesday, February 1, 2022**, the District shall submit to CDE a corrective action plan ("CAP") that adequately 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. Attendance and completion of training provided by CDE on providing proper notice of an IEP Team meeting and of a disciplinary change of placement. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.322(a) and 300.530(h). Director and CDE Special Education Monitoring and Technical Assistant Consultant Rebecca O'Malley will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. Given the similarity and proximity in findings of noncompliance with State Complaint 2020.518, this training will include checks for understanding with participants. This training is mandatory for Director, Special Education Coordinator, Special Education Administrative Assistant, all special education teachers, all case managers, and any

other staff members who routinely send notices pursuant to §§ 300.322(a) or 300.530(h). Such training shall be completed no later than **Tuesday, March 1, 2022**.

- i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Tuesday, March 8, 2022**.
- b. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance. Due to the similarities and proximity in findings of noncompliance in State Complaint 2020.518, verification activity will include collaborative, side-by-side file reviews related to and completion of a facilitated self-assessment in the area of disciplinary change of placement.

## 2. District Policies and Procedures

- a. The District must revise its written procedures regarding providing Notice of Meeting to parents, in accordance with 34 C.F.R. § 300.322(a)-(b). Such procedures should outline, at a minimum, how the notice of meeting will be provided to parent(s) and the required content for the notice of meeting. The District must develop these procedures and submit them to CDE for approval by **Tuesday, March 1, 2022**.
- b. The District must develop written procedures regarding the provision of services to a student following the tenth day of removal in a school year, in accordance with 34 C.F.R. § 300.530(b)-(d). Such procedures should outline when the District is required to provide services, who determines the services needed, and what services are necessary. The District must develop these procedures and submit them to CDE for approval by **Tuesday, March 1, 2022**.

## 3. Review of IEP

- a. The District must convene Student's IEP Team, at a mutually agreeable date and time, by **Tuesday, February 15, 2022**. Student's IEP Team should review and revise Student's current IEP and determine what additional services are necessary to allow Student to make progress on his annual goals—specifically, his math goals—during his temporary placement, consistent with 34 C.F.R. § 300.530(d)(1)(i). The IEP Team should ensure Student's IEP addresses Student's academic needs in accordance with 34 C.F.R. § 300.324(a)(1)-(2). The District must submit Notice of Meeting, Prior Written Notice, and the IEP to CDE by **Friday, March 4, 2022**.

4. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **96 minutes of direct psychological services outside the general education classroom**. This instruction must be provided by a school psychologist. All 96 minutes must be completed by **Thursday, May 26, 2022**.
- b. Student shall receive **510 minutes of direct specialized instruction outside the general education classroom**. At least 270 minutes of this specialized instruction shall be in the area of math. This instruction must be provided by a special education teacher. All 510 minutes must be completed by **Thursday, May 26, 2022**.
- c. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- d. To verify that Student has received the services required by this Decision, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. The District shall communicate with the District as necessary to obtain this information.
  - i. **By Tuesday, February 1, 2022**, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent,

and should thus be excused from providing compensatory services, rests solely with CDE.

- ii. The District shall submit the schedule of compensatory services to CDE no later than **Tuesday, February 15, 2022**. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify CDE of the change in the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Rebecca O'Malley  
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 CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 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 3rd day of January, 2022.

*Ashley Schubert*

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Ashley E. Schubert  
State Complaints Officer

## Appendix

### **Complaint, pages 1-13**

- Exhibit 1: May IEP
- Exhibit 2: Discipline Records
- Exhibit 3: Email Correspondence
- Exhibit 4: Email Correspondence
- Exhibit 5: Meeting Documentation
- Exhibit 6: Manifestation Determination
- Exhibit 7: Notice of Meeting
- Exhibit 8: Calendar Invitation
- Exhibit 9: Email Correspondence
- Exhibit 10: Email Correspondence
- Exhibit 11: Email Correspondence
- Exhibit 12: Email Correspondence
- Exhibit 13: Email Correspondence
- Exhibit 14: Correspondence
- Exhibit 15: Email Correspondence
- Exhibit 16: Email Correspondence

### **Response, pages 1-7**

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Blank
- Exhibit D: MDRs
- Exhibit E: Discipline Records
- Exhibit F: Documentation of Meetings
- Exhibit G: Blank
- Exhibit H: Blank
- Exhibit I: Blank
- Exhibit J: Progress Monitoring Data
- Exhibit K: Attendance Records
- Exhibit L: District's Calendar
- Exhibit M: PWNs
- Exhibit N: Notice of Meeting
- Exhibit O: Correspondence
- Exhibit P: District's Policies and Procedures

### **Reply, pages 1-4**

**Telephonic Interviews with:**

- Special Education Director: December 9, 2021
- Online Learning Coach: December 9, 2021
- School Psychologist: December 9, 2021
- Parent: December 14, 2021