

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

**State-Level Complaint 2023:600
Douglas County School District**

DECISION

INTRODUCTION

On October 27, 2023, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Douglas County School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “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 October 27, 2022 through the present 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 violations occurring after October 27, 2022.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to conduct a manifestation determination review (“MDR”) within ten school days of the District’s decision in May 2023 to change Student’s placement for disciplinary reasons by restricting Student’s opportunity to participate in nonacademic activities—specifically, recess—in violation of 34 C.F.R. § 300.530(e).

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

2. Failed to properly implement Student’s IEP from the beginning of the 2023-2024 school year to October 27, 2023 by failing to provide the accommodation in Student’s IEP allowing him movement breaks, in violation of 34 C.F.R. § 300.323.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Student attends fourth grade at a District elementary school (“School”). *Exhibit A*, p. 1. He is eligible for special education and related services under the categories of Other Health Impairment and Specific Learning Disability. *Id.*
2. Student is ten years old, a “funny,” “bubbly” student who also suffers from anxiety. *Id.* at p. 4; *Interview with Parent*. His social skills lag somewhat behind his peers, and he can occasionally be blunt or rude. *Interview with Parent*. He is not shy or hesitant to speak to adults; he advocates for himself and will ask for a break or, if he is in the administrative office because of some difficulty, for more time to gather himself before returning to his school day. *Interviews with Special Education Teacher, General Education Teacher, and Principal*.
3. Student struggles with negative behaviors such as verbal and physical aggression, but these behaviors do not usually interfere with his learning or that of his peers. *Exhibit A*, p. 5. Most of his behaviors occur during recess and lunch. *Exhibit B*, p. 4.
4. Parent alleges that the staff at School have not been following Student’s IEP by denying him the accommodation in his IEP for movement breaks. *Complaint*, p. 7. She also alleges that Student was disciplined by being isolated at recess so that he was forced to be alone by himself, without the opportunity to play with other children. *Id.* at p. 5; *Interview with Parent*. She sees a pattern of discrimination and mistreatment by School staff. *Complaint*, pp. 3-11; *Interview with Parent*.
5. The District denies these allegations. *Response*, pp. 1-5. Principal acknowledges the stark difference between Parent’s understanding of Student’s experience at School and that of School staff. *Interview with Principal*. Both parties feel that there are issues with communication and that they are not being heard. *Interviews with Parent and Principal; see, e.g., Exhibit L*, pp. 24, 33.

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

B. Student's IEP

6. Student's November 15, 2022 IEP was in effect during the spring 2023 and fall 2023 semesters, the time of the alleged violations. *Exhibit A; Complaint*, pp. 5, 7.
7. The IEP Team recorded Student's level of academic and functional performance, noting that he was able to make strong friendships through playing with his peers, although he could be impulsive and say hurtful things. *Exhibit A*, p. 3-4. He struggled in his academic classes, lagging a full grade level behind in reading and scoring at a kindergarten level in math. *Id.*
8. Student's disabilities, including diagnoses of PTSD, OCD, and ADHD, led him to need extra support in the areas of communication, math, reading, writing, and social emotional wellness. *Id.* at p. 7.
9. The IEP Team provided ten annual goals, eight focused on academics and two focused on social-emotional wellness. *Id.*
10. Student's IEP provided accommodations to allow him access to the general education curriculum. *Id.* at p. 13. The accommodations included, as relevant here, "Do not take away recess as a consequence" and "Allow movement breaks throughout the day." *Id.*
11. To enable Student to meet his goals, his IEP provided specialized instruction in reading, writing, and math; speech therapy from a speech-language pathologist; and two hours per month of mental health services to address his social-emotional and self-determination goals. *Id.* at p. 16.
12. The IEP Team determined that Student should be in the general education environment at least 80% of the time. *Id.* at p. 17.
13. Student's providers receive a "snapshot" of his IEP, which includes a list of his accommodations, via email at the beginning of the year and after any IEP Team meeting. *Interviews with Special Education Teacher and General Education Teacher*. Staff who need full access to Student's IEP—such as Special Education Teacher, School Psychologist, and Principal—can also pull it up through the District's IEP software. *Interviews with Special Education Teacher, School Psychologist, and Principal*.

C. Recess Restrictions in Spring 2023

14. In the spring 2023 semester, Student was friends with another boy in his grade ("Friend"). *Response*, p. 3. Student and Friend often encouraged each other to engage in negative behaviors, such as insulting other students, defying staff, and clogging a toilet so thoroughly it needed to be removed for repairs. *Exhibit L*, pp. 3, 6, 27; *Exhibit H*, p. 1; *Interviews with*

School Psychologist and Principal. These behaviors occurred primarily at lunch and recess. *Exhibit A*, pp. 4-5; *Exhibit B*, p. 4; *Interview with Principal*.

15. To address this negative dynamic, Principal imposed “zone” restrictions for Student and Friend during recess from roughly February 27, 2023 through March 20, and again from roughly April 13 through May 8. *Complaint*, p. 5; *Response*, p. 3; *Exhibit L*, pp. 6, 9-12; *Interviews with Principal and Parent*.
16. School has a very large playground, which is divided into seven “zones.” *Interviews with Principal, Special Education Teacher, General Education Teacher, School Psychologist, and Principal*; see *Response*, p. 2.
17. The zones are separated primarily by activity. *Interviews with Principal, Special Education Teacher, and School Psychologist*; see *Response*, p. 2. For example, a large soccer field is divided down the middle into two zones; paved areas for four-square and similar games comprise a single zone; a sprawling, L-shaped grassy area with playground equipment is divided into two zones; a basketball court along with a large dirt play area is in another zone; and a grassy area of undeveloped land is its own zone. See *Response*, p. 2.
18. School used the “zones” to limit certain games to certain areas, restrict students to a smaller area of the playground on days when fewer adults were available to supervise, and block off certain areas for weather-related reasons. *Response*, p. 3. School would also use the zones to separate students who were in immediate conflict with each other or who caused conflict when together. *Id.*
19. When School imposed “zone restrictions” on Student, it also imposed them on Friend. *Response*, p. 3; *Exhibit L*, pp. 6, 9-12. Student and Friend could not both be in the same zone because they had recently been goading each other into calling other students names. *Interview with Principal*; *Exhibit L*, pp. 6, 9-12, 27.
20. To assign the zones fairly, the teacher or staff overseeing recess would alternate between giving Student and Friend the first pick as to which zone they wanted to play in. *Interviews with School Psychologist and Principal*; *Exhibit L*, p. 9. If they wanted to switch zones during recess, they could talk to the teacher overseeing recess and then switch, so long as they were still separated. *Exhibit L*, p. 9.
21. School had two recesses per day, and one or two grades would go outside for each recess. *Interviews with General Education Teacher, School Psychologist, and Principal*. Between 50 and 100 students were on the playground at every recess, depending on teachers’ schedules. *Id.*
22. No student would be isolated or forced to be alone on the playground. *Interviews with Special Education Teacher, General Education Teacher, School Psychologist, and Principal*. Principal

has allowed Student to invite other children to play with him and offered to invite another child on his behalf. *Interview with Principal*. None of the zones were an “isolation” zone. *Interviews with General Education Teacher and Special Education Teacher*. There were play options in all zones except the grassy area of undeveloped land, and if a zoned student chose that area, staff would suggest they pick an area with more activity. *Interview with Principal*. As a general matter, staff did not encourage students to go to the grassy area because it was easier to monitor the students when they stayed in the other areas. *Id.*; see *Response*, p. 2.

23. Student was allowed to sit with Friend at lunch in the cafeteria even when under the zone restrictions, and Principal wrote at the time that “[t]he goal is for the boys to demonstrate that they can positively influence one another.” *Exhibit L*, p. 9.
24. Although Parent believes, from Student’s reports, that Student was isolated and made to be alone at recess, the SCO finds that there must have been a miscommunication: School staff were consistent and credible in their explanations for how the “zone” system works. *Interviews with Parent, Special Education Teacher, General Education Teacher, School Psychologist, and Principal*; see *Exhibit A*, p. 13. Further, emails from spring 2023 focused on the separation of Student from Friend, documented the system by which Student and Friend would alternate first pick of the zones, and documented Student’s and Friend’s option to switch zones during recess. See *Exhibit L*, pp. 6, 9-12. Nothing in the Record supports a finding that Student was forced to be alone by himself.
25. Accordingly, the SCO finds that Student was restricted from playing with Friend at recess, but Student was not isolated or prevented from playing with other students (except for Friend) during that time.

D. Movement Breaks in Fall 2023

26. Student’s IEP requires staff to “[a]llow movement breaks throughout the day.” *Exhibit A*, p. 13. This changed somewhat from the 2022-2023 school year to the 2023-2024 year: Student was allowed, in the 2022-2023 school year, to walk the hallways and, on Fridays if he did not display negative behavior, to visit some chickens residing on or near School property. *Interviews with Parent and General Education Teacher*; *Exhibit L*, p. 25.
27. In the fall 2023 semester, however, Student reported to Parent that he was no longer allowed any movement breaks. *Interview with Parent*; *Exhibit L*, p. 25. Per Parent, Student’s General Education Teacher said Student was not allowed to take movement breaks. *Id.*
28. Although General Education Teacher agrees that Student has not been allowed to visit the chickens this year—a trip she says takes too much time—she and the other School staff say that he has otherwise been allowed to have movement breaks. *Interviews with Special Education Teacher, General Education Teacher, School Psychologist, and Principal*.

29. General Education Teacher has a recurring alarm that goes off at 10:45am and 1:15pm each day. *Interviews with General Education Teacher and Special Education Teacher.* When it alerts, she asks Student if he wants a movement break. *Interview with General Education Teacher.* He usually declines. *Id.*
30. General Education Teacher will tell Student to take a movement break if she thinks he needs it; she will tell him, “You’re wiggly, go take a break.” *Id.* This happens approximately twice a week. *Id.*
31. She also monitors the class as a whole and makes the whole class take a movement break—exercise or a dance from YouTube—each day in either the morning or afternoon, depending on when the class seems to need it. *Id.* This is in addition to the two recesses per day. *Id.*
32. Student can also request a break on his own initiative, and staff will allow it unless the class is in the middle of receiving instruction. *Interviews with General Education Teacher, Special Education Teacher, and School Psychologist.* He does ask for a movement break occasionally, but not often. *Id.* Last semester, he asked for movement breaks frequently, and he was not shy about asking. *Id.*
33. Although Student does not often ask for a “movement break” specifically, he does regularly ask to get water or use the bathroom, which gets him out of his seat. *Id.* Student will occasionally request to go to the Zen Den, which is a separate room where students can go to calm down. *Id.* General Education Teacher finds that he asks to go to the Zen Den about once a week. *Interview with General Education Teacher.*
34. This semester, School tried using a “heavy box” for Student’s movement breaks: When he would be given a movement break—either by the teacher’s initiative or his own—he would be tasked with taking a colored box filled with rocks from outside the classroom to the administrative office, where he could swap it for a different box and return to the classroom. *Interviews with General Education Teacher and Special Education Teacher.* Student, however, felt that the heavy box system was embarrassing, and other students made fun of him for it. *Interview with Parent.* Parent asked School to stop using the box, and School agreed to remove it the next day. *CDE Exhibit 1.*
35. As with the recess zones, the SCO finds there must have been miscommunication. Although Student has lost the “chicken break,” School staff consistently and credibly explained how Student’s movement breaks were implemented in the fall 2023 semester. *Interviews with Special Education Teacher, General Education Teacher, School Psychologist, and Principal.*
36. Accordingly, the SCO finds that Student was allowed movement breaks throughout the day in the fall 2023 semester.

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 did not remove Student from his placement by imposing the recess zones and accordingly was not required to hold an MDR under 34 C.F.R. § 300.530(e). No violation of the IDEA occurred.

Parent’s concern is that the District changed Student’s placement by isolating him at recess as a disciplinary action and then failed to follow the change of placement with an MDR as required by the IDEA. (FF # 4.)

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 any decision to remove a student with a disability from the student’s placement because of a violation of a code of conduct, a school district must perform an MDR to determine whether the behavior at issue was a manifestation of the student’s disability or a direct result of the school district’s failure to implement the IEP. *Id.* § 300.530(e)(1).

The dispositive question for this Complaint is whether District’s disciplinary action—imposing “zones” on Student’s recess—constituted a removal of Student from his original placement. A disciplinary change of placement occurs when a school district “remov[es] a child with a disability from the child’s current educational placement” for violating the code of conduct for more than 10 consecutive school days, or for more than total 10 school days as part of a pattern of removals. 34 C.F.R. § 300.536(a). Crucially, however, a student is not “removed from placement” when all three of the following requirements are met: (1) The child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child’s IEP; and (3) the child continues to participate with nondisabled children to the extent the student would have in the student’s current placement. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, FAQ No. C-1, 81 IDELR 138 (OSERS 2022). When these three requirements are met, the IDEA’s disciplinary protections do not apply. *Id.*

Here, because the District’s disciplinary action—imposing the recess zones—satisfied these three requirements, Student was not removed from his original placement: (1) Parent does not allege, and the Record does not show, that the recess zones affected Student’s ability to appropriately participate in the general curriculum; (2) Parent does not allege, and the Record does not show, any change in Student’s services; and (3) Student continued to be able to participate with nondisabled children in unstructured play for the entirety of recess. (FF #s 14-25.)

For these reasons, the SCO finds and concludes that no disciplinary change of placement occurred under 34 C.F.R. § 300.530, and, as a result, the District was not required to conduct an MDR.

Conclusion to Allegation No. 2: The District implemented Student’s IEP by providing the movement break accommodation in compliance with 34 C.F.R. § 300.323. No violation of the IDEA occurred.

Parent’s concern is that the District did not implement Student’s IEP because it did not provide Student’s movement break accommodation.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education, related services, accommodations, and other supports described in an IEP. 34 C.F.R. §§ 300.17, 300.320; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

Here, the SCO has found that Student’s IEP requirements—including his accommodations—were made available to his teachers and providers. (FF # 13.) The SCO has further found that Student’s accommodation of “[a]llow movement breaks throughout the day” was implemented. (FF #s 26-36.) Student knew that he could ask for a break and was not shy about advocating for himself. (FF #s 2, 32.) Student would have three movement breaks per day, at a minimum, because he had two recesses and a whole-class movement break. (FF # 31.) Further, he also moved around when he asked to go to the Zen Den, to use the bathroom, or to get a drink of water. (FF # 33.) Finally, General Education Teacher and Special Education Teacher both credibly described General Education Teacher’s practice of setting an alarm to go off twice a day to remind her to ask Student if he wanted a break. (FF # 29.)

For these reasons, the SCO finds and concludes that the District implemented Student’s IEP accommodation to allow movement breaks and, as a result, the District did not violate 34 C.F.R. § 300.323 of the IDEA.

REMEDIES

The SCO concludes that the District did not violate the requirements of the IDEA or the ECEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 26th day of December, 2023.

A handwritten signature in black ink, appearing to read "Nicholaus Podsiadlik", written over a horizontal line.

Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-14

- Exhibit 1: Correspondence

Response, pages 1-6

- Exhibit A: IEP
- Exhibit B: BIP
- Exhibit C: Evals
- Exhibit D: DCSD Response 2023-600
- Exhibit E: Meeting Notice
- Exhibit F: Service Logs
- Exhibit G: Attendance Reports
- Exhibit H: Behavior Report
- Exhibit I: Progress Reports
- Exhibit J: Calendars
- Exhibit K: Policies and Procedures
- Exhibit L: Correspondence
- Exhibit M: Exhibits
- Exhibit P: OSEP Letter

Telephone Interviews

- Special Education Teacher: November 27, 2023
- School Psychologist: November 27, 2023
- General Education Teacher: November 27, 2023
- Principal: November 28, 2023
- Parent: November 29, 2023