

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Individuals with Disabilities Education Act (IDEA) and the Protection of Individuals  
from Restraint and Seclusion Act (PPRA)

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**State-Level Complaint 2024:518  
El Paso 20**

**DECISION**

**INTRODUCTION**

On February 13, 2024, 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 El Paso 20, Academy District 20 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified six allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)<sup>2</sup> and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “PPRA Rules”).<sup>3</sup> See C.R.S. § 22-32-147(6); PPRA Rule 2.07. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c); PPRA Rule 2.07(2)(f). Accordingly, this investigation will be limited to the period of time from February 13, 2023 to the present for the purpose of determining if a violation of IDEA or the PPRA 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 District denied Student a Free Appropriate Public Education (“FAPE”) because District:

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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.

<sup>2</sup> The Protection of Individuals from Restraint and Seclusion Act, C.R.S. § 26-20-101, *et seq.*, was previously titled the Protection of Persons from Restraint Act and referred to as the “PPRA.” This acronym lives on despite amendment of the Act’s title.

<sup>3</sup> The Rules are codified at 1 C.C.R. 301-45.

1. Failed to conduct a comprehensive evaluation of Student, specifically in the area of behavior, from November 2023 to present, in violation of 34 C.F.R. § 300.304(c)(6).
2. Failed to develop, review and revise an IEP that was tailored to meet Student's individualized needs from November 2023 to present because the behavioral strategies and supports, specifically Student's behavior intervention plan ("BIP"), did not adequately address behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i).
3. Failed to properly implement Student's IEP, specifically by failing to follow Student's BIP, from August 2023 to present, in violation of 34 C.F.R. § 300.323.
4. Failed to permit Parent to inspect and review education records relating to Student without unnecessary delay and before any IEP meetings after requests on or around January 26, 2024, in violation of 34 C.F.R. § 300.613.

And whether District violated the PPRA because District:

5. Improperly restrained Student on or around January 26, 2024, specifically by:
  - a. Restraining Student in a non-emergency situation, in violation of PPRA Rule 2.01(1)(a);
  - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of PPRA Rule 2.01(1)(b);
  - c. Restraining Student using handcuffs when Student was not a danger to himself or others and was not subject to a custodial arrest requiring transport, in violation of PPRA Rule 2.02(1)(a)(vii); and
  - d. Failing to comply with the documentation and notification requirements for restraint, in violation of PPRA Rule 2.04.
6. Improperly secluded Student on or around January 26, 2024, specifically by:
  - a. Secluding Student in a non-emergency situation, in violation of PPRA Rule 2.01(1)(a);
  - b. Secluding Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of PPRA Rule 2.01(1)(b);

- c. Failing to provide Student with opportunities to have the seclusion removed, in violation of PPRA Rule 2.02(1)(a)(iv);
- d. Failing to end the seclusion when it was no longer necessary to protect the Student or others, to reintegrate the Student or clearly communicate that the Student is free to leave the seclusion area, in violation of PPRA Rule 2.02(1)(a)(v);
- e. Failing to ensure seclusion was administered by staff who have received required training, in violation of PPRA Rule 2.03; and
- f. Failing to comply with the documentation and notification requirements for seclusion, in violation of PPRA Rule 2.04.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>4</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is 14 years old and, during the 2023-2024 school year, attends eighth grade at a school ("School") in District. *Exhibit A*, p. 23. Student is currently eligible for special education services as a student with autism spectrum disorder ("ASD") and a specific learning disability ("SLD"). *Id.*
2. Student is very visual and creative, and he loves using technology. *Interviews with Parent, Student's special education teacher and case manager ("Case Manager"), and School's social worker ("Social Worker")*. He likes routines and "enjoys transitioning between classes with his peers." *Exhibit A*, p. 10.
3. He struggles with communication and peer relationships. *Interviews with Parent and Social Worker*. Academics, especially reading and writing, are a challenge. *Id.* He is a very black and white thinker, becoming dysregulated when things do not go the way he expects. *Interview with Parent*. He can become aggressive in response to undesired directives. *Interview with Case Manager*.

#### **B. May 2023 BIP**

4. At the start of the 2023-2024 school year, Student's then-current BIP was from May 2023 ("May BIP"). *Exhibit A*, pp. 10-12. According to the May BIP, Student engages in aggression and eloping to "avoid non-preferred tasks or activities or to access preferred" things. *Id.* at p. 10. In addition, "when he is highly dysregulated" there is "an automatic function." *Id.*

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<sup>4</sup> The appendix, attached and incorporated by reference, details the entire Record.

5. The May BIP includes three setting event strategies: (1) home/school communication; (2) changes in weather; and (3) changes in schedule. *Id.*
6. It includes 12 antecedent strategies: (1) pre-teaching of changes in schedule; (2) maintain line of sight, from a safe distance, during escalations; (3) walk away and allow extra time after giving a directive; (4) visuals of expectations; (5) identify reinforcers; (6) give Student a choice between three and five minutes breaks; (7) use a “when/then” visual for non-preferred tasks; (8) model and prompt asking for help; (9) use timers for wait time and breaks; (10) relate activities to preferred topics; (11) daily scheduled sensory breaks; and (12) “respect functional communication to be left alone” by providing a break before having Student return to the task. *Id.* at pp. 10-11.
7. The behavior teaching strategies include teaching “5 is Against the Law,” as well as teaching pro-social behaviors, coping strategies, replacement behaviors and emotions and providing at least two 15-minute sensory/movement breaks per day. *Id.* at p. 10.
8. The May BIP includes seven reinforcement strategies: (1) access to point store and preferred school activities; (2) increased independence; (3) improved peer and staff relationships; (4) increased access to after school activities; (5) access to preferred adults; (6) access to independent rewards; and (7) peer recognition. *Id.*
9. The included crisis intervention plan indicates that if Student becomes a danger “staff trained in [Crisis Prevention Intervention (“CPI”)] will use verbal de-escalation strategies and then physical restraints if needed.” *Id.*

### **C. Implementation of the May 2023 BIP – Staff Awareness**

10. Special education teams, particularly the case manager, are responsible for making sure that other staff understand their responsibilities in a student’s IEP, including any BIPs. *Interviews with Case Manager, Social Worker, and District’s Director of Special Education (“Director”).* Each school handles this differently, but special education staff should be determining who needs to know the information as well as what they need to know. *Interview with Director.*
11. At School, special education staff create “at a glance” summaries of the IEP for any staff that works with a student. *Interview with Case Manager.* These summaries list a student’s strengths and weaknesses, goals, accommodations, service minutes and a summary of the BIP. *Id.* The “at a glance” is uploaded to an electronic file that is shared to all core and elective teachers for the student, as well as paraprofessionals. *Id.* This electronic file is also accessible to administrators, but the “at a glance” is not directly shared with them. *Id.*
12. In addition, special education and general education teachers meet every other week to review students’ progress on goals and address concerns. *Id.* Social Worker meets with teachers to review behavior goals she is working on at the start of a new IEP and on an

ongoing basis. *Interview with Social Worker*. She is in frequent contact with teachers and paraprofessionals, including coaching them on strategies. *Id.*

13. For Student, Case Manager initially emailed all his teachers at the beginning of the year, before uploading his “at a glance” to the shared electronic file that was provided to his teachers and paraprofessionals. *Interview with Case Manager*. At the start of the year, they also had a meeting with all special education teachers, mental health providers, and all the building administrators to discuss special education caseloads. *Id.*

#### **D. Implementation of the May 2023 BIP – Strategies**

14. Case Manager would pre-teach any changes in schedule. *Id.* To give him space, staff would place directions on Student’s desk and then walk away to help other students. *Id.* They also offered choices. *Id.* Timers were used for work as well as breaks. *Interviews with Case Manager and Social Worker*.
15. In fall 2023, Student had a variety of visual supports. *Interview with Case Manager*. He had a visual schedule, social stories, and a point sheet. *Id.* Staff also created visual “when/then” prompts saying, for example, “when you do math for 15 minutes, then you will get a piece of candy.” *Id.* Student had a red/green card on his desk. *Id.* When it was green, he was permitted to interact with adults. *Id.* If it was red, he was expected to work independently. *Id.*
16. Student’s special education classroom had an adjoining room with various sensory tools (“sensory room”). *Exhibit U*, pp. 12-17; *Interview with Case Manager*. Sensory room has a door to the classroom and a door to the hallway. *Interview with Case Manager*. The door into the classroom was removed in September, while they waited for a new door with a window. *Id.* The new door was installed the week of February 12, 2024. *Id.*; *Exhibit U*, p. 2.
17. Student had sensory breaks in the special education classroom in the morning, after electives, and after lunch, before science. *Interview with Case Manager*. During breaks he could use the swing, sit on the beanbag chairs, or watch short videos. *Id.*
18. Social Worker taught the “5 is Against the Law” curriculum to the whole special education class in spring 2023. *Id.* “5 is Against the Law” is an “approach for teaching social boundaries and potential legal consequences” to teens. The Incredible 5-Point Scale, <https://www.5pointscale.com/books.html>, (last visited April 5, 2024). In fall 2023 she reinforced it weekly with hypothetical scenarios reflecting both appropriate and inappropriate behaviors. *Interviews with Case Manager and Social Worker*. After incidents, Social Worker or Case Manager would talk about what he could do differently next time. *Id.*
19. Social Worker also worked with Student on various coping strategies like grounding (e.g., identify three things in the room that start with “S”) or taking a break. *Interview with Social*

*Worker*. She used flash cards to help him identify emotions and talk about what the person on the card was feeling. *Id.*

20. Student earned points for behavior and could purchase reinforcers from the school store. *Interview with Case Manager*. Other times, he could identify and work for specific rewards Case Manager would obtain, like pink sprinkled donuts. *Id.* He could also earn access to preferred school activities or extra time with preferred teachers during lunch. *Interview with Social Worker*.
21. If Student started to fidget or appear antsy, staff would ask if he needed a break and remind him of options like getting water. *Interview with Social Worker*. Staff would also back away anytime Student escalated, to try and avoid physical aggression. *Id.* In addition to backing up themselves, during escalations, staff would remind Student to have safe hands and safe body and to back up out of their space. *Interview with Case Manager*. Staff would also set timers and remind Student he could earn bonus points. *Id.* Although CPI holds were attempted during escalations, staff could never get and keep him in a hold. *Id.*; *Exhibit S*, p. 28.

#### **E. Implementation of the May 2023 BIP – Examples**

22. Student continued to exhibit significant behaviors throughout the fall, including incidents that resulted in temporary removals from general education classes and an out of school suspension. *Exhibit W*, pp. 1-90; *Interview with Parent*.
23. For instance, on August 30, 2023, he was asked to keep his “hands off himself.” *Exhibit F*, p. 17. He was given a pre-warning, verbal reminder, space, and staff set a timer for wait time. *Id.* The SCO finds that these strategies are consistent with those in the May BIP. *Exhibit A*, pp. 10-11. However, Student became angry and threw items as well as hit and kicked Case Manager before moving a bookshelf to block staff out of the sensory room. *Exhibit F*, p. 17.
24. On September 5, 2023, he became upset when he was told his grandfather would not be picking him up. *Exhibit F*, p. 19.0 He was redirected, given space and choices and staff attempted planned ignoring. *Id.* at p. 21. The SCO finds that these strategies are consistent with those in the May BIP. *Exhibit A*, pp. 10-11. However, he headbutted and slapped a staff member and pulled her hair. *Exhibit F*, p. 19. He then eloped from the classroom and injured himself in the elevator before eloping from the building. *Id.* at pp. 19, 21; *Exhibit N*, p. 22.
25. On September 18, 2023, Student was touching himself inappropriately while sitting on a beanbag in the special education classroom and was directed to sit at his desk and given space. *Exhibit F*, p. 22. He stood up and punched Case Manager in the face and then used furniture to barricade himself in the sensory room. *Id.* at pp. 22, 127. Parent was called to pick him up, and he was suspended for the rest of the day. *Id.* Parent then kept him home two more days. *Exhibit G*, p. 4; *Exhibit N*, pp. 405-406.

26. After this incident, Student would no longer have access to ice or the classroom beanbags for sensory breaks. *Exhibit W*, p. 24. Case Manager recommended identifying alternative sensory strategies for Student. *Id.* The SCO finds that neither access to ice nor beanbags was specifically required by Student's May BIP. *Exhibit A*, pp. 10-11.
27. When Student returned on September 21, 2023, he came off the bus "snarling and growling." *Id.* at p. 1. Case Manager gave him space while getting her other students to class. *Id.* When he refused to go to class, Case Manager directed him to select a book to read. *Id.* Student refused and barricaded himself in the sensory room. *Id.* When Case Manager opened it to keep an eye on him, Student was aggressive, "pushing, shoving, slapping" and grabbing and breaking Case Manager's glasses. *Id.* Case Manager used a visual timer, verbal reminder and wait time, gave space and a choice, and redirected Student. *Exhibit F*, p. 24.
28. Student eloped to the elevator and "slap[ped], push[ed], and shove[d]" the staff who prevented the elevator doors from closing. *Exhibit W*, p. 1. Case Manager and a security guard attempted a "CPI de-escalation maneuver" and Student choked Case Manager before running back to the special education classroom. *Id.* He was again given space, wait time, and a choice, and a visual timer was used. *Id.*; *Exhibit F*, p. 24. He was eventually ready to complete work in the special education classroom. *Exhibit W*, p. 1. He had multiple sensory breaks and was able to apologize to Case Manager. *Id.*
29. Although the May BIP required maintaining a safe distance during behaviors, it also required maintaining line of sight. *Exhibit A*, p. 10. The SCO finds that opening the sensory room door or blocking the elevator was necessary to maintain line of sight. The SCO finds that the strategies used were consistent with those in Student's May BIP. *Exhibit A*, pp. 10-11.

#### **F. November Reevaluation**

30. On September 28, 2023, District sought consent to reevaluate Student. *Exhibit D*, p. 19. District proposed to evaluate Student in: (1) Academics; (2) Records Review; (3) Health; (4) Cognitive/Adaptive; (5) Social/Emotional; (6) Formal functional behavior assessment ("FBA"); and (7) Speech/Language. *Id.*
31. District completed a reevaluation on November 17, 2023 ("November Evaluation"). *Exhibit C*, p. 2. The November Evaluation included a review of Student's last reevaluation in April 2023. *Id.* It also included academic and cognitive testing. *Id.* at pp. 2-13. Formal and informal assessments of Student's language abilities indicated challenges with expressive, receptive, and pragmatic language, along with some relative strengths. *Id.* at pp. 20-22.
32. Rating scales completed by Case Manager, Parent and Student indicated significant difficulties with executive functioning, including behavior regulation, emotion regulation and cognitive regulation. *Id.* at p. 13-16. Additional rating scales by Parent and Case Manager indicated that Student's behavior struggles were consistent with anxiety, attention deficit

hyperactivity disorder and ASD. *Id.* at p. 17-19. Student's challenges included impulse control, inattention, social relationships, tolerating changes in routine and responding to sensory stimulation. *Id.* at p. 19.

33. An OT noted that while Student requires adult support with sensory regulation, given "structure, adult support, and breaks, [Student is] regulated within the classroom environment." *Id.* at p. 22. He also has sensory breaks built into his day. *Id.* A screener completed by Case Manager indicated that Student had moderate to severe difficulties in every area of sensory processing. *Id.* at pp. 23-24.
34. Social Worker observed Student for 30 minutes in a general education social studies classroom in November 2023. *Exhibit C*, p. 28. During the observation, Student stayed in the classroom and completed an assignment with the assistance of a paraprofessional. *Id.* A speech and language pathologist ("SLP") observed Student the following day in the same classroom. *Id.* During her observation, Student was again "following classroom routines" and "successfully participate[d] in the general education classroom with direct para support." *Id.* This is a preferred class for Student, where he gets along with the teacher ("Social Studies Teacher"). *Interview with Social Worker.*

#### **G. November FBA**

35. The November Evaluation also included an FBA that tracked three target behaviors: physical aggression, elopement, and task refusal. *Exhibit C*, pp. 26-28. Physical aggression includes making or attempting to make physical contact with another person. *Id.* at p. 27. Elopement was attempting to or successfully leaving the room without permission. *Id.* Task refusal was verbally and physically refusing to complete assigned tasks or demands. *Id.* As of November 2023, Student had 12 disciplinary referrals for the year: one for inappropriate behavior, and 11 for physical aggression towards staff. *Id.* at p. 5.
36. Data for the FBA was collected over 13 days from September 26 through October 12, 2023. *Id.* at p. 27. The FBA included 14 incidents of the target behaviors, with each behavior occurring with similar frequency. *Exhibit B*, p. 11. Behaviors were most likely on Mondays and Tuesdays and usually lasted over an hour. *Id.*
37. About one third of the behaviors occurred between 9 and 9:30 a.m. *Id.* During the eligibility meeting, the MDT discussed whether this was related to challenges on the bus, including a possible failure to follow Student's BIP on the bus. *Exhibit E*, p. 11. District staff agreed to look into this. *Id.* A third of the behaviors occurred in the special education classroom, a third occurred in general education, 14% occurred in the sensory room and 14% occurred in the hallway. *Exhibit C*, p. 27.
38. 64% of the behaviors occurred after a directive was given, with another 28% occurring when Student was denied access to something. *Id.* The FBA concluded that Student engaged in



physical aggression, elopement, and task refusal to escape demands or to gain access to preferred items or activities. *Id.* at p. 28.

39. According to the November FBA, Student usually stopped the behavior in response to Staff intervention (at least 75% of the time). *Exhibit B*, p. 12. The rest of the time, physical aggression or refusal continued. *Id.* However, in response to staff intervention, elopement intensified 20% of the time. *Id.*
40. The November FBA was completed by Social Worker and Case Manager, with the support of District's behavior team and paraprofessionals from Student's special education class. *Interviews with Social Worker and Case Manager*. District's school psychologist ("School Psychologist") was not involved in the FBA. *Interview with School Psychologist*.
41. School staff gathered data on Student's behavior using forms that tracked both his behavior and staff actions, including implementation of interventions like positive reinforcement or providing wait time. *Exhibit F*, pp. 12-123. Observations were primarily conducted by members of District's behavior team and by special education paraprofessionals. *Interview with Social Worker*.

#### **H. November 2023 Eligibility Determination**

42. On November 17, 2023, a multidisciplinary team including Case Manager, School's principal ("Principal"), one of School's assistant principals ("Assistant Principal 1"), a school nurse, Social Worker, SLP, Parent, School Psychologist, Student's English teacher ("English Teacher"), and Social Studies Teacher, met to review the November Evaluation and determine Student's ongoing eligibility. *Exhibit E*, p. 9.
43. Although School Psychologist asked several general education teachers for feedback, none of them returned any feedback. *Exhibit E*, p. 10; *Interview with School Psychologist*. However, all of Student's seventh grade teachers provided feedback for the April 2023 evaluation, which was included in the record review in the November Evaluation. *Interview with School Psychologist; Exhibit C*, p. 9. Since that feedback was less than a year old, School Psychologist could still consider it as current information. *Interview with School Psychologist*.
44. Ultimately, the MDT determined that Student was eligible as a child with a specific learning disability and ASD. *Id.* at p. 11.

#### **I. November 2023 IEP Meeting**

45. On November 30, 2023, an IEP team including Case Manager, Parent, OT, Social Worker, SLP, Social Studies Teacher, English Teacher, Assistant Principal 1, and Principal met to develop an updated IEP for Student based on the November Evaluation and FBA. *Exhibit E*, p. 5.

46. Parent raised concerns that the observations in the November Evaluation were of only “good days” that did not seem to reflect the frequent emails she was getting about Student’s behavior. *Id.* at p. 5. Parent questioned how they could get different results without changing Student’s supports. *Id.* She asked for more information about what was triggering Student so that she could help the team. *Id.* Case Manager said she needed to be more observant and Assistant Principal 1 indicated that Student was consistently lashing out when asked to do something he does not want to do. *Id.*
47. The IEP team reviewed the proposed BIP as well as strategies that were currently being implemented. *Id.* Some, like pre-teaching expectations prior to transitions, were new, while others, like a daily written schedule and choices, were already being used. *Id.* They also discussed new sensory strategies for Student. *Id.* at pp. 5-6.
48. The IEP team explained the new reinforcement menu they would implement for Student. *Id.* Social Worker talked with Student to identify motivating rewards. *Interview with Social Worker; Exhibit C*, p. 26. They wanted a menu of options because Student’s preferences were changing. *Id.* They added several additional reinforcers, like trips to preferred restaurants, based on feedback from Parent. *Id.* Paraprofessionals would be using new point sheets to monitor Student’s progress. *Exhibit E*, p. 6.
49. Parent asked if there was anything in the plan to address elopement. *Id.* Social Worker and Case Manager said they did not need to use CPI techniques for elopement because, if they watch him, he comes back. *Id.* Assistant Principal 1 advised not getting into a power struggle with Student about elopement, just let him leave and come back as he “deserves his space.” *Id.* Case Manager had instructed paraprofessionals to wait on different levels of the School when Student eloped. *Id.* English Teacher suggested that if they “work on the antecedent behavior then the elopement will end.” *Id.*
50. The IEP team then reviewed the remainder of the IEP. *Id.* at pp. 6-7. Parent asked several questions, and the IEP team reached agreement about Student’s goals, accommodations, and services. *Id.*
51. In general, students may cycle through low, medium, and peak behaviors in an escalation cycle. *Interview with CDE Content Specialist 1.* If you can stop or prevent the low intensity behaviors, you can often prevent a student from engaging in the more intense behaviors. *Id.* As such, teams will often develop BIPs to target those low behaviors instead of the more serious behaviors. *Id.*
52. If the BIP does not target the most agitated behaviors, the crisis plan should include steps for addressing those behaviors. *Id.* Recent CDE guidance advises IEP teams to develop detailed crisis plans to address the escalation cycle. *Id.* These crisis plans should include strategies to address each stage of a student’s escalation cycle, including the most serious behaviors. *Id.*

## **J. November 2023 BIP**

53. The November 30 IEP team meeting resulted in an updated BIP dated November 30, 2023 (“November BIP”). *Exhibit A*, pp. 34-36. The November BIP summarized that Student engaged in physical aggression, elopement, and task refusal to escape task demands or to gain access to preferred items. *Id.* at p. 34.
54. The November BIP included 12 setting event strategies. *Id.* at pp. 34-35. These included in part: (1) reducing noise; (2) avoiding crowds by transitioning either early or late; (3) preferred seating with personal space; (4) check ins during transitions; (5) pre-teaching of expectations prior to every transition; (6) reminders that he can request help or breaks; (7) clear expectations; and (8) a written daily schedule with predictable routines and forewarning of changes. *Id.*
55. There were nine antecedent strategies, some of which mimicked the setting event strategies. *Id.* at p. 34. The distinct strategies included: (1) timers; (2) providing two choices; (3) items to hold during transitions; and (4) sensory breaks. *Id.*
56. Five teaching strategies included: (1) the “5 is against the law” curriculum; (2) modeling safe hands; (3) teaching self-advocacy for breaks or sensory input; (4) direct teaching of social skills and (5) direct teaching of communication skills. *Id.*
57. Reinforcement strategies were: (1) reward system with points to spend on “reinforcement menu;” (2) positive praise and reinforcement from adults and (3) honoring self-advocacy requests. *Id.*
58. The crisis plan is the same as the May BIP: “[s]hould [Student] become a danger to himself or others, staff trained in CPI will use verbal de-escalation strategies and then physical restraints if needed.” *Id.* at pp. 11, 35.

## **K. Implementation of the November 2023 BIP – Strategies**

59. All the general education teachers and paraprofessionals working with Student were trained on the new November BIP by Social Worker and Case Manager. *Interview with Social Worker*. Case Manager also sent all those providers an updated “at a glance” summary of Student’s new IEP and BIP. *Interview with Case Manager*.
60. To reduce noise, Student had access to headphones or could work in the special education classroom or Social Worker’s office. *Interviews with Social Worker and Case Manager*. He consistently sat in a seat in the back of the classroom, by the door. *Interview with Social Worker; Exhibit E*, p. 7. To avoid crowded hallways, Student would leave his classes late if he liked the teacher, or early if he did not. *Exhibit W*, pp. 58, 67; *Interviews with Social Worker and Case Manager*.

61. Staff would review expectations for the day with Student, along with the reward he was working for that day. *Interview with Case Manager*. They had story boards and would pre-teach expectations like proximity and space. *Id.* He carried a visual schedule with him, along with any social stories staff would pre-teach him that day. *Id.* Staff continuously modeled self-advocacy for Student, including reminding him he could ask for help or breaks. *Id.*
62. Student would be offered choices to create a sense of control. *Interview with Social Worker*. These choices might look like “do you want to start math now or in 10 minutes.” *Id.* This was a big focus for Student, so everyone from teachers to paraprofessionals to administrators knew to offer choices. *Id.* Timers and choices were used consistently and tracked daily. *Exhibit F*, pp. 98-123.
63. Student had sensory tools he carried with him, and he could also walk barefoot in the grass for sensory input. *Interview with Case Manager*. He had planned breaks in the sensory room after every other class. *Id.* Student would carry the sensory tools or personal items like a water bottle during transitions between classes, to encourage him to keep his hands to himself. *Interviews with Social Worker and Case Manager*.
64. To model safe hands, Social Worker worked with Student on space bubbles and alternative ways to get attention like saying “excuse me.” *Interview with Social Worker*. They worked on this 1:1 and during her time in the special education classroom. *Id.* Social Worker and SLP worked together to create weekly social skills and communication lessons, often using hypothetical scenarios. *Id.*
65. Social Worker continued to reinforce the “5 is Against the Law” lessons weekly, using special cards with different scenarios to talk through what a hypothetical student should or should not do. *Id.* Working on self-advocacy strategies, like asking for a break, was a new intervention that often went along with the “should I, shouldn’t I” cards. *Id.* Case Manager and her staff also reinforced the self-advocacy lessons continuously to help ensure Student’s needs were met. *Interview with Case Manager*.
66. Student had access to a variety of reinforcers ranging from watching videos to earning food or homework passes. *Id.* Staff changed up the options, and Student would identify what he wanted to work for that day. *Id.* He would also get high fives or praise from staff and was particularly motivated to have Parent notified when he did well. *Interview with Social Worker*.

#### **L. Implementation of the November 2023 BIP – Examples**

67. On December 5, 2023, Student threw a rock in the parking lot. *Exhibit W*, p. 94. When he was redirected by a member of District’s behavior team (“Behavior Tutor”), he eloped through the connected elementary school before returning to the special education classroom in School. *Id.*; *Exhibit F*, p. 98. Overall, Student had three instances of aggression and three

instances of elopement that day. *Exhibit F*, p. 98. That day, staff successfully offered a timer five times, choices four times, and sensory breaks twice. *Id.*

68. On December 7, 2023, Student was in the sensory room with Behavior Tutor. *Exhibit N*, p. 253. Behavior Tutor notified a classroom paraprofessional (“Paraprofessional 1”), that Student was touching himself inappropriately. *Id.* Paraprofessional 1 successfully redirected Student. *Id.* When Behavior Tutor reentered the sensory room, Student began yelling and swinging his arms at Behavior Tutor. *Id.* Paraprofessional 1 and Case Manager attempted to separate them until Behavior Tutor could leave the room. *Id.* Student got away from Paraprofessional 1 and Case Manager and grabbed Behavior Tutor by the hair. *Id.* Once they separated Behavior Tutor from Student and had her leave the room, Student returned to the sensory room. *Id.* Student did not respond to use of a timer or choices that morning. *Exhibit F*, p. 102. Student was picked up by family around 9 a.m. that morning. *Exhibit G*, p. 3.
69. On January 18, 2024, Case Manager requested assistance by radio when Student became dysregulated, throwing a pencil box at her and removing her glasses. *Exhibit N*, p. 260. A school security officer (“Security Officer 1”) and a School dean (“Dean”) responded to assist. *Id.* Security Officer 1 and Behavior Tutor entered the sensory room where Student was sitting. *Id.* Student grabbed Behavior Tutor’s hair and knocked off her glasses. *Id.* When Security Officer 1 intervened, Student attempted to kick and headbutt him, but Security Officer 1 successfully blocked him. *Id.*
70. Student then eloped from the classroom and took the elevator down to the elementary school. *Id.* School Security Officer 1 directed Student outside, where he was calm, before he ran back into the building and through the attached high school. *Id.* Student told Security Officer 1, who was “attempt[ing] to reason with [Student],” that he wanted to be left alone. *Id.* Student then eloped from the building and staff briefly lost sight of him in the high school. *Id.* at p. 261. Another building administrator intercepted Student and walked him back to School. *Id.* Student did not respond to choices on January 18, 2024. *Exhibit F*, p. 114. Timers, his red/green card, and scheduled breaks were successfully offered eight times. *Id.*
71. As discussed further below, Student has not been at School since January 25, 2024. *Exhibit G*, pp. 2-3. There were 26 school days between November 30, 2023 and January 25, 2024. *Exhibit L*. Student missed seven of them. *Exhibit G*, p. 3. Thus, the SCO finds the November BIP was implemented for 19 days.

### **M. The January 25, 2024 Incident**

72. On January 25, 2024, at about 10 a.m., Student was working in the special education classroom with a paraprofessional (“Paraprofessional 2”), while the rest of the class worked on life skills outside with Case Manager. *Exhibit R*, p. 6. Student wanted to join the class, but Paraprofessional 2 directed him to complete 15 minutes of math first and set a timer. *Id.* Paraprofessional 2 tried to correct how Student was completing the math and Student

“shoved [him] back” saying he wanted to do it himself. *Id.* Paraprofessional 2 gave him space but again tried to correct how Student was doing the math. *Id.*

73. Student then punched Paraprofessional 2 in the face. *Id.* In response, Paraprofessional 2 told Student he could not go outside with his class, and he would be losing a point for not having safe hands. *Id.* Student asked him not to deduct a point, but Paraprofessional 2 said he had to. *Id.* Student then swung and grabbed at Paraprofessional 2, backing him into a corner. *Id.*
74. At that point, Case Manager entered and successfully directed Student to take a break. *Id.* at pp. 6, 10. After 10 minutes, Case Manager checked on Student, who was in the sensory room. *Id.* Student said he was not ready to have calm body and safe hands. *Id.* A few minutes later he eloped to the hallway, where Paraprofessional 2 followed him. *Id.* Case Manager radioed for backup before leaving with Behavior Tutor to look for Student. *Id.* at p. 10.
75. While in the hallway, Student passed Social Worker. *Id.* at p. 5. Social Worker tried directing Student to her office to play a game, but he asked her to leave him alone. *Id.* As Student passed Social Worker, he pushed her out of the way before continuing to run towards the high school. *Id.* At this point, Paraprofessional 2 and another school security officer (“Security Officer 2”) were following Student. *Id.* at p. 7.
76. Student attempted to take an elevator, but Security Officer 2 prevented the elevator from leaving. *Id.* Student attempted to hit or kick Security Officer 2, who blocked those efforts. *Id.* Student eventually succeeded in taking the elevator to another floor, where he was met by a high school administrator (“High School Administrator”). *Id.*
77. High School Administrator introduced himself and began walking with Student. *Id.* at pp. 7, 14. Student exited the building and held the door to prevent High School Administrator from following him. *Id.* at p. 14. However, he did allow a student to enter. *Exhibit V*, 16.
78. High School Administrator and another security officer (“Security Officer 3”) then followed Student, who indicated he wanted to be left alone. *Exhibit R*, p. 14; *Exhibit V*, 19. High School Administrator offered to give Student space if he was safe, and they both paused briefly outside the building. *Exhibit R*, p. 14.
79. Student tried to re-enter the building, but the doors were locked. *Id.* He briefly paused after Dean arrived, and he was given space. *Id.* Student then proceeded towards elementary school playgrounds and then into an unlocked and empty classroom. *Id.* at pp. 3, 14-15. In the classroom with Dean and High School Administrator, Student was told he could sit down in the classroom or outside. *Id.* He chose in the classroom and Dean set a timer for two minutes. *Id.* Dean offered to reset the timer, but Student left the building and headed towards another playground. *Id.* at p. 15. Around this time, School Security Officer 1 also began following Student. *Id.*

80. Student then headed through the bus lot and back towards School. *Id.* He asked to return to the special education classroom. *Id.* Student appeared calmer and was told he could go back to the classroom if he was ready to be safe. *Id.* Dean notified another assistant principal, (“Assistant Principal 2”) of the plan. *Id.* at p. 3. Student was outside the doors closest to the classroom. *Id.* at pp. 3, 15.
81. As Student approached the building, a school resource officer who is an employee of a local police department (“SRO”) did not think he should be allowed to enter, for the safety of other students. *Id.* at p. 12; *Exhibit S*, p. 2, 4, 14, 23; *Response*, p. 11. SRO moved into the doorway where Student was entering. *Id.* Student shouted “get out of my way” and punched SRO, who placed him in handcuffs at 11:26 a.m. *Exhibit S*, p. 4; *Exhibit R*, pp. 3, 12; *Exhibit V*, 33.
82. SRO and Security Officer 1 escorted Student, in handcuffs, back to the special education classroom. *Exhibit V*, 33. Both then entered the classroom with Student at 11:27, followed by High School Administrator. *Id.*; *CDE Exhibit 2*, p. 1.
83. Student asked SRO to remove the cuffs, which SRO agreed to do once Student was calm. *Exhibit S*, p. 24. SRO removed the cuffs after approximately five minutes. *Id.* at pp. 24, 27. At that point, Student told everyone they could leave, but SRO said one adult would need to stay with Student. *Id.*
84. After the cuffs were removed, Student sat calmly on a beanbag chair in the sensory room. *CDE Exhibit 2*, p. 1, 4. Security Officer 1 stood just outside the sensory room door in the hallway. *Id.* at p. 1.
85. SRO entered the special education classroom to wait. *Id.* High School Administrator stood in the open doorway between the classroom and sensory room and maintained line of sight supervision of Student. *Id.* At no point was Student alone in the classroom or sensory room. *Id.* at pp. 1, 4.
86. Parent arrived to pick up Student at 11:45 a.m. *Exhibit V*, 34. Parent walked to the special education classroom. *Exhibit R*, p. 13. When she arrived, High School Administrator was standing in the doorway of the sensory room. *Exhibit 6; Interview with Parent*. She was let into the classroom and left the building with Student at 11:48 a.m. *Exhibit V*, 34.
87. Parent has chosen to keep Student home since January 25, 2024. *Exhibit D*, p. 11; *Interviews with Parent and Case Manager*. Student’s private mental health provider has advised excusing Student from school due to increased mental health concerns related to the incident. *Exhibit 1*.

## **N. Parent Access to Records**

88. On January 25, 2024, Parent emailed Director and District's superintendent requesting access to video footage of the incident. *Exhibit N*, p. 155. District initially declined to provide access to the video footage, due to the ongoing police investigation. *Id.* at pp. 148, 188.
89. However, on February 21, 2024, Parent was directed to contact District's security department to view the footage. *Id.* at p. 505. On February 23, 2024, Parent met with District's assistant Director for Security to review the video footage. *CDE Exhibit 1*, p. 1. The SCO finds that this was 29 days after her initial request.
90. Parent acknowledges that she was permitted to review the video footage from January 25, 2024. *Interview with Parent*. However, she is concerned that she was only allowed to review the footage after filing this Complaint. *Id.*

## **O. Staff CPI Training**

91. Case Manager completed CPI training in June 2023. *Exhibit K*, pp. 4, 12. Three paraprofessionals, including Paraprofessionals 1 and 2, worked in the special education classroom between August 2023 and January 2024. *Id.* p. 15. All three had completed CPI training as of September 26, 2023. *Id.* at pp. 3, 6, 13.
92. Security Officers 1, 2 and 3 received CPI certification on August 11, 2023. *Id.* at pp. 15-16. High School Administrator, Social Worker, Dean and Assistant Principal 2 did not have CPI training as of January 25, 2024. *Id.* at p. 15.
93. Behavior Tutor last participated in CPI training in June 2021. *Id.* at p. 15. CPI training requires annual recertification. *Interview with CDE Content Specialist 2*. This annual training includes a review of de-escalation strategies as well as practice implementing various hold techniques. *Id.* This review is a necessary component to ensure that any holds are done correctly and safely. *Id.* Thus, the SCO, in consultation with CDE Content Specialist 2, finds that someone without a recent recertification would not be considered CPI-trained.

## **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District's evaluation of Student's behavior was sufficiently comprehensive, consistent with 34 C.F.R. § 300.304(c)(6). No violation occurred.**

Parent's concern is that the November Evaluation did not adequately evaluate Student's behavioral needs.



The IDEA requires an evaluation to assess students “in all areas related to the suspected disability.” 34 C.F.R. § 300.304(c)(4). Evaluations must be sufficiently comprehensive to identify all of the child’s special education needs, whether or not commonly linked to the disability category with which the child has been identified. *Id.* at § 300.304(c)(6). The evaluation must also gather all relevant information that may assist in determining “the content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum.” *Id.* at § 300.304(b)(1)(ii).

The law does not require an IEP Team to use a particular tool or assessment when considering positive behavioral support; however, “conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,683 (Aug. 14, 2006). An FBA is meant to gather information about academic, social or emotional behaviors of concern, including when, where and with whom the behavior occurs and what factors make the behavior worse or more likely to occur. *See* CDE, *Functional Behavioral Assessment (FBA) and Behavior Intervention Plans (BIP)* at pp. 1-2 (August 2017), available at [https://www.cde.state.co.us/cdesped/ta\\_fba-bip](https://www.cde.state.co.us/cdesped/ta_fba-bip) (providing a description of the purpose of FBAs as well as the common types). A brief FBA involves interviews with staff or parents who have observed challenging behavior, while a more common full FBA “involves short and extended interviews, a record review, and direct observations of the challenging behavior.” *Id.*

In this case, the November Evaluation included behavior rating scales indicating that Student struggled with impulse control, inattention, social relationships, changes in routine and sensory regulation. (FF #s 32, 33.) Student had already received 12 disciplinary referrals for the year. (FF # 35.) The two observations included in the November Evaluation took place in a preferred classroom, and Student had no issues during either. (FF # 34.) District also conducted a November FBA, which included multiple observations across various settings. (FF #s 35-41.)

The November FBA tracked three target behaviors: aggression, elopement, and task refusal. (FF # 35.) Data was collected over three weeks, during which time the target behaviors occurred 14 times, with each type of behavior occurring with similar frequency. (FF # 36.) The November FBA identified several patterns, such as behaviors occurring more frequently on Mondays and Tuesdays as well as between 9 and 9:30 a.m. (FF #s 36, 37.) However, the behaviors occurred across a range of settings, including the special education classroom, general education, and hallways. (FF # 37.) Most behaviors occurred in response to a directive, with about a third occurring when Student was denied access to something. (FF # 38.) The November FBA concluded that Student engaged in the target behaviors to escape demands or gain access to preferred things. (*Id.*) The November FBA noted that staff interventions were successful in stopping at least 75% of Student’s behaviors. (FF # 39.) The rest of the time, aggression or refusal continued, while elopement intensified in response to interventions 20% of the time. (*Id.*) The SCO finds that the November Evaluation, through the November FBA, identified when and where behaviors occur, as well as factors, like staff intervention, that made behaviors worse.

Thus, the SCO finds and concludes that the November Evaluation and FBA were sufficiently comprehensive, consistent with the requirements of 34 C.F.R. § 300.304(c)(6).

**Conclusion to Allegation No. 2: District failed to develop a BIP that adequately addressed Student’s behavioral needs from November 30, 2023 to present, in violation of 34 C.F.R. § 300.324(a)(2)(i). This violation resulted in a denial of FAPE.**

Parent’s concern is that the November BIP did not adequately meet Student’s behavioral needs.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

#### **A. IEP Development Process**

Parent did not raise concerns regarding the IEP development process under the first prong, so the SCO turns directly to the consider the second prong of whether the November BIP was substantively adequate. *Rowley*, 458 U.S. at 207.

#### **B. Substantive Adequacy of the November BIP**

For a student whose behavior impedes their learning, the IEP must, among other things, also “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.324(a)(2). As contemplated by 34 C.F.R. § 300.324(a)(2), this includes where the consequences of a child’s behavior, including “violations of a school’s code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures,” impede the child’s learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22). IEPs must address any behaviors that are impeding learning, including by causing student to miss instruction or avoid work. 34 C.F.R. § 300.324(a)(2)

The regulations do not require an IEP Team to use a particular tool or assessment when considering positive behavioral support; however, “conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,683 (Aug. 14, 2006). Development of a BIP is an “acceptable way of

considering a child’s behavioral needs”, though not required. *Coleman v. Wake Cnty. Bd. of Educ.*, 120 LRP 4253, at \*9 (E.D. N.C. 2020). To be effective, a BIP should detail the target behaviors and the motivation behind these target behaviors. *CDE IEP Procedural Guidance Manual*, p. 121.

Here, the November BIP was developed based on the November Evaluation and FBA. (FF #s 45, 47.) The November BIP identified three target behaviors: physical aggression, elopement, and task refusal, noting that Student engaged in those behaviors to escape demands or gain access to preferred items. (FF # 53.) As discussed at the November 30 IEP team meeting, the November BIP includes several strategies to address Student’s behaviors, including many that were new. (FF #s 47, 48.) However, the November BIP does not include any specific strategies to address elopement, a target behavior, as District staff did not think it was necessary. (FF #s 49, 54-58.)

The November BIP’s crisis plan requires staff trained in CPI strategies to use verbal de-escalation and then “physical restraints if needed.” (FF # 58.) This is the same as the May BIP. (*Id.*) Elopement and physical aggression were frequent concerns for Student. (FF #s 35, 36.) Staff efforts to address elopement led to an escalation of Student’s behavior 20 percent of the time. (FF # 39.) Existing strategies were frequently failing, and the November BIP did not identify additional strategies to use in a crisis except CPI procedures. Moreover, staff was never able to use CPI restraints because Student consistently escaped holds. (FF # 21.)

The SCO notes that BIP strategies often only address low intensity behaviors, with a goal of preventing a student from reaching a more escalated state. (FF # 51.) In this case, the crisis plan could have included more specifics for dealing with the most agitated behaviors. (FF # 52.) Indeed, more recent CDE guidance advises the creation of more detailed crisis plans which address each stage of a student’s escalation cycle. (*Id.*)

For these reasons, the SCO finds and concludes that District failed to develop a BIP that adequately met Student’s behavioral needs in violation of 34 C.F.R. § 300.324(a)(2)(i). This resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements).

### **C. 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).

Here, District failed to develop an appropriate crisis plan on November 30, 2024. (FF #s 53, 58.) After that point, Student attended 19 days of school. (FF # 71.) In that time, there were four days when Student's behavior continued or escalated despite District's crisis plan. (FF #s 67-70, 72-80.) Because Student was still able to access his services the other 15 days, the SCO finds and concludes that no compensatory services are required at this time.

**Conclusion to Allegation No. 3: District failed to implement Student's November BIP on December 5, 2023 and January 25, 2024, in violation of 34 C.F.R. § 300.323. This did not result in a denial of FAPE.**

Parent's concern is that District did not consistently implement either the May or November BIP.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

An IEP must identify the special education and related services and supplementary aids and services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4). 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 provider who is responsible for its implementation 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).

#### **A. Knowledge of Student's May BIP**

The SCO first determines whether District satisfied its obligation under 34 C.F.R. § 300.323(d). The special education staff at School, particularly Case Manager, was responsible for ensuring Student's teachers and other providers understood their responsibilities under his IEP and BIP. (FF # 10, 11.) A summary of Student's May IEP and BIP was shared with all the staff working directly with him, including general education teachers and paraprofessionals. (FF #s 11, 13.) Social Worker reviewed Student's behavior goals with his teachers and was in frequent contact with teachers and paraprofessionals to provide guidance on how to support him. (FF # 12.) Thus, the SCO finds and concludes that District ensured Student's teachers and providers were aware of their responsibilities under the May BIP, and no violation of 34 C.F.R. § 300.323(d) occurred.

## **B. Implementation of Student's May BIP**

### *a. Antecedent Strategies*

Student's May BIP required the use of several antecedent strategies to decrease the likelihood that the target behaviors would occur. These antecedent strategies included providing space after directives and during escalations, but maintaining line of sight, using timers for breaks, using visual expectations and when/then prompts, and sensory breaks. (FF # 6.) He was given space after directives and staff regularly used timers for work and breaks. (FF # 14.) Student had regular access to visual supports, including when/then prompts, social stories and his point sheet. (FF # 15.) He had regular breaks in the sensory room. (FF #s 16, 17.) During and before escalations, District consistently implemented the strategies in Student's BIP. (FF #s 22-29.) In some cases, maintaining line of sight limited their ability to give Student space, but the SCO finds that was still consistent with the requirements of the May BIP. (FF# 29.) Thus, the SCO finds and concludes that District implemented the May BIP in this respect, consistent with 34 C.F.R. § 300.323.

### *b. Behavior Teaching Strategies*

The May BIP also included several teaching strategies to increase reliance on replacement behaviors, or more appropriate means of attaining Student's objective, including "5 is Against the Law," and teaching pro-social behaviors, coping strategies, replacement behaviors and emotions. (FF # 7.) Social Worker taught and reinforced the "5 is Against the Law" curriculum and pro-social behaviors weekly. (FF # 18.) Both Case Manager and Social Worker worked with Student on coping strategies and replacement behaviors after an incident. (FF # 18.) Social Worker also proactively taught about coping strategies and emotions. (FF # 19.) Thus, the SCO finds and concludes that District implemented the May BIP in this respect, consistent with 34 C.F.R. § 300.323.

### *c. Reinforcement Strategies*

The May BIP included various reinforcement strategies to ensure the need is met when Student demonstrates the desired replacement behavior, like access to the point store and independent rewards, and access to preferred school activities and preferred adults. (FF # 8.) Student earned daily points he could use at the school store or to obtain individual rewards like pink sprinkled donuts. (FF # 20.) He could also work for access to preferred activities or additional time with preferred staff. (*Id.*) Thus, the SCO finds and concludes that District implemented the May BIP in this respect, consistent with 34 C.F.R. § 300.323.

## **C. Knowledge of Student's November BIP**

The SCO first determines whether District satisfied its obligation under 34 C.F.R. § 300.323(d). School staff were made aware of their responsibilities under students' IEPs using "at a glance" summaries. (FF #s 10, 11.) After the November BIP was completed, Case Manager sent all of

Student's providers an updated summary. (FF # 59.) Social Worker also trained Student's general education teachers and paraprofessionals on the November BIP. (*Id.*) Thus, the SCO finds and concludes that District ensured Student's teachers and providers were aware of their responsibilities under the November BIP and no violation of 34 C.F.R. § 300.323(d) occurred.

#### **D. Implementation of Student's November BIP**

##### **a. Setting Event Strategies**

Here, Student's November BIP required 12 setting event strategies to decrease the impact of other factors likely to contribute to behaviors, including reducing noise, preferred seating with personal space, avoiding crowds by transitioning either early or late, check ins during transitions, pre-teaching of expectations prior to every transition, reminders that he can request help or breaks, clear expectations, and a written daily schedule with predictable routines and forewarning of changes. (FF # 54.)

Student had access to headphones to reduce noise, or he could work in the special education classroom or Social Worker's office if other spaces were too loud. (FF # 60.) He also had access to a preferred seat in the back of the classroom. (*Id.*) He left classes either early or late, depending on his relationship with staff, to avoid crowded hallways. (*Id.*) Staff used story boards and social stories to pre-teach and clarify expectations, and he had a visual schedule for each day that he carried with him. (FF # 61.) Case Manager modeled and reminded Student about asking for help or breaks. (*Id.*) Thus, the SCO finds and concludes that District implemented the November BIP in this respect, consistent with 34 C.F.R. § 300.323.

##### **b. Antecedent Strategies**

The November BIP included four antecedent strategies distinct from the setting event strategies: (1) timers; (2) providing two choices; (3) items to hold during transitions; and (4) sensory breaks. (FF # 55.)

Staff consistently utilized timers and regularly offered choices. (FF # 62.) The latter was a particular focus for all staff working with Student. (*Id.*) He had transition items like sensory fidgets or personal items he could carry between classrooms. (FF # 63.) In addition to carrying around sensory tools, he had planned sensory breaks after every other class. (*Id.*) Thus, the SCO finds and concludes that District implemented the November BIP in this respect, consistent with 34 C.F.R. § 300.323.

##### **c. Behavior Teaching Strategies**

The November BIP required five behavior teaching strategies: (1) the "5 is against the law" curriculum; (2) modeling safe hands; (3) teaching self-advocacy for breaks or sensory input; (4) direct teaching of social skills and (5) direct teaching of communication skills. (FF # 56.)

Social Worker continued teaching the special education class, including Student, the lessons from “5 is Against the Law.” (FF # 65.) Social Worker and SLP worked together to teach social skills and communication to the class. (FF # 64.) Social Worker worked directly with Student on safe hands and alternative ways to get attention. (*Id.*) Finally, both Social Worker and Case Manager worked with Student on a range of self-advocacy skills, including asking for help. (FF # 65.) Thus, the SCO finds and concludes that District implemented the November BIP in this respect, consistent with 34 C.F.R. § 300.323.

*d. Crisis Plan*

The crisis plan required staff trained in CPI to use verbal de-escalation and, if needed, restraint. (FF # 65.)

When Student was escalated, responding staff included Case Manager, classroom paraprofessionals, school security officers, Dean and Behavior Tutor. (FF #s 67-80.) Case Manager, the classroom paraprofessionals and the school security officers all had current CPI training during the 2023-2024 school year. (FF #s 91, 92.) Dean and Behavior Tutor did not. (FF #s 92, 93.) During most incidents, at least one respondent was CPI-trained. (FF # 68, 69, 74.) However, on December 5, 2023, the only person responding to Student’s escalation while he eloped through the School was Behavior Tutor. (FF # 67.) Then, during portions of the January 25 incident, the only responders were Dean and High School Administrator. (FF #s 77, 79.) None of these individuals were CPI trained. (FF #92.) For these reasons, the SCO finds and concludes that District failed to implement the November BIP on December 5, 2023 and January 25, 2024, in violation of 34 C.F.R. § 300.323.

**E. Materiality of Failure to Implement**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App’x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App’x 202, 205 (2d Cir. 2010).

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

In this case, District consistently implemented the strategies in Student’s May BIP and November BIP. However, they failed to implement the November BIPs’ crisis plan during one incident on December 5, 2023 and during portions of an incident on January 25, 2024 (although, at other times that day, CPI-trained staff such as Paraprofessional 2, Case Manager, and school security officers responded). (FF #s 67, 72-80, 91-93.) The SCO finds that that the outcome of the January 25 incident would not have been different because Dean and High School Administrator were still using strategies from Student’s BIP, like timers, and succeeded in having him take several breaks. (FF #s 78, 79.) In fact, staff was in the process of escorting Student back to his classroom when SRO intervened. (FF #s 80, 81.) Thus, the SCO finds and concludes that the failure to implement Student’s BIP in these two brief incidents was not a material failure. No denial of FAPE occurred.

**Conclusion to Allegation No. 4: Parent was permitted to review the requested records within 45 days, consistent with the requirements of 34 C.F.R. § 300.613. No violation occurred.**

Parent’s concern is that she was not allowed to view video footage of the January 25, 2024, incident until after this Complaint was accepted for investigation.

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). Accordingly, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” *Id.* A district must comply with a parent’s request to review his or her child’s education records “without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510 and in no case more than 45 days after the request.” *Id.*

Here, Parent requested to view the video footage of January 25, 2024, that same day. (FF # 88.) Although District initially declined to provide her with access to the video footage, Parent was able to review video footage of the incident on February 23, 2024. (FF # 88, 89.) This was 29 days after her initial request. (FF # 89.) Parent was keeping Student home from School at that time. (FF # 71.) Parent has not alleged that she needed the footage for any IEP meetings and nothing in the Record suggests that any IEP meetings were scheduled at that time. Because Parent was permitted to review the records within 45 days of her request, the SCO finds that there was no violation of 34 C.F.R. § 300.613(a).



**Conclusion to Allegation No. 5: District did not restrain Student on January 25, 2024. No violation of the PPRA Rules occurred.**

Parent’s concern is that District improperly restrained Student on January 25, 2024.

The PPRA applies to a wide variety of governmental agencies. C.R.S. § 26-20-102(1)(a). It does not apply to “[a]ny law enforcement agency of the state or of a political subdivision of the state.” *Id.* at § 102(1)(b). Similarly, the PPRA Rules permit students or parents to file a complaint about the use of restraint or seclusion only “by an employee or volunteer” of a school or district. PPRA Rule 2.07(1).

Here, SRO is a law enforcement officer and employee of a local law enforcement agency. (FF # 81.) He is not a District employee or volunteer. (*Id.*) Nothing in the Record suggests that Student was restrained by any District employees or volunteers on January 25, 2024. (FF #s 21, 72-85.) Thus, the SCO finds and concludes that Student was not restrained by District. Allegation No. 5, subparts a through d, concern PPRA Rule requirements that only apply when a student has been restrained *by a district*. Because District did not restrain Student within the meaning of the PPRA Rules, District did not need to meet these requirements. No violation of the PPRA Rules occurred.

**Conclusion to Allegation No. 6: District did not seclude Student on January 25, 2024. No violation of the PPRA Rules occurred.**

Parent’s concern is that District inappropriately secluded Student on January 25, 2024.

“Seclusion”, within the scope of the PPRA Rules, means “the placement of a student *alone* in a room from which egress is involuntarily prevented.” PPRA Rule 2.00(9) (emphasis added). Seclusion explicitly excludes: (a) placement of a student in residential services in his room for the night; and (b) time-out, where a student is removed from “potentially rewarding people or situations.” *Id.* Any space used for seclusion “must have adequate lighting, ventilation, and size.” *Id.* PPRA Rule 2.02(2)(e)(ii). “To the extent possible under the specific circumstances, the space should be free of injurious items.” *Id.*

Here, the entire time Student was handcuffed in the special education classroom on January 25, 2024, SRO, Security Officer 1, and High School Administrator were in the room with him. (FF #s 82, 83.) Student then sat on a beanbag in the sensory room after the handcuffs were removed. (FF # 84.) At the time, there was no door between the sensory room and the special education classroom. (FF # 16.) High School Administrator stood in the open doorway, maintaining line of sight supervision of Student until Parent arrived. (FF #s 85, 86.) At no point was Student alone in the sensory room. (FF # 85.) Because Student was never alone in the sensory room, the SCO finds that Student was not “secluded” within the meaning of the PPRA Rules on January 25, 2024.

Allegation No. 6, subparts a through f, concern PPRA Rule requirements that apply only when a student has been secluded. Because District did not seclude Student within the meaning of the PPRA Rules, District did not need to meet these requirements.

**Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic in nature and likely to impact the future provision of services for all children with disabilities in District if not corrected.**

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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. 46,601 (Aug. 14, 2006).

Nothing in the Record suggests that the failure to develop an appropriate BIP for Student or to implement it on two occasions was systemic. Instead, the SCO finds that the failure to develop an appropriate BIP for Student was related to the unique challenges he presented, including that standard CPI protocols were not effective. (FF # 21.) Given that District was largely implementing Student’s BIP, including during various incidents, there is also no evidence that the failure to implement his BIP on two occasions was indicative of a systemic concern. Thus, the SCO finds and concludes that this investigation does not demonstrate violations that are systemic in nature.

### **REMEDIES**

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

- a. Failing to develop an IEP that adequately addressed Student’s behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i); and
- b. Failing to implement Student’s BIP, in violation of 34 C.F.R. § 300.323.

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

#### **1. Corrective Action Plan**

- a. By **Monday, May 13, 2024**, District shall submit to the 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 District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct

verification activities to confirm District's timely correction of the areas of noncompliance.

## **2. Final Decision Review**

- a. Director, Case Manager, Social Worker, Principal, and Assistant Principals 1 and 2 must review this decision, as well as the requirements of 34 C.F.R. §§ 300.323 and 300.324(a)(2). If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Friday, May 17, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, May 24, 2024**.

## **3. IEP Meeting**

- a. District must convene Student's IEP team, at a mutually agreeable date and time, by **Friday, June 28, 2024**. In consideration of all recent evaluations of Student, Student's IEP team should review, and, as necessary, revise Student's BIP, consistent with the requirements of 34 C.F.R. § 300.324(a), to address Student's unique needs and the concerns identified in this Decision.
  - i. If Parent refuses to participate in the IEP meeting, District may convene a meeting without her, provided District diligently attempts to secure her participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure her participation rests solely with CDE. Regardless, unless Student is withdrawn from District, District must still convene Student's IEP team.
- b. By **Friday, July 19, 2024**, District must provide notice of the IEP meeting, proof of IEP Team members – such as a signature page, and a finalized IEP and BIP to the CDE Special Education Monitoring and Technical Assistance Consultant.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

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

### **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. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 13<sup>th</sup> day of April, 2024.



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Rachel Dore  
Senior State Complaints Officer

## APPENDIX

### Complaint, pages 1-7

#### Response, pages 1-39

- Exhibit A: IEPs
- Exhibit B: Behavior Team
- Exhibit C: Evaluations
- Exhibit D: PWNs
- Exhibit E: Meeting Notes
- Exhibit F: Behavior Logs
- Exhibit G: Attendance Records
- Exhibit H: Progress Data
- Exhibit I: Contact Logs
- Exhibit J: Restraint Review
- Exhibit K: CPI Certifications
- Exhibit L: District Calendar
- Exhibit M: District Policies
- Exhibit N: Correspondence
- Exhibit O: Staff Contacts
- Exhibit P: Verification of Delivery
- Exhibit Q: Complaint
- Exhibit R: Witness Statements
- Exhibit S: Police Report
- Exhibit T: Service Logs
- Exhibit U: Photos
- Exhibit V: Videos
- Exhibit W: Correspondence

#### Reply, pages 1-41

- Exhibit 1: Doctor's Notes
- Exhibit 2: Correspondence
- Exhibit 3: Photos
- Exhibit 4: Correspondence
- Exhibit 5: Phone Records
- Exhibit 6: Video
- Exhibit 7: Video
- Exhibit 8: Verification of Delivery

## **CDE Exhibits**

- CDE Exhibit 1: Correspondence
- CDE Exhibit 2: Witness Statements

## **Telephone Interviews**

- Social Worker: March 18, 2024
- Case Manager: March 19, 2024
- Director: March 19, 2024
- School Psychologist: January 20, 2024
- Parent: January 22, 2024