

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

State Complaint SC2025-595
San Luis Valley BOCES

DECISION

INTRODUCTION

On July 29, 2025, the Parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against the San Luis Valley BOCES (“BOCES”) and concerning one of its member school districts (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified seven allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A final written decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after July 29, 2024. Information prior to July 29, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

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 The CDE’s state complaint investigation determines if BOCES complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. BOCES did not fully implement Student’s Individualized Education Program (“IEP”) during the 2024-2025 school year, because it:
 - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d);
 - b. Did not provide the behavior supports and accommodations listed in the IEP and Behavior Intervention Plan (“BIP”), as required by 34 C.F.R. § 300.323(c).
2. BOCES did not provide Parents notice of any decisions during the 2024-2025 school year which constituted a disciplinary change of placement, as required by 34 C.F.R. § 300.530(h).
3. BOCES did not hold a manifestation determination review (“MDR”) for Student within ten school days of the decision to change Student’s placement during the 2024-2025 school year, as required by 34 C.F.R. § 300.530(e).
4. BOCES did not provide Student educational services to enable him to participate in the general education curriculum and progress towards his annual IEP goals during disciplinary removals during the 2024-2025 school year, as required by 34 C.F.R. § 300.530(d).
5. BOCES did not review and, as appropriate, revise Student’s IEP during the 2024-2025 school year to address continued academic, behavioral and disciplinary concerns, as required by 34 C.F.R. § 300.324(b).
6. BOCES did not provide Parents with a copy of Student’s IEP at no cost after IEP meetings in October 2024 and spring 2025, as required by 34 C.F.R. § 300.322(f).
7. BOCES did not afford Parents an opportunity to inspect and review Student’s education records—specifically Student’s October 2024 IEP, Spring 2025 IEP, Spring 2025 evaluation report, May 2025 BIP, and May 2025 MDR—after Parent’s requests, as required by 34 C.F.R. §§ 300.501 and 300.613.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 11 years old and resides within the boundaries of District, a member school district of the BOCES. *Exhibit A*, p. 1. During the 2024-2025 school year, Student attended fourth

³ The appendix, attached and incorporated by reference, details the entire Record.

grade at a District elementary school ("School"). *Id.* at p. 13. BOCES is responsible for providing a free appropriate public education ("FAPE") to all IDEA-eligible children with disabilities attending a school in its member school districts. ECEA Rule 2.03.

2. Student is eligible for special education services as a child with an autism spectrum disorder and a specific learning disability in written expression. *Exhibit I*, pp. 1-3. Student is easily overwhelmed by sensory sensitivities, including to sounds or heat. *Interview with Parents*. He gets very frustrated when he does not understand something or does something incorrectly. *Interviews with Parents, Student's fourth grade teacher ("Teacher") and Student's paraprofessional ("Paraprofessional 2")*.
3. Student is sweet and funny and enjoys talking with adults. *Interviews with Parents, Paraprofessional 2, Teacher and Student's special education teacher and case manager ("Case Manager")*. When regulated, he has good self-awareness and ability to reflect on his day. *Interviews with Case Manager and BOCES' school psychologist ("School Psychologist")*.

B. 2023 IEP

4. The first day of school was August 8, 2024. *Exhibit O*. Student's then-current IEP was from October 2023 ("2023 IEP"). *Exhibit A*, p. 1. At the start of the school year, Student was attending school from 8 am - 1:15 pm on Monday through Wednesday. *Exhibit G*, pp. 11-12; *Interviews with Parents and Case Manager*. On Thursday he could "earn" art, which was at the end of the day. *Exhibit E*, p. 1; *Interviews with Parents and Case Manager*. There was no school on Fridays. *Exhibit O*.
5. The 2023 IEP included three goals, one each in writing, social-emotional wellness and occupational therapy. *Exhibit A*, pp. 6-7. Student required 11 accommodations, including: (1) "picture schedule posted in the classroom/break-out room"; (2) "safe place outside of the classroom"; (3) "sensory breaks as needed"; (4) "use of conversation to keep from 'melting down'"; and (5) "positive reinforcement." *Id.* at pp. 7-8.
6. "In addition to a full-time paraprofessional" Student required direct instruction from a special education teacher, mental health provider and an occupational therapist. *Id.* at p. 10. His least restrictive environment ("LRE") was general education 98.4% of the time. *Id.* at p. 11.

C. 2023 BIP

7. According to the 2023 BIP, Student had "a strong oral vocabulary," and enjoyed building relationships with those he trusted. *Exhibit B*, p. 1. Student did well with visual aids like to-do lists and a reward system and "working 1:1 with peers in the breakout room." *Id.* He enjoyed art and math was his strongest academic area. *Id.*
8. Student had difficulty regulating behaviors when "frustrated or uninterested in what is being taught." *Id.* at p. 2. He would "roll his head or eyes, become mute, grow[l] & grun[t] and stomp." *Id.* Student was "aggressive, self-injure[d] and destroye[d] property." *Id.* Behaviors

did not have a pattern but occurred weekly. *Id.* It was hypothesized that he was trying to escape/avoid what he believed were unpleasant tasks. *Id.*

9. The 2023 BIP included 14 setting event strategies to reduce the impact of setting events, including: (1) visual schedule including sensory breaks; (2) keep schedule consistent and provide as much warning as possible of schedule changes; (3) sensory diet to provide Student with the input his body needs; (4) movement breaks to re-energize his body and give his brain time to process; and (5) home-school connection through “Class Dojo.” *Id.* at pp. 2-4.
10. The 2023 BIP included 11 antecedent strategies to decrease the likelihood that behaviors would occur, including: (1) give Student “choices so that he feels empowered”; (2) paraprofessionals and teachers should strengthen their relationship with Student by showing an interest in his interests; and (3) “[i]gnore off task behaviors but positively reward on task behaviors at the time he is exhibiting them” with verbal or tangible reinforcement like token economy so he will continue with the desired behavior. *Id.*
11. There were six teaching strategies to provide replacement strategies for Student to use instead of problem behaviors: (1) teach/model functional communication skills; (2) review schedules daily and provide structure around any changes to give him a sense of control over his day (3) teach/model social skills through social stories for situations like when he is off task or expressing his needs when he is agitated; (4) teach Student to self-advocate for breaks or help through practice and positive reinforcement; (5) teach coping skills when he is not in crisis; (6) teach Student the “Zones of Regulation.” *Id.* at pp. 2-3.
12. Finally, there were five reinforcement strategies to meet the need behind the behavior when Student demonstrated the replacement behaviors: (1) positively reinforce appropriate behaviors or expectations with verbal praise or token economy; (2) allow Student to earn time to play computer games; (3) If Student is not following classroom expectations, “he then chooses to be removed from the classroom and visit the Sensory Room or go to a Quiet place to decompress, room inside the classroom according to colors”; (4) if he “makes his day, reinforce his behaviors through a call home, time to assist a younger student or allow him to choose a tangible item from the treasure box”; and (5) if Student “becomes a danger to himself or others, and verbal de-escalation has failed, CPI may be used by a trained staff member only to remove him to a ‘safe zone.’ The Parent will be notified.” *Id.*

D. 2023 IEP and BIP Accessibility to Teachers and Providers

13. BOCES has standard operating procedures (“SOPs”) that are reviewed and updated annually and shared with all member districts. *Exhibit P*, pp. 24-106; *Interviews with BOCES’ Director of Special Education (“Director”)*. The SOPs require that case managers provide information about accommodations and modifications to all services providers, including teachers and paraprofessionals, “at the beginning of the school year and upon arrival of new staff, and amendment/change to the IEP, and completion of the annual review.” *Exhibit P*, p. 42. The SOP does not mention building administrators. *Id.*

14. BOCES uses an electronic data management system to create and store IEPs. *Interviews with Director and Case Manager*. At the start of each year, the records person at BOCES makes sure that all case managers and related service providers have access to the correct IEPs. *Interview with Director*. Case managers in District are then responsible for making sure providers are aware of their responsibilities under a student’s IEP. *Interviews with the principal of School (“Principal”), Case Manager and Director*.
15. In this case, Case Manager gave Teacher Student’s IEP snapshot and BIP at the start of the 2024-2025 school year. *Interviews with Case Manager and Teacher*. They did not review the documents, but Teacher knew she could go ask questions as needed. *Interview with Teacher*.
16. Case Manager also gave copies of the IEP and BIP to the paraprofessionals at the start of the year and whenever a new one started. *Interview with Case Manager*. Student started the year with his paraprofessional from last year. *Id.* He also had another paraprofessional who shadowed that paraprofessional for eight school days before working directly with Student. *Id.* Any time a new paraprofessional started, they also received copies of Student’s IEP and BIP and shadowed for their first eight days. *Id.* The paraprofessionals also kept copies of students’ IEPs in the Paraprofessionals’ Classroom—a location where paraprofessionals could bring students to work. *Interview with Paraprofessional 2*.
17. Principal tries to be familiar with who has an IEP, but she cannot access BOCES’ electronic data management system to review them. *Interview with Principal*. She gets copies of IEPs and BIPs during related meetings but does not have access to them outside the meeting because of confidentiality. *Id.* Neither Principal nor School’s assistant principal (“Assistant Principal”) had a copy of Student’s IEP and BIP at the start of the 2024-2025 school year. *Id.*
18. Case Manager does not usually share IEPs with Principal or other administrators because they can access the documents in BOCES’ data management system. *Interview with Case Manager*. Building principals have “view only” access to the IEP documents for the students in their school. *Interview with Director*. Other administrators can be given such access upon request. *Id.* Director will review how to access the system with Principal. *Id.*

E. 2024 IEP

19. Student’s IEP team, including Principal and Assistant Principal, met October 17, 2024 to develop a new IEP (“2024 IEP”) for Student. *Exhibit A*, p. 13. On October 9, Parent texted Case Manager to request that Advocate receive a copy of Student’s current IEP, which Case Manager provided. *Exhibit 1*, p. 39; *Exhibit Q*, p. 121.
20. The 2024 IEP included present level data from the beginning of the year as well as the end of the previous year. *Id.* at p. 15. The 2024 IEP included one goal each in the areas of writing, social-emotional wellness and occupational therapy. *Id.* at pp. 17-20.

21. The 2024 IEP included 13 accommodations, including: (1) Use indirect language to give instructions—"I wonder if we could try this" or "Do you think you might be able to..."; (2) somatic and sensory strategies to "reduce physiological stress responses" and for sensory breaks; (3) use specific and low-pressure positive reinforcement focusing on "effort and process rather than achievement or completion to help with perfectionist tendencies"; (4) avoid confrontational language, offering alternatives and understanding "rather than insisting on compliance"; and (5) use conversation or quiet time to prevent melt downs. *Id.* at pp. 20-21.
22. Student continued to require paraprofessional support as well as direct instruction from a special education teacher, mental health provider and occupational therapist. *Id.* at p. 23. Student's LRE was general education 97.5% of the time. *Id.* at p. 24. The embedded PWN is the same as the 2023 IEP. *Id.* at pp. 11, 24.

F. 2024 BIP

23. An updated BIP ("2024 BIP") was also created. *Exhibit B*, pp. 8-14. The problem behaviors and hypothesis statement are unchanged from the 2023 BIP. *Id.* at pp. 2, 9.
24. The setting event strategies and antecedent strategies are the same as in the 2023 BIP, with some clarifications and new examples. *Id.* at pp. 2-4, 9-11. The only change to the behavior teaching strategies was the replacement of the zones of regulation curriculum with the "Mind Up!" curriculum, teaching Student how to identify and respond to "threats." *Id.* at pp. 3, 11.
25. Two reinforcement strategies, earning computer time and earning rewards for "mak[ing] his day," were removed. *Id.* at pp. 2-3, 9-11. The other strategies remained, with some clarifications added. *Id.*

G. Parents' Receipt of the 2024 IEP and BIP

26. Pursuant to the SOPs, case managers are responsible for providing parents with a copy of a student's IEP and BIP after IEP team meetings. *Exhibit P*, pp. 40-41; *Interview with Director and Case Manager*.
27. Case Manager generally sends IEPs to parents within 10 days of the meeting. *Interview with Case Manager*. She often sends them home in the student's backpack, but if parents are concerned that it will not make it home that way, she mails it instead. *Id.*
28. Case Manager asked Parents how they wanted to get a final copy of the 2024 IEP and BIP during the October meeting. *Id.* Student had a dedicated folder in his backpack for communication home so they opted to receive it that way. *Id.*
29. On November 4, 2024, Parents sent back a draft of the 2024 IEP, with edits, in Student's backpack. *Exhibit 1*, p. 52. Case Manager agreed to update Parents' address and asked some follow up questions about testing accommodations. *Id.* Case Manager then sent a final copy

of the IEP home with Student on November 5. *Id.* at p. 42. This was 10 school days after the October 17 meeting. *Exhibit O.*

30. Parents do not recall receiving a copy of the 2024 IEP. *Interview with Parents.* However, they used his backpack to send back edits the day before and did not send any texts indicating that the IEP did not make it home on November 5. *Exhibit 1*, pp. 42, 52. Thus, the CDE finds that Case Manager provided Parents with Student's 2024 IEP and BIP on November 5, 2024.

H. 2024 IEP and BIP Accessibility to Teachers and Providers

31. Principal had a draft of the IEP and BIP during the October IEP meeting. *Interview with Principal.* She did not get a final copy after the meeting, so neither she nor Assistant Principal had a copy. *Id.*
32. Case Manager gave Teacher and any paraprofessionals paper copies of Students' 2024 IEP and BIP after the October IEP team meeting. *Interview with Case Manager.* Paraprofessional 2 received a copy of Student's IEP when she first started working with him in November 2024. *Interview with Paraprofessional 2.* Teacher also attended the October 2024 IEP team meeting. *Interview with Teacher; Exhibit A*, p. 14.

I. IEP and BIP Implementation: Behavior Supports

33. Parents' concern is that ongoing behavior challenges indicated that BOCES was not fully implementing Student's IEP and BIP. *Interview with Parents.* Specifically, Parents are concerned that: (1) he did not have a visual schedule; (2) he was not being taught coping strategies while in a calm state; (3) he was not allowed to take breaks or walks until he was already too overstimulated and that BOCES was penalizing his need for breaks by threatening to call law enforcement; and (4) BOCES would not use CPI holds even when necessary. *Id.*
34. The 2023 and 2024 IEPs and BIPs had essentially the same requirements in these areas, and thus the CDE will consider them together. *Exhibit A*, pp. 7, 8, 20; *Exhibit B*, pp. 2-5, 9-12.

Visual Schedule

35. Student's 2023 IEP required a consistent picture schedule, while his 2023 BIP specified that the schedule was individualized, to include sensory breaks. *Exhibit A*, p. 7; *Exhibit B*, pp. 2-3. The 2024 BIP also required a visual daily schedule with built in sensory breaks, noting that it was "posted on a white board in the break out room." *Exhibit B*, pp. 9-10.
36. Teacher had a visual schedule on her board every day. *Interview with Teacher.* Student also had a copy of the schedule in his breakout room, at the recommendation of his prior paraprofessional. *Id.* Teacher had a very consistent routine for her classroom day to day. *Id.*
37. Student immediately destroyed his visual schedule in third grade, and they found that writing his schedule on the white board worked better for him. *Interview with Case Manager.* Each

day, his schedule, or list of tasks, was written on the board and he could give himself “smileys” for each task he completed. *Id.* He also had breaks written into the schedule. *Interview with Case Manager and Paraprofessional 2.*

38. Based on these findings, the CDE finds that BOCES provided Student with a visual schedule consistent with the IEP and BIP during the 2024-2025 school year.

Coping Strategies

39. Student’s 2023 and 2024 BIPs both require teaching Student “coping skills when [he] is in a **non-crisis setting** (e.g. breathing techniques, asking for breaks, identifying feelings/strategies, etc.)” *Exhibit B*, pp. 3, 10 (emphasis in original).
40. In September and October 2024, School Psychologist provided Student’s mental health services. *Exhibit M*, p. 2; *Interview with School Psychologist*. During her time with Student, they worked through the “Mind Up” curriculum to develop his understanding how different feelings felt in his body and understanding when he was becoming escalated. *Exhibit M*, p. 3; *Interview with School Psychologist*. The goal was to help him identify when he needed coping skills before he reached the “point of dysregulation where he could not control his body.” *Interview with School Psychologist*.
41. BOCES then hired a new mental health service provider (“Social Worker”) who shadowed School Psychologist for a couple of sessions before taking over Student’s services. *Exhibit M*, pp. 1-2; *Interview with School Psychologist*. In their sessions together, they worked on identifying his emotions, recognizing his stress response, and reflecting on coping skills that could have been used by superheroes or during prior escalations. *Exhibit M*, pp. 9-13.
42. Based on these findings, the CDE finds that BOCES taught Student coping skills while he was emotionally regulated consistent with the IEP and BIP during the 2024-2025 school year.

Breaks

43. The 2023 IEP required “sensory breaks as needed.” *Exhibit A*, p. 8. The 2024 IEP required sensory breaks and calming activities like movement breaks. *Id.* at p. 20. The 2023 and 2024 BIPs required a sensory diet, movement breaks, and access to the sensory room. *Exhibit B*, pp. 3, 10-11.
44. For the first half of the year, Student spent a lot of time in a breakout room that was connected to Teacher’s classroom. *Interview with Teacher and Case Manager*. He could choose to work in the breakout room or the classroom. *Id.* The breakout room was equipped with various sensory tools including a weighted cat, a squishy cat, fidgets, headphones, special chairs and special seat cushions. *Interviews with Teacher, Case Manager and Paraprofessional 2.*

45. Student had scheduled breaks throughout the day. *Interviews with Teacher, Case Manager and Paraprofessional 2*. For instance, at the start of the year he liked to walk around with the School's janitor to help him pick up breakfast trash. *Interview with Teacher*. When Student no longer wanted to do that, he started taking walking breaks with School's security officer ("SSO") instead. *Id.*
46. Student was offered breaks when he was starting to show signs of frustration or before hard tasks. *Interviews with Paraprofessional 2 and Case Manager; See, e.g., Exhibit 2, pp. 43, 50, 57, 59*. He also took breaks with Case Manager. *Interviews with Teacher and Case Manager*.
47. Sometimes, instead of asking for a break or waiting for an adult to accompany him, Student would elope from (leave) the classroom or building. *Interview with Case Manager*. When he eloped outside, staff sometimes told him they would have to call the police if he left the school. *Exhibit 2, p. 11, 33, 34, 40*. In response, Student always stopped. *Id.* The CDE finds that this did not penalize Student's need for a break or prevent him from taking a break.
48. Based on these findings, and the credible descriptions of how these behavior supports were provided in interviews, the CDE finds that BOCES provided Student with sensory and movement breaks consistent with the IEPs and BIPs during the 2024-2025 school year.

Use of CPI

49. Student's 2023 BIP stated that if Student was a danger to himself or others and "verbal de-escalation has failed, CPI may be used by a trained staff member only to remove him to a 'safe zone.'" *Exhibit B, p. 3*. The included crisis intervention plan stated that CPI is a "technique used as a last resort" that includes de-escalation techniques including "empathic listening skills, verbal intervention strategies and transport." *Id.* at p. 5. The 2024 BIP includes the same language. *Id.* at pp. 10-12.
50. Parents' concern is that staff did not use CPI holds when he was hurting people. *Interview with Parent*. School moved to a "hands free" model last year where staff were advised not to use restraints. *Interview with Case Manager*.
51. The CDE finds that the 2023 and 2024 BIPs do not require the use of CPI given the permissive "may" language.

J. April 2025 IEP Amendment

52. BOCES' SOPs require that IEPs either be amended at an IEP team meeting or by an agreement in writing to amend the IEP without a meeting. *Exhibit P, p. 49*.
53. Student was suspended on January 21, and Parents requested an MDR review meeting so that the team could come together and "figure out something else to try to help." *Exhibit 1, p. 2*. Case Manager agreed that they needed to update his IEP. *Id.* Ultimately, they scheduled

a “parent meeting” with the staff that worked with Student daily to brainstorm ideas to help Student be more successful. *Exhibit Q*, p. 43.

54. On January 27, Parents met with School staff including Case Manager, Principal, Assistant Principal, Teacher, his then-current paraprofessionals, Paraprofessionals 1 and 2, and Social Worker. *Exhibit Q*, pp. 43-46; *Interviews with Parents, Case Manager and Principal*. This was a parent/teacher conference, not an IEP team meeting. *Exhibit Q*, p. 44. There was no notice of meeting. *Exhibit C*.
55. At the meeting, they agreed that Student would start spending four additional hours with Case Manager each week, as Student would have “choice time” at 9 am every day. *Exhibit Q*, p. 46; *Interview with Teacher and Case Manager*. Student started going to Case Manager’s classroom at 9 am every day beginning on Monday, December 9, 2024. *Exhibit 1*, p. 46. During that time he got a break and helped “lead” Case Manager’s reading intervention group. *Interview with Case Manager; Exhibit 1*, p. 46. Case Manager would continue checking in with Student between 12:30 p.m. and 1 p.m. every day. *Exhibit Q*, p. 46.
56. They also agreed to start his day outside of the classroom. *Id.*; *Interviews with Parents, Teacher and Case Manager*. From that point forward, Student would get his breakfast in Teacher’s classroom and then head upstairs to the Paraprofessionals’ Classroom. *Interview with Teacher; Exhibit 1*, pp. 8-9. Teacher would always invite him to stay in the general education classroom, but he almost always chose to work in the Paraprofessionals’ Classroom instead. *Id.* While there, the paraprofessionals continued to offer work, but Student rarely completed assignments, instead damaging most assignments that were provided. *Interview with Paraprofessional 2*.
57. After the meeting, staying until the end of the day for art on Thursday became a choice for Student. *Exhibit Q*, p. 46. They also discussed accommodations for Student, like fidgets, “snacks throughout the day” and speech to text. *Id.*
58. However, no changes were made to the IEP at that time because Case Manager forgot to do the paperwork. *Response*, pp. 3-4; *Exhibit A*, pp. 44-45; *Interview with Case Manager*. Instead, an agreement to amend the IEP without a meeting was drafted and signed in April 2025. *Exhibit A*, pp. 42-45. The amendment indicated that Student was spending four additional hours with Case Manager but did not mention the move from Teacher’s classroom to the Paraprofessionals’ Classroom or the change in his Thursday schedule. *Id.* No changes were made to Student’s accommodations or his BIP through the amendment. *Id.*

K. Removals from School

59. BOCES’ SOPs require that parents be notified and given a copy of the procedural safeguards notice anytime a disciplinary change of placement occurs. *Exhibit P*, p. 60. A change of placement occurs if the student is removed for more than 10 days or for a total of more than 10 days where the removals constitute a pattern. *Id.* In the event of a change of placement,

the SOPs require an MDR and describe the necessary steps schools must follow depending on if the behavior is a manifestation. *Id.*, The SOPs correctly identify when services must be provided and who determines what services are necessary. *Id.* at p. 61. They do not define what constitutes a removal or offer any instructions for tracking them. *Id.* at pp. 60-62.

60. In a section about updates for the 2024-2025 school year, the SOPs note that districts must ensure that MDRs are held within 10 school days of any decision to change a student's placement and that staff must be trained annually on MDR procedures, particularly with respect to "documenting team discussion and outcome." *Id.* at p. 80.
61. On August 14 and August 15, a paraprofessional asked Parents to pick Student up around 9 am after Student refused to work and became escalated at School. *Response*, p. 2; *Exhibit 1*, pp. 29, 34; *Exhibit M*, p. 26. School administrators did not realize the paraprofessional was contacting Parents to pick Student up. *Interview with Principal*. The CDE finds that this constitutes two days of removal. *Response*, p. 2.
62. On September 9, Student became escalated after there was a substitute teacher. *Exhibit 1*, p. 30. At 11:15 am, Parents were asked to pick him up. *Response*, p. 2; *Exhibit 1*, p. 30; *Exhibit M*, p. 26. The CDE finds that this constitutes a half day removal (2.5 total for the school year). *Response*, p. 2.
63. On October 2, Student had a hard time at School, saying he was tired and wanted to go home. *Exhibit M*, p. 34. Around 11, Case Manager told him he could go home if he finished one more assignment, which he did five minutes later. *Id.*; *Exhibit 1*, p. 36. Case Manager texted Parents to pick him up. *Id.*; *Response*, p. 2. The CDE finds that this constitutes a half-day removal (three total for the school year). Student had another hard day on October 3, but Case Manager reminded him that Parents would not pick him up every time he got angry. *Exhibit M*, p. 35.
64. On October 7, Student got upset that he missed recess during a group session with School's guidance counselor ("Guidance Counselor"). *Id.* Student was given options like going to recess with another class or playing outside with his paraprofessional. *Id.* Instead, Student started throwing furniture and hitting the paraprofessional and Teacher when they tried to stop him. *Exhibit 2*, p. 67. Assistant Principal offered to take a walk with Student, but he did not respond. *Id.* Student eventually agreed to leave with Assistant Principal to help him figure out how his flashlight worked. *Id.* Student was suspended for one day and School contacted BOCES for additional support. *Id.*; *Exhibit F*, p. 30; *Response*, p. 2. The CDE finds that this constituted one day of removal (four total for the school year).
65. On November 4, Student was introduced to Paraprofessional 2. *Exhibit M*, p.47. He then got upset when a computer-based assignment timed out before he could finish. *Id.* Paraprofessional 1 asked if he wanted to "get a teacher to finish it or if he wanted [her] to," but Student did not respond. *Id.* Student started hitting and kicking the wall and then hit and kicked Paraprofessional 1 and Case Manager when they tried to stop him. *Id.* Student eventually agreed to take a walk with Case Manager and Principal before returning to class.

Id. at pp. 46-47. Student was sent home at 9:30 am and suspended for the remainder of the day. *Id.*; *Exhibit F*, p. 26; *Exhibit G*, p. 2; *Response*, p. 3. The CDE finds that this constituted one day of removal (five total for the school year).

66. On December 5, Student got frustrated when completing standardized testing after not having anyone to play football with at recess and kicked Paraprofessional 1. *Id.* Student went for a walk with Assistant Principal. *Id.* Student spent the rest of the day, starting around 10:30 am, in in school suspension and could not stay for art class. *Id.* at p. 39; *Exhibit F*, p. 23. He was picked up from School a little after 1 pm. *Exhibit 2*, p. 39. As he could not stay for art and did not meet with Case Manager during his time in ISS, the CDE finds that this constituted a half day of removal (5.5 total for the school year). *Id.*; *Response*, p. 3.
67. On December 17, Student became frustrated while drawing and eloped from the room. *Exhibit 2*, p. 34. Paraprofessional 2 followed making small talk to distract him. *Id.* She offered him a snack but he ran towards a building exit and then started hitting her. *Id.* She attempted to deflect him until Paraprofessional 1 arrived and said “we will have to call the cops” if Student left the school grounds. *Id.* Student then went for a walk with Assistant Principal. *Id.* Student was suspended for one day on December 18 because of this incident. *Exhibit F*, p. 19; *Exhibit Q*, p. 41; *Response*, p. 3. The CDE finds that this constituted one day of removal (6.5 total for the school year).
68. On January 14, Student got frustrated after he accidentally knocked some things off a shelf. *Exhibit 2*, p. 32. Case Manager came to help Paraprofessional 1, but Student continued to damage property in the breakout room. *Id.* When she prevented him from knocking over a bookshelf, Student hit and kicked Case Manager. *Id.* She told him he could not stay at School since he hit her. *Id.* Parents were called to pick him up at 8:45 am and Student was suspended for the day. *Id.*; *Exhibit F*, p. 16; *Response*, p. 3. The CDE finds that this constituted one day of removal (7.5 total for the school year).
69. On January 21, Student was uncomfortable because his shirt was “too tight.” *Exhibit 2*, p. 28. He came back from a group with Guidance Counselor frustrated and picked up a stool to throw it. *Id.* at p. 29. After he put it down, he repeatedly pushed Paraprofessional 2. *Id.* Paraprofessional 2 left the room and asked for assistance. *Id.* Principal and Assistant Principal responded, but he eloped from the room. *Id.* Parents were contacted around 11 am and he was suspended for the remainder of the day. *Exhibit F*, p. 13; *Response*, p. 3. The CDE finds that this constituted half a day of removal (eight total for the school year).
70. On February 17, there was a substitute for Paraprofessional 1. *Exhibit 2*, p. 22. Student became frustrated and started following Paraprofessional 2 with clenched fists and destroying property in the Paraprofessionals’ Classroom. *Id.* at p. 23. Student became frustrated again when asked to clean up the room and eloped from the building. *Id.* Case Manager texted Parents about his day and asked for help the following morning in getting Student to clean up the room. *Id.* at p. 22. Parents did not have their phones at this time. *Exhibit Q*, p. 52.

71. Student returned the next morning irritated and proceeded to do additional damage and throw chairs. *Id.* Case Manager texted Parents for help and got no response. *Id.* SSO came to help and Student hit and kicked him multiple times. *Id.* Student's aggression lasted for an hour while Principal tried to reach Parents. *Id.* at pp. 21-22; *Exhibit F*, p. 8. Around 9 am, Principal reached Parents, and staff took him home on the school bus. *Id.* Student was suspended for two days and Parents were notified that School wanted to discuss alternative placements. *Id.*; *Exhibit F*, p. 10; *Response*, p. 4. The CDE finds that this constituted two days of removal (10 total for the school year).
72. On March 6, Student got upset and threw a chair before eloping from the building, with Paraprofessional 2 following. *Exhibit 2*, p. 13. Student repeatedly ran towards Paraprofessional 2 "with his fists clenched" and eventually hit her. *Id.* At that point, Case Manager, Assistant Principal, SSO and Principal arrived to help. *Id.* Student was suspended for one day for hitting Paraprofessional 2. *Exhibit F*, p. 6; *Response*, p. 4. The CDE finds that this constituted one day of removal (11 total for the school year).
73. On March 24, the first day after spring break, Student got upset while working on math after lunch. *Exhibit 2*, pp. 10-11. He threw his coffee at Paraprofessional 2 and it landed on Case Manager. *Id.* He also threw chairs and eloped from the building. *Id.* Student was suspended for one day. *Exhibit F*, p. 3; *Response*, p. 4. The CDE finds that this constituted one day of removal (12 total days for the school year).
74. After describing the incident to Parents, Case Manager proposed having Student do "half days" because "[a]fter lunch always seems to be a struggle." *Exhibit 1*, p. 10. Parents agreed to half days for the rest of the year, and Case Manager arranged to have the bus pick him up at 11:45 am moving forward, a 90-minute reduction in Student's school day. *Id.* at p. 13. At the same time, Case Manager adjusted the schedule so that Student would be with her from 10:45 am until lunch at 11:15 am, to reduce his time with Paraprofessional 2. *Id.*
75. At this point, there were 30 school days left. *Exhibit O*. Parents choose to keep Student home on eight of those days. *Exhibit G*, p. 1. Thus, the CDE finds Student was removed from 33 hours of school, or the equivalent of 6.5 school days given his 8 am - 1:15 pm schedule (18.5 total days for the school year). BOCES was not aware of this change until this investigation. *Interview with Director; See, Response*, p. 6-9.⁴
76. Student did not receive any services from School or BOCES during these removals and no IEP team considered his need for services during the removals. *Interviews with Parents, Case Manager, Director*. Parents did not receive any notice of a placement change. *Id.* Parents were offered copies of the procedural safeguards notice at the IEP team meetings in October and May, but not in relation to any removals. *Id.*

⁴ Pursuant to House Bill 24-1063, as of July 2025, all administrative units must have a policy to clarify "when and how abbreviated school day schedules may be implemented." C.R.S. § 22-20-123(1)(a)(IV)-(V). See, [CDE's Model Abbreviated School Day Policy](#).

L. MDR Meeting

77. During the meeting in January, when considering the need for an MDR, School staff proposed only counting the 4.5 formal days of removal toward the need for an MDR and not considering the 4.5 days of informal removals. *Exhibit Q*, p. 46. Hoping Student would be sent home less, Parents agreed. *Interview with Parents*.
78. On April 28—25 school days after March 6 and 20 school days after March 24—Director determined an MDR was necessary because Student had “been removed from his education placement for over 10 days” that year. *Exhibit Q*, p. 79; *Exhibit O*. Parents were leaving on a trip and asked to schedule the meeting after they returned on May 15. *Exhibit Q*, p. 77.
79. On May 19, BOCES held an MDR meeting to determine whether Student’s behavior on March 24 was a manifestation of his disability. *Exhibit E*, pp. 5-6. The MDR team hypothesized that Student “experienced difficulty with emotional regulation and frustration tolerance during the math activity” triggering an escalation for which he “wasn’t able to identify or use an effective coping strategy.” *Id.* at p. 7.
80. Parents noted that he exhibited similar behaviors at home but indicated that they were “able to keep him from being destructive or hurtful by using verbal directives.” *Id.* at p. 12-13. Parents increased Student’s medications in the fall and observed that he seemed to have more incidents on Mondays and Tuesdays. *Id.*
81. Since Student exhibits the same behaviors across settings, the MDR team determined that the behaviors “stem from his underlying disability” and that his “emotional dysregulation significantly impacts his ability to process situations appropriately and respond with expected behavioral choices.” *Id.* at p. 15. Thus, it was determined that the behavior was a manifestation of his disability. *Id.* They agreed to review and revise, as necessary, his BIP. *Id.*

M. 2025 IEP

82. On February 25, BOCES drafted a consent for evaluation to develop an updated BIP and consider a change in placement. *Exhibit K*, pp. 1-7; *Exhibit Q*, pp. 55-57. Parents signed and returned the consent form on March 2. *Exhibit K*, pp. 1-7. BOCES completed a functional behavior assessment (“FBA”) on April 29, 2025, and an evaluation in May 2025 (“2025 Evaluation”). *Exhibit I*, pp. 1-37.
83. On May 21, an IEP team including Parents, their advocate (“Advocate”), Paraprofessionals 1 and 2, Student’s occupational therapist (“OT”), legal counsel for BOCES, District’s Superintendent, Social Worker, Principal, Assistant Principal, a BOCES’ school psychologist, BOCES’ behavior specialist and Guidance Counselor developed a new IEP (“2025 IEP”). *Exhibit A*, pp. 28-29. The last day of school was May 22. *Exhibit O*.
84. Student continued to require a BIP and special transportation. *Exhibit A*, p. 32. Student continued to have one goal each in writing, social-emotional wellness and occupational

therapy, with progress to be reported three times per year. *Id.* at pp. 32-34. Apart from the addition of three testing accommodations, all others in the 2025 IEP are the same as the 2024 IEP. *Id.* at pp. 20-21, 34-35.

85. The 2025 IEP included the same full-time paraprofessional support and direct services with a special education teacher, mental health provider and OT as the 2024 IEP, with the addition of 120 MPW of direct support from a special education teacher outside of the general education setting. *Id.* at pp. 23, 37-38. The 2025 IEP also outlined Student's schedule during his abbreviated day from 8:15 am - 1:00 pm and a plan to increase his time at school with every 10% increase on his mastery of his social-emotional wellness goal. *Id.*
86. Student's LRE was general education 91.2% of the time "as observational data show[ed] [Student] achieve[d] 78-100% activity completion and 85-100% instruction compliance with appropriate supports." *Id.* at p. 39. According to the PWN, the IEP team considered a more restrictive placement but determined he could successfully increase school participation with "proper BIP implementation and environmental supports." *Id.* at pp. 40-41.

N. 2025 BIP

87. The 2025 BIP used an updated format developed by the CDE, which goes more in depth on strategies and responses. *Exhibit B*, pp. 15-28; *Exhibit Q*, p. 57. Target behaviors included "accelerated behaviors (pacing, grunting, stomping," etc.), physical aggression and elopement. *Exhibit B*, p. 16. The behaviors occurred in all settings and could last from five minutes to all day. *Id.* The 2025 BIP hypothesized that the behaviors function to help Student escape/avoid unpleasant situations because Student lacked the skills to communicate his wants or needs or evaluate the situation and choose the best course. *Id.*
88. The 2025 BIP included various new setting event, antecedent, behavior teaching and reinforcement strategies, like teaching the 3 3 3 rule for anxiety and using an appropriate tone when talking to Student. *Id.* at pp. 18-22. It also included a detailed de-escalation plan with steps to follow when Student begins to escalate and when he is exhibiting severe behaviors. *Id.* at pp. 23-24.

O. Parents Receipt of the 2025 IEP and BIP

89. The 2025 IEP was not finalized because the school year ended. *Interview with Case Manager*. Case Manager was waiting for others to review the documents and was not sure how to proceed after an unanswered email asking for the document to be reviewed on May 27, before it was sent home. *Id.*
90. On June 19, Advocate asked Director to send Parents a copy of the 2024 IEP. *Exhibit Q*, p. 121. Director sent Parents the 2023 and 2024 IEPs and BIPs that day. *Id.* at p. 124.
91. Director sent an email to Principal and Case Manager on July 8 about the 2025 IEP. *Exhibit Q*, p. 122. Case Manager finalized the 2025 IEP and BIP that day. *Interview with Case Manager*.

She printed the document at School and mailed them to Parents, including the evaluation report, functional behavioral assessment and MDR from the spring in the same envelope. *Id.* This was the only copy Parents got of those records. *Interview with Parent.*

92. Parents did not request any records except Student’s 2023 and 2024 IEP during the 2024-2025 school year. *Exhibit 1; Exhibit Q; Interview with Director.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: BOCES did not ensure that administrators had access to and an understanding of their responsibilities for implementing Student’s IEPs, as required by 34 C.F.R. § 300.323(d). Nevertheless, BOCES fully implemented the behavior supports in Student’s 2023 and 2024 IEPs and BIPs during the 2024-2025 school year, as required by 34 C.F.R. § 300.323(c). No denial of FAPE occurred.

A. IEP Implementation: Legal Requirements

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).

A 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.” *Id.* To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and 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).

B. IEP Implementation: Accessibility of and Responsibilities for Student’s IEP

Teachers and Paraprofessionals

Here, the 2023 IEP and BIP were shared with Teacher and Student’s paraprofessionals at the start of the 2024-2025 school year. (FF #s 15, 16.) New paraprofessionals also got copies of the documents when they started, had access to a copy in their classroom, and shadowed current staff for two weeks before working directly with Student. (FF # 16.) Teacher and Student’s paraprofessionals also got copies of Student’s 2024 IEP and BIP after the October meeting. (FF # 32.) Thus, the CDE finds and concludes that Teacher and Student’s paraprofessionals had access to and understood their specific responsibilities for implementing Student’s 2023 and 2024 IEPs.

Administrators

Principal and Assistant Principal regularly responded to help when Student was escalated and thus constitute “other service provider[s]” responsible for IEP implementation who needed access to and an understanding of their specific implementation responsibilities. (FF #s 64-72.); 34 C.F.R. § 300.323(d). Principal had access to BOCES’ data management system, but she did not know of this access and therefore did not obtain the IEPs or BIPs in that system. (FF #s 17, 18.) Although she got a draft of the 2023 IEP during the IEP team meeting, she did not get a copy of the final version after the meeting. (*Id.*) She similarly did not get a copy of the 2024 IEP and BIP after the October meeting. (FF # 31.) Assistant Principal also did not have the 2023 or 2024 IEP. (FF # 17, 31.) Case Manager did not review the documents with either Principal or Assistant Principal. (FF # 18.) Thus, the CDE finds and concludes that Principal and Assistant Principal did not have access to or understand their specific responsibilities for implementing Student’s 2023 or 2024 IEPs, as required by 34 C.F.R. § 300.323(d).

C. Implementation of Behavior Supports

This case concerns implementation of four behavior supports and accommodations: (1) access to a visual schedule; (2) teaching of coping strategies; (3) access to sensory and movement breaks; and (4) use of CPI holds. (FF # 40.) The CDE finds that, throughout the 2024-2025 school year, BOCES provided the first three supports, consistent with Student’s 2023 and 2024 IEPs and BIPs. (FF #s 41-55.) Thus, BOCES complied with 34 C.F.R. § 300.323(c).

Parents’ fourth concern is that BOCES did not use CPI holds, even when “necessary.” (FF # 33.) Student’s 2023 and 2024 BIPs stated that CPI holds *may* be used when verbal de-escalation has failed and that it is “a technique used as a last resort.” (FF # 49.) The CDE finds that the BIPs, consistent with the law, did not require the use of restraints and instead appropriately indicated that CPI holds would only be used when other interventions had failed. (FF # 51.) Thus, the CDE finds and concludes that BOCES was not required to use CPI under Student’s 2023 and 2024 IEPs.

Indeed, restraint and seclusion must never be used as part of a treatment plan or behavior modification plan. C.R.S. § 26-20-103(1.5)(b); *see also Academy Sch. Dist. 20*, 124 LRP 34397 (SEA CO 3/22/24). Moreover, there must be an appropriate basis for the use of restraint and seclusion as they can only be used in an emergency with extreme caution after the failure of less restrictive alternatives (or a determination that such alternatives would be inappropriate or ineffective). PPRA Rule 2.01. The “. . . use of restraint and seclusion can have very serious consequences, including, most tragically, death.” Department of Education, *Restraint and Seclusion: Resource Document*, (May 15, 2012) (Available at <https://www.ed.gov/sites/ed/files/policy/seclusion/restraints-and-seclusion-resources.pdf>.)

And “there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques . . .” *Id.* “[S]chools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports, that

applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.” *Id.*

D. Materiality of Noncompliance

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, not implementing an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not implementing a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE).

“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*, 502 F.3d at 822. 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.*

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 CDE “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).

In this case, Principal and Assistant Principal did not have copies of Student’s IEPs and BIPs. (FF #s 17, 18, 31.) However, they both participated in the October IEP team meeting. (FF # 19.) They also regularly succeeded in verbally de-escalating Student using conversation and walks, consistent with his IEPs. (FF #s 5, 9, 21, 24, 64-72.) Their lack of access to Student’s 2023 and 2024 IEPs did not result in noncompliance under 34 C.F.R. § 300.323(c) with implementation of support provided to Student. Thus, the CDE finds and concludes that the noncompliance with 34 C.F.R. § 300.323(d) was not material.

Conclusion to Allegation Nos. 2-4: BOCES did not provide Parents with notice of or hold an MDR within 10 days of the decisions on March 6 and 24 that resulted in a disciplinary change of

placement or provide Student with services after the 10th day of removal, as required by 34 C.F.R. § 300.530. This noncompliance resulted in a denial of FAPE.

A. What Constitutes a Disciplinary Change in Placement

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. A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of short-term removals that total more than 10 school days and constitute a pattern. *Id.* § 300.536(a). A pattern exists where the removals involve “substantially similar” behavior and where other factors—such as the length of each removal, total amount of time removed, and the proximity of removals—support the existence of a pattern. *Id.* § 300.536(a)(2)(i)-(iii). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis, and such a determination is inherently subjective. *Id.* § 300.526(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

School districts must consider both formal removals (such as suspensions) and informal removals. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161, Question C-6 (OSERS 07/19/22) [hereinafter *Discipline Q&A*]. The U.S. Department of Education provides that an informal removal:

means action taken by school personnel in response to a child’s behavior that excludes the child for part or all of the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the child with a disability from class or school without invoking IDEA’s disciplinary procedures. **Informal removals are subject to IDEA’s requirements to the same extent as disciplinary removals by school personnel using the school’s disciplinary procedures.** Informal removals include administratively shortened school days when a child’s school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child’s behavior.

Id. (emphasis added). The repeated use of informal removals to address behavior “could constitute a disciplinary removal from current placement.” *Id.* The U.S. Department of Education has indicated that in-school suspension counts as a short-term removal unless the student can appropriately participate in the general education curriculum, receives the services required by their IEP, and “continues to participate with nondisabled children to the extent they would have in the child’s current placement.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

B. Whether a Disciplinary Change in Placement Occurred

In this case, Student was removed for a total of 18.5 school days after 13 separate incidents. (FF #s 61-75.) Because the informal removals, including sending Student home and shortening his day, were done in response to behavior and were not agreed upon by an IEP team, the CDE finds that they constituted disciplinary removals. (*Id.*) Student was not removed for more than 10 consecutive school days, so the CDE must consider whether these removals constitute a pattern. (*Id.*) In 12 out of 13 incidents, he was refusing to work, destroying property, and physically aggressive towards staff. (*Id.*) Also, 11 out of 13 removals were for one half to one whole day, with another lasting two days and the final being for 90 minutes per day for 22 days. (*Id.*) And, from August through March, Student was removed once or twice per month and never went more than one month without a removal. (*Id.*) Thus, because the removals totaled more than 10 days, involved “substantially similar” behavior, were similar in length, and occurred in close proximity over time, the CDE finds and concludes that they constituted a pattern and resulted in a disciplinary change of placement. 34 C.F.R. § 300.536(a).

C. Notice of the Disciplinary Change in Placement

If a school district makes a removal that constitutes a disciplinary change of placement, it must notify the child’s parents of the removal and provide them with the procedural safeguards notice on the date the school district made the decision to remove the child. 34 C.F.R. § 300.530(h).

Here, the decision to remove Student that constituted a disciplinary change of placement was made on March 6 (when Student was suspended for the 11th day). (FF # 72.) Parents received notice of the one-day suspension, but not of the removal constituting a disciplinary change of placement. (FF #s 72, 76.) They did not receive the procedural safeguards notice. (*Id.*) Another decision to remove Student that constituted a disciplinary change of placement occurred on March 24 (when he was suspended for one day and the decision was made to shorten his school day by 90 minutes per day). (FF #s 73-75.) Parents did not receive notice of the removal constituting a disciplinary change in placement or the procedural safeguards notice. (FF # 76.) Thus, the CDE finds and concludes that BOCES did not comply with 34 C.F.R. § 300.530(h).

D. Timeliness of MDR

A school district is required to conduct an MDR within ten school days of the decision to change a student’s placement because of a violation of a code of student conduct. 34 C.F.R. § 300.530(e)(1).

Here, a disciplinary change of placement occurred on March 6 and March 24. (FF #s 72-75.) Thus, BOCES would have been obligated to conduct the MDR no later than April 1 and 9. BOCES did not attempt to schedule an MDR until April 28, and the MDR did not occur until May 19. (FF # 78.) Thus, the CDE finds and concludes that BOCES did not comply with 34 C.F.R. § 300.530(e).

E. Services During Removals

Once a student has been removed from his educational placement for ten school days, the IDEA requires a school district to provide the student educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). Such educational services must allow the student “to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goal set out in the child’s IEP.” *Id.* § 300.530(d)(1)(i). If the removals resulted in a disciplinary change of placement, the IEP Team must determine what services are necessary for the student to progress toward meeting his goals. *Id.* § 300.530(d)(5).

In this case, Student did not receive any services during these removals, including after the 10th day. (FF # 76.) Moreover, Student’s IEP team did not determine what services were necessary for him to progress toward meeting annual goals after the disciplinary removals of March 6 and 24. (*Id.*). Thus, the CDE finds and concludes that BOCES did not comply with 34 C.F.R. § 300.530(d).

F. Impact of the Procedural Noncompliance

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance with the IDEA only amounts to a denial of FAPE to the extent that it: (1) impedes the child’s right to a FAPE; (2) significantly impedes the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE; or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

In this case, Student was removed for an additional 7.5 days after BOCES was initially obligated to provide notice of a disciplinary change of placement and conduct an MDR on March 6. (FF #s 73-75.) An MDR was held on May 19 and determined that Student’s behavior was a manifestation of his disability. (FF #s 79, 81.) As a result, the MDR team agreed to review and revise Student’s BIP. (FF # 81.) The new BIP developed on May 21 included significant revisions, including new strategies for avoiding behaviors and responding to escalations. (FF #s 82, 87, 88.) These additional removals might have been prevented or shortened had BOCES conducted the MDR and reviewed and revised Student’s supports sooner. For instance, the IEP team extended Student’s shortened day to 1 pm again. (FF # 85.) In addition, the IEP team did not consider Student’s need for services during 8.5 days of removal, and no services were provided by BOCES during those removals. (FF # 76.) Since the noncompliance resulted in Student being removed for the equivalent of 8.5 days without services, the CDE finds and concludes that the noncompliance resulted in a deprivation of educational benefit and a denial of FAPE. 34 C.F.R. § 300.513(a)(2)

G. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for the noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services 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, BOCES did not timely conduct an MDR and Student did not receive services for 8.5 days of removal during the 2024-2025 school year. Pursuant to the 2025 IEP, his LRE remains general education most of the time, with support from a paraprofessional. (FF #s 85, 86.) To put Student in the position he would have been in, the CDE finds that it is necessary to provide him with an additional eight (8) hours of direct instruction inside the general education setting, to be provided by a mental health provider to support paraprofessionals and teachers in implementing Student's 2025 IEP and BIP and support Student in developing and generalizing the emotion/behavior regulation skills required to maintain in that setting.

Conclusion to Allegation No. 5: BOCES did not review and revise, as appropriate, Student's 2024 IEP to address behaviors impeding his learning, as required by 34 C.F.R. § 300.324(b). This noncompliance resulted in a denial of FAPE.

A. Legal Obligation to Review and Revise IEPs

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). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as appropriate, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

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).

B. Review and Revision of Student's IEP

Here, BOCES revised Student's IEP and BIP at his annual review meeting in October 2024. (FF #s 19-25.) Then, in January 2025, Parents requested an MDR due to Student's frequent removals,

and Case Manager agreed that they needed to update Student's IEP. (FF # 53.) However, instead of an MDR or IEP team meeting, School scheduled a parent/teacher meeting. (FF #s 53, 54.) At that meeting, they agreed to try several new approaches: additional time with a special education teacher, less time in general education, additional accommodations, and a different Thursday schedule. (FF #s 55-57.) Student's IEP was not modified to reflect these changes until April 2025, at which point only the special education instruction was amended. (FF # 58.) Since BOCES recognized that Student's IEP needed to be reviewed and revised to address his needs but did not do so, the CDE finds and concludes that BOCES did not comply with 34 C.F.R. § 300.324(b) from January to May 2025.

The CDE also finds and concludes that BOCES' noncompliance related to the review and revision of Student's IEP 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). However, BOCES has since remedied this noncompliance by convening an IEP team in May 2025 to review and revise Student's IEP. (FF #s 83-88.) Thus, no remedies, other than a review of this Decision, have been ordered to address this noncompliance.

Conclusion to Allegation No. 6: BOCES timely provided a copy of Student's 2024 and 2025 IEPs to Parents, consistent with 34 C.F.R. § 300.322(f). BOCES complied with the law.

The IDEA requires school districts to provide parents a copy of their child's IEP at no cost. 34 C.F.R. § 300.322(f). Providing a copy of the IEP is essential to a parent's ability to participate in the development and enforcement of their child's IEP. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017). The IDEA does not, however, specify that the IEP be provided within a certain timeframe. *See id.* Prior CDE state complaint decisions provide some guidance on the timeframe. *See, e.g., St. Vrain Valley Sch. Dist. RE-1J*, 124 LRP 34391 (SEA CO 1/29/24) (finding a three month delay reasonable, where two of those were over the summer); *but, see, e.g., St. Vrain Valley Sch. Dist. RE-1J*, 122 LRP 13570 (SEA CO 2/15/22) (finding a two-month delay in the context of a nine-month school year results in IDEA noncompliance); *Durango Sch. Dist. 9-R*, 122 LRP 13564 (SEA CO 2/4/22) (finding a ten-month delay over two separate school years results in IDEA noncompliance).

Here, Case Manager provided Parents with a copy of the 2024 IEP and BIP on November 5, 2024, 10 school days after the IEP team meeting. (FF #s 29, 30.) The 2025 IEP was developed on the second to last day of the 2024-2025 school year. (FF # 83.) Case Manager mailed Parents a copy of the 2025 IEP and BIP on July 8, 2025. (FF # 91.) Although this is a delay of almost two months, only one school day transpired during that time. As Parents received copies of both the 2024 and 2025 IEPs and BIPs within 10 school days, the CDE finds and concludes that BOCES complied 34 C.F.R. § 300.322(f).

Conclusion to Allegation No. 7: BOCES timely responded to Parents' two requests to review Student's education records, consistent with 34 C.F.R. § 300.613(a). BOCES complied with the law.

A. The Right to Inspect and Review Records

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). Thus, 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 request from a parent to review his or her child's education records "without unnecessary delay and before any meeting regarding an IEP," and in no case more than 45 days after the request." *Id.* Parents also have the right to have "a representative of the parent inspect and review the records." *Id.* at 300.613(b)(3).

B. Parents' Access to Records

In this case, Parents requested that Advocate receive a copy of the 2023 IEP in October 2024, and Advocate asked that Parents receive a copy of the 2024 IEP in June 2025. (FF #s 19, 90.) The IEPs are education records and Parents were provided with the requested documents in both instances. (*Id.*) Parents did not make any other requests to inspect Student's education records. (FF # 92.) Thus, the CDE finds and concludes that BOCES complied with 34 C.F.R. § 300.613(a).

Systemic IDEA Noncompliance: This investigation demonstrated noncompliance that will likely impact the future provision of services for all children with disabilities in BOCES if not corrected.

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

A. Noncompliance with Implementation under 34 C.F.R. § 300.323(d)

Here, BOCES has SOPs which, consistent with IDEA's requirements, highlight case managers' responsibility for ensuring teachers and service providers have access to and understand their specific responsibilities. (FF # 13); 34 C.F.R. § 300.323(d). However, the SOP does not consider the potential role of building administrators for implementing IEPs and does not direct case managers to ensure building administrators are also made aware of and understand their responsibilities. (FF # 13.) In practice, neither Principal nor Assistant Principal had copies of Student's IEPs. (FF # 17, 31.) Principal was not aware that she had access to the documents in BOCES' data management system and believed that they were not available to her because of confidentiality. (FF #s 17, 18.) While this did not lead to an implementation lapse in this case, where Principal and Assistant Principal attended IEP team meetings and were frequently involved, other administrators may not be aware of their responsibilities for other children. Thus, the CDE finds and concludes that this noncompliance is likely to affect the future provision of

services and will order a remedy to ensure BOCES develops procedures to ensure compliance with 34 C.F.R. § 300.323(d).

B. Noncompliance with MDRs under 34 C.F.R. § 300.530

In this case, BOCES' SOPs accurately define a disciplinary change of placement and the steps to follow when one occurs. (FF #s 59, 60.) They also identify the services to be provided after the 10th day of removal. (*Id.*) However, the SOPs do not define an informal removal or offer instructions for keeping track of repeated removals. (*Id.*) School staff did not realize they had to count informal removals when considering the need to conduct an MDR. (FF # 77.) They also did not realize that changing Student's schedule could constitute a removal. (FF #s 74, 75.) For these reasons, the CDE finds and concludes that this noncompliance is likely to affect the future provision of services and will order a remedy to ensure BOCES develops procedures to ensure compliance with 34 C.F.R. § 300.530.

C. Noncompliance with IEP Review and Revision under 34 C.F.R. § 300.324(b)

Here, BOCES SOPs include accurate instructions for amending IEPs via an IEP team meeting or written agreement. (FF # 52); 34 C.F.R. § 300.324(b). Nothing in the Record suggests that Case Manager routinely amends IEPs without an agreement or IEP team meeting. Instead, this appears to have been a one-time oversight. (FF # 58.) Thus, the CDE finds and concludes that this noncompliance is not systemic in nature.

REMEDIES

The CDE concludes that BOCES did not comply with the following IDEA requirements:

1. Ensuring that IEPs are accessible to staff responsible for their implementation and that staff understand their specific implementation responsibilities, as required by 34 C.F.R. § 300.323(d).
2. Providing notice of and holding an MDR within 10 days of a disciplinary change of placement, as required by 34 C.F.R. § 300.530.
3. Providing services after the 10th day of removal, as required by 34 C.F.R. § 300.530.
4. Reviewing and revising, as appropriate, Student's IEP, as required by 34 C.F.R. § 300.324(b).

To demonstrate compliance, BOCES is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Friday, October 24, 2025**, BOCES shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance 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 BOCES 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 BOCES timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Principal, Assistant Principal and Case Manager must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.323(d), 300.324 and 300.530, by **Friday, November 7, 2025**. If these individuals are no longer employed by BOCES/District, BOCES may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Monday, November 10, 2025**.

3. Procedures

- a. By **Friday, November 21, 2025**, BOCES must submit a written procedure outlining how BOCES ensures compliance with 34 C.F.R. § 300.323(d).
 - i. At a minimum, the procedure must offer clear guidance on the affirmative duty to ensure that all services providers, including administrators, are aware of and understand their responsibilities under a student’s IEP and BIP. This includes ensuring that providers receive or know how to access a copy of the IEP and BIP.
 - ii. BOCES may submit existing procedures that meet these requirements. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
 - iii. BOCES must ensure that all case managers and building principals in their member districts receive a copy of the approved written procedures as well as information on where to get help accessing BOCES’ data management system, by **Friday, December 19, 2025**.
 - iv. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to the CDE no later than **January 6, 2026**.
- b. By **Friday, November 21, 2025**, BOCES must submit a written procedure outlining how BOCES ensures compliance with 34 C.F.R. § 300.530.

- i. At a minimum, the procedure must define informal removals and offer clear guidance on (a) using informal removals; (b) tracking both formal and informal disciplinary removals; and (c) if possible, notifying BOCES before an MDR becomes necessary, so that BOCES can monitor and provide assistance with next steps.
- ii. BOCES may submit existing procedures that meet these requirements. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- iii. BOCES must ensure that all case managers and building principals and assistant principals in their member districts receive a copy of the approved procedures by **Friday, December 19, 2025**.
- iv. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to the CDE no later than **January 6, 2026**.

4. Compensatory Services

- a. Student shall receive **8 hours of direct specialized instruction from an appropriately licensed mental health provider such as a social worker, school psychologist or BCBA/RBT selected by BOCES**. A determination that the provider is appropriately licensed rests solely with the CDE.
- b. All compensatory services must be provided to Student no later than **May 29, 2026**. These services must be designed to advance Student toward his annual IEP goals as well as the development and generalization of the skills required to increase Student's work completion and time in general education. As such, these services must be provided to Student during the school day, inside the general education environment.
- c. By **Friday, November 7, 2025**, Parents shall provide written consent for the provision of compensatory services to the CDE and BOCES. If Parents do not provide written consent for services by this date, BOCES will be excused from providing compensatory services to Student. Unless otherwise specified by the BOCES, this written consent shall be provided by Parents to BOCES Director. BOCES must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- d. If written consent for the provision of compensatory services is received by November 7, 2025, BOCES shall submit the schedule of compensatory services to Parent and the CDE by **Friday, November 21, 2025**.

- i. The schedule shall include the full name(s) of the appropriately licensed provider(s) as well as the dates, times and durations of planned sessions.
 - ii. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - iii. When providing consent, Parents may opt out of some of the compensatory services. In that case, along with the schedule of services, BOCES shall submit evidence of Parents' written request to opt out of a specific amount of compensatory services.
- e. Monthly consultation between the provider(s) delivering compensatory services and Student's case manager for the 2025-2026 school year shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. BOCES must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. To verify that Student has received the services required by this Decision, BOCES must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- g. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives.
- h. If for any reason, including illness, Student is not available for any scheduled compensatory services, BOCES will be excused from providing the service scheduled for that session. If for any reason BOCES fails to provide a scheduled compensatory session, BOCES will not be excused from providing the scheduled service and must immediately schedule a make-up session and notify the Parent and CDE of the change in the appropriate service log.
 - i. Student will not be deemed unavailable if, due to behavior/dysregulation, he is in the building but outside of the classroom or has been sent home or suspended. Instead, BOCES must either reschedule the service or continue to provide the planned intervention outside of the classroom, with the intent of helping return Student to the general education environment.

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
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If BOCES does not meet the timelines set forth above, it may adversely affect BOCES' annual determination under the IDEA and subject BOCES to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; 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 State Complaints Officer ("SCO").

Dated this 26th day of September, 2025.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-8

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence

Response, pages 1-13

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Notice of Meetings
- Exhibit D: None
- Exhibit E: Meeting Documentation
- Exhibit F: Disciplinary Records
- Exhibit G: Attendance and Grades
- Exhibit H: Progress Monitoring
- Exhibit I: Evaluations
- Exhibit J: Records from Parents
- Exhibit K: Consents for Evaluation
- Exhibit L: None
- Exhibit M: Service Logs
- Exhibit N: None
- Exhibit O: Calendar
- Exhibit P: BOCES Policies and Procedures
- Exhibit Q: Correspondence
- Exhibit R: None
- Exhibit S: Verification of Delivery

Telephone Interviews

- Parents: September 3, 2025
- Principal: September 3, 2025
- Teacher: September 3, 2025
- Paraprofessional 2: September 8, 2025
- Case Manager: September 8, 2025
- Director: September 9, 2025
- School Psychologist: September 9, 2025