

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

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**State-Level Complaint 2018:527  
Westminster Public Schools**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on September 11, 2018, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA). On November 1, 2018, the SCO extended the date for a final decision in this matter based on exceptional circumstances.

The State Complaints Officer (SCO) determined that the Complaint identified five allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (CDE) has the authority to investigate alleged violations of IDEA that occurred not more than one year from the date the Complaint was filed. Accordingly, this investigation will be limited to events that occurred no earlier than September 11, 2017, to determine whether a violation of IDEA occurred. Information prior to this date may be considered to fully investigate all allegations accepted for investigation. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether Student has been denied a free appropriate public education because the District:

1. Failed to develop an IEP in January of 2018 that was tailored to meet Student's individualized needs, specifically as follows:
  - a. Parents did not have an opportunity to meaningfully participate in the January IEP meeting where Student's educational program was developed, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.322;

- b. Behavioral strategies and supports, including Student's behavioral intervention plan, have not been updated since January of 2017 and did not adequately address behavioral needs, consistent with 34 C.F.R. § 300.324(a)(2)(i) and (b);
  - c. Annual goals did not adequately address behavior that interfered with learning, consistent with 34 C.F.R. § 300.320(a)(2)(i); and
  - d. The 2018 IEP did not identify transportation as a related service, consistent with 34 C.F.R. § 300.320(a)(4), even though Student received this service.
2. Failed to ensure that staff responsible for transporting Student had access to his BIP and behavioral strategies from the beginning of the 2018-19 school year to present, consistent with 34 C.F.R. § 300.323(d)(2).
3. Failed to provide periodic reports concerning Student's progress on annual goals during the 2017-18 school year, consistent with 34 CFR §§ 300.320(a)(3)(ii).
4. Failed to convene the IEP team at parental request in August of 2018 to discuss Parents' concerns with significant behavioral incidents that had occurred over the summer, consistent with 34 C.F.R. §§ 300.324(a)(1)(ii) and 300.324(a)(2)(i) and (b).
5. Failed to provide copies of Student's special education and disciplinary records to law enforcement in August of 2018, consistent with 34 C.F.R. § 300.535(b).

### **FINDINGS OF FACT**

After an analysis of the record detailed in the appendix, the SCO makes the following findings:

#### **Background:**

1. At all times relevant to the Complaint, Student was eligible for special education and related services as a child with a serious emotional disability (SED). (Ex. A at 10.) Student's mental health diagnoses include disruptive mood dysregulation disorder, post-traumatic stress disorder (PTSD), and attention deficit hyperactivity disorder (ADHD). (Ex. C at 2.)
2. Student is described as a bright, imaginative, and creative student who is passionate about topics that interest him. For the past several years, Student has been passionate about the performers of World Wrestling Entertainment (WWE), a media company that promotes professional wrestling. (Ex. C; Exhibit 15 at 1; Interviews with Parent, ISC Principal, Special Education Teacher, and Social Worker.)

3. Student's emotional disability, combined with his passion for WWE, has led to significant challenges in the educational setting. For instance, Student is reported to have "grandiose delusions of himself as an actual WWE wrestler" and spends the majority of his time planning and acting out wrestling moves. Believing himself to be a WWE character, Student has performed potentially dangerous wrestling moves on peers and staff, such as chokeholds. In addition, Student consistently reacts aggressively to anyone challenging his identity as a WWE character. (Ex. C at 1; Interviews with Parent, ISC Principal, Social Worker, Special Education Teacher, and School Psychologist.)

4. Parent and the ISC educators who work with Student agree that Student's ability to regulate his emotions and maintain safe behavior in the classroom is his most critical challenge. When Student becomes agitated, he has a very difficult time calming down and can quickly escalate to being physically and verbally aggressive. When Student feels slighted by a peer, or is presented with an unwelcome request from staff, his typical reaction is to demonstrate immediate verbal or physical aggression to gain control over the situation or avoid the task. Because Student escalates quickly, and often without visible warning signs, i.e., going from "0-60 in a second," his behavior is unpredictable and presents significant safety concerns. (Ex. C; Ex. A at 12-13; Interviews with Principal, School Psychologist, Social Worker, Special Education Teacher, and Parent.)

5. In January of 2017, due to increasingly dangerous and disruptive behavior, Student began attending the Instructional Services Center (ISC), a therapeutic day treatment program operated by the District. At that time, the results of a reevaluation evidenced increases in aggressive, unsafe, defiant, and off-task behavior, as well as decreases in academic performance. Based on reevaluation, the IEP team determined that Student's disability-related needs would be met more appropriately in the ISC, an educational setting where he would receive "more structured, intensive programming." (Ex. A at 22-33.)

6. The ISC is a highly structured, small group therapeutic setting where class size is typically limited to between six and ten students. The ISC program is specially designed to address the needs of students who struggle with behavioral challenges related to emotional disability. The structure of the ISC includes therapeutic supports and behavioral interventions provided by highly trained, experienced, and skilled staff. As one component of its behavioral supports, the ISC employs a level system that measures behavioral progress based on standardized expectations. Although therapeutic and behavioral supports are woven into the structure of the ISC, students may also receive treatment services that include individual, group and family therapy. All students at the ISC are IDEA eligible and receive educational services pursuant to an IEP. (Response at 2-3; Interviews with ISC Principal and Social Worker.)

7. Student attended the ISC for the remainder of the 2016-17 school year, pursuant to the January 17, 2017 IEP. (Ex. A at 21-43.)

8. In August of 2017, Student was placed in a Residential Facility by Hospital “due to out of control, impulsive, aggressive behaviors, and suicidal ideation and attempts” at home.

9. In connection with this residential placement, Student received educational services at Facility School from August 24, 2017, to January 6, 2018, rather than at the ISC. (January 2018 IEP, Ex. A at 19.)

10. Student returned to the ISC on January 11, 2018, following discharge from Residential Facility. (Exhibit 14; Interview with Parent and written correspondence from ISC Principal.)

11. Parent filed this Complaint to address concerns with the development of the January 2018 IEP following Student’s discharge from Residential Facility, as well as the District’s response to changing behavioral needs for the 2018-19 school year. In addition, Parent raised concerns related to the implementation of Student’s BIP on the bus during the fall of 2018, the receipt of progress reports, and the sharing of Student’s special education records with law enforcement in August of 2018.

12. To remedy these concerns, Parent believes that Student should be placed back at Facility School because it is a locked facility staffed by professionals who have experience working with students who, like Student, exhibit more dangerous behavior than students typically served by the ISC. (Interview with Parent.)

**Development of the January/Transfer 2018 IEP:**

13. In December of 2017, Facility School and the ISC agreed that Facility School would host Student’s upcoming annual IEP meeting because Student had not attended the ISC since May of 2017.

14. As agreed, Facility School convened a properly constituted IEP team to review Student’s IEP on January 16, 2018. Parent, ISC Principal, and School Psychologists participated as members of the IEP team, in addition to staff from Facility School. (Ex. F at 3; Ex. A at 10; Ex. I at 13; Interviews with School Psychologist, ISC Principal, and Parent.)

15. Parent raises the following concerns related to the development of the 2018 IEP: 1) Parent did not have an opportunity to meaningfully participate in the development of Student’s IEP, 2) the behavioral goals, supports, and services identified in the IEP were not adequate to meet Student’s needs, and 3) the IEP did not include transportation as a related service, even though Student received it while attending the ISC.

16. First, Parent alleges that she did not participate in the development of Student’s January 2018 IEP. In support of this allegation, Parent asserts that the meeting on January 16 was a “transfer of care” meeting, not an IEP meeting. As further evidence that the January 16 meeting was not an IEP meeting, Parent asserts that the January 2018 IEP is identical to the January 2017 IEP.

17. Based on the following facts, the SCO finds that the meeting held at Facility School on January 16, 2018, was an IEP meeting. The SCO further finds that Parent was provided with an opportunity to participate in the development of Student's IEP during this meeting.

- The Notice of Meeting, dated December 15, 2017, informed Parents that the meeting scheduled for January 16, 2018, was an IEP review. The Notice specifically stated that the purpose of the meeting would be “to review and update [Student’s] present levels of academic achievement and functional performance, needs, and goals, and to develop a plan to provide special education and related services.” (Ex. F at 3.)
- Consistent with the Notice of Meeting, the team reviewed new assessment data in reading, math, and an update on social-emotional functioning observed at Facility School. (Ex. A at 12-16; Ex. I at 13; Interviews with School Psychologist, ISC Principal and Parent.)
- Student’s 2018 IEP contained two new annual goals, including a different goal in reading and an additional goal in math. (*Comparing* Ex. A at 12-16 with Ex. A at 26-29.)
- Finally, Parent attended the IEP meeting on January 16, 2018, and actively participated in the discussion. (Ex. A at 13; Interviews with ISC Principal, School Psychologist, and Parent.)

18. The IEP developed on January 16, 2018, was adopted by agreement between the ISC and Parent on February 22, 2018. This IEP will now be referred to as the “Transfer IEP.”

19. One of the changes made when the ISC adopted the Transfer IEP was to include transportation as a related service, specifying that Student would receive door-to-door transportation between his residence and the ISC. This change was made because Student did not need transportation when he was in residential placement but would need that service now that he was attending the ISC. At the time Parent agreed to the Transfer IEP, she believed that it was appropriate to meet Student’s needs. (Response; Interviews with Parent, ISC Principal, and Social Worker.)

20. Although Parent believed that the Transfer IEP was appropriate at the time it was adopted, she now questions this belief based on Student’s increasingly serious behavioral challenges. Presently, Parent alleges that the annual goals and supports/services related to behavior/social-emotional functioning are not appropriate to meet Student’s needs. In support of this allegation, Parent asserts that Student’s annual goals on the 2018 Transfer IEP are identical to the goals identified on the January 2017 IEP and Student’s behavioral intervention plan (BIP) has not been updated since January of 2017. In addition, Parent now believes that the IEP failed to adequately address Student’s PTSD, a treatment area of growing concern to Parent and Student’s in-home providers. (Reply; Interview with Parent.)

21. The SCO agrees that Student’s social/emotional goals and behavioral supports remained substantively the same as those described on the January 2017 IEP. Based on Findings of Fact (FF) ## 22-25 below, the SCO finds that the behavioral goals and supports did not adequately support Student’s most critical need in the area of emotional regulation.

22. In relevant part, the Transfer IEP described the following present levels of functional performance, social emotional needs, and impact of disability:

[Student] has a hard time accepting limits and following directions, especially when he hears the word “no”. He can be very reactive to situations involving his peers and will jump into negativity in the classroom or respond negatively when provoked by others. [Student] is easily triggered and frustrated if things don’t go his way. [Student] is also triggered by comments that a peer has made and will fixate and perseverate becoming more and more agitated . . . . Once triggered, [Student] has a very hard time calming himself down and regulating his emotions, [sic] this can result in his becoming physically aggressive . . . .

....

. . . [Student] has improved his overall awareness of his triggers and emotions; however, he struggles to stop and think before reacting to a [sic] situations . . .

....

. . . [Student] needs to work on utilizing his coping skills in the classroom in order to regulate his mood and emotions and verbalize his needs and feelings in an appropriate manner.

(Exhibit A, at 12-13.)

23. To address Student’s disability-related needs, the Transfer IEP contained three goals in the area of social/emotional wellness. As described below, these IEP goals were substantively the same for 2017 and 2018.

- Goal One (maintain emotional regulation). When feeling upset or overwhelmed, [Student] will utilize a coping skill/tool to regulate his emotional state and remain in the classroom setting in 8 out of 10 situations as measured by teacher observation and daily point sheets.

The difference between this goal and the 2017 IEP goal was the distinction that Student would remain in the classroom rather than in the school building and the measure being described as 80% of the time based on staff report.

- Goal Two (maintain personal space). [Student] will maintain his personal space and keep his hands to himself in 8 out of 10 situations as measured by teacher observation and daily point sheets.

The difference between this goal and the 2017 IEP goal was the measure being described as 80% of the time based on staff report.

- Goal Three (maintain focus on instruction). During classroom instruction, [Student] will listen without interrupting, focus on instruction, and complete his assignments 75% of the time as measured by teacher observation and daily point sheets.

The difference between this goal and the 2017 IEP goal was the measure being based on staff report.

*(Comparing 2018 Transfer IEP, Ex. A at 14-15 with 2017 IEP, Ex. A at 28-29.)*

24. Similarly, the BIP adopted by the District in the 2018 Transfer IEP incorporated the BIP dated January 17, 2017, with minor additions from Facility School that included accommodations related to Student’s proximity to peers and staff, access to sensory and movement breaks, and opportunities for special tasks. (Ex. A at 4; Ex. B.) Both the 2017 and 2018 BIPs identified the primary function of Student’s inappropriate behavior as attention seeking. (Ex. B at 2.)

25. Notably, the Transfer BIP did not directly address or provide instructional support and behavior teaching strategies in the area of emotional regulation. Although the BIP stated what Student would do to demonstrate emotional regulation, it did not describe what staff would do to teach and support him in getting there. For example, the BIP stated that Student will begin to recognize when he is becoming overstimulated and will communicate this to an adult—even though the IEP simultaneously recognized that Student “struggles to stop and think before acting.” The BIP did not identify any behavior teaching strategies that would be employed by adults to help Student be able to recognize when he is becoming agitated. Indeed, the entire section of the BIP titled “Behavior Teaching Strategies” described what Student would be able to demonstrate but did not include any statements describing what staff would do to teach and support him. (Transfer BIP, Ex. B at 2-3.)

### **Progress on Behavioral Goals during the 2017-18 School Year**

26. In addition to concerns about the Transfer IEP, Parent alleges that she did not receive reports on Student’s progress for the 2017-18 school year. Based on the following facts, the SCO finds that Parent likely received the IEP progress report at the end of the second semester. Student’s 2018 IEP provides that “Parents will be notified of progress on annual goals through semester report cards.” (Exhibit A, at 14.) Special Education Teacher recalled that Student’s progress report was sent home at the end of the semester with his grades by the ISC Secretary, according to customary practice. Consistent with her recollection, the Progress Report and the

Enrich audit log indicated that progress on Student's IEP goals was updated and reported by Special Education Teacher on May 24, 2018. (Ex. H at 1-2; Ex. K at 33.)

27. In her Reply, Parent stated that she disagreed with the District's assertion that Student had made progress on his behavioral goals, as evidenced by daily behavior tracking sheets and incident reports. (Reply at 1-2.)

28. Based on the facts described in FF ## 28-31, the SCO finds that Student did not make progress in the area of social/emotional functioning from January to May of 2018. First, the IEP Progress Report completed by Special Education Teacher, dated May 24, 2018, stated that Student made insufficient progress on all three IEP goals in the area of social/emotional functioning between January and May of 2018. For Goal Two (maintain personal space), Student performed at 58%. For Goal Three (maintain focus), Student performed at 54%. Although the Progress Report stated that Student made insufficient progress on Goal One, no measure or percentage was indicated. Special Education Teacher also stated that progress on Student's academic goals in reading and writing was impacted by "disruptive or unsafe behavior." (Exhibit G at 1-2.)

29. Notably, Student also failed to make progress on the same social/emotional goals in May of 2017. Based on the IEP Progress Report completed by Special Education Teacher, dated May 26, 2017, Student did not make progress on Goal Two, as measured by behavior tracking sheets that demonstrated Student had displayed aggressive or assaultive behavior toward self or others on 35 occasions between January and May of 2017. Similarly, Student did not make progress on Goal Three, as measured by tracking sheets that demonstrated Student had displayed excessive classroom disruption on 29 separate occasions between January and May of 2017. (Progress Report dated May 26, 2017, Ex. G at 7.)

30. Second, Student's behavioral graph does not provide sufficient evidence to demonstrate progress in the area of behavior. (Response at 3; Behavior Graph, Ex. G at 4.) For example, Student's behavior remained at level one, the lowest in the ISC's level system, for the entire spring semester of 2018. And although Student showed slight progress in his behavioral performance for limited periods, as measured the ISC's level system, it was not sustained. During the semester, Student never progressed to level 2. (Behavior Graph, Ex. G at 4.)

31. Finally, Student's behavior grades demonstrated repeated incidents of misconduct, described as follows:

- 5 incidents where Student left without permission;
- 40 incidents where Student demonstrated excessive classroom disruption in which he did not respond to redirection;
- 17 incidents where Student interfered with staff management;



- 80 incidents of aggressive/assaultive behavior toward self and/or others;
- 8 incidents of major property destruction;
- 1 incident of behavior misconduct on transportation; and
- 2 incidents of spitting on other people or the personal possessions of others.

Although the frequency of incident reports decreased from a high of 25 in April to a low of 10 in May, the severity of the behavior increased. (Review of disciplinary history, Exhibit D.) For example, Student’s behavior resulted in suspensions on March 7, April 18, and April 28 of 2017. This series of suspensions totaled five days of removal. The reasons for the suspensions were described as verbal aggression, physical aggression, and the disruption of the classroom environment for an extensive amount of time. (Ex. D at 1 and 6-7.)

**Implementation of BIP on the Bus at the beginning of the 2018-19 school year:**

32. Parent alleged that Student’s BIP was not implemented while Student was on the bus, as evidenced by the fact that transportation staff did not have access to Student’s IEP. In response to this allegation, the District admitted that Student’s BIP was not shared with transportation staff because it was “primarily focused on classroom strategies,” and Student lived so close to the ISC that he was only on the bus for approximately one to two minutes. (Response at 4; Interviews with ISC Principal and Bus monitor.)

33. Based on the following facts, the SCO finds that Student’s IEP did not require that transportation staff be trained to implement his BIP. Student’s IEP stated that a bus monitor would be on the bus to “provide behavior support and to monitor for safety on the ride to and from school.” (2018 IEP, Ex. A at 4). Consistent with the IEP, a bus monitor was assigned to Student’s bus for the primary purpose of providing emotional/behavioral support, as well as to ensure safety. *Id.* All transportation staff assigned to serve students attending the ISC, including bus monitors, have received training on de-escalation techniques, including Crisis Prevention Intervention (CPI) training, to ensure safety. In addition, students who ride the bus have assigned seating with space provided between students to decrease likelihood of altercations. Finally, ISC staff communicate with transportation staff on a daily basis to share relevant information about the kind of day a student may be having and are available for support and intervention. Bus Monitor confirmed that Student has an assigned seat away from other peers and that she communicates with ISC staff daily, most often with Principal, to support Student’s behavioral needs on the bus. (Interviews with ISC Principal and Bus Monitor.) Combined, these facts support a finding that Student received support on the bus in accordance with his IEP.

### **Actions to Address Increasing Behavioral Concerns during the 2018-19 School Year:**

34. On July 30, 2018, Parent contacted Executive Director of Student Services to request an IEP meeting prior to the start of the 2018-19 school year to address “behavioral difficulties from the previous school year,” as well as to review and revise the IEP. (Response at 5.) In addition, Parent wanted to discuss changes in Student’s behavior that had occurred over the summer. In response to Parent’s request for an IEP meeting, ISC Principal informed Parent that she would schedule a meeting on August 14, 2018, the day before Student would start school. ISC Principal clarified that the purpose of this meeting would be to learn more about Parent’s concerns and to review the BIP and safety plan. ISC Principal also assured Parent that an IEP meeting would be scheduled for a later date. (Ex. I at 1-2.)

35. On August 14, 2018, ISC staff met with Parent to discuss her concerns. Participants in this meeting included Parent, Parent’s Advocate, ISC Principal, School Psychologist, and Special Education Teacher.

36. During this meeting, ISC Principal agreed with Parent that a reevaluation should be conducted to explore concerns with cognitive, sensory, and behavioral concerns, as well as to respond to Parent’s request for a change in placement. Accordingly, the District proposed to reevaluate Student in the areas of sensory needs, academics, and social/emotional status. Parent signed prior notice and consent for reevaluation on August 20, 2018. (Ex. E at 1; Ex. I at 1-7.)

37. Between August 15 and September 19, Student’s behavior became increasingly dangerous and disruptive. During this time, Student was subject to the following series of suspensions that when combined totaled ten days of removal.

- On August 17, 2018, Student was suspended for five days for disrupting the school environment for an extensive amount of time and for becoming verbally and physically aggressive with staff.
- On August 30, 2018, Student was suspended for two days for disrupting the school environment and property destruction.
- On September 6, 2018, Student was suspended for two days for disrupting the school environment for an extensive period of time and becoming physically aggressive with another student.
- On September 18, 2018, Student was suspended for one day for disrupting the school environment for an extensive period of time and becoming physically aggressive with staff.

In addition to exhibiting behavior resulting in suspension, ISC staff documented serious and potentially dangerous behavioral incidents that had been occurring on an almost daily basis

since the beginning of the 2018-19 school year. Behaviors included flipping and throwing classroom furniture (i.e., desks, chairs, fire extinguishers) at peers/staff; punching and kicking others; kicking lockers; yelling; making verbal threats and inappropriate comments to staff/peers; spitting on peers and furniture/floor; putting a peer in a headlock; breaking windows; and attempting to choke himself. (Exhibit D.)

38. On September 19, 2018, Parents decided to keep Student at home, rather than send him to the ISC. Parents chose to keep Student at home because they were concerned that his increasingly dangerous behavior and mental fragility could result in risk to Student, his peers and ISC staff, as well as lead to further disciplinary action and involvement with law enforcement. (Ex. I at 11; Interview with Parent.)

39. Following Parents' decision to keep Student at home, the District has provided Student with homebound services that include forty-five minutes of academic tutoring, three times per week. There are no services currently being provided in the area of affective needs. At the time of her interview, Parent stated that Student has been actively participating in the tutoring sessions and that the sessions are going well.

40. On or around September 21, 2018, the District completed a comprehensive reevaluation, including an FBA, and requested that the IEP team convene in early October 2018 to review Student's IEP and develop a new BIP. (Ex. F at 1.)

41. On October 17, 2018, Student's IEP team met to discuss the reevaluation and agreed to reconvene the first week of November to develop Student's IEP and determine placement. (Interview with Parent and written correspondence from ISC Principal.) Although the next meeting was scheduled for November 1, 2018, Parent requested that it be rescheduled due to a work conflict. To accommodate, the District rescheduled the meeting for November 9, 2018. (Correspondence with Special Education Director.)

42. On November 9, 2018, Student's IEP team met again to complete a review and revision of the IEP based on the results of reevaluation. Relevant to the Complaint allegations, the IEP team made the following revisions to Student's IEP.

43. The IEP team described the impact that Student's behavior has had on learning in the present levels of academic and functional performance as follows:

Problem behaviors often result in time out of class and away from all academic instruction. As a result, [Student] has had difficulty maintaining focus on the instructional task at hand. Because of the time away from instruction due to unsafe/aggressive behavior, [Student] has fallen behind in several critical academic areas. [Student] is functioning approximately one level below grade level.

(Ex. M at 4.)

44. Revision of Social/Emotional Goals. The IEP team reviewed Student's past performance on these goals and concluded that Student had demonstrated insufficient progress on all three. Parent also expressed concern that Student has struggled to meet his goals. As a result of this discussion, the IEP team decided to continue the three behavior goals described in FF # 23 above with the following substantive revisions:

- Goal One (maintaining emotional regulation) was revised to include specific coping skills Student would be taught to utilize, i.e., visual cues, mindfulness, and sensory tools.
- Goal Two (maintaining safe boundaries) was revised to address that Student would keep his feet and objects to himself, in addition to his hands. In addition, the performance target was increased from 80% to 100%.
- Goal Three (maintaining focus) was revised to increase the performance target from 75% to 80%.

(Ex. M at 6-7 and 10-11.)

45. Addition of New IEP Goal in the Area of Self-Determination. The IEP team added the following new goal: [Student] will accept redirection without arguing or negotiating and then follow directions within two prompts from staff 80% of the time. (Ex. M at 12.)

46. Significant Revision of BIP. Although the changes to Student's social/emotional goals were slight, the IEP team made significant and substantive changes to Student's BIP. Most significantly, the BIP specifically addresses what the adults should do to support Student in achieving his behavioral goals, remedying the concerns raised in FF ## 24-25 above. Relevant changes to the BIP are summarized as follows:

- FBA Summary Statement was revised to identify the function of Student's behavior as seeking control over a situation, as opposed to attention seeking. This statement aligns more closely with the concerns and observations expressed by educators and parents during interviews, suggesting that it is a more accurate hypothesis. Most importantly, many elements of the BIP contain provisions designed to increase Student's sense of control over his environment.
- Setting event strategies included new and specific instructions for staff, including how to provide Student with choices throughout the day in a structured setting, how to address Student in the appropriate tone of voice, and how to communicate with family and outside providers to ensure academic and behavioral consistency.
- Antecedent strategies included new and specific instructions for staff, including requirements for staff to review daily goals and alternative behavior with Student during morning check-in; constant monitoring of Student for hyper-vigilance with instruction on how to proceed when the level is high; and explicit instruction on how to

provide choices, feedback on behavior expectations and performance, and opportunities for problem solving.

- Behavior teaching strategies included new and specific instruction for staff, including how to provide explicit instruction to Student in “I” statements, coping skills, anger management, mindfulness, self-regulation, and empathy. In addition, staff are instructed to use empathic listening skills and avoid power struggles/arguing when processing a situation with Student.
- Finally, the BIP included specific provisions related to transportation providers.

47. Recommended Change in Placement: The IEP team determined that Student would be best served in a “therapeutic day treatment program that provides psychiatric supervision, consultation and medication intervention as well as being a locked setting for maintaining and preventing elopement.” Because the ISC does not provide this level of service, the District has agreed to research and secure placement in a therapeutic day treatment program that does provide this level of care. Until such placement is secured, Student will continue to receive services in the homebound setting. (Ex. M at 17.)

#### **Provision of Special Education Files to Law Enforcement**

48. On August 21 and August 30, ISC Principal called the School Resource Officer (SRO) to report criminal activity due to damage of school property allegedly caused by Student’s misconduct. The SRO is employed by the Adams County Sheriff Department, not by the District. (Interview with ISC Principal.)

49. On August 21, Student broke a window at the ISC. ISC Principal called the SRO to report the incident, which resulted in charges filed against Student by Adams County. This case is pending, and Student is represented by an attorney in this matter.

50. On August 30, 2018, Student broke a window on the bus. ISC Principal called the SRO to report the incident, which resulted in charges filed against Student by the City of Westminster. This case is pending, and Student is represented by an attorney in this matter.

51. ISC Principal explained that Student’s special education and disciplinary records were not provided at the time these incidents were reported because the SRO had been provided with a copy of Student’s IEP in the spring of 2018, prior to the events in August. Parent had provided consent for Student’s records to be shared with the SRO in the spring of 2018. Because the SRO had a copy of the IEP and no changes had been made, ISC Principal did not believe it necessary to provide the SRO with another copy at the time of these incidents. (Response; Interview with ISC Principal.)

## CONCLUSIONS OF LAW

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

**Conclusion to Allegation One:** The Transfer IEP was not tailored to meet Student's individualized needs in the area of behavior, resulting in a denial of FAPE between January 16 and September 19, 2018.

Any analysis of the appropriateness of an IEP must begin with the standard first established by the United States Supreme Court in *Rowley v. Board of Education*, 458 U.S. 176 (1982), in which the Court set out a two-step analysis for determining whether an IEP has offered a FAPE. The first part of the analysis looks to whether the IEP development process complied with the IDEA's procedures; the second looks to whether the resulting IEP was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017). If those two questions are satisfied in the affirmative, then the IEP is appropriate under the law.

Parent has alleged several procedural inadequacies in the development of the Transfer IEP that are addressed separately in Sections A-C below.

### **A. Parent was provided with a meaningful opportunity to participate in the development of Student's 2018 Transfer IEP.**

First, Parent alleges that she did not participate in the development of the Transfer IEP because the meeting on January 16, 2018, was not an IEP meeting. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10<sup>th</sup> Cir. 2008). Essential to a parent's ability to participate in the IEP process is the requirement that parents be invited and encouraged by the school district to attend the IEP meeting. To that end, the federal regulations specifically require that the school district notify parents of the meeting early enough that they have an opportunity to attend and "schedule the meeting at a mutually agreed on time and place." 34 C.F.R. § 300.322(a).

In this case, the SCO finds and concludes that Parent was provided with a meaningful opportunity to participate in the IEP meeting held on January 16, 2018. Not only did Parent receive proper notice of the IEP meeting, she attended and actively participated in the discussion. Contrary to Parent's understanding and recollection, this was an IEP meeting during which new assessment data was discussed, and revisions were made to the IEP, including the addition of annual goals in academic areas. Finally, Parent agreed to the ISC's adoption of the IEP in February of 2018.

**B. The Transfer IEP accurately described the transportation services Student was to receive.**

Parent also alleges that the IEP did not adequately describe transportation services. Contrary to Parent's allegation, the SCO finds and concludes that the IEP adequately described transportation as a related service. The IEP is a comprehensive written statement that identifies the unique educational needs of an eligible student and sets forth the specific special education programming and related services that will be provided to meet the identified needs. 34 C.F.R. § 300.320. Accordingly, the IEP must include a statement describing the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that the child will receive to enable him to make progress on annual goals and the general education curriculum. 34 C.F.R. § 300.320(a)(4). As described more fully in FF # 19, the 2018 Transfer IEP accurately described transportation as a related service.

**C. Although Student's 2018 Transfer IEP contained social/emotional goals and a BIP, these goals and behavioral supports did not adequately address Student's unique needs, resulting in an IEP that was not substantively appropriate.**

Finally, Parent alleges that the IEP team failed to consider Student's unique behavioral needs by not updating IEP goals and behavioral supports, including Student's January 2017 BIP, to address Student's needs. For the reasons explained below, the SCO agrees.

In developing the IEP, the team must consider the use of positive behavioral interventions and supports to address behavior for a student whose behavior impedes his ability to learn. 34 C.F.R. § 300.324(a)(2)(i). In addition, the IEP must contain goals designed to: 1) meet the needs that result from the student's disability to enable him to be involved in and make progress in the general education curriculum, and 2) meet each of the student's other educational needs that result from his disability. 34 C.F.R. § 300.320(a)(2). Because Student's IEP contained annual goals in the area of social/emotional functioning, as well as the positive behavioral supports and interventions provided through a BIP, the SCO concludes that the IEP met IDEA's procedural requirements. The question now is whether these goals and supports were substantively appropriate.

The IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F., 69 IDELR 174 (U.S. 2017)*. In essence, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." Here, the SCO concludes that the IEP was not tailored to adequately meet Student's unique behavioral needs. In reaching this conclusion, the SCO relies on the following factors.

First, the BIP and IEP goals in the area of social/emotional functioning remained relatively unchanged for the 2017-18 and 2018-19 school years, even though Student had not

demonstrated progress in behavior by any measure in the spring of 2017 or fall of 2018. Because the IEP must aim to enable the child to make progress, an IEP team should consider the effectiveness of the specific strategies and supports previously provided. *Id*; *Q&A on U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017). Notably, there is no indication that the IEP team reviewed Student's progress on IEP goals in the area of behavior as part of the development of the Transfer IEP.

Second, and most notably, the BIP did not provide specific supports and services targeted at improving emotional regulation, the need identified as most critical by Parents and staff serving Student at the ISC. For example, the BIP stated that Student would demonstrate emotional regulation without describing the specific instructional strategies and supports that ISC staff would provide to support Student in achieving this goal. And while the SCO acknowledges that the ISC weaves behavioral supports and interventions throughout its program that are specifically designed to support all students with emotional disability, IDEA requires that disability-related supports and services be individualized based on a student's unique needs.

Finally, Student's repeated misconduct following implementation of the Transfer IEP provides further evidence that the goals and behavioral supports were inadequate. A student's repeated misconduct may indicate a need to include new or different behavioral supports. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). As described more fully in FF ## 26-31 and 37, Student has engaged in repeated incidents of misconduct during the spring and fall of 2018, incidents that have resulted in multiple suspensions.

All combined, these factors support a conclusion that the behavioral goals and supports described in the Transfer IEP were not reasonably calculated to enable him to make progress appropriate in light of his circumstances, resulting in a denial of FAPE. As described in the November 2018 IEP, Student's behavioral challenges have resulted in loss of instruction that has impeded his educational performance, leaving him at least one level below grade level.

In determining how to remedy the denial of FAPE, the SCO considers the actions taken by the District since the beginning of the school year to address Student's behavior. Based on the following considerations, the SCO concludes that the District has partially remedied the denial of FAPE.

First, the District revised Student's IEP through the IEP process based on the results of a recent reevaluation. These revisions, most notably the significant revisions made to the BIP, address the concerns raised above that the goals and services did not adequately target emotional regulation. For example, the new IEP goal targeting emotional regulation identified specific coping skills where the previous goal had not. And where the 2017 BIP failed to match Student's specific disability-related need to instructional strategies and supports, the November 2018 BIP succeeded. For instance, the revised BIP more accurately identified the function of Student's behavior as seeking control over his environment rather than as attention seeking.



Responsive to the newly identified function, the BIP provided specific instructional supports and behavior teaching strategies intended to increase Student's sense of control and provided specific instruction for staff on how to support Student in developing emotional regulation, his most critical need.

Second, the IEP team recognized that Student requires a level of care that includes psychiatric programming and oversight in a locked facility. Because the IEP team determined that the ISC could not provide this level of support, the District will place Student in a therapeutic day treatment program with the required level of service as soon as an appropriate placement can be secured. Accordingly, the SCO concludes that the revisions made to Student's IEP have remedied the deficiencies identified in the 2018 Transfer IEP.

Finally, the ISC is and has been providing homebound instruction in academics following Parents' decision to keep Student at home. Because the District was not obligated to provide homebound services pursuant to the Transfer IEP, the SCO has considered these services in awarding compensatory education for a denial of FAPE from January 16 to September 19, 2018. Acknowledging that the District has provided compensatory services in academics, the remedy below is tailored to the remaining need for compensatory services in the area of social-emotional functioning. The remedy related to parent counseling/training and the sharing of information is intended to support collaboration and consistency between home and school.

**Conclusion to Allegation Two:** The District ensured that Student was provided with behavioral support while he was on the bus, consistent with his IEP.

Under IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the District, must implement a student's IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, the District must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 C.F.R. § 300.323(d)(2).

In this case, the SCO finds and concludes that the District ensured that Student was provided with behavioral supports consistent with his IEP while he was on the bus. As described more fully in FF # 33, Student's IEP required that a bus monitor provide behavioral support and maintain safety during the bus ride between the ISC and Student's residence. Consistent with the IEP, a bus monitor trained in behavioral support and de-escalation techniques was assigned and consistently rode the bus with Student.

**Conclusion to Allegation Three:** The District provided periodic reports concerning Student’s progress on annual goals during the 2017-18 school year, consistent with his IEP.

A parent’s right to participate in the development of their child’s educational program requires that they be regularly informed of progress toward IEP goals. *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017)(“[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.”) For that reason, school districts must periodically report a student’s progress toward meeting annual goals to her parents, in accordance with the schedule described in the IEP. 34 C.F.R. § 300.320(a)(3). In light of *Endrew F.*, the ED has provided additional guidance concerning the importance of sharing progress monitoring data with Parents:

“Public agencies may find it useful to examine current practices for engaging and communicating with parents throughout the school year as IEP goals are evaluated and the IEP Team determines whether the child is making progress toward IEP goals. IEP Teams should use the periodic progress reporting required at 34 CFR §300.320(a)(3)(ii) to inform parents of their child’s progress. Parents and other IEP Team members should collaborate and partner to track progress appropriate to the child’s circumstances.

Questions and Answers (Q&A) on *U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017).

In this case, the SCO finds and concludes that the District likely provided progress reports consistent with Student’s IEP. Parent also raised the concern that Student has not made progress on his IEP goals in the area of behavior. As described more fully in FF ## 26-31 and 37, the SCO agrees that Student has not made progress in the area of behavior by any measure. Because the SCO relied, in part, on the lack of progress in reaching a conclusion that the 2018 Transfer IEP was not substantively appropriate, she does not need to further address this allegation.

**Conclusion to Allegation Four:** The District convened the IEP team in a timely manner following parental request in August of 2018, consistent with 34 C.F.R. §§ 300.324(a)(1)(ii) and (a)(2)(i) and (b).

IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently than once a year to address changing needs or an unexpected lack of progress. *See* 34 CFR § 300.324 (a)(4)-(6) and (b); *Endrew F.*, 37 S. Ct. at 994. “Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time.”

Questions and Answers (Q&A) on *U. S. Supreme Court Case Decision Endrew F. v. Douglas*

*County School District Re-1, 71 IDELR 68 (OSEP 2017).* Consequently, a school district must carefully consider and appropriately respond to a parent's request to convene the IEP team.

In this case, the SCO finds and concludes that District responded to Parent's request to convene the IEP team to address her concerns about Student's behavior within a reasonable time. Within two weeks of Parent's request to discuss her concerns, ISC Principal and staff met with Parent and her advocate to learn more about her concerns. As a result of this meeting, the ISC promptly requested Parent's consent to conduct a reevaluation. As soon as the reevaluation was completed, the ISC convened the IEP team to discuss the results of the reevaluation and revise Student's IEP. Over the course of two IEP meetings, the team reviewed and revised Student's IEP. While Parent and her advocate wanted the meeting to occur as soon as it was requested, the District requires time to convene a proper IEP team. The time it took to convene the IEP team was reasonable given the need for reevaluation. Accordingly, the slight delay does not amount to a refusal to hold an IEP meeting. Instead, the District's actions demonstrate that it was appropriately and reasonably responsive to Parent's request for an IEP meeting.

**Conclusion to Allegation Five:** The District failed to provide copies of Student's special education and disciplinary records to law enforcement in August of 2018, consistent with 34 C.F.R. § 300.535(b).

Pursuant to IDEA's disciplinary procedures, an agency reporting a crime committed by a student with a disability must ensure that the student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. 34 C.F.R. § 300.535(b). Consistent with the Family Educational Rights and Privacy Act (FERPA), a school district must obtain prior written consent from a parent to disclose a student's education records unless an exception applies. 34 C.F.R. § 99.30. Because the transmittal of records in this provision does not constitute an exception to FERPA, the District may only disclose the records in a manner consistent with FERPA. *Id.* Relevant here, a public agency may disclose an education record with parental consent.

In this case, the SCO finds and concludes that the District failed to provide the City of Westminster and the Adams County Sheriff Department with Student's IEP and disciplinary history in accordance with 34 C.F.R. § 300.535(b). In August of 2018, the District reported to law enforcement that Student had committed property destruction. Because the ISC was the entity that reported these alleged crimes to the respective law enforcement agencies, it was subject to this provision. Moreover, disclosure would have been clearly consistent with FERPA because Parents had provided consent for Student's records to be shared with law enforcement. Accordingly, the District should have transmitted Student's special education and disciplinary records to each respective law enforcement entity for consideration in determining charges.

In its Response, the District asserted that it had complied with this provision because the School Resource Officer (SRO) had been provided with Student's IEP in the spring of 2018. Providing

the SRO with a copy of Student's IEP in April of 2018 was not sufficient to satisfy this provision when Student was referred to both the City of Westminster and Adam's County Sheriff's Department in August of 2018 for potential criminal prosecution. Further, there is no evidence that the SRO shared this information with the two law enforcement agencies for consideration in determining charges arising out of the two incidents in August of 2018.

### **REMEDIES**

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

- a. Behavioral strategies and supports, including Student's behavioral intervention plan, have not been updated since January of 2017 and did not adequately address behavioral needs, consistent with 34 C.F.R. § 300.324(a)(2)(i) and (b).
- b. Transmittal of special education and disciplinary records to law enforcement, consistent with 34 C.F.R. § 300.535(b).

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

- 1) By November 30, 2018, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision.
- 2) By December 12, 2018, the District must develop a notice consistent with 34 C.F.R. § 300.535(b) and this decision for approval by CDE regarding the transmittal of special education records to law enforcement. CDE will approve or request revisions to the proposed notice by December 17, 2018. The approved notice must then be shared with all staff at the ISC who are in a position to contact law enforcement. Documentation that this notice has been provided to the appropriate ISC staff must be submitted to the Department by January 4, 2019.

### **Student-Specific Remedies to Address the Denial of FAPE:**

- 3) Compensatory Education in the area of social-emotional functioning. The District shall provide five hours of parent counseling and training in SED to assist Parents in developing the skills to support implementation of Student's IEP, including the importance of consulting and sharing information between the ISC and Student's in-home providers. This training and counseling must be provided by a licensed social worker or licensed school psychologist. Consistent with this remedy, Parents must provide consent to share information between Student's in-home providers and educational staff. If Parents refuse to provide consent to share information by November 26, 2018, or decline these services, the District will be excused from providing parent counseling and training.

- 4) In addition, the District shall provide Student with one hour of direct instruction in the area of social emotional functioning and regulation each week until Student is placed in an appropriate day treatment program. Although the amount of instruction must total one hour each week, it may occur in smaller chunks of time throughout the week, based on Student's needs and stamina. This instruction must be provided by a licensed school psychologist, social worker, or mental health provider with experience teaching emotional regulation skills. This instruction must focus on the behavior teaching strategies identified in Student's November 2018 BIP and designed to support Student's progress in IEP goals in the area of behavior/social emotional functioning.
- 5) By November 26, 2018, the District must meet with Parent to schedule compensatory services. These compensatory services shall begin no later than the week of November 26, 2018, and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student towards IEP goals and objectives.
  - a) The Parties shall cooperate in determining how the compensatory education services will be provided. If Parent refuses to meet with the District within this time period, the District will be excused from providing compensatory services, provided that the District diligently attempts to meet with Parent and documents its efforts. The determination that the District has diligently attempted to meet with Parent and should therefore be excused from providing these services rests solely with the CDE.
  - b) The District must submit the schedule of compensatory services to the Department no later than December 3, 2018.
  - c) The District must submit a monthly service log to the CDE to document the compensatory services provided. This documentation must be provided on the third Monday of each month until the services ordered have been provided.
  - d) If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason, the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the Department of the change in the monthly service log.
- 6) The District shall provide a copy of Student's special education and disciplinary records to the attorney representing Student in the pending criminal cases. Parents shall provide the name and contact information of Student's attorney to the ISC Principal or Special Education Director by November 26, 2018. If Parents do not provide the requisite contact information by this date, the District will be excused from providing the records. The District shall provide documentation to the Department that the records have been shared or that

Parents failed to provide the required contact information for Student's Attorney, no later than December 3, 2018.

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

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

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

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

#### **CONCLUSION**

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

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

Dated this 14<sup>th</sup> day of November, 2018.

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Candace Hawkins, Esq.  
State Complaints Officer

## **Appendix**

### **Complaint, pages 1-5**

Exhibit 1: January 2018 IEP  
Exhibit 2: Summons and Complaint  
Exhibit 3: Parent Statement concerning ESY  
Exhibit 4: Progress report  
Exhibit 5: Blank  
Exhibit 6: Parent statement concerning parent participation  
Exhibit 7: Email correspondence  
Exhibit 8: Parent statement concerning transportation services  
Exhibit 9: Parent statement and documentation concerning access to BIP for transportation providers.

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

Exhibit A: January 2018 IEP and documentation of adoption/transfer  
Exhibit B: BIP dated January 2018 and 2017  
Exhibit C: Assessment data  
Exhibit D: Disciplinary history  
Exhibit E: Prior written notice and consent to evaluate  
Exhibit F: Notices of meeting  
Exhibit G: Progress reports and grades  
Exhibit H: District Policies  
Exhibit I: Correspondence  
Exhibit J: Contact information  
Exhibit K: Enrich audit logs  
Exhibit L: Personal meeting notes from ISC Principal  
Exhibit M: IEP developed on November 9, 2018  
Written Correspondence with Special Education Director

### **Reply, pages 1 -2**

Exhibit 10: District Transfer Guidelines  
Exhibit 11: Trauma checklist  
Exhibit 12: Draft BIP  
Exhibit 13: FBA dated September 2018  
Exhibit 14: Residential Facility discharge summary  
Exhibit 15: Evaluation Report dated September 2018

### **In-person interviews with:**

- Parent

- ISC Principal
- Social Worker
- School Psychologist
- Special Education Teacher
- Bus Monitor