

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

State-Level Complaint 2020:518
Weld RE-5J School District

DECISION

INTRODUCTION

On May 15, 2020, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against the Weld RE-5J School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from May 15, 2019 through May 15, 2020 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

1. Failing to conduct a manifestation determination review within ten school days of the District’s decision on or about November 13, 2019 to change Student’s placement, in violation of 34 C.F.R. §§ 300.530(e) and 300.536;

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. Failing to provide an independent educational evaluation (“IEE”) at public expense, or file a due process complaint to show the District’s evaluation was appropriate, following Parent’s request for an IEE on December 19, 2019, in violation of 34 C.F.R. § 300.502(b)(1)-(2);
3. Changing Student’s educational placement to a home-bound services program on December 20, 2019, and failing to:
 - a. Include Parent in the decision to change Student’s educational placement, in violation of 34 C.F.R. § 300.116;
 - b. Ensure Student’s educational placement was made in conformity with IDEA’s least restrictive environment (“LRE”) provisions, in violation of 34 C.F.R. §§ 300.114, 300.116, and 300.320(a)(5); and
 - c. Provide Parent with Prior Written Notice (“PWN”) of the change in educational placement, in violation of 34 C.F.R. § 300.503.

FINDINGS OF FACT

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

A. Background

1. Student is a thirteen-year-old who is eligible for special education and related services under the disability category of Specific Learning Disability (“SLD”). *Ex. B*, p. 1. Student attended seventh grade at School, which is located within the District, during the first half of the 2019-20 school year. During the third quarter of the school year, Student attended homebound instruction administered by the District at Elementary School.
2. Student is described as an intelligent and active young man who loves hockey and spending time with his friends. *Interviews with Parent and Special Education Teacher*.
3. As a result of his disability, Student struggles to produce written work with correct mechanics, structure, and organization. Additionally, Student demonstrates difficulties with decoding and encoding, which impact his reading fluency. *Ex. B*, p. 4.
4. In addition to academic struggles, Student displayed significant behavioral difficulties during the 2019-20 school year. Student’s behavior—and the District’s disciplinary response to Student’s behavior—are at the center of the allegations in this matter.

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

B. Parent's Request for Behavioral Supports and Reevaluation

5. Throughout the first half of the 2019-20 school year, Student frequently engaged in disruptive and defiant behavior toward School staff. *Response*, p. 1; *Ex. A*. On September 6, Student received a one-day in-school suspension for refusing to work and for repeatedly throwing a book across the classroom. *Ex. A*, pp. 7-8. On October 4, Student acted rudely toward multiple staff members, and made a crude gesture toward the School building, resulting in a three-day out-of-school suspension. *Id.* at pp. 5-6.
6. On September 12, Parent emailed Special Education Teacher requesting an IEP review meeting to discuss Student's declining grades and increasing behavioral issues. *Ex. G*, pp. 1-2. Parent also requested a functional behavioral assessment ("FBA") and—if appropriate based on the results—development of a behavior intervention plan ("BIP"). *Id.*
7. On September 26, Parent provided consent to reevaluate Student in the areas of academic performance, social emotional status, and health. *Ex. 5*, p. 11. The District completed a reevaluation of Student that included vision and hearing screenings, the Woodcock-Johnson IV Test of Achievement, the Differential Scales of Social Maladjustment and Emotional Disturbance ("DSSMED"), and two classroom observations. *Id.* at pp. 37-40.
8. Student's scores on the Woodcock-Johnson fell below the 12th percentile in reading and writing, indicating he functioned below the average range. *Id.* at p. 4. Parent and teachers also completed surveys for the DSSMED. *Id.* Parent and teachers rated Student "not at risk" for an emotional disturbance. Parent and three classroom teachers rated Student as "not at risk" for social maladjustment, while two teachers rated Student as "at risk" for social maladjustment.
9. School Psychologist also completed an FBA on October 7 as part of the reevaluation. *Ex. J*. Student's problem behaviors were identified as disrupting his learning and the learning of others, arguing with adults, a lack of academic effort, and issues with work completion. *Id.* at p. 1. Teachers described the frequency of these behaviors as sporadic and circumstance dependent. School Psychologist also reviewed Student's disciplinary history and conducted two classroom observations. *Id.* at pp. 3, 5-8.
10. The educational impact of Student's behavior is documented as "missed classroom instructional time due to being sent out of class for disruptive conduct, thereby impacting his curricular knowledge in any given subject area, work completion, thereby impacting his grades." *Id.* at p. 4. The FBA neither identifies any antecedents, consequences, or reinforcers that maintain Student's problem behavior nor describes the possible functions of the behavior or possible positive alternative behaviors.

11. School Psychologist explained that a BIP was not developed because, based on the results of the FBA, there was no connection between Student's behavioral issues and the SLD disability category. *Interview with School Psychologist*. The summary statement contained in the FBA states in part that "[Student's] problematic behavior appears to be for the purpose of obtaining power/control over situations for specific end goals, such as getting out of class, being transferred to a different section of class in order to be with friends and/or to be home schooled." *Ex. J*, p. 8.
12. On October 23, Parent met with Academic Officer and Special Education Director. Parent requested certain accommodations to help Student academically, such as modified notes and extended time to complete assignments. *Interview with Special Education Director*. They discussed modifying Student's schedule to reduce problematic behaviors in certain classes and disruptions between passing periods and at lunch. *Interview with Academic Officer*.
13. Following the October 23 meeting, Special Education Teacher emailed Parent explaining an alternative schedule that School staff had developed. The new plan consisted of Student eating lunch in a designated teacher's room away from his general education peers. Additionally, the plan indicated that Student would be escorted by a School staff member to each class during passing periods and that he would wait in the office after school is dismissed each day. Special Education Teacher ended the email by writing, "[i]f he is not kicked out of any classes for two weeks he can earn his reg. Pride class, passing periods, 3rd period Sci [sic] and lunch back. But, as soon as he is kicked out of one class and/or suspended his two week schedule starts over." *Ex. N*, p. 7.

C. The November 15 IEP Meeting

14. On November 15, the District convened a properly constituted IEP team to review and revise Student's IEP. *Ex. B*. The IEP team reviewed Student's present levels of performance, noting he scored in the 27th percentile in reading and the 6th percentile in language on the Fall 2019 Measures of Academic Progress testing. The IEP team cautioned that these results may not accurately reflect Student's ability levels because he rushed through the assessments and said that he did not care what his scores were. At that time, Student had a C in math, an F in social studies, a C in language arts, a D in reading, and an F in science. The results of the Woodcock-Johnson assessment and the DSSMED are also included in the present levels of performance section. *Id.* at pp. 3-4.
15. The IEP team determined Student continued to qualify for special education and related services as a child with a SLD. *Id.* at pp. 14-15. The November 15 IEP describes Student's needs and the impact of his disability as "difficulties with decoding and encoding which greatly impact his reading fluency . . . [and adds] He struggles in production of written work that has correct mechanics and that includes structure and

organization” *Id.* at p. 4. The IEP continues “[t]hese difficulties . . . impact his ability to complete grade level reading and writing assignments in a timely manner.” *Id.*

16. The IEP team then reviewed and updated annual goals, developing one goal pertaining to reading and two goals pertaining to writing. *Id.* at pp. 5-7. To help advance these goals, Student received 250 minutes per week of direct special education instruction. *Id.* at p. 10. The November 15 IEP also contains accommodations to assist Student with reading and writing skills. *Id.* at p. 8. Ultimately, the IEP team determined that Student’s placement in the least restrictive environment was in the general education classroom at least 80 percent of the time. *Id.* at p. 11.
17. Notably, the November 15 IEP contains no behavioral supports or interventions. *Ex. 5*, p. 48. Special Education Director explained the IEP did not contain behavioral supports because the IEP team concluded Student’s problematic behaviors were not related to his disability category. *Interview with Special Education Director*. Additionally, even though School Psychologist had completed Student’s FBA, a BIP was not developed.
18. Private Psychologist attended the IEP meeting and requested that the District administer the Behavior Assessment System for Children (“BASC-III”). *Interview with Parent*. Private Psychologist asserted that—based on interactions with Student and his mental health diagnoses—Student should qualify for special education under an emotional disability. Private Psychologist explained that Student shuts down or acts out when he is frustrated or confused. *Interview with Parent*. At the end of the meeting, Parent provided consent for additional social emotional evaluations. *Ex. 5*, pp. 86-87.
19. The November 15 IEP contains an embedded prior written notice (“PWN”), written by Special Education Teacher, that provides: “the Sped team considered using teacher reports and observations but [Parent] requested formal evaluations. . . [and] . . . Parent requests, therapist notes, teacher grade reports, teacher observations, resource reports, and teacher feedback forms were considered.” *Ex. B*, p. 11. When asked by the SCO what formal evaluations Parent requested at this meeting, Special Education Teacher could not recall. *Interview with Special Education Teacher*.
20. On November 20, Principal and Academic Officer created a Behavior Modification Plan (“BMP”) for Student. *Ex. K*. A BMP is a general education intervention used by the District to address problematic behaviors. *Interview with Special Education Director*. School staff recognized that Student needed behavioral supports, but since the District had not yet completed all assessments that it intended to, the District used a BMP that was completed outside of the IEP process. *Id.*

D. Ongoing Behavioral Issues and District’s Homebound Services Offer

21. On Thursday, November 21, Student received a three-day out-of-school suspension for running away from a teacher, refusing to come to class, and making a rude gesture at a

teacher. *Ex. 6*, p. 2. The following week School was out of session for Thanksgiving break, marking Monday, December 2 as the final day of suspension. Prior to this incident, Student had received two days of out-of-school suspension for separate acts of defiance. *Id.* at pp. 2-4. On November 15, he was sent to the office for refusing to follow directions and roughhousing with a friend in class. Once in the office, Student refused to follow directions and cursed at staff. On November 19, Student left class and refused to go back. Parent and Academic Officer agreed that, combined with the three-day suspension on October 4, the November 21 incident brought the out-of-school suspension total for the 2019-20 school year to eight days. *Ex. N*, pp. 23-24.

22. On November 21, Parent emailed Academic Officer requesting a copy of the BMP so she could “review it with [Student] as soon as possible [and] use this suspension time to work on practicing the strategies that [School] added to this document.” *Id.* at p. 22. Academic Officer suggested that Parent work with Student to appropriately comply with adult requests, and to attend class and participate without disrupting the learning of others. *Id.* at p. 31.
23. Academic Officer wrote, “[Student is struggling at the moment and we want to use everything in our bag of tricks to get him on the right track – so he can become a learner and a student at [School].” *Id.* at p. 22. Academic Officer added, “I offered you homebound services this week. Homebound services would allow [Student] to stay at home, meet with a tutor 12 hours a week and still receive his special ed [sic] services outlined in his IEP.” *Id.*
24. Academic Officer explained that the District does not have an expulsion program, but instead uses Homebound Services. Typically, in a Homebound Services arrangement, the District finds a teacher available to work overtime to provide one-on-one services outside of the regular school day. *Interview with Academic Officer*. When asked whether Student was facing expulsion at that time, Academic Officer stated he was “pretty close.” *Id.*
25. Following the November 21 suspension, the District scheduled a re-entry meeting for December 3. Student, Parent, Advocate, Principal, Assistant Principal, Academic Officer, and School Resource Officer attended. *Interview with Parent*. During the meeting, Parent repeatedly stated that Student has a social emotional disability, and that nothing would change unless and until that was addressed. *Interview with Academic Officer*. However, it was the District’s position that there was no evidence of a social emotional problem. Academic Officer said Student could return to School, but that he would need to again be escorted to all classes. Parent objected, stating that the alternative schedule and classroom escorts had not previously curbed his behavior. *Interview with Principal*.
26. Academic Officer presented Parent and Student with a Student Behavior Contract (“SBC”). *Ex. C*. The SBC listed 3 behavioral goals: (1) comply with reasonable staff

requests, (2) report to class on time and remain for the entire period, and (3) refrain from cursing at students/staff. *Id.* The SBC also listed two consequences if the goals were not met: (1) a five-day suspension from school and (2) an expulsion hearing. *Id.*

27. Parent refused to sign the SBC. Parent explained to the SCO that she felt the SBC was a trap, and that agreeing to the terms would mean the next time Student was in trouble he would be expelled. *Interview with Parent.* Principal's understanding was that Academic Officer wanted Parent to either sign the SBC or proceed to an expulsion hearing. *Interview with Principal.* Based on the lack of interventions up to this time, Parent had no confidence in School's ability to support Student. *Interview with Parent.*
28. The parties also discussed holding a manifestation determination review ("MDR") meeting. Academic Officer told Parent that they could have an MDR, but added that since Student did not qualify for special education under the disability category of Serious Emotional Disability ("SED"), an MDR would conclude that his behavior was not related to his disability. *Interviews with Parent and Academic Officer.*
29. Fearful that Student would be expelled if he returned to School, Parent kept Student home on December 4 and 5. *Interview with Parent.* On Friday, December 6, Parent emailed Academic Officer writing:

given the options that you presented to us on Tuesday, it sounds like [School] is not willing to address [Student's] mental health issues and that the administration has their mind made up regarding his student status at the school. At this time, it seems like we have no options to keep him in the general education setting as the administration continues to ignore his clinically diagnosed mental health issues and expects him to act as if he doesn't have mental health problems. Please send me the information regarding the homebound program so that we can at least get him some academic instruction while we search for a program that is not as restrictive and into a place where he is learning, making friends, feels wanted, and can get the mental health support that he needs as well.

Ex. N, p. 34.

30. On Monday, December 9, Academic Officer wrote, "[t]hank you for the update. We will work on our side to assign a teacher. We hope to have this done quickly. We will let you know when we have everything figured out." *Id.* A teacher was not assigned until Friday, December 20. During this time, Student received no educational services, and was not allowed to be on school property. *Id.* at p. 13.

E. The December 19 IEP Meeting

31. On December 19, the IEP team convened to review the results of the BASC-III and discuss whether Student qualified for special education and related services under the disability category of SED. After reviewing the results of the BASC-III and the other assessments completed during the November 2019 reevaluation, the District members of the IEP team decided that Student had a conduct disorder but not an emotional disability. *Interviews with Special Education Teacher and Special Education Director.*
32. Student's IEP remained unchanged following this meeting, including the LRE statement which placed him in the general education environment for 88.2% of the school day. *Ex. 5, p. 80.* The IEP team did not discuss creating a BIP. *Interview with School Psychologist.*
33. Though Parent had agreed to place Student in Homebound Services on December 6, this decision was not discussed at all during this IEP meeting. *Interview with Special Education Director.* Special Education Director explained that, since Homebound services is a general education intervention and the District planned to provide special education services in the Homebound Services setting, it did not need to be discussed. The SCO finds that the decision to change Student's placement to Homebound Services was done outside of the IEP process.
34. The PWN embedded in the IEP does not contain any reference to the IEP team discussing the results of the BASC-III, the outcome of the SED eligibility determination, or the impending transition to homebound services. *Id.* The PWN only provides, "not conducting the additional evaluation for social/emotional was not an option since mom requested formal testing . . . [and] . . . parent requests, therapist notes, teacher grade reports, teacher observations, resource reports, and teacher feedback forms were considered." *Id.*
35. The parties' recollection of the end of this IEP meeting differ. Parent and Advocate state that, following the IEP team's discussion regarding SED eligibility, Advocate told Parent in front of the entire IEP team that she was entitled to an outside evaluation based on her disagreement with the District's social emotional evaluations. *Interviews with Parent and Advocate.* However, neither Parent nor Advocate could recall whether Parent requested an Independent Educational Evaluation ("IEE"). None of the District members of the IEP team recall anyone discussing additional evaluations or IEEs. *Interviews with Special Education Teacher and Special Education Director.* The SCO thus finds that Parent did not make a formal IEE request at the December 19 IEP meeting.
36. The first semester of the 2019-20 school year ended on Friday, December 20. Student's grade report shows that he failed all of classes, except for math in which he earned a B. *Ex. 11, p. 4.*

F. Homebound Services and School Closure due to COVID-19

37. On December 20, Special Education Teacher 2 emailed Parent a document outlining Homebound services. *Ex. M*, pp. 3-5. That document states “as an alternative to school expulsion, [District] in conjunction with [School] is offering [Student] homebound learning and special education services for a total of 12 hours at [Elementary School].” *Id.* at p. 3. Under this plan, Student would walk to Elementary School and receive one-on-one tutoring Monday through Thursday from 12 p.m. to 3 p.m.
38. Special Education Teacher 2 administered Student’s Homebound Services during the third quarter of the 2019-20 school year. *Interview with Special Education Teacher 2*. Special Education Teacher 2 was familiar with Student and his needs, having been his case manager for a portion of the 2018-19 school year. Special Education Teacher 2 received a copy of Student’s IEP and collaborated with his general education teachers and Special Education Teacher regarding the curriculum for Homebound Services. Student began the third quarter strong, but he struggled because he had been out of school for the entire month of December. *Id.* Toward the end of February, Student’s engagement and participation declined, and he began to refuse to work on academics.
39. During this time, Student made some progress on annual IEP goals. *Id.*; *Ex. 8*, pp. 3-4. For instance, Special Education Teacher 2 noted on the reading goal that Student used decoding, fluency, and word recognition skills “to read his instructional material independently with 1-2 prompts over a three month period at about a 68% level according to teacher observation.” *Ex. 8*, p. 3.
40. The District officially ended the school year after the third quarter, on March 16, 2020, due to the COVID-19 pandemic. During the subsequent period of quarantine, the District moved to a voluntary online enrichment model for all students. *Interview with Special Education Director*. For the fourth quarter, Student was placed back on his regular class schedule, including his special education services. *Ex. 8*, p. 3. Special Education Teacher 2 continued to try and contact Student for online lessons, but his engagement quickly declined and he rarely attended general education and special education online lessons. *Interview with Special Education Teacher 2*; *Ex. 8*, pp. 3-4.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District failed to conduct an MDR within 10 school days of Student’s disciplinary change of placement on December 10, 2019, in violation of 34 C.F.R. §§ 300.530(e) and 300.536.

Lack of a Manifestation Determination Review

“The IDEA includes extensive provisions governing the discipline of children with disabilities. The regulations are premised on the principle that children should not be penalized for conduct that is the result of a disability.” *CDE Guidance Memorandum* found at: http://www.cde.state.co.us/sites/default/files/documents/cdesped/download/pdf/guidance_disciplineofchildren.pdf; see also 71 Fed. Reg. 46720 (Aug. 14, 2006) (providing that “a child with a disability may display disruptive behaviors characteristic of the child’s disability and . . . should not be punished for behaviors that are a result of the child’s disability”).

Implicit in IDEA’s disciplinary provisions is a “principle that disfavors [using] discipline to make changes in the educational placement of a child with a disability. Rather, where a child with a disability has issues with behavior or self-control, [IDEA] shows a preference for dealing with those issues via the IEP process rather than via the disciplinary process.” *Id.* Accordingly, for a student with a disability, the IDEA requires school districts to “take a careful look at any possible relationship between the misconduct in question and the child’s disability (or disabilities), and to proceed cautiously with disciplinary action.” *Id.*

An MDR examines whether a child’s misconduct was directly and substantially related to the child’s disability, and must be performed within ten days of “any decision to change the placement of a child with a disability because of a violation of a code of student conduct” 34 C.F.R. § 300.530(e)(1). A change of placement occurs if a disciplinary removal is for more than ten consecutive school days, to include an expulsion, or if the child has been subjected to a series of disciplinary removals that constitutes a pattern. 34 C.F.R. § 300.536. The IDEA identifies a series of factors to determine whether a child has been subjected to a pattern of removals, such as the series of removals totaling more than 10 school days in a school year; the child’s behavior being substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and additional factors such length of each removal, total amount of time the child has been removed, and proximity of the removals to one another. *Id.*

In this case, Student accumulated eight days of out-of-school suspension during the 2019-20 school year: three days on October 4, one day on November 15, one day on November 19, and three days on November 21. Student served the three-day suspension from November 21—since School was not in session the next week due to Thanksgiving—on Friday, November 22, Monday, December 2, and Tuesday, December 3.

The District held a reentry meeting on December 3, and Parent subsequently withheld Student from School on December 4 and 5. Parent was justified in withholding Student from School after the December 3 reentry meeting given not only the District’s failure to provide Student with behavioral supports, but also the threat of expulsion which has far greater ramifications.

On Friday, December 6, Parent emailed Academic Officer to accept the Homebound Services placement offer. (FF #29). The District did not assign a teacher until Friday, December 20, and Homebound Services did not begin until after winter break. Student was not allowed to return to School and did not receive any academic services—including services listed in his IEP—from Friday, December 6 until the end of the semester on Friday, December 20, a total of eleven school days. (FF #30).

By removing Student from School and failing to provide academic services for eleven school days, the District constructively extended the three-day suspension received on November 21 to a fourteen-day suspension. *See Larimer Cnty. Sch. Dist.*, 115 LRP 36469 (SEA CO 7/14/15) (concluding that “characterizing the six days Student was denied educational services as a de facto suspension is consistent with IDEA’s protections for students with disabilities in the context of school discipline.”).

The SCO finds and concludes that Student’s cumulative days of removal constitute a pattern. The removals—which total more than ten school days during the 2019-20 school year because of the constructive extension—involved substantially similar conduct and occurred in proximity with one another. The first out-of-school suspension occurred on October 4 after Student acted rudely toward staff and made an inappropriate gesture. (FF #5). He was next suspended on November 15 and 19 for similar defiant and disrespectful behavior towards staff. (FF #21). Finally, Student was suspended on November 21 for refusing to be escorted to class, refusing to go to class, and again making a rude gesture at school staff. (FF #21). As a result, the SCO finds and concludes that Student’s placement was changed through disciplinary action on December 10, 2019, the eleventh cumulative day of suspension during the 2019-20 school year.

The District was required to conduct an MDR within ten school days of any decision to change Student’s placement based on a violation of a code of student conduct, but it did not do so. The failure to conduct an MDR is a procedural violation of IDEA. A procedural violation results in a denial of FAPE if it: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Here, the failure to conduct an MDR significantly deprived Parent of an opportunity to participate in the decision-making process regarding the provision of FAPE to Student. The District sidestepped IDEA’s preference for using the IEP team, and not school discipline, to address behavior. The District allowed Academic Officer to dictate the consequences of Student’s behavior. Academic Officer’s concerning comments, detailed at FF #28, demonstrate a fundamental misunderstanding of the scope and purpose of an MDR. Specifically, Academic Officer told Parent that, because Student did not qualify for special education and related services as a child with SED, his behaviors would not be found to be a manifestation of his disability.

Again, an MDR examines whether a child’s misconduct was directly and substantially related to the child’s disability. 34 C.F.R. § 300.530(e)(1). When conducting an MDR, the IDEA requires the school district, parents, and relevant members of the IEP team to “review all relevant information in the [child’s] file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents” 34 C.F.R. § 300.530(e)(1). There is nothing “in the statute or the regulations . . . that limits a manifestation determination review only to the disability that served as the basis for the eligibility determination.” *Letter to Yudian*, 103 LRP 37911 (OSEP 8/1/03).

Academic Officer’s statement, one that impermissibly predetermines the outcome of an MDR, demonstrates such a consequential misunderstanding of IDEA’s disciplinary protections that it renders critical disciplinary protection for students with disabilities futile and meaningless. It is for these reasons the SCO finds and concludes the procedural violation resulted in a denial of FAPE.

Lack of Positive Behavioral Supports in Student’s IEP

The SCO must further address the fact that the District frustrated the IDEA’s preference for using the IEP process to address emerging behavioral challenges—and not the student code of conduct—given the absence of positive behavioral supports in Student’s IEP.

IDEA requires a school district to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. ____ (2017), 137 S. Ct. 988, 999. An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Westminster Pub. Sch.*, 118 LRP 50551 (SEA CO 11/14/2018).

In developing the IEP, the IEP 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). This “requirement applies to all IEP Teams, *regardless of the child’s specific disability*, and to the development, review, and revision of IEPs. Incidents of child misbehavior and classroom disruptions, as well as violations of a code of student conduct, may indicate that the child’s IEP needs to include appropriate behavioral supports.” *Dear Colleague Letter*, 68 IDELR 76 (OSEP 8/1/16) (emphasis added). The “failure to consider and provide for needed behavioral supports through the IEP process is likely to result in a child not receiving a meaningful educational benefit or FAPE.” *Id.* Moreover, “a failure to make behavioral supports available throughout a continuum of placements, including in a regular education setting, could

result in an inappropriately restrictive placement and constitute a denial of placement in the LRE.” *Id.*

In this case, it is clear that the lack of positive behavioral supports in Student’s IEP, combined with his failing grades and lack of progress on his goals, indicate the IEP was not substantively appropriate, and therefore did not offer Student a FAPE. *Id.* Specifically, the SCO finds and concludes that the District failed to consider the use of positive behavioral interventions and supports, in violation of 34 C.F.R. § 300.324(a)(2)(i).

A procedural violation results in a denial of FAPE if it: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2). The SCO finds and concludes that this procedural violation resulted in substantive harm because it deprived Student of an educational benefit in the form of missed instructional time.

Despite Student’s ongoing behavioral challenges, suspensions, and removals, the District failed to consider and provide needed behavioral supports. All District personnel recognized a need to address Student’s behaviors, and even Special Education Director noted this was the impetus behind the creation of the BMP, a general education behavioral intervention. (FF #20). Additionally, the FBA stated that Student’s behavior impacted his education because he was repeatedly removed from class which affected his knowledge, work completion, and grades. (FF #10). Moreover, Parent requested the District address Student’s behavioral issues several times during the first half of the 2019-20 school year, beginning on September 12. (FF #6).

The SCO finds that District’s failure to consider positive behavioral supports through the IEP process is the result of a fundamental misunderstanding of IDEA’s requirements. All District employees questioned about this issue—Special Education Director, Special Education Teacher, and School Psychologist—consistently answered that Student’s IEP did not contain behavioral supports because there was not a connection between his disability category and his behavioral issues. There is no such requirement in IDEA. Rather than address behavior through the IEP process, the District addressed it solely through general education disciplinary measures.

OSEP has cautioned that removals and suspensions have been shown to be ineffective at reducing or eliminating problematic behaviors. *Dear Colleague Letter*, 68 IDELR 76 (OSEP 8/1/16). In addition to being ineffective, suspensions have been shown to have “significant adverse consequences for the children suspended. Suspensions from school are consistently associated with lower academic performance. As a suspended child’s education is interrupted, he or she is more likely to fall behind, to become disengaged from school, and to drop out.” *Id.*

The results of this investigation affirm these warnings detailed by OSEP. For instance, the District’s use of repeated in-school and out-of-school suspensions, as well as the alternate

schedule and hallway escorts, did not meet Student’s behavioral needs. Rather, the frequency and severity of Student’s behavior escalated, culminating in three separate suspensions for five days total between November 15 and November 21. These repeated removals had adverse consequences for Student because, by the end of the first semester of the 2019-20 school year, he was failing all classes except for math. (FF #36). Student then missed a full month of school in December. Ultimately, by the fourth quarter of the 2019-20 school year, Student became discouraged, disengaged, and rarely attended online classes.

Conclusion to Allegation No. 2: The District did not violate 34 C.F.R. § 300.502(b)(1)-(2) because Parent did not formally request an IEE during the December 19, 2019 IEP meeting.

Parents have a right to seek an IEE at public expense if they disagree with an evaluation conducted by the school district. 34 C.F.R. § 300.502(b)(1). An IEE is an “evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” 34 C.F.R. § 300.502(a)(3)(i). After a parent requests an IEE at public expense, the district “must without unnecessary delay, either – (i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.” 34 C.F.R. § 300.502(b)(2).

The threshold question when determining whether a District has properly responded to an IEE request is whether a request was made in the first place. *See Klamath Falls City Sch. Dist.*, 104 LRP 42381 (SEA OR 9/22/03) (finding school district did not fail to properly respond to IEE request because parents had not made a clear request for an IEE).

Here, based on the credible evidence in the Record, the SCO finds and concludes that neither Parent nor Advocate requested the District to provide an IEE at public expense at the December 19 IEP meeting. (FF #35). No member of the IEP team—including Parent—recalled a specific request for an IEE at this meeting. Because Parent did not request an IEE, the District was not obligated to provide an IEE at public expense or file a due process complaint to show the District’s evaluations conducted during the 2019-20 school year were appropriate. Nevertheless, this result does not preclude Parent from requesting an IEE based on a disagreement with evaluations conducted during the 2019-20 school year.

Conclusion to Allegation No. 3: The District changed Student’s educational placement to Homebound Services outside of the IEP process, failed to ensure the change in educational placement was made consistent with the LRE statement in Student’s IEP, and failed to provide Parent with PWN of the change in educational placement, in violation of 34 C.F.R. §§ 300.114, 300.116, 300.320(a)(5), 300.327, 300.503 and ECEA Rule 4.03(8)(b)(ii)(B).

Change in Educational Placement

Placement—a term used to denote the provision of special education and related services—is determined by the IEP Team, including parents, and must be individualized, as well as based on the IEP. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Andrew F. v. Douglas Ctny. School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). Any significant change in placement, such as the termination of an instructional or related service, must be made by the IEP team—including the parents of the child—and in consideration of a reevaluation. ECEA Rule 4.03(8)(b)(ii)(B).

In this case, although Parent was ostensibly involved in the decision to change Student’s placement to Homebound Services, the SCO finds and concludes that this decision was made wholly outside of the IEP process. For instance, Homebound Services were not discussed by the IEP team at the November 15 IEP meeting or the December 19 IEP meeting. (FF #33). Instead, Academic Officer offered Homebound Services to Parent in a discussion on November 18 that pertained solely to discipline. (FF #23-24). Academic Officer is not a member of the IEP team and thus did not attend either the November 15 IEP meeting or the December 19 IEP meeting.

The SCO also finds and concludes that the change to Homebound Services constituted a significant change in placement because Student was completely removed from the general education environment and taught one-on-one by Special Education Teacher 2 at Elementary School. This significant change in placement was not made in consideration of reevaluation. The District reevaluated Student prior to the November 15 IEP meeting, however, because the change in placement was made outside of the IEP process and viewed by all involved as a general education intervention, there is no evidence the reevaluation was considered at all in the decision to change Student’s placement.

The District’s decision to change Student’s educational placement outside of the IEP process and without consideration of a reevaluation results in a procedural violation of IDEA and ECEA Rules. A procedural violation results in a denial of FAPE if it “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

The SCO finds and concludes that this violation resulted in a denial of FAPE. First, changing Student’s placement completely outside of the IEP process significantly impeded Parent’s participation in the decision-making process regarding the provision of FAPE to Student. By proceeding in this fashion, Student’s IEP team—the group of individuals meant to develop a plan that ensures Student’s needs are met—were completely and purposely excluded from the process. *See Dallas Sch. Dist. 2*, 118 LRP 34179 (SEA OR 6/4/18) (finding FAPE denial when District unilaterally restricted student’s school day to one hour of instruction outside the IEP process). Parents are required members of any IEP team, and the District’s actions here

significantly impeded Parent's opportunity to participate in the decision-making process regarding FAPE.

Second, this violation resulted in a denial of educational benefit because Student was denied educational services in December 2020 as he was not allowed to return to School. *See Lompoc Unified Sch. Dist.*, 120 LRP 4333 (SEA CA 1/2/20) (finding substantive FAPE violation where delay in arranging homebound instruction resulted in student being denied access to classes and services described in her IEP). The SCO now considers an award of compensatory education.

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education is not typically based solely on the amount of time services were missed. *See Cherry Creek Sch. Dist.*, 119 LRP 37631 (SEA CO 6/25/19). 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, because of the relatively short period of instruction missed, a calculation based on the amount of services missed is appropriate. Student was to receive 250 minutes per week, or 50 minutes per day, of direct special education services for reading and writing. (FF #16). Student was denied all educational services from the day Parent accepted the Homebound Services agreement, on December 6, to the end of the first semester, on December 20, a period encompassing 11 school days. Accordingly, the SCO awards 550 minutes of compensatory services to remedy this deficiency.

Homebound Services and the LRE statement in Student's IEP

"Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). This means that children with disabilities receive their education in the general education setting with typical peers to the maximum extent appropriate, and that they attend the school they would if not disabled. 34 C.F.R. §§ 300.114 and 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii).

Accordingly, an IEP must include "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* Students with disabilities must be educated consistent with the LRE described in the IEP. *Id.*

Here, the IEP's least restrictive environment section placed Student in the general education classroom at least 80% of the time. (FF #16). Changing Student's placement to homebound services—an extremely restrictive placement where he was educated one-on-one with Special Education Teacher 2 and had no contact with general education peers—was inconsistent with the LRE requirement in his IEP. Accordingly, the SCO finds and concludes that Student was not educated consistent with the LRE described in his IEP, resulting in a procedural IDEA violation.

A procedural violation results in a denial of FAPE if it “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

The SCO finds and concludes that District’s failure to educate Student consistent with the LRE in his IEP caused a deprivation of educational benefit, which resulted in substantive harm. First, the District did not attempt to provide positive behavioral interventions and supports to Student in the regular education classroom. The failure to provide necessary interventions and supports resulted in repeated suspensions and removals from School. (FF #s 5, 21). Second, the District isolated Student during the school day by escorting him during passing periods and making him eat lunch alone with a staff member. (FF #12). Third, the District ultimately moved Student to a Homebound Services placement where he was completely isolated from general education peers and received no behavioral support. Accordingly, the SCO concludes that this procedural violation resulted in a denial of FAPE.

Prior Written Notice

Essential to a parent’s ability to participate in the development of a child’s educational program is the procedural requirement that the school district provide sufficient notice before it makes or refuses to make substantial changes to the child’s educational program. 34 C.F.R. § 300.503(a). This obligation to provide prior written notice is triggered when the proposed change involves identification, evaluation, educational placement, or the provision of FAPE. *Id.*

Adequately identifying the specific action being proposed or refused is essential because the primary purpose of prior written notice is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18).

PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those

options were rejected; and a description of any other factors relevant to the district's proposal or refusal. 34 C.F.R. § 300.503(b)(1-3) and (6-7). It must also include a statement that the parents of a child with a disability have protections under the procedural safeguards and the means by which to obtain a copy, if the notice is not for an initial evaluation, and sources for parents to contact to obtain assistance in understanding the procedural safeguards. 34 C.F.R. § 300.503(b)(4-5).

As an initial matter, the SCO finds and concludes that changing Student's placement to Homebound Services on December 6 triggered the District's obligation to provide Parent with a PWN. The District did not provide PWN regarding this change of placement. (FF #34). The failure to provide PWN in this circumstance results in a procedural IDEA violation.

The SCO also finds and concludes that the PWNs embedded in the November 15 and December 19 IEPs are overly vague and lack required information, resulting in procedural violations of IDEA. For instance, although the PWN from November 15 states that Parent requested additional evaluations, the types of evaluations requested are not listed. (FF #19). This is significant because Parent requested social emotional evaluations to address Student's behavior, which the District subsequently failed to address. Additionally, the PWN embedded in the December 19 IEP contains no reference to the SED eligibility determination, the results of the BASC-III assessment, or Student's change of placement to homebound services. (FF #34).

For these reasons, the SCO finds and concludes that the cumulative effect of all procedural violations related to PWN, combined with violations related to LRE, results in a denial of FAPE.

Systemic IDEA Violations: This investigation demonstrates that multiple violations are systemic and will likely impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

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

Here, based on the credible evidence in the record, the SCO finds and concludes that several of the above IDEA violations are systemic in nature. First, the comments made by multiple District staff members regarding a student's special education disability category—and the connection required to conduct an MDR or provide for positive behavioral supports through the IEP process—show a flawed understanding of IDEA's requirements. Such a consequential

misunderstanding has the potential to affect all children receiving special education and related services in the District.

Second, the circumstances surrounding Student's change of placement indicate a fundamental misunderstanding regarding other IDEA requirements. Specifically, the SCO points to Special Education Director's comments regarding Homebound Instruction. For instance, Special Education Director commented that it was not necessary to discuss a change of placement to Homebound Services in the December 19 IEP meeting because homebound instruction is a general education intervention. Special Education Director also commented that LRE was not implicated because Student's special education services could be delivered through homebound instruction, a very restrictive placement. The SCO thus finds that the evidence supports multiple systemic violations, and therefore sets forth the following remedies consistent with IDEA.

REMEDIES

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

- a) Failing to conduct an MDR within ten days of a disciplinary change of placement, in violation of 34 C.F.R. §§ 300.530(e) and 300.536;
- b) Failing to consider positive behavioral interventions and supports in Student's IEP, in violation of 34 C.F.R. § 300.324(a)(2)(i);
- c) Changing Student's placement outside the IEP process and without consideration of a reevaluation, in violation of 34 C.F.R. §§ 300.116, 300.327 and ECEA Rule 4.03(8)(b)(ii)(B);
- d) Failing to educate Student consistent with the LRE identified in his IEP, in violation of 34 C.F.R. §§ 300.114, 300.320(a)(5);
- e) Failing to provide prior written notice, in violation of 34 C.F.R. § 300.503.
- f) Failing to include required content in a prior written notice, in violation of 34 C.F.R. § 300.503;

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

1. By **August 11, 2020**, the District shall submit to CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

- a. Attendance and completion of training provided by CDE in the areas of MDRs and the use of positive behavioral interventions and supports for students with disabilities. This training will address, at a minimum, concerns noted in this decision, requirements of 34 C.F.R. §§ 300.530 and 300.324, and OSEP's *Dear Colleague Letter* related to behavioral interventions and supports, found at 68 IDELR 76. Special Education Director and CDE Senior Consultant Beth Nelson will determine the date, time, and format for this training (i.e. video conference, web conference, webinar, or webcast). The training **must be completed by August 31, 2020.**
 - i. This training is mandatory for all District special education staff, including Special Education Director, Case Managers/Coordinators, and Special Education Teachers, as well as Principals, Assistant Principals, Academic Officer, and any other District staff who regularly participate or are likely to participate in MDRs and/or who are responsible for implementing IEPs which require behavioral supports and interventions in order for the child to receive FAPE, including School Psychologist.
 - b. Attendance and completion of training provided by CDE in the areas of placement determinations, LRE, and PWN. The training must address the concerns raised in this Decision, as well as the requirements of 34 C.F.R. §§ 300.116, 300.114, 300.320, 300.503. Special Education Director and Beth Nelson will determine the date, time, and format for this training (i.e. video conference, web conference, webinar, or webcast). The training **must be completed by August 31, 2020.**
 - i. This training is mandatory for all District special education staff, including Special Education Director, Case Managers/Coordinators, School Psychologist, and Special Education Teachers, and any other District staff who are responsible for issuing PWN, and/or are involved in placement determinations.
 - c. CDE will approve or request revisions to the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities regarding all remedies ordered in this Decision to confirm the District's timely correction of the areas of noncompliance.
2. Within 60 days of completing the training detailed above, the District must submit written procedures to address areas of noncompliance identified in sections a- f above, including disciplinary removals, consideration of positive behavior interventions and supports, change of placement, least restrictive environment, and prior written notice.

- a. CDE will review the written procedures and require revision, if necessary, to ensure consistency with IDEA and ECEA.
3. By **October 1, 2020**, CDE will conduct a file review of students, grades 5 through 8, who were suspended or expelled during the 2018-19 school year, as well as students placed on homebound services. CDE will schedule the file review with the Special Education Director.
4. By **September 1, 2020**, the District shall convene a multidisciplinary team (MDT) to conduct an MDR consistent with the following:
 - a. The District shall consult Parent prior to the MDR to determine membership of the MDT that will conduct the review, consistent with 34 C.F.R. § 300.530(e)(1), (h);
 - b. In addition to Parents, District staff, and relevant members of Student's IEP team, the MDT shall include, if any party requests, a person qualified to interpret the results of any evaluation results to be discussed, and qualified to speak about Bipolar disorder in general, and Student's diagnoses specifically;
 - c. The MDT must review all relevant information in Student's file, including but not limited to the December 2019 evaluation report, October 2019 FBA, the results of an IEE if requested by Parent and provided by the District, current and former IEPs, and—at Parent's discretion—the results of any private psychological evaluations and mental health diagnoses;
 - d. The MDT shall document with specificity the discussion at the MDR, including what information was discussed and considered, and how that information supports the MDT's conclusion in the new MDR;
 - e. Documentation evidencing completion of the above steps shall be submitted to CDE **by September 30, 2020**. Documentation shall include the MDR and meeting notes, and prior written notice. The CDE will determine, in its sole discretion, whether the documentation submitted sufficiently evidences that the District complied with IDEA procedures in conducting the MDR, as well as whether the outcome was consistent with student-specific data in the record.
 - f. If the outcome of the MDR concludes that Student's behavior was a manifestation of his disability, the District must create a clear record of the MDT's determination. Additionally, under this circumstance, the District must comply with 34 C.F.R. § 300.530(f) by reviewing Student's BIP and modifying it as

necessary to address the behavior and return Student to the placement from which he was removed, unless Parent and District agree to a change in placement as part of the modification of his BIP.

5. Compensatory Education Services for Denial of FAPE

- a. The District shall provide Student with **550 minutes of direct specialized reading and writing instruction** outside of the general education environment by **December 31, 2020**. This specialized instruction must be provided by a properly licensed and credentialed special education teacher. Given the ongoing COVID-19 crisis, these services may be provided remotely if necessary. To document the provision of these services, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration (with specific hours/minutes of the day services are provided), and a brief description of the service, must be included in the service log.
- b. **By August 11, 2020**, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via email, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time period, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents its efforts. A determination that the District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
- c. The District shall submit the schedule of compensatory services to CDE no later **August 18, 2020**. 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 CDE of the change in the appropriate service log.

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

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

CONCLUSION

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

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

Dated this 14th day of July, 2020.

 /s/ Thomas Treinen
Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-8

- Exhibit A: 2019-20 Behavior Detail Report
- Exhibit B: IEP dated 11/15/19
- Exhibit C: Behavior Contract dated 12/3/19
- Exhibit D: Suspension letters dated 10/8/19, 11/15/19, & 12/3/19
- Exhibit E: Email dated 2/27/19
- Exhibit F: 2019-20 attendance record
- Exhibit G: Email dated 9/12/19
- Exhibit H: Email dated 10/4/19
- Exhibit I: Determination of Eligibility dated 11/15/19
- Exhibit J: Functional Behavioral Assessment dated 10/7/19
- Exhibit K: Behavior Modification Plan dated 11/20/19
- Exhibit L: IEP dated 12/19/19
- Exhibit M: Homebound Services document dated 12/20/19

Response, pages 1-5

- Exhibit 1: *see exhibit 2*
- Exhibit 2: District Handbook of Special Education Procedures
- Exhibit 3: *see exhibit 2*
- Exhibit 4: *see exhibit 2*
- Exhibit 5: IEP 8/20/18; IEP 11/15/19; FBA 10/7/19; evaluation 11/15/19; evaluation 12/19/19; homebound services description; notice of meeting 12/13/19
- Exhibit 6: Behavior contract; behavior detail report; suspension letters
- Exhibit 7: *no MDR documentation submitted*
- Exhibit 8: progress reports
- Exhibit 9: *see exhibit 5*
- Exhibit 10: *see exhibit 5*
- Exhibit 11: attendance record; report card
- Exhibit 12: email correspondence
- Exhibit 13: District contact information

Reply, pages 1-5

- Exhibit N various email correspondence

Interviews with:

Parent

Advocate
Special Education Teacher
Special Education Teacher 2
Academic Officer
Principal
School Psychologist
Special Education Director