

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

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**State-Level Complaint 2024:554**  
**Ute Pass BOCES**

**DECISION**

**INTRODUCTION**

On May 9, 2024, the complainant (“Complainant”) filed a state-level complaint (“Complaint”) on behalf of multiple students (collectively, “Students”) each identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> against Ute Pass BOCES (“BOCES”) and concerning its member district Woodland Park School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified nine allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after May 9, 2023. Information prior to May 9, 2023, may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

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

<sup>2</sup> The CDE’s state complaint investigation will determine if the BOCES complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. Failed to develop IEPs that were tailored to the individual needs of Student A, Student B, and Student E between October 2023 and February 2024, specifically by:
  - a. Failing to consider the most recent evaluations of Student A, Student B, and Student E in developing their IEPs, in violation of 34 C.F.R. § 300.324(a)(iii); and
  - b. Failing to consider the academic, developmental, and functional needs of Student A, Student B, and Student E when determining their special education and related services, in violation of 34 C.F.R. § 300.324(a)(iv).
2. Made a significant change to the placements of Student A and Student B, in October 2023 and January 2024 respectively, without consideration of reevaluation, in violation of ECEA Rule 4.03(8)(b)(ii)(B).
3. Amended the IEPs of Student B and Student C outside of an IEP Team meeting and without parental consent in or around December 2023 and January 2024, in violation of 34 C.F.R. § 300.324(a)(6).
4. Failed to reevaluate Student D after Student D's parent(s) requested a reevaluation in January 2024, in violation of 34 C.F.R. § 300.303(a).
5. Disclosed Student D's personally identifiable information ("PII") to outside providers without consent from Student D's parent(s), in or around February 2024, in violation of 34 C.F.R. § 300.622.
6. Failed to reevaluate Student F after obtaining consent to evaluate from Student F's parent in October 2023, in violation of 34 C.F.R. § 300.303(a).
7. Failed to conduct a manifestation determination review ("MDR") for Student F within ten school days of the BOCES' decision to change Student F's placement between October to December 2023, in violation with 34 C.F.R. § 300.530(e).
8. Failed to provide Student F educational services following his disciplinary change of placement between October to December 2023, in violation of 34 C.F.R. § 300.530(d)(1).
9. Failed to ensure that the teachers in School's affective needs classroom possessed the required certifications and licenses during the 2023-2024 school year, in violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

## **FINDINGS OF FACT**

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

### **A. Background**

1. Each of the Students named in the Complaint attended a District high school (“School”) for at least a portion of the 2023-2024 school year. *Interviews with BOCES Director of Exceptional Student Services (“Director”) and Complainant.* Three school districts, including District, belong to the BOCES (collectively, “Member Districts”). *Interview with Director.* BOCES has responsibility for providing FAPE to all IDEA-eligible children with disabilities attending school in its member districts. ECEA Rule 2.02. According to an August 2024 press release, the BOCES intends to dissolve following the 2024-2025 school year. *CDE Exhibit 1.* Regardless, during the period relevant to this Complaint, Member Districts were (and still are) members of the BOCES. *Id.*
2. Complainant worked as a special education teacher at School during the 2022-2023 and 2023-2024 school years. *Interview with Complainant.*

### **B. Relationship between the BOCES and the District**

3. The BOCES provides training for special education staff from all the Member Districts at the beginning of each school year. *Interview with BOCES Assistant Director of Exceptional Student Services (“Assistant Director”).* Staff also have access to an electronic written special education manual prepared by the BOCES. *Id.*
4. During the school year, BOCES staff hold monthly meetings with the special education department in each Member District. *Id.* During these meetings, BOCES staff answer questions about processes or unique student situations. *Id.*
5. The BOCES does not have many designees identified, so BOCES staff often attend IEP Team meetings in the Member Districts—typically about five meetings per week. *Id.*
6. Within the District, building-level staff oversee special education processes. *Interview with School’s Assistant Principal (“Assistant Principal”).* The District does not employ any administrative staff to handle special education compliance. *Id.* In addition to her role as a special education teacher, Complainant also served as the chair of School’s special education department. *Interview with Complainant.* In this role, Complainant helped with planning, student schedules, and IEP compliance, while holding weekly meetings with School staff and monthly meetings with the BOCES. *Id.*

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

### **C. IEP Development**

7. The IEP development process involves collaboration between both BOCES staff and District staff. *Interview with Director*. The District schedules IEP Team meetings with all required IEP Team members. *Interview with Complainant*. After the meeting, the case manager makes sure the IEP is complete and matches what was decided in the meeting, prepares any prior written notice (“PWN”), and finishes the meeting notes. *Id.*
8. Next, the case manager sends the IEP to a BOCES staff member for review. *Interviews with Director, Assistant Director, and Complainant*. The BOCES reviews every IEP developed by the Member Districts. *Interview with Director*. The review focuses on compliance, not content. *Id.* Some of the issues reviewers look for included, for example, whether the IEP could “pass the stranger test,” whether the annual goals are measurable, whether any annual goals are missing, whether the impact of disability statement aligns with the student’s disability category, and whether the student is appropriately scheduled for alternate assessments. *Interview with Assistant Director*. If the reviewer identifies anything that was unclear or a compliance issue, the reviewer works with the case manager to correct the IEP. *Id.* Depending upon the nature of the issue, the BOCES may need to reconvene the IEP Team. *Id.*
9. Once the IEP passes the review process, the BOCES finalizes the IEP and sends it to the student’s parents. *Interview with Director*. The entire process—from IEP Team meeting to sending the finalized IEP—takes less than 30 days. *Id.*
10. The back-to-school training provided by the BOCES for special education staff from the Member Districts included IEP development. *Interview with Assistant Director*. This “intense, in-depth” training included reviewing errors from the past year, including any BOCES-related CDE state complaint decisions. *Id.* If one member district made a mistake, the BOCES would address the issue across all member districts. *Id.*

### **D. Staffing in School’s Affective Needs Program**

11. School has an affective needs classroom (“AN classroom” or “AN program”). *Interview with Director*. At the beginning of the 2023-2024 school year, there were approximately ten students in the AN classroom. *Id.* The classroom was staffed by an affective needs teacher (“Former Teacher”) and a paraprofessional. *Id.*
12. Former Teacher resigned, and his last day working in the AN classroom was November 15, 2023. *Exhibit OO*, p. 8. That same day, the District hired the AN classroom’s paraprofessional as the new affective needs teacher (“AN Teacher”). *Exhibit XX*, p. 8. A new paraprofessional replaced AN Teacher. *Interviews with AN Teacher and BOCES Behavior Specialist (“Behavior Specialist”)*.
13. At that point, AN Teacher had worked as a paraprofessional at School since 2016. *Interview with AN Teacher*. For the first couple of years, AN Teacher was assigned to the SSN classroom

but later moved to the AN classroom. *Id.* She had been a paraprofessional in the AN classroom for the last four or five years. *Id.* During her last year as a paraprofessional in the AN classroom, AN Teacher taught the social/emotional curriculum. *Interviews with AN Teacher and Behavior Specialist.*

14. Before her employment with the District, AN Teacher was working towards a bachelor's degree in severe needs with a minor in abnormal psychology. *Interview with AN Teacher.* A health emergency prevented AN Teacher from completing the student-teaching component of her coursework; as a result, she received an associate's degree. *Id.* After the health emergency resolved, she did not go back to complete her bachelor's degree. *Id.*
15. On September 21, 2023—shortly before she was hired as a teacher—AN Teacher obtained her one-year substitute teaching license from the CDE. *Exhibit XX*, p. 12.
16. AN Teacher received her alternative teacher license, with a special education generalist endorsement, on January 1, 2024. *Id.*
17. Between November 15, 2023, and January 1, 2024, 21 school days passed. *Exhibit YY*, p. 2. During that time, there was not a licensed special education teacher in the AN classroom. *Id.*
18. As soon as AN Teacher was hired, Behavior Specialist started going to the AN classroom to mentor and train AN Teacher. *Interview with Behavior Specialist.* AN Teacher already had a solid understanding of behavior based on her background and experience in the AN classroom. *Id.* However, she lacked knowledge of special education processes (such as IEP Team meetings and IEP development), so Behavior Specialist provided her training in those areas and even met with AN Teacher on weekends to work on developing IEPs for students' annual reviews. *Id.*
19. AN Teacher taught the classroom's Discovery course, which targeted students' social skills. *Interview with AN Teacher.* She also taught a resource course where she worked one-on-one with students on subjects or assignments requiring extra assistance. *Id.* Specific academic special education classes—such as math and English—were taught by other special educators outside the AN classroom (as they were when Former Teacher was employed). *Id.*
20. Director encouraged member districts to ensure all staff were properly certified. *Interviews with Assistant Director and Director.* However, school districts handled their own hiring. *Id.* While some districts allowed the BOCES to participate in the hiring process, other districts—such as the District—refused to let the BOCES be involved in hiring and hired whomever they wanted regardless of certification. *Id.*
21. School's Assistant Principal acknowledged that she was responsible for hiring AN Teacher. *Interview with Assistant Principal.* She was aware AN Teacher did not have the required license but was not concerned. *Id.* Assistant Principal knew AN Teacher planned to apply for her alternative teacher license. *Id.* Assistant Principal also relied on her work evaluating AN

Teacher while she worked as a paraprofessional. *Id.* Those evaluations were very positive and showed AN Teacher’s great talent and instincts with students with behavioral challenges. *Id.*

#### **E. Student A**

##### **Background**

22. Student A enrolled in tenth grade at School in September 2023, after transferring from another school district in Colorado. *Exhibit A*, p. 4. Student previously attended school in the District until January 2020. *Id.*
23. At the time of her enrollment, Student A was eligible for special education and related services under the Other Health Impairment (“OHI”) disability category due to a diagnosis of reactive attachment disorder. *Id.*
24. Prior to her reevaluation in 2022, Student A qualified under Serious Emotional Disability (“SED”). *Id.* Based on her growth, a multi-disciplinary team in her prior district determined that she was no longer eligible under SED. *Id.*
25. Student A’s behavior declined during the 2022-2023 school year, prompting her former district to conduct additional evaluations in May and June 2023 (“2023 Evaluation”). *Exhibit A*, pp. 105-113. Two of Student A’s teachers completed the BASC-3 ratings scales as part of the 2023 Evaluation. *Id.* The teachers identified clinically significant concerns in the areas of Depression, Conduct Problems, Externalizing Problems, Attention Problems, Learning Problems, School Problems, and Study Skills. *Id.*

##### **Transfer IEP**

26. On September 18, 2023, the BOCES adopted Student A’s IEP (and accompanying BIP) from her prior district (“Transfer IEP”). *Exhibit A*, p. 66.
27. The Transfer IEP identified self-harm as one of Student A’s greatest challenges and noted several recent stays in residential behavioral health facilities. *Id.* at p. 68. As a result of her disability, Student “struggle[d] with [a] sense of inadequacy, social stress, anxiety, needing breaks from the classroom, panic attacks, and self-harm.” *Id.* at p. 70. “Her overall difficulty with self-esteem, regulating emotions, and practicing appropriate coping strategies ha[d] a history of affecting her attention in class and thereby . . . her work completion.” *Id.*
28. Under the Transfer IEP, Student A received these special education and related services:
  - **Counseling**: 160 minutes per month of direct mental health services provided by a social worker outside of the general education classroom.

- Transition Services: 60 minutes per week of direct “support in the classroom for time management, classroom engagement, and task/work completion focusing on math or classes that [Student A] perceives as difficult.”

*Id.* at p. 74.

29. The Transfer IEP specified that Student A spent at least 80% of her time in the general education environment. *Id.*
30. The BIP adopted by the BOCES (“Transfer BIP”) was last revised in October 2022. *Id.* at p. 76. The Transfer IEP indicated that Student A engaged in “off-task behavior (roaming, classroom walkout, eloping from building) or defiance toward staff” when she experienced “emotional distress, conflicts at home, changes in medication, transitions, and/or [when] the classroom environment is overwhelming.” *Id.* This behavior allowed Student A to gain attention from adults and avoid undesirable activities. *Id.*
31. The Transfer BIP included antecedent strategies designed to decrease the targeted behaviors. *Id.* at p. 77. These strategies included, in part, building a positive relationship with Student A, providing planned movement and regulation breaks outside of class, using a calm tone of voice, redirecting Student A away from her peers, and identifying 2-3 spaces in the building where Student A could go when escalated (instead of eloping). *Id.* Staff should also provide Student an opportunity to process with a trusted adult. *Id.*
32. The Transfer BIP also detailed behaviors staff should use when Student became dysregulated, such as maintaining calm tone/body language, swapping with other staff to remain regulated, and refraining from engaging in a power struggle. *Id.* at pp. 80-82.

### Early Behavioral Challenges

33. Student A started attending School on or around September 12, 2023. *Exhibit H*, p. 2; *Exhibit F*, p. 7. Student A immediately began to experience behavioral challenges. *Interviews with Complainant and Director*. Student A frequently eloped from class, coming and going as she pleased. *Id.* She had angry outbursts directed at teachers and at peers. *Id.*
34. On Friday, September 15, 2023, District staff met with Student A and her father to discuss moving Student A to District’s Alternative High School (“Alternative School”). *Interview with Alternative School Director*. Dean of Students, Complainant, Social Worker, Student A’s teachers, and Student A’s counselor attended the meeting, as well as Alternative School Director. *Id.* The meeting was not scheduled as an IEP Team meeting. *Interviews with Alternative School Director, Complainant, and Director; Exhibit B*, pp. 1-8.
35. During the meeting, District staff presented Alternative School as an option. *Interviews with Alternative School Director and Complainant*. However, prior to the meeting Dean of Students

told Alternative School Director that Alternative School “would be the placement” for Student A. *Interview with Alternative School Director.*

36. Student A’s father toured Alternative School after the meeting and said he would bring Student A to Alternative School on Monday, September 18, 2023, the next school day. *Id.*
37. In the Complaint, Complainant alleges that the BOCES placed Student in Alternative School without considering Student A’s individualized needs or evaluation data. *Complaint*, p. 6. Additionally, Complainant contends the BOCES made a significant change to Student A’s placement without consideration of reevaluation. *Id.*

### Alternative School

38. Alternative School’s students typically have not been successful in a traditional educational environment and often are referred by counselors or through the discipline process. *Interview with Alternative School Director.*
39. During the 2023-2024 school year, approximately 18 students attended Alternative School in person, while five students participated remotely. *Id.*
40. Alternative School had three staff members: Alternative School Director (who taught part-time), an additional full-time teacher, and a paraprofessional. *Id.*
41. Students received live instruction and participated in online classes. *Id.* For example, if most students had not completed ninth-grade English, a teacher would provide that instruction live. *Id.* Those students who had already completed that course would be enrolled in an online English class. *Id.* Like core classes, electives were delivered through live instruction and online courses. *Id.*
42. Though Alternative School shares a campus with School, the programs are separate. *Id.*; *Interview with Assistant Principal.* Students at Alternative School typically have no access to any extracurricular sports or activities at School. *Interview with Alternative School Director.*
43. On September 18, 2023, Student A started attending Alternative School. *Interview with Alternative School Director.* Half of Student A’s classes were live, and half were online. *Id.*
44. Over the course of the 2023-2024 school year, Student A’s attendance improved. *Id.* She slowly began attending Alternative School with more consistency; however, she never really accessed her academics. *Id.* Online courses did not interest Student A (even though the coursework was relatively easy for her when she did complete it). *Id.*
45. Social Worker provided Student A’s counseling services while Student A was at Alternative School. *Id.*

### Annual Review

46. The BOCES held Student A's annual IEP review meeting on November 27, 2023. *Exhibit B*, p. 2. That meeting resulted in an IEP dated November 27, 2023 ("2023 IEP"). *Exhibit A*, pp. 34-53. The 2023 IEP noted that Student A attended Alternative School. *Id.* at p. 36.
47. At the time of the annual review meeting, Student A had attended approximately four days at Alternative School since starting in mid-September. *Id.* at p. 38.
48. The 2023 IEP copied information from the Transfer IEP (which originated from her IEP from her prior school district) regarding the 2023 Evaluation, including the clinically significant concerns identified by her teachers and the result of the FBA. *Id.* at p. 37. The 2023 IEP also acknowledged Student A's ongoing mental health struggles, including running away from home and placement on a one-week mental health hold during Summer 2023. *Id.* at pp. 40-41.
49. The 2023 IEP required Student A to receive 30 minutes per month of counseling provided by a social worker outside of the general education classroom. *Id.* at p. 51. This was a significant reduction from the 160 minutes per month of counseling services required by the Transfer IEP. *Id.* at pp. 51, 74. Though the Transfer IEP required 60 minutes per week of direct specialized instruction targeting time management and classroom engagement, those services were removed from the 2023 IEP. *Id.*
50. Under the 2023 IEP, Student A spent at least 80% of her time in the general education environment. *Id.* at pp. 51-52. The IEP indicated Student A needed "intensive social skills instruction and practice in a small group setting in order to improve her ability to resolve conflict and cooperate with peers." *Id.* at p. 52. Such instruction would be provided by a social worker or school counselor. *Id.*

### Request to Return to School and Reevaluation

51. In January 2024, Student A asked Alternative School Director what she would need to do to return to School. *Exhibit H*, p. 27; *Interview with Alternative School Director*.
52. Around this time, AN Teacher became aware that Student A was attending Alternative School. *Interview with AN Teacher*. AN Teacher scheduled a "team planning meeting" to discuss Student A's request with her father and staff from Alternative School and School. *Id.*
53. During the meeting, AN Teacher informed attendees that the BOCES would need to reevaluate Student A before it could consider a change of placement. *Id.* Student A's father provided consent to evaluate Student's academic performance and social/emotional status during that meeting. *Exhibit C*, p. 2. Though Student A refused to participate in the academic evaluation, the BOCES completed an FBA. *Exhibit D*, pp. 2-13.

## 2024 IEP

54. On April 22, 2024, the BOCES convened a multidisciplinary team to review Student A's eligibility in light of the evaluation. *Exhibit A*, p. 4. The team determined that Student A was eligible for special education under the disability categories for SED and OHI. *Id.*

55. Student A's IEP Team met on May 6, 2024, to review the 2023 IEP. *Id.* at pp. 1-27. That meeting resulted in an IEP dated May 6, 2024 ("2024 IEP"). *Id.* During the meeting, the IEP Team discussed Student A's Spring 2024 reevaluation. *Interviews with BOCES Behavior Specialist and AN Teacher.*

56. Under the 2024 IEP, Student A received these special education and related services:

- Specialized Instruction:
  - 420 minutes per week of direct specialized instruction provided by a special education teacher outside of the general education classroom to support Student A's social/emotional needs.
  - 30 minutes per month of indirect specialized instruction provided by a special education teacher in consultation with Student A's general education teachers.
- Counseling:
  - For the remainder of the 2023-2024 school year:
    - 30 minutes per month of direct counseling services provided by a psychologist, social worker, or counselor outside the general education classroom.
  - For the 2024-2025 school year:
    - 240 minutes per month of direct counseling services provided by a psychologist, social worker, or counselor outside the general education classroom.

*Exhibit A*, p. 25.

57. The 2024 IEP indicated that Student A spent "84 minutes of her school day at [School's] AN program, with the rest of her day spent in [Alternative School] in general education classes and online classes." *Id.* Student A continued to spend greater than 80% of her school day in the general education environment. *Id.* at p. 26.

58. The Complainant alleges that the BOCES changed Student A's placement without reevaluating her and placed her in a more restrictive environment than necessary. *Complaint*, p. 4. Additionally, the Complainant asserts that the BOCES ignored Student A's recent evaluations and individualized needs in developing her IEPs during the 2023-2024 school year. *Id.*

## F. Student B

### Background

59. During the 2023-2024 school year, Student B attended ninth grade at School. *Interview with AN Teacher*. Student B qualified for special education and related services under the disability categories of SED, OHI, and Specific Learning Disability ("SLD"). *Exhibit B*, p. 59.

### 2023 IEP

60. At the beginning of the 2023-2024 school year, Student B's IEP dated February 3, 2023 was in effect ("2023 IEP"). *Id.* at pp. 2-47. The BOCES developed the 2023 IEP during Student B's eighth-grade year. *Id.* at p. 2.

61. The 2023 IEP noted Student B's mental health challenges, including that she spent time in a residential facility during the 2022-2023 school year and had a history of self-harm. *Id.* at p. 5.

62. Under the 2023 IEP, Student B received these special education and related services:

- Specialized Instruction:
  - 300 minutes per month of direct specialized instruction provided by a special education teacher outside of the general education classroom to support Student B in the areas of mathematics and writing.
  - 300 minutes per month of direct specialized instruction provided by a special education teacher or paraprofessional inside the general education classroom to assist Student B with work completion, self-regulation, and decision-making.
- Counseling:
  - 240 minutes per month of direct counseling services provided by a social worker outside the general education classroom to support Student B's social/emotional and self-regulation skills.

*Id.* at p. 45.

63. The 2023 IEP indicated that Student B spent at least 80% of her time in the general education classroom. *Id.* at p. 46. This placement in the LRE allowed Student B access to grade-level materials and ideas, as well as the opportunity to apply skills learned outside the general education environment. *Id.*

#### Disagreement over Counseling Services

64. On January 23, 2024, the BOCES convened Student B’s IEP Team to complete her annual review. *Exhibit I*, p. 135. Prior to the meeting, either Complainant or Social Worker proposed reducing Student B’s counseling services from 240 minutes per month to 60 minutes per month in the draft IEP. *Interviews with AN Teacher and Behavior Specialist.*

65. During the meeting, the IEP Team considered whether Student B’s counseling services should be decreased. *Interviews with AN Teacher, Behavior Specialist, and Complainant.* Complainant and Social Worker believed Student B’s lack of behavior referrals justified the change. *Interview with Complainant.* Meanwhile, AN Teacher and Behavior Specialist had concerns about how this reduction would impact Student B’s mental health challenges, especially given her history of self-harm. *Interviews with AN Teacher and Behavior Specialist.* Additionally, they felt that a reevaluation would be necessary to reduce Student B’s counseling services so drastically. *Id.* Student B’s guardian indicated he wanted what the IEP Team determined was best for Student B. *Id.*; *Exhibit I*, p. 138.

66. Social Worker walked out of the IEP Team meeting after AN Teacher and Behavior Specialist disagreed with her. *Interview with Behavior Specialist; Exhibit I*, pp. 137-38.

67. This dispute continued after the IEP Team meeting. *Interview with Behavior Specialist; Response*, p. 5. The next day, AN Teacher met with Complainant to finalize the IEP. *Interview with AN Teacher.* Complainant used AN Teacher’s computer to change the counseling service minutes to 60 minutes. *Id.*; *Exhibit K*, pp. 2-3. Social Worker later came to AN Teacher’s classroom to try convince her to reduce Student B’s counseling services. *Exhibit K*, p. 3.

68. Despite the arguments by Complainant and Social Worker, AN Teacher and Behavior Specialist—who was acting as AN Teacher’s mentor—finalized the IEP without changing Student B’s counseling services. *Interviews with AN Teacher and Behavior Specialist; Exhibit I*, p. 118.

#### 2024 IEP

69. The January 23 IEP Team meeting resulted in an IEP of the same date (“2024 IEP”). *Exhibit I*, pp. 59-120.

70. The 2024 IEP described Student B’s present levels of performance, noting that Student B continued to struggle with work completion and engagement. *Id.* at p. 67. Social Worker acknowledged that Student B needed “support[ ] in the SPED [classroom] to maintain her

grades, and when left to her own, non-preferred tasks [were] not completed in school.” *Id.* at p. 68. During second quarter, Social Worker reported that Student B had “more challenges related to peers and class experiences.” *Id.* Student B had not yet met her annual social/emotional or academic goals. *Id.* at pp. 68.

71. The 2024 IEP required Student B to receive these special education and related services:

- Specialized Instruction:
  - 360 minutes per week of direct specialized instruction provided by a special education teacher outside of the general education classroom in Resource and Discovery classes.
  - 300 minutes per month of direct specialized instruction provided by a special education teacher or paraprofessional inside the general education classroom to assist Student B with work completion, self-regulation, and decision-making.
- Counseling:
  - 240 minutes per month of direct counseling services provided by a mental health service provider outside the general education classroom to support Student B’s social/emotional skills.

*Id.* at p. 118.

72. The 2024 IEP significantly increased Student B’s specialized instruction provided outside the general education classroom. *Id.* Under the 2023 IEP, Student B received only 300 minutes *per month* of specialized instruction outside the general education classroom versus 360 minutes *per week* under the 2024 IEP. *Id.* at pp. 45, 118.

73. According to the BOCES, the 2023 IEP incorrectly identified Student B’s specialized instruction outside the general education as 360 minutes *per month* when it should have read 360 minutes *per week*. *Interview with Director; Response*, p. 4. In middle school, Student B participated in an affective needs class and an affective needs advisory period each day. *Exhibit P, Part 2*, pp. 3-4. In total, Student B received 420 minutes per week of specialized instruction outside the general education classroom at the end of the 2022-2023 school year. *Id.*

74. Per Director, the change made in the 2024 IEP sought to correct the error from middle school and align the 2024 IEP with the services Student B was receiving at School. *Interview with Director*. Since the beginning of the 2023-2024 school year, Student B had participated in two affective needs classes per day for a total of 360 minutes per week of specialized instruction outside the general education classroom. *Id.*; *Exhibit R*, p. 2.

75. Complainant identified the inconsistency between the services required by Student B's 2023 IEP and the services she was receiving at School as early as October 30, 2023. *Exhibit R*, p. 2. However, the BOCES took no action to address that inconsistency until Student B's annual review was held in January 2024. *Interview with Director*.
76. The 2024 IEP indicated that Student B spent at least 80% of her day in the general education environment; however, the text below the least restrictive environment ("LRE") grid showed that Student B was in the general education classroom only 79.5% of the time. *Exhibit I*, pp. 118-19.
77. The Complaint asserts that the BOCES ignored Student B's recent evaluations and individualized needs when developing her IEP during the 2023-2024 school year. *Complaint*, p. 5. Specifically, Complainant questions the IEP Team's decision to increase Student B's specialized instruction outside the general education environment and to maintain her current level of mental health services. *Id.* Additionally, the Complaint alleges that the BOCES changed Student B's placement without reevaluating her and amended her IEP outside of an IEP Team meeting without parental consent. *Id.*

## G. Student C

### Background

78. During the 2023-2024 school year, Student C attended ninth grade at School. *Exhibit S*, p. 1. Student C was eligible for special education and related services under the disability categories of SED and OHI. *Id.*

### Annual Review

79. On February 15, 2024, the BOCES convened Student C's IEP Team to complete her annual review. *Exhibit V*, p. 3.
80. At that time, Student C's existing IEP—dated March 10, 2023—required: (a) 120 minutes per day of specialized instruction from a special education teacher outside the general education classroom to support behavior and socialization, and (b) 60 minutes per month of direct counseling services from a social worker outside the general education classroom targeting social skills. *Exhibit S*, p. 18. As such, both a special education teacher and a social worker targeted Student C's social skills. *Id.* That IEP contained two self-determination goals and one social/emotional wellness goal. *Id.* at pp. 15-16.
81. Several days before the scheduled IEP Team meeting, AN Teacher and Behavior Specialist created a draft IEP. *Interviews with AN Teacher and Behavior Specialist*. This draft included two self-determination goals targeting Student C's use of coping strategies and ability to stay on task. *Id.*; *Exhibit S*, p. 87.

82. AN Teacher informed Social Worker, as one of Student C's service providers, that the draft IEP was available for Social Worker to add her input. *Exhibit X*, p. 2. Social Worker entered a summary of Student C's progress during the school year. *Exhibit S*, p. 81. She also copied the self-determination goal targeting coping skills and identified it as Student C's new mental health goal. *Id.* at p. 87. Social Worker did not write any of the goals in the draft IEP. *Interviews with AN Teacher and Behavior Specialist.*
83. During the IEP Team meeting, AN Teacher or Behavior Specialist pointed out the duplicative goal. *Id.* Social Worker described an alternative goal that proposed Student C eating lunch with SSN students to target her social skills. *Id.* Social Worker did not have any baseline data for the proposed goal and could not explain why this goal was relevant to Student C's needs. *Id.* Other members of the IEP Team, including Student C's parent, thought the goal was "odd" and did not agree to include the goal. *Id.* After discussing the alternative goal, Social Worker left the IEP Team without permission and did not return. *Id.*
84. The lunchroom goal was never added to Student C's IEP, draft or otherwise. *Id.* After the IEP Team meeting ended, AN Teacher removed the duplicative self-determination goal from the draft IEP. *Id.* She emailed Social Worker later that day to ask if Social Worker had another goal to include. *Interview with AN Teacher; Exhibit X*, p. 3. However, Social Worker never provided another goal, so the IEP was finalized without an additional goal. *Interview with AN Teacher; Exhibit S*, pp. 87-88. The IEP was finalized with only three annual goals, all of which were presented during the IEP Team meeting. *Exhibit S*, pp. 87-88.
85. Complainant alleges that the BOCES amended Student C's IEP outside of an IEP Team meeting and without parental consent. *Complaint*, p. 6.; *Interview with Complainant.* Specifically, Complainant asserted that AN Teacher and Behavior Specialist "added and altered IEP goals" after the IEP Team meeting concluded. *Id.*

## H. Student D

### Background

86. During the 2023-2024 school year, Student D was in twelfth grade at School. *Exhibit Y*, p. 2. She qualified for special education and related services under the disability categories of OHI and Speech or Language Impairment ("SLI"). *Id.*

### Fall 2023 Reevaluation

87. In October 2023, the BOCES obtained consent for Student D's triennial reevaluation. *Exhibit AA*, p. 2. At that time, Student D's most recent reevaluation was from 2020. *Exhibit Z*, p. 2.
88. A PWN explained that IEP Team considered "conducting formalized academic testing; however, the team felt like this would delay the IEP process and take Student D away from too much instructional time in her classes." *Exhibit AA*, p. 2. The PWN gave Student D's parent

("Parent D") the right to reject the BOCES' proposal to reevaluate Student D using existing data and informed Parent D that she had the right to request additional assessment. *See id.* at pp. 2-4.

89. The BOCES completed Student D's reevaluation on October 18, 2023 ("2023 Reevaluation"). *Exhibit Z*, p. 2-13. The 2023 Reevaluation included:

- Background History;
- Parent Input;
- Summary of Student D's progress on her goals from Social Worker;
- Summary of Student D's progress on her goals from a speech-language pathologist;
- Classroom Teacher Feedback;
- Classroom Observations by Complainant;
- Transcript Review;
- Statement of Student D's Transition Goals;
- State and District Assessment Results from Spring 2022, Spring 2023, and Fall 2023;
- Summary of Student D's progress on prior annual goals.

*Id.*

#### Parent's Request for Another Reevaluation

90. In January 2024, Parent D contacted a community organization ("Community Organization") to discuss postsecondary services for Student D. *Exhibit FF*, pp. 2-3. Community Organization's staff indicated additional testing was needed to determine whether Student D met the eligibility criteria for an individual with a developmental disability. *Id.* Specifically, Community Organization requested an "intellectual or adaptive behavior test" to see if Student D's IQ met the state criteria. *Id.* at p. 3.

91. On February 2, 2024, Parent D asked that this testing be "added to [Student D's] file." *Id.* at p. 2. Director proposed administering the Vineland Adaptive Behavioral Scales ("Vineland") to assess Student's adaptive behavior. *Id.* at p. 6. Parent rejected this option and, instead, requested "a full re-evaluation . . . including cognitive assessment, behavior adaptive assessment, functional behavior analysis[,] as well as any speech/occupational therapy [assessment]." *Id.* at p. 10.

92. Parent D and the BOCES continued to dispute whether a reevaluation was warranted or necessary over the next forty-five days. *Id.* at pp. 2-24. The BOCES' took the position that a reevaluation would be necessary if the BOCES were questioning whether to change Student D's eligibility or her services. *Id.* at p. 14. The BOCES was not considering either of those changes, especially since Student D was a senior. *Id.* Parent D, meanwhile, asserted that the BOCES had not completed a "full reevaluation since 2017." *Id.* at p. 15.

93. On March 20, 2024, Parent D provided consent to evaluate Student D’s adaptive skills using the Vineland, though she continued to disagree with the BOCES’ refusal to provide a full reevaluation. *Id.*; *Exhibit AA*, p. 5.
94. The BOCES administered the Vineland and completed Student D’s reevaluation (“2024 Reevaluation”) on April 18, 2024. *Exhibit Z*, pp. 19-32. No other formal assessments were used. *Id.* Other than the Vineland results, the 2024 Reevaluation included much of the same information in the 2023 Reevaluation (though, sometimes, with more detail). *Id.*
95. The BOCES convened a multidisciplinary team on April 18, 2024 to discuss the 2024 Reevaluation and review Student D’s eligibility in light of the 2024 Reevaluation. *Exhibit DD*, p. 7. The team found Student D qualified for special education under the multiple disabilities eligibility category based on her intellectual disability, SLI, and OHI. *Exhibit Z*, pp. 33-37.
96. The BOCES provided the 2024 Reevaluation to Parent D, so Parent D could share the information with Community Organization. *Interviews with Assistant Director and Director*. No BOCES or District staff member communicated directly with Community Organization regarding the assessment Community Organization needed or the results of the 2024 Reevaluation. *Id.* In advance of the multidisciplinary meeting, Assistant Director confirmed in an email with Case Manager that Parent D would be responsible for providing the results to community organization: “Unless we have a release of information, we won’t send documents directly to them.” *Exhibit FF*, p. 18.
97. In her Complaint, Complainant asserted that the BOCES disclosed Student D’s PII to Community Organization without Parent D’s permission. *Complaint*, p. 10. Complainant based her allegation on an assumption that Director contacted Community Organization because Director knew the specific assessments that would satisfy Community Organization’s needs. *Interview with Complainant*. However, Director asserted that she already had this knowledge from her years of experience both in the BOCES and working directly with Community Organization. *Interview with Director*.

## I. Student E

### Background

98. Student E attended eleventh grade at School during the 2023-2024 school year. *Exhibit GG*, p. 29. He qualified for special education and related services under the disability categories of SLD and SED. *Id.*
99. Student E has significant academic challenges. *Interview with AN Teacher*. Historically, Student E’s frustration with his academic abilities led to behavioral outbursts and elopement. *Id.*

## 2023 IEP

100. At the beginning of the 2023-2024 school year, Student E's IEP dated February 7, 2023 ("2023 IEP") was in effect. *Exhibit GG*, pp. 2-19. The 2023 IEP was later amended on September 18, 2023 ("Amended 2023 IEP"). *Id.* at p. 2.
101. Under the Amended 2023 IEP, Student E spent 40-89% of his time in the general education classroom. *Exhibit GG*, pp. 17; *Interviews with Director and AN Teacher*. Though the 2023 IEP indicated Student E spent 85% of his time in the general education classroom, the LRE percentage was not recalculated by the IEP software when the 2023 IEP was amended. *Id.* As a result, the Amended 2023 IEP listed Student E's LRE percentage as 85%, but it was 79%. *Interviews with Director and AN Teacher*.
102. Student E received direct specialized instruction in the AN classroom targeting academics and social/emotional skills, as well as direct counseling services from Social Worker. *Exhibit GG*, pp. 16-17.
103. The 2023 IEP indicated that Student E needed "materials to be broken down or given to him at his instructional level, as well as help with material that contain[ed] his academic deficits." *Id.* at p. 7. As Student's behavior improved, BOCES staff saw Student E needed more academic support from staff in the AN classroom. *Id.*

## Reevaluation and Annual Review

104. In Fall 2023, Complainant and Social Worker suggested that Student E no longer needed School's AN program. *Interview with Director*. Complainant questioned whether Student E's primary disability was SLD or SED. *Interview with Complainant*. She felt that providing Student E more support in the general education classroom and reducing his time in the AN classroom would better prepare him for his final year of high school and graduation. *Id.*
105. In December 2023, Complainant initiated a reevaluation even though Student E's triennial reevaluation was not due until February 2026. *Interviews with Director and AN Teacher; Exhibit GG*, p. 2. The BOCES obtained consent to evaluate Student E's social/emotional status and academic abilities. *Exhibit II*, pp. 5-6.
106. The BOCES evaluated Student E's academic abilities using the Woodcock-Johnson IV Test of Achievement ("Woodcock-Johnson"). *Exhibit JJ*, pp. 2-3. The results of the Woodcock-Johnson showed that Student E's mathematic ability fell within the extremely limited range, while his reading, writing, and broad achievement scores were in the limited range. *Id.* Because Student E attended special education classes for reading and math, the reevaluation did not provide any insight into how Student E would do in a general education reading or math class. *Id.* at pp. 8-9. However, the teachers for Student E's general education elective courses indicated he performed well in those classes. *Id.* The reevaluation also considered

Student E's recent i-Ready scores. *Id.* at pp. 3-4. The i-Ready testing showed Student E's reading ability to be at a third-grade level and his math skills to be at a second-grade level. *Id.*

107. For Student E's social/emotional status, the BOCES relied on teacher questionnaires, an interview with Student E's guardian, an interview with Student E, and classroom observations. *Id.* at pp. 8-10. These tools showed that Student E had demonstrated significant social/emotional growth, evidenced by a reduction in self-destructive behaviors and his role as a student mentor in a unified P.E. class and a unified culinary class. *Id.* at p. 9. However, Student E still struggled to stay in class for the entire period; Student E left class and went to the AN classroom 55% of the time. *Id.* Behavior Specialist hypothesized that this behavior was due to anxiety about assignments that Student E did not feel prepared to complete:

It is important to remember that academically, [Student E] is performing far below many of his typical peers and it could be that [Student E] is experiencing anxiety about how to communicate to general education staff that he does not understand the work he is expected to do. As well, he may be concerned that his typical peers might tease him or view him differently due to his academic weaknesses.

*Id.* at p. 12. Since middle school, Student E had relied on the AN classroom when he was upset about a situation or problem. *Id.*

108. Other than the assessments and tools administered in the reevaluation, the BOCES had few other results or data to consider. *See Exhibit JJ*, pp. 26-28. In February 2023—when Student E's triennial was last due—the BOCES completed a records review, which considered student observations, progress on annual goals, and state and district assessments. *Id.*
109. Once the BOCES completed the reevaluation, a multidisciplinary team met on February 7, 2024, to determine Student E's continued eligibility for special education and related services. *Id.* at pp. 22-25. The team found Student E's primary disability to be SLD and his secondary disability to be SED. *Id.* This was a reversal from his prior eligibility determination. *Interviews with AN Teacher and Director.*
110. Following the eligibility determination, the BOCES convened Student E's IEP Team to consider the reevaluation and complete Student E's annual IEP review. *Exhibit HH*, pp. 2-3. That meeting resulted in an IEP dated February 7, 2024 ("2024 IEP"). *Exhibit GG*, pp. 29-62.
111. The IEP Team reviewed the reevaluation and considered increasing Student E's time in the general education environment to at least 80% but rejected that option. *Exhibit GG*, p. 61. The IEP Team determined that Student E continued to need direct specialized instruction in academics and social/emotional skills. *Id.*; *Interviews with Director and AN Teacher.* Providing Student E support and instruction in the AN classroom allowed him to better access his curriculum and develop advocacy skills. *Id.* The IEP Team determined increasing Student E's time in the general education environment would cause a regression in his behavior,

especially since his behavior tended to increase when he did not have appropriate support with academic work. *Id.*

112. The Complainant asserts that the BOCES did not consider Student E's individual needs and evaluation results in developing the 2024 IEP. *Complaint*, p. 9. Specifically, Complainant alleges the BOCES placed Student E in a more restrictive environment than necessary. *Id.*

## J. Student F

### Background

113. During the 2023-2024 school year, Student F attended eleventh grade at School. *Exhibit NN*, p. 2. He qualified for special education and related services under the SED disability category. *Id.* Due to behavioral concerns, Student F participated in School's AN program. *Id.* at p. 4; *Interview with AN Teacher*.

### 2023 IEP

114. When the school year began, Student F's IEP dated February 9, 2023 ("2023 IEP") was in effect. *Exhibit NN*, pp. 2-18.

115. Under the 2023 IEP, Student F received these special education and related services:

- Specialized Instruction: 275 minutes per week of direct specialized instruction provided by a special education teacher outside the general education classroom. These services would be provided by the AN program.
- Counseling: 120 minutes per month of direct counseling services provided by a social worker outside the general education classroom.

*Id.* at p. 14.

116. Student F spent at least 80% of his day in the general education classroom. *Id.* at p. 15.

117. Student F's BIP, dated February 10, 2023 ("2023 BIP"), was also in effect. *Id.* at pp. 19-25. The 2023 BIP identified Student F's target behaviors as inappropriate comments, work avoidance/refusal, and distracting peers. *Id.* at pp. 19-20.

### Amendment of 2023 IEP

118. From the outset of the school year, Student F had behavioral challenges, including walking out of class, refusing to complete work, and disruptive behavior. *Interview with AN Teacher; Exhibit WW*, p. 2. In response to Student F's behaviors, the BOCES convened his IEP Team on

September 13, 2023, to review his IEP and discuss how to address his behavior. *Exhibit UU*, p. 2.

119. The IEP Team amended the 2023 IEP on September 13, 2023 (“Amended 2023 IEP”); however, the changes were insignificant and insubstantial. *Exhibit NN*, p. 26. Of relevance, the Amended 2023 IEP indicated that Student F would be placed “on escort” (i.e., escorted two and from his classes) if he was found hiding or avoiding his classes again. *Id.* Additionally, the Amended 2023 IEP provided that if Student F needed to work in a quieter environment during fourth period (which was part of the 2023 BIP), he would work in an assigned front office space. *Id.* This change was made due to Student F’s disruptive behavior in the AN classroom during that class period. *Id.*

Consent to Evaluate

120. Despite the September IEP Team meeting, Student F’s behavioral challenges continued throughout Fall 2023. *Exhibit QQ*, pp. 3-13. At this point, the BOCES sought consent to reevaluate Student F’s social/emotional status. *Interview with Director; Exhibit OO*, p. 2. The BOCES hoped the reevaluation would provide additional insight into Student F’s behaviors and the best placement for him. *Interview with Complainant; Exhibit OO*, p. 9.

121. The BOCES obtained consent to evaluate from Student F’s guardian (“Guardian F”) on October 4, 2023. *Exhibit OO*, p. 2.

122. Social Worker interviewed Guardian F as part of the reevaluation; during those interviews, she learned background information that had not previously been included in Student F’s IEPs and evaluations. *Interviews with Complainant and Director*. As a result, Social Worker recommended conducting a more comprehensive reevaluation. *Id.*

123. On October 17, 2023, the BOCES obtained consent from Guardian F to expand the reevaluation to include vision, hearing, occupational therapy, physical therapy, speech, and academic testing. *Exhibit OO*, p. 2.

Behavioral Incidents

124. According to the BOCES’ behavior records, Student F was involved in the following disciplinary events between August 31, 2023, and November 8, 2023:

DATE	BEHAVIOR	DISCIPLINE
8/31/2023	Hitting another student.	1 day in-school suspension (“ISS”)

9/22/2023	Refusal to turn in his phone, disrupting class, verbal assault of staff member.	All-day detention (8 hours).
9/25/2023	Refusal to go to class.	All-day detention (5 hours).
9/26/2023	Left two classes class without permission and did not return.	All-day detention (5 hours).
9/27/2023	Left class without permission; verbal assault of staff member.	All-day detention (4 hours).
10/2/2023	Refusal to work; refusal to put his phone away; use of profanity.	1 day out-of-school suspension (“OSS”) served at school.
10/4/2023	Refusal to follow directions; disrupting class; refusal to put his phone away; use of profane gestures directed at staff member.	1 day OSS served at school.
10/16/2023	Use of profanity.	All-day detention (8 hours).
11/03/2023	Use of aggressive, profane language directed to classmates.	1 day ISS.
11/07/2023	Refusal to go to class.	1 day ISS.
11/08/2023	Refusal to go to class; making threatening statements about a staff member.	1 day ISS.

*Exhibit QQ*, pp. 3-13. This table does not include other incidents in which Student F was involved but for which he received no discipline (often for cutting class). *Id.*

125. The shaded rows in the table include incidents involving verbal or physical aggression directed at staff and Student F’s classmates. *Id.* Collectively, Student F missed 5 ½ days of school over 10 weeks for these incidents. *Id.* The remaining incidents in the table relate to Student F’s refusal to go to class and his use of profanity when redirected for this behavior. *Id.* Student F was removed from School for just over five days during a six-week period for these incidents. *Id.*

126. Within School, all-day detention and ISS were essentially the same. *Interview with AN Teacher*. When he was serving all-day detention or ISS, Student F would work in a designated space in the building (usually either the counseling office or an extra office). *Id.* He could

access his general education classes through an online platform, and he received supplies or materials for classes that were not on the online platform (such as art). *Id.* Student F still had access to AN Teacher or a paraprofessional from the AN classroom. *Id.* This was also true when Student F served an OSS at school. *Id.*

127. On November 28, 2023, Student F slapped AN Teacher’s head when she leaned forward to assist him with an assignment. *Id.* at pp. 2-3, 25-26; *Interview with AN Teacher.* In response, Student F received five days of OSS. *Exhibit QQ*, pp. 2-3.

128. Based on this incident, Student was recommended for expulsion. *Id.* at p. 24. On November 28, 2023, Dean of Students indicated the District would “be requesting a manifestation meeting immediately prior to the expulsion meeting.” *Id.*

129. The same day, School staff learned of an off-campus incident involving Student F that occurred over Thanksgiving break. *Interview with Director; Exhibit QQ*, p. 2. Allegedly, Student F made threatening comments to other students at a park while brandishing a weapon. *Interviews with Complainant and Director.* At the time, Student F had pending criminal charges arising from the incident. *Id.* Student F received five days’ OSS for this event. *Exhibit QQ*, p. 2.

130. The BOCES categorized both the November 28 incident (where Student F hit a teacher) and the off-campus incident (where Student threatened another student with a weapon) as physical aggression. *Exhibit SS*, p. 1.

#### First Manifestation Determination

131. On December 1, 2023, the BOCES conducted an MDR regarding the November 28 incident in which Student F slapped AN Teacher. *Interview with Director; Exhibit SS*, pp. 2-12.

132. During the meeting, Director suggested the MDR Team postpone the MDR until the reevaluation was completed. *Interview with Director; Exhibit SS*, p. 11. This would allow the MDR Team to consider the results of the reevaluation when analyzing the function of Student F’s behaviors. *Interview with Director; Exhibit SS*, p. 11. The MDR Team followed Director’s recommendation, and no determination was made regarding Student F’s behavior. *Interview with Director; Exhibit SS*, p. 2, 11. That day, the BOCES issued a PWN detailing the decision to delay the MDR pending the results of the reevaluation. *Id.* at p. 2.

#### Reevaluation

133. The BOCES completed Student F’s reevaluation on January 12, 2024 (“2024 Reevaluation”). *Exhibit PP*, p. 2-34. In total, 87 days passed between October 17, 2023—the date the BOCES obtained consent for the expanded reevaluation—and January 23, 2024. *See Exhibit YY*, p. 2.

During that period, the BOCES had 22 days off for fall break, Thanksgiving, and winter break. *See id.*

134. That same day, the BOCES convened a multidisciplinary team to determine Student F's continued eligibility for special education and related services based on the 2024 Reevaluation. *Id.* at pp. 35-40. The team considered Student F's eligibility under SED, OHI, and SLI, but he was found eligible only under SED and OHI. *Id.* at pp. 36-37.

### Second Manifestation Determination

135. The BOCES conducted a second MDR on January 12, 2024, between the eligibility determination and the IEP Team meeting. *Exhibit SS*, pp. 2-12.

136. After considering Student F's recent reevaluation, the MDR Team determined that Student F's behavior on November 28 was a manifestation of his disability. *Id.* at p. 10. Specifically, the MDR Team found that Student F "becomes too familiar with staff and loses perspective as to the appropriate behavior when horseplaying. The impulsive nature of his disability at times is connected to this behavioral action." *Id.*

137. The MDR Team also decided that the behavior was a direct result of the BOCES' failure to implement Student F's IEP and BIP during Fall 2023, noting a lack of "consistent implementation . . . across various environments." *Id.*

138. The MDR paperwork listed all the behavior incidents included in the table above, as well as the November 28 incident. *Exhibit SS*, pp. 7-9. The off-campus incident was not included. *Id.* The paperwork contained no calculation regarding the total days of removal or any analysis as to the existence of a pattern of removals; however, November 28 was identified as the day of disciplinary removal. *See id.* at p. 7.

### Student F's Access to Educational Services

139. Student F returned to School on Tuesday, January 16, 2024—the first school day following the MDR on January 12, 2024. *Interview with Director*. He returned to the same placement he was in before the incident on November 28, 2023. *Interviews with AN Teacher, Complainant, and Director*. However, his classes taught by AN Teacher were moved to another special education teacher. *Id.*

140. Since his suspension began on November 28, 2023, Student F had not been permitted to return to School in-person due to pending criminal charges arising from the off-campus incident. *Exhibit SS*, p. 11. Beginning on November 28, 2023, the BOCES provided Student F

online access to his general education and special education courses. *Interview with Director; Exhibit TT*, pp. 6-122.

141. During this investigation, the BOCES produced detailed documentation and logs showing Student F's access to his courses and the work he produced between November 28, 2023, and January 16, 2024, when he returned to School. *Id.* When necessary, staff scheduled virtual meetings with Student F to proctor his final exams. *Id.* at p. 16.
142. Though AN Teacher set up virtual meetings with Student F for his special education discovery and advisory classes, he never attended one of the meetings. *Id.* at pp. 18, 20-22; *Interview with AN Teacher*. However, Student F still completed the work for both classes. *Exhibit TT*, pp. 10-15, 19; *Interview with AN Teacher*.
143. Student F passed all his classes during Fall 2023 except for one. *Exhibit TT*, p. 4.
144. The Complaint asserts that the BOCES did not timely complete Student F's reevaluation. *Complaint*, pp. 11-12. Additionally, the Complaint alleges that the BOCES improperly delayed Student F's MDR and did not provide him access to educational services following a disciplinary change of placement. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The BOCES did not develop an IEP that was tailored to Student A's individualized needs, as required by 34 C.F.R. § 300.324(a)(1). This noncompliance resulted in a denial of FAPE. The IEPs developed by the BOCES for Student B and Student E were tailored to their individualized needs, consistent with 34 C.F.R. § 300.324(a)(1). No noncompliance with the IDEA occurred as to Student B and Student E.**

The first allegation in the Complaint relates to the development of the IEPs of Student A, Student B, and Student E. Complainant alleges the IEPs were developed without consideration of their individualized needs and/or recent evaluation results. (FF #s 58, 77, 112.)

#### **A. Legal Standard for IEP Development**

The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). The IDEA requires districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Id.* at 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 the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.*

### **B. The IEP Development Process**

Here, Complainant's allegations challenge the substantive adequacy of the IEPs and not the IEP development process; as such, this Decision addresses only the second prong of the *Rowley* standard.

### **C. Substantive Adequacy of Student A's IEPs**

When developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a)(1).

#### 2023 IEP

As to Student A, Complainant contends the BOCES developed Student A's IEPs without considering her evaluations or her individualized needs. (FF # 58.) The 2023 IEP—created in Fall 2023 after Student A's move to Alternative School—contained the results of the 2023 Evaluation, including the clinically significant social/emotional concerns identified by Student A's teachers on an assessment and the results of an FBA. (FF # 48.) This information, however, was copied from the Transfer IEP (which simply duplicated the information from Student A's IEP from her prior district). (*Id.*)

Copying and pasting information into an IEP does not alone satisfy the requirements of the IDEA. The IEP Team must consider the information when developing a student's IEP and creating the student's unique plan for special education and related services. Here, the decisions made by the IEP Team regarding Student A's mental health services and her attendance at Alternative School conflicted with her needs and the results of the 2023 Evaluation. For example, even though the 2023 IEP acknowledged her teachers' concerns about her mental health and her placement on a one-week mental health hold during Summer 2023, the IEP Team significantly decreased Student A's mental health services under the 2023 IEP. (FF #s 48, 49.) By reducing her services from 160 minutes per month to only 30 minutes per month, the IEP Team eliminated 80% of Student A's mental health services. (FF # 49.) No information in the 2023 IEP—either Student A's prior evaluations or information regarding her individualized needs—supported reducing her mental health services. (FF #s 46-50.)

At the time the 2023 IEP was developed, Student had attended only 4 days of school since moving to Alternative School. (FF # 47.) As a result, BOCES staff hardly knew her and certainly not well enough to determine that her mental health needs had changed. (FF #s 22, 47.) Indeed, one

might argue that Student A’s behavior made clear that she still needed her mental health services. For these reasons, the CDE finds and concludes that the BOCES did not consider Student A’s recent evaluations or individualized needs when developing the 2023 IEP, as required by 34 C.F.R. § 300.324(a)(1). This noncompliance resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements).

The CDE has ordered the BOCES to convene Student A’s IEP Team to review and, as necessary, revise her IEP to ensure it considers her individualized needs and reevaluation results.

### 2024 IEP

Complainant asserts that the IEP Team’s decision to increase Student A’s specialized instruction—specifically, in the School’s AN classroom—was not supported by her needs or her evaluation results. (FF # 58.) While developing the 2024 IEP, the IEP Team specifically considered Student A’s recent reevaluation, as well as information regarding her grades, attendance, and behavioral issues during the 2023-2024 school year. (FF # 54.) The IEP Team determined that Student A’s participation in a social/emotional class through the AN program would allow her to better access her education. (FF #s 56-57.) Student A’s Spring 2024 IEP Team sought to provide Student A with the additional support she needed and which the Fall 2023 IEP Team removed from her. For these reasons, the CDE finds and concludes that the BOCES properly considered Student A’s individualized needs and evaluations when developing the 2024 IEP, consistent with 34 C.F.R. § 300.324(a)(1).

### **D. Substantive Adequacy of Student B’s IEP**

Complainant contends the BOCES neglected to consider Student B’s individualized needs and recent evaluations during the development of her 2024 IEP. (FF # 77.) In particular, Complainant questioned the IEP Team’s decision to increase Student B’s specialized instruction outside the general education environment and to maintain her current level of mental health services. (*Id.*)

The Findings of Fact show that the IEP Team increased Student B’s specialized instruction time to correct an error in the 2023 IEP (which listed the services as monthly instead of weekly) and to reflect the services Student B was currently receiving at School. (FF #s 71-74.) Though this correction resulted in a change of services on paper, it did not result in any change to Student B’s day-to-day services at School. (*Id.*) By correcting the error, the IEP Team simply endorsed that the current level of services met Student B’s needs. In the 2024 IEP, Student B’s teachers reported struggles with work completion and engagement. (FF # 70.) Social Worker even acknowledged that Student B needed “support[ ] in the SPED [classroom] to maintain her grades, and when left to her own, non-preferred tasks [were] not completed in school.” (*Id.*) Despite Complainant’s suggestion otherwise, the IEP Team was not seeking to increase Student B’s time in the affective needs classroom.

With regard to Student B’s mental health services, the Findings of Fact demonstrate that the IEP Team considered reducing Student B’s mental health services, as suggested by Complainant and Social Worker. (FF #s 64-68.) Student B’s discipline referrals had decreased, but, as noted above, Student B had ongoing challenges related to engagement. (FF # 70.) Social Worker’s report in the 2024 IEP indicated that Student B had “more challenges related to peers and class experiences” during the second quarter of the school year; additionally, Student B had not met her social/emotional goal related to use of coping strategies. (*Id.*) This information—coupled with Student B’s history with self-harm and related hospitalizations—prompted the IEP Team to retain Student B’s current level of services. (FF # 65.)

For these reasons, the CDE finds and concludes that the BOCES properly considered Student B’s individualized needs and evaluations when developing the 2024 IEP, consistent with 34 C.F.R. § 300.324(a)(1).

### **E. Substantive Adequacy of Student E’s IEP**

Complainant asserts that the BOCES did not consider Student E’s individualized needs when developing his 2024 IEP, and, as a result, Student E had less access to general education peers. (FF # 112.)

As shown in the Findings of Fact, the BOCES completed a reevaluation to determine whether Student E would benefit from increased time in the general education environment. (FF #s 105-05.) Even though Student E was not yet due for a reevaluation (and, in fact, was not due for two more years), the BOCES completed the reevaluation based on a suggestion from Complainant and Social Worker that Student was ready for more time in a general education setting. (*Id.*)

The 2024 IEP evidences that the IEP Team considered increasing Student E’s time in the general education environment to at least 80%. (FF # 111.) That option was rejected because the reevaluation showed that Student E continued to need direct specialized instruction in academics and social/emotional skills. (*Id.*) Even though Student E’s behavior had improved, his significant academic needs persisted. (*Id.*) And without proper support for his academic needs, the IEP Team feared Student E’s behavior might regress. (*Id.*) For these reasons, the CDE finds and concludes that the BOCES properly considered Student E’s individualized needs and evaluations when developing the 2024 IEP, consistent with 34 C.F.R. § 300.324(a)(1).

**Conclusion to Allegation No. 2: The BOCES made a significant change to Student A’s placement without considering a reevaluation, inconsistent with ECEA Rule 4.03(8)(b)(ii)(B). This resulted in noncompliance with the ECEA Rules and IDEA and a denial of FAPE. However, the BOCES did not make a significant change to Student B’s placement. No noncompliance with the ECEA Rules occurred as to Student B.**

The second allegation in the Complaint concerns changes made to the placement of Student A and Student B. Specifically, Complainant alleges the BOCES made significant changes to the students’ placements without first reevaluating them. (FF #s 58, 77.)

### **A. Placement Legal Requirements**

A child's placement—a term used to denote the provision of special education and related services—must be determined by the IEP Team, including parents, and must be individualized, as well as based on the student's IEP. 34 C.F.R. §§ 300.116, 300.322, 300.327; ECEA Rule 4.03(8)(a); *Questions and Answers on Andrew F. v. Douglas Cty. Sch. Dist.*, 71 IDELR 68 (OSERS Dec. 7, 2017). School districts must ensure that the placement decision is made by a group of persons including parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); see also *id.* §§ 300.321(a)(1), 300.322, 300.324, 300.327, 300.501(c). If a change of placement will be a “significant” change, the IEP Team must consider reevaluating the student. ECEA Rule 4.03(8)(b)(ii)(B).

Amongst other scenarios, a significant change of placement occurs where the change results in the student “having different opportunities to participate in nonacademic and extracurricular services.” *Id.* 4.03(8)(b)(ii)(A)(I). Additionally, the move from a brick-and-mortar school to an online program constitutes a significant change of placement. *Id.* 4.03(8)(b)(ii)(A)(III).

### **B. Student A's Placement**

In mid-September 2023, District staff met with Student A and her father to discuss moving Student A to Alternative School due to her behavior. (FF # 34.) This meeting occurred approximately one week after Student A began attending classes at School. (FF #s 33-34.) Following the meeting, Student A transitioned from School to Alternative School. (FF # 43.)

Here, Student A's move from School to Alternative School constituted a significant change of placement. At Alternative School, half of Student A's classes were online, and half of her classes were in person. (FF # 43.) Student A continued to receive her counseling services while at Alternative School; however, she did not receive the services targeting time management and classroom engagement required by the Transfer IEP. (FF # 45.) Additionally, Student A did not have access to any of School's nonacademic or extracurricular activities while attending Alternative School. (FF # 42.) Though Alternative School offered some elective courses, many of them were online only. (FF # 41.)

Student A simply did not have the same access to programming and peers at Alternative School that she had at School. (FF #s 38-45.) The BOCES did not consider reevaluating Student A when it made this change to her placement and, in fact, did not convene Student A's IEP Team. (FF #s 34-36.) When the BOCES convened Student A's IEP Team for her annual review the following month, the BOCES again did not consider reevaluating Student A; instead, the IEP Team removed Student A's existing services targeting time management and classroom engagement and continued her placement at Alternative School. (FF #s 46-50.) For these reasons, the CDE finds and concludes that the BOCES made a significant change to Student A's placement without consideration of reevaluation, resulting in noncompliance with ECEA Rule 4.03(8)(b)(ii)(B).

### **C. Student B's Placement**

During her annual review in January 2024, the BOCES changed Student B's specialized instruction outside the general education classroom from 360 minutes per *month* to 360 minutes per *week*. (FF #s 71-73.) On paper, this change made it appear as if the BOCES quadrupled Student B's time outside the general education setting. (*Id.*) However, the change was in form only. (FF #s 73-74.) Student B's 2023 IEP incorrectly identified specialized instruction as 360 minutes per month when, in reality, Student B was receiving those services weekly. (*Id.*) In January 2024, Student B's IEP Team sought to correct this error. (FF #s 71-73) Student B already received 360 minutes per week of specialized instruction at School, so the change in her IEP did not affect the services she received. (FF # 74.)

For this reason, the CDE finds and concludes that the 2024 IEP did not result in a significant change of placement. Indeed, Student B's placement was unaffected by the new IEP. The BOCES acted consistent with ECEA Rule 4.03(8)(b)(ii)(B).

### **D. Impact of Noncompliance**

Procedural noncompliance with the IDEA results in a denial of FAPE if the noncompliance (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, the BOCES made a significant change to Student A's placement without consideration of reevaluation, resulting in noncompliance with ECEA Rule 4.03(8)(b)(ii)(B). The change of placement resulted in Student A spending nearly an entire school year in Alternative School, where she had less access to peers, extracurricular activities, and live classes. (FF #s 41-44.) Student rarely engaged in her online classes. (FF # 44.) This change was based on School leadership's frustration with Student A's behaviors and not based on an understanding of Student A's needs. Student A was deprived of an educational benefit as a result of the BOCES' noncompliance. Additionally, though Student A's father attended a meeting regarding her change of placement, he did not have the benefit of a reevaluation that would have allowed him to more fully participate in the decision-making process. Accordingly, the CDE finds and concludes that this noncompliance resulted in a denial of FAPE.

**Conclusion to Allegation No. 3: The BOCES did not amend the IEPs of Student B or Student C, and thus the requirements of 34 C.F.R. § 300.324(a)(6) were not implicated. The BOCES complied with the IDEA.**

The Complaint's third allegation relates to the amendment of the IEPs of Student B and Student C. Complainant contends the BOCES amended each student's IEP outside of IEP Team meetings and without parental consent, inconsistent with 34 C.F.R. § 300.324(a)(6). (FF #s 77, 85.)

### **A. IEP Amendment Legal Requirements**

Under the IDEA, an IEP can be amended by the IEP Team at an IEP Team meeting or by written agreement of the parent and the school district to amend the IEP without an IEP Team meeting. 34 C.F.R. § 300.324(a)(6).

### **B. Amendment of Student B's IEP**

In the allegation concerning Student B, Complainant contends Behavior Specialist or AN Teacher unilaterally changed Student B's counseling service minutes after the IEP Team meeting ended. (FF # 77.) As detailed in the Findings of Fact, members of the IEP Team did not agree on whether Student B's services should be continued at their current level of 240 minutes per month or reduced to 60 minutes per month. (FF #s 64-68.) While Complainant and Social Worker advocated for the reduction, other members of the IEP Team, including Behavior Specialist and AN Teacher, worried the reduction would impact Student B's mental health. (*Id.*) Additionally, Behavior Specialist and AN Teacher felt Student B's services could not be reduced so significantly without a reevaluation. (*Id.*)

Based on these concerns, the IEP Team decided not to change Student B's counseling services. (*Id.*) The Findings of Fact do not suggest that the IEP Team modified Student B's services during the meeting and reversed that decision later. (*Id.*) Instead, Behavior Specialist and AN Teacher simply finalized the draft IEP after the meeting to ensure it reflected the decisions made during the meeting. (FF # s 65, 68.) Based on these facts, the CDE finds and concludes that the BOCES did not amend Student B's IEP, and thus the requirements of 34 C.F.R. § 300.324(a)(6) were not implicated. No noncompliance with the IDEA occurred.

### **C. Amendment of Student C's IEP**

With regard to Student C, Complainant alleges that the BOCES improperly amended the IEP by altering annual goals after the IEP Team meeting concluded. (FF # 85.) The CDE disagrees with Complainant's characterization of the events. During the IEP Team meeting, Social Worker proposed a new annual goal related to Student C's use of social skills in the cafeteria. (FF # 83.) That goal had not been included in the draft IEP. (FF #s 82-83.) The members of the IEP Team—including Student C's parent—did not agree with Social Worker's suggested goal, finding it unrelated to Student C's specific needs and lacking baseline data. (FF # 83.) The IEP Team rejected the goal, and Social Worker left the IEP Team meeting. (*Id.*)

The goal Social Worker duplicated from AN Teacher remained in the draft IEP. (FF # 84.) Following the meeting, Behavior Specialist and AN Teacher deleted the duplicative goal in the IEP. (*Id.*) No other goals were amended or added. (*Id.*) Though AN Teacher contacted Social Worker to request an additional goal, Social Worker did not respond, so no additional goal was added. (*Id.*) The IEP was finalized with only three annual goals, all of which were presented during the IEP Team meeting. (*Id.*) For these reasons, the CDE finds and concludes that that the BOCES did not amend

Student C's IEP, and thus the requirements of 34 C.F.R. § 300.324(a)(6) were not implicated. No noncompliance with the IDEA occurred.

**Conclusion to Allegation Nos. 4 and 6: The IDEA did not require the BOCES to reevaluate Student D upon Parent D's request, because Student D had already been reevaluated once that year. As for Student F, the BOCES completed the reevaluation of Student F within a reasonable time. In both instances, the BOCES acted consistent with 34 C.F.R. § 300.303 and in compliance with the IDEA.**

In the Complaint, Complainant alleged that the BOCES did not properly reevaluate Student D and Student F, even after obtaining consent from their parent or guardian. (FF#s 97, 144.) The allegation tied to Student D relates to the extent of the reevaluation performed by the BOCES, whereas the allegation about Student F concerns the timeliness of the reevaluation. (*Id.*)

#### **A. Reevaluation Requirements**

School districts must reevaluate a student with a disability when: (1) the district determines that the student's needs warrant a reevaluation; or (2) upon request from the child's parent or teacher. 34 C.F.R. § 300.303(a). However, the IDEA limits the frequency of reevaluations. *Id.* § 300.303(b). Unless the parent and district agree otherwise, a student must not be reevaluated more than once a year but must be reevaluated at least every three years. *Id.* If an IEP Team determines that no additional data are needed to complete the reevaluation, the school district must notify the parent of that determination and the basis for the determination and right of the parent to request additional assessments. *Id.* § 300.305(d)(1); *see also Letter to Anonymous*, 107 LRP 45732 (OSEP 02/06/2007).

Districts must obtain parental consent prior to conducting a reevaluation. 34 C.F.R. § 300.300(c)(1). Once districts obtain parental consent, an initial evaluation must be conducted within 60 days. *Id.* § 300.301(c)(1). However, the IDEA does not contain a deadline by which a reevaluation must be completed. *See id.* § 300.303. Nonetheless, school districts' obligations under the IDEA and the ECEA Rules make it imperative that reevaluations are completed in a timely manner. That is, the IDEA requires districts to act to identify a student's needs and then provide instruction and services to meet the student's needs in a timely manner. *See, e.g., id.* § 300.323(c) (requiring school districts to make special education and related services available to students "as soon as possible following the development of the IEP"). Additionally, following a reevaluation, the ECEA requires a meeting to be "held within a reasonable period" to identify the student's needs. ECEA Rule 4.02(6)(a)(ii). Based on these obligations, the CDE previously found that reevaluations must be completed within a reasonable period after the parent provides consent. *See CDE Decision 2022:550* (December 2022). Finding otherwise—that districts have an unlimited amount of time to complete reevaluations—would contradict the IDEA.

### **B. Student D's Reevaluation**

Here, the BOCES completed Student D's triennial reevaluation in Fall 2023; at that time, her most recent reevaluation was in 2020. (FF # 87.) By reevaluating Student D at least once every three years, the BOCES complied with 34 C.F.R. § 300.303(b). In Spring 2024—only six months later—Parent D requested the BOCES reevaluate Student D to obtain data needed for Student D's postsecondary transition services. (FF #s 90-91.) According to the BOCES, Student D's needs did not warrant a reevaluation at that time. (FF # 92.) Regardless, the BOCES administered the assessment Parent D needed for Community Organization. (FF #s 91-94.)

When requesting the reevaluation, Parent D advocated for a full reevaluation, arguing the BOCES' most recent reevaluations (in 2020 and 2023) relied too heavily on records reviews. (FF # 92.) To be clear, the adequacy of the prior reevaluations is not at issue in this investigation, and the CDE makes no finding regarding the sufficiency of those reevaluations. Here, the question is whether the BOCES was required to fully reevaluate Student D in Spring 2024.

The answer to that question is no. Because Student D had already been reevaluated during that school year, the BOCES was not obligated to conduct a full reevaluation upon Parent D's request. 34 C.F.R. § 300.303(b). The consent to evaluate form and accompanying PWN issued by the BOCES in Fall 2023 informed Parent D that she could reject the proposal to review existing data. (FF # 88.) The BOCES, then, would have performed formal assessments as part of the 2023 Reevaluation. Parent D did not request any additional assessments in Fall 2023. (*Id.*) For that reason, the CDE finds and concludes that the BOCES acted consistent with its obligations under both 34 C.F.R. § 300.303 and § 300.305(d). The BOCES complied with the IDEA.

### **C. Student F's Reevaluation**

As for Student F, the BOCES completed his reevaluation on January 12, 2024. (FF # 133). Guardian F originally provided consent for the reevaluation on October 4, 2023. (FF # 121.) On October 17, 2023, the BOCES obtained consent for the expanded scope of the reevaluation. (FF # 123.) As noted above, the IDEA contains no directive regarding how soon a reevaluation must be completed once consent has been obtained, but the CDE has previously concluded that a reevaluation must be completed within a reasonable time period. *See* 34 C.F.R. § 300.303; *CDE Decision 2022:550* (December 2022) (finding a five-month delay in *starting* the reevaluation unreasonable). Additionally, the IDEA specifies that an initial evaluation must be “conducted in an expedited manner” where the request to evaluate is made while the child is being disciplined for a code of conduct violation pursuant to 34 C.F.R. § 300.530. *Id.* § 300.534(d)(2)(i). This provision makes clear the importance of timely completing an evaluation while disciplinary action is pending.

It took the BOCES slightly more than three months to complete the reevaluation, which examined Student F in a number of areas. (FF #s 123, 133.) Nearly one-half of that delay occurred before Student F was suspended for the November 27, 2023 incident. (*Id.*) Though some of the delay was attributable to the BOCES, the reevaluation also spanned over four weeks of school holidays,

and the BOCES' access to Student F was hindered by his removal from School. (FF # 133.) Here, the CDE finds and concludes that the completion of the reevaluation in less than three months to be reasonable under the circumstances present. The BOCES acted consistent with 34 C.F.R. § 300.303 and thus complied with the IDEA.

**Conclusion to Allegation No. 5: The BOCES did not disclose Student D's PII to Community Organization or any other outside provider without consent from Parent D. The BOCES acted consistent with 34 C.F.R. § 300.622 and thus complied with the IDEA.**

The fifth allegation in the Complaint charges the BOCES with improperly disclosing Student D's PII to Community Organization in Spring 2024, around the time Parent D requested a comprehensive reevaluation. (FF # 97.)

#### **A. Protection of PII**

The IDEA requires school districts to protect the confidentiality of any PII it collects or maintains. 34 C.F.R. §§ 300.610-627. "PII" refers to information that contains, as relevant here, "[t]he name of the child, the child's parent, or other family member" or "other information that would make it possible to identify the child with reasonable certainty." *Id.* § 300.32. Although the IDEA allows some exception, generally parental consent must be obtained before a student's PII may be disclosed. *Id.* § 300.622.

#### **B. Disclosure of Student D's PII**

Here, the Findings of Fact do not indicate that the BOCES improperly disclosed Student D's PII to Community Organization or any other outside provider. (FF #s 90-96.) Neither Director nor any other BOCES or District staff member contacted Community Organization regarding Student D or the assessment requested by Community Organization. (FF # 96.) Complainant assumes that Director spoke with Community Organization because Director knew what assessments would satisfy Community Organization's requirements. However, Director already had this information based on her history with the BOCES and with Community Organization. (FF #s 96-97.)

While the BOCES disclosed the 2024 Reevaluation results to Parent D, the BOCES did not share that information with Community Organization. (FF # 96.) Indeed, even before the April 2024 multidisciplinary team meeting, Assistant Director reaffirmed that the BOCES would not disclose any information to Community Organization. (*Id.*) For these reasons, the CDE finds and concludes that the BOCES did not disclose Student D's PII to Community Organization. The BOCES satisfied its obligation under 34 C.F.R. § 300.622 to protect Student D's information and complied with the IDEA.

**Conclusion to Allegation No. 7: The BOCES did not complete an MDR within 10 school days of Student F’s disciplinary change of placement, as required by 34 C.F.R. § 300.530(e). This resulted in noncompliance with the IDEA; however, no denial of FAPE occurred.**

Complainant next alleges that the BOCES erred by not conducting an MDR within 10 school days of Student F’s disciplinary change of placement, consistent with 34 C.F.R. § 300.530(e). (FF # 144.)

Discipline of a student with a disability may result in a change to the child’s placement and entitle the student to procedural protections under the IDEA. *See* 34 C.F.R. §§ 300.530, 300.536. Within ten school days of any decision to remove a student with a disability from the student’s placement because of a violation of a code of conduct, a school district must perform an MDR to determine whether the behavior at issue was a manifestation of the student’s disability or a direct result of the school district’s failure to implement the IEP. The student’s behavior must be found to be a manifestation of the student’s disability if: (1) the behavior in question was “caused by, or had a direct and substantial relationship to” the student’s disability, or (2) the behavior in question was a result of the school district’s failure to implement the student’s IEP. *Id.* § 300.530(e)(1). As discussed in more detail below, such a determination triggers additional obligations for the school district. *Id.* § 300.530(f). On the contrary, if the behavior is not a manifestation of the student’s disability, the school district may discipline the student in the same manner as a non-disabled student. *Id.* § 300.530(c). The district must, however, ensure the student continues to receive educational services as specified in 34 C.F.R. § 300.530(d).

Before analyzing whether the BOCES was obligated to conduct an MDR, the CDE must determine whether a disciplinary change of placement occurred and, if so, the date of the change of placement.

**A. What Constitutes a Disciplinary Change of Placement**

A disciplinary change of placement occurs if: (1) a student has been removed from her current educational placement for more than ten consecutive school days or (2) a student has been subjected to a series of short-term removals that total more than ten school days and constitute a pattern. *Id.* § 300.536(a). Such a pattern exists where the removals involve “substantially similar” behavior and where other factors—such as the length of each removal, total amount of time removed, and the proximity of removals—support the existence of a pattern. *Id.* § 300.536(a)(2)(i)-(iii). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis, and such a determination is inherently subjective. *Id.* § 300.526(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006) [hereinafter *Assistance*]. School districts must consider both formal removals (such as suspensions) and informal removals. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161, Question C-6 (OSERS 07/19/22) [hereinafter *Discipline Q&A*]. The U.S. Department of Education has indicated that in-school suspension counts as a short-term removal unless the student can appropriately participate in the general education curriculum, receives

the services required by their IEP, and “continues to participate with nondisabled children to the extent they would have in the child’s current placement.” *Assistance*, 71 Fed. Reg. 46715.

### **B. Whether a Disciplinary Change of Placement Occurred**

Here, the CDE finds that a disciplinary change of placement occurred on November 28, 2023. By November 8, 2023, Student F had been suspended or otherwise removed from class for 5 ½ days for verbal or physical aggression. (FF #s 124, 125.) These incidents occurred within a two-month time period, and all involved Student F hitting a peer or directing profane or threatening language or gestures at staff or classmates. (*Id.*) Occasions in which Student F used profane language to comment on a situation (i.e., not directed at or in reference to a person) have not been included in this total. (*See id.*) For each occurrence, Student F typically received a one-day suspension or detention. (FF # 124.) During detention, Student F had access to most of his classes, but he worked in an isolated space without any peer interaction. (FF # 126.) Accordingly, these removals count as short-term removals. On November 28, 2023, another instance of physical aggression occurred when Student F slapped AN Teacher. (FF # 127.) He received a five-day suspension for this behavior, which began that day. (*Id.*)

The CDE finds the removals for physical or verbal aggression to be substantially similar such that a pattern exists. The removals involved similar behavior, occurred in close proximity, and were comparable in length. The five-day suspension made it clear that Student F’s short-term removals for aggression would exceed ten days. Thus, the School’s decision to suspend Student F on November 28, 2023, resulted in a disciplinary change of placement.

### **C. Timeliness of MDR**

A school district is required to conduct an MDR within ten school days of the decision to change a student’s placement. 34 C.F.R. § 300.530(e)(1). Here, the disciplinary change of placement occurred on November 28, 2023. Therefore, the BOCES would have been obligated to conduct the MDR no later than December 12, 2023.

The MDR was not completed until January 12, 2024, 20 school days after the BOCES’ decision to change Student F’s placement. (FF # 135.) The BOCES began an MDR on December 1, 2023—within the permissible time period—but decided to postpone the MDR until Student F’s reevaluation was completed. (FF #s 131-32.) This effort did not prevent the BOCES’ noncompliance. Though the rationale makes some sense, the IDEA does not authorize such a delay. *See* 34 C.F.R. § 300.530(e). For these reasons, the CDE finds and concludes that the BOCES did not timely conduct an MDR, resulting in procedural noncompliance with 34 C.F.R. § 300.530(e)(1).

#### **D. Impact of the Procedural Noncompliance**

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Ed. v. Rowley*, 458 U.S. 176, 205-06 (1982). Procedural noncompliance with the IDEA amounts to 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, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding procedural noncompliance can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Here, the BOCES postponed completing Student F's MDR until Student F's reevaluation was complete. (FF #s 131-32.) This resulted in the MDR being conducted 20 school days after the disciplinary change of placement, instead of 10 school days as required by the IDEA. (FF # 135.) This delay impacted Student F's access to the disciplinary protections afforded to him by the IDEA. If the MDR had been conducted by December 12, 2023, Student F could have potentially returned to in-person learning ten school days earlier. However, the CDE finds that this impact was mitigated by the educational services Student F received during his removal.

As detailed below, the BOCES began providing Student F online access to his general education and special education courses beginning on November 28. In doing so, the BOCES made those services available to as soon as it was legally required to do so. The prompt educational access offset the impact of the delayed MDR. For these reasons, the CDE finds and concludes that the procedural noncompliance did not result in a denial of FAPE.

**Conclusion to Allegation No. 8: The BOCES provided Student F educational services following his disciplinary change of placement, as required by 34 C.F.R. § 300.530(d)(1). The BOCES complied with the IDEA.**

The eighth allegation in the Complaint concerns Student F's access to educational services after his disciplinary change of placement.

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

In this case, Student F was removed from his educational placement on November 28, 2023, the date the decision was made to change his placement. At that point, the BOCES became obligated to provide educational services to Student F on each subsequent day of removal. Though Student

was not permitted to return to School in person, he was provided online access to his general education and special education classes beginning on November 28, 2023. (FF # 139.) As such, the BOCES provided Student F educational services as soon as it was obligated to do so under the IDEA. Documentation produced by the BOCES showed that Student F had access to his coursework and continued to complete his work during his period of remote instruction. (FF #s 139-143.) For these reasons, the CDE finds and concludes that the BOCES provided Student F educational services following his disciplinary change of placement, in accordance with 34 C.F.R. § 300.530(d)(1). The BOCES complied with the IDEA.

**Conclusion to Allegation No. 9: The BOCES did not ensure that the teacher in AN classroom was appropriately licensed during the 2023-2024 school year, as required by 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04. This did not result in a denial of FAPE.**

The Complaint’s final allegation relates to the licensure of AN Teacher during the 2023-2024 school year. Specifically, Complainant asserts that AN Teacher was not appropriately licensed at the time she was hired for that role, inconsistent with the requirements of the IDEA and the ECEA.

**A. Legal Requirements for Special Education Certifications and Licenses**

Under the IDEA, the CDE must establish qualifications to ensure that special education teachers are “appropriately and adequately prepared and trained . . . to serve children with disabilities.” 34 C.F.R. § 300.156(a). This includes ensuring that all special education teachers have obtained state certification as special education teachers. *Id.* § 300.156(c). Administrative units must ensure that staff are “appropriately and adequately prepared, subject to the requirements of § 300.156.” *Id.* § 300.207.

To that end, the CDE requires “[a]ll special education teachers [to] hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). Administrative units bear the responsibility for ensuring their staff comply with state licensing requirements. ECEA Rule 3.03. A school district’s decision to employ teachers to provide specialized instruction who do not possess the required special education certifications and/or licensure will likely result in noncompliance with the IDEA. *See, e.g., In re Student with a Disability*, 120 LRP 476 (SEA MN 12/30/19) (finding IDEA noncompliance as to group of students who received specialized instruction from teachers holding a variety of teaching licenses but no certification or licensure in special education, but no noncompliance as to group of students who were not entitled to specialized instruction in the areas taught by unlicensed staff); *CDE Final Decision 2023:557* (SEA CO 09/12/23) (finding no IDEA compliance where substitute teacher, who had no certification in special education, did not provide student with any specialized instruction).

Finally, the IDEA does not excuse a district’s failure to comply with its requirements regarding the licensure/certification of special education teachers based on staff shortages. *Memorandum to State Directors of Special Education*, 81 IDELR 287 (OSEP 2022); *In re Student with a Disability*, 123 LRP 15403 (SEA NV 03/24/23) (finding charter school violated IDEA in employing substitute

teachers with only standard substitute licenses, and no certification in special education, despite staffing shortage of licensed special education teachers); *see also El Paso Cty. Sch. Dist. 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage).

### **B. Licensure of AN Teacher**

Here, the BOCES acknowledged that AN Teacher did not hold the proper license between her hiring on November 15, 2023 and receipt of her alternative teaching license on January 1, 2024. (FF #s 15-17.) During that time period, 21 school days passed in which students in the AN classroom did not have an appropriately licensed teacher. (FF # 17.) For that reason, the CDE finds and concludes that the BOCES did not ensure that AN Teacher was appropriately licensed, as required by 34 C.F.R. §§ 300.156, 300.207 and ECEA Rules 3.03 and 3.04. This resulted in procedural noncompliance with the IDEA and the ECEA Rules.

### **C. Impact of Procedural Noncompliance**

Procedural noncompliance amounts to a denial of FAPE where the procedural noncompliance: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, AN Teacher worked in the AN classroom without the required license for 21 school days. (FF # 17.) During this time, AN Teacher taught a social skills course and led a resource class, in which she provided students assistance with troublesome subjects or assignments. (FF # 19.) Even before she was hired as a teacher, AN Teacher taught the social skills curriculum in the AN classroom. (FF # 13.) Other than a change of title, little else changed in the day-to-day operation of the AN classroom.

At the time of her hiring, AN Teacher had worked as a paraprofessional in the AN classroom for the last four to five years. (*Id.*) As a result, she was familiar with the individual students and workings of the AN classroom. (*Id.*) Though she lacked the required license, she had significant experience working with students with behavioral challenges and had an educational background in that area. (FF # 14.) Both Behavior Specialist and Assistant Principal lauded her innate talent in the classroom. (FF #s 18, 21.) When Assistant Principal hired AN Teacher, she knew AN Teacher planned to apply for her alternative teacher license. (FF # 21.)

For these reasons, the CDE finds and concludes that AN Teacher's lack of a required license did not impede the students' right to a FAPE or deprive them of any educational benefit. No denial of FAPE occurred. The CDE has based this finding on the specific facts present in this investigation. This finding does not endorse the hiring of unlicensed teachers, even when those individuals have relevant experience or qualifications. Here, the violation was limited to a short portion of the school year. Because of AN Teacher's experience in the same classroom, she was able to continue providing students the social skills curriculum (which she previously taught under Former

Teacher’s supervision). Ordinarily, these violations result in a denial of FAPE, requiring compensatory services. *See Widefield Sch. Dis. 3*, 124 LRP 34287 (SEA CO 2024) (awarding thirteen students compensatory services due to the district’s noncompliance related to staff licensure); *Ute Pass BOCES*, 124 LRP 35528 (SEA CO 2024) (requiring the BOCES to provide compensatory services to students who received instruction from a staff member without the proper license).

**Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic and likely to impact the future provision of special education for all children within the BOCES if not corrected.**

Pursuant to its general supervisory authority, the 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 State Enforcement Agency’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).

Nothing in the record suggests that the BOCES’ noncompliance as to IEP development and change of placement is systemic in nature. Indeed, the findings of this investigation itself show that the concerns in these areas are not widespread. Though Complainant named multiple students in the allegations regarding IEP development and change of placement, the allegations were substantiated only as to one student.

However, the CDE has concerns about the noncompliance related to staff licensure. The BOCES bears ultimate responsibility for compliance with the IDEA. Even though the BOCES knew the District hired AN Teacher when she did not hold the required license, the BOCES took no action. (FF #s 18, 20.) During this investigation, the BOCES acknowledged that the District ultimately decides which staff members to hire, leaving the BOCES with little input or control over the process. (FF # 20.) Additionally, in a separate investigation in September 2024, the CDE found the BOCES did not ensure that staff possessed the required certification and licenses at a separate school. *Ute Pass BOCES*, 124 LRP 35528 (SEA CO 2024). Two findings of noncompliance within a short period of time suggest broader issues. For these reasons, the CDE finds this noncompliance gives rise to systemic concerns about the hiring of licensed staff within the BOCES. The CDE has ordered a remedy, outlined below, to address this concern.

The CDE has similar concerns about the BOCES’ noncompliance related to MDRs. During the initial MDR meeting, Director advised the participants to delay completing the MDR until Student F’s reevaluation was complete. (FF #s 131-32.) This advice was inconsistent with the BOCES’ obligations under the IDEA and originated from the head of special education in the BOCES. During the investigation, the BOCES’ witnesses recognized no error in the handling of Student F’s

discipline. These facts give rise to systemic concerns about the conduct of MDRs within the BOCES. Below, the CDE has outlined remedies consistent with the IDEA.

### **REMEDIES**

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

1. Developing IEPs that were tailored to individual needs, as required by 34 C.F.R. § 300.324.
2. Making a significant change in placement without considering a reevaluation, as required by ECEA Rule 4.03(8)(b)(ii)(B).
3. Not completing an MDR within 10 school days of a disciplinary change of placement, as required by 34 C.F.R. § 300.530(e).
4. Not ensuring a special education teacher was appropriately licensed, as required by 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04.

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

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

- a. By **Friday, February 28, 2025**, the BOCES shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the BOCES is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the BOCES’ timely correction of the areas of noncompliance.

#### **2. Final Decision Review**

- a. BOCES Director; any BOCES assistant director(s); Behavior Specialist; School’s principal, assistant principal(s) and dean of students; School’s special education coordinator(s); and AN Teacher must review this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.156, 300.207, 300.324, 300.530(e) and ECEA Rules 3.04 and 4.03(8)(b)(ii)(B), by **Friday, March 14, 2025**. If these individuals are no longer employed by the BOCES or the District, the BOCES may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that these materials have been read and reviewed must be provided to the CDE by **Friday, March 21, 2025**.

### 3. Training

- a. BOCES Director, any BOCES assistant director(s), Behavior Specialist, all special education teachers within the BOCES' Member Districts, and all school psychologists, social workers, and counselors employed by the BOCES or the Member Districts must attend and complete training provided by the CDE on MDRs. If these individuals are no longer employed by the BOCES or the Member Districts, the BOCES may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.530, as well as any related concerns in this Decision.
- b. BOCES Director, any BOCES assistant director(s), all building administrators in the Member Districts, and all special education department chairs or special education coordinators in the Member Districts must attend and complete training provided by the CDE regarding AU responsibilities for ensuring compliance with personnel qualifications requirements for special education staff. If these individuals are no longer employed by the BOCES or the Member Districts, the BOCES may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04, as well as any related concerns in this Decision.
- c. Both trainings must be completed no later than **Friday, April 4, 2025**. Evidence that the training occurred must be documented (i.e. training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training(s)) and provided to the CDE no later than **Friday, April 11, 2025**.

### 4. Procedures

- a. By **Friday, March 14, 2025**, the BOCES must submit written procedures or guidance to ensure compliance with 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04. The procedures must offer clear guidance on the requirement for special education teachers to possess an appropriate endorsement or authorization prior to providing specially designed instruction without supervision from a properly credentialed special education teacher.
  - i. At a minimum, these procedures must require Member Districts to submit the names and credentials (including license(s), endorsement(s), etc.) of prospective hires to the BOCES for approval of the individual's credentials before the Member Districts hire the individual. The procedures should outline how the approval process will work and provide timeframes for submission of prospective hires and approval by the BOCES.

- b. The BOCES can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. By **Friday, April 11, 2025**, the CDE will approve the BOCES' draft procedures, approve them contingent upon the BOCES's adopting CDE's revisions, or reject the procedures with guidance to the BOCES on how they must be corrected.
- d. By **Friday, April 18, 2025**, the BOCES must ensure that a copy of the approved procedures have been distributed to all building administrators in the Member Districts and all individuals responsible for hiring in the Member Districts, as well as all BOCES staff involved in implementation of the procedure.
- e. If CDE has not approved the BOCES' draft procedures by April 11, 2025, the CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this subpart in CDE's sole discretion and according to CDE's interpretation of the purposes of this subpart.
- f. The CDE will conduct verification activities to ensure compliance with the BOCES' revised procedures and 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04.
- g. If the BOCES dissolves following the 2024-2025 school year, the Member Districts must continue to implement the procedures, though the Member Districts may amend the procedures to reflect their status as independent AUs and require approval of a prospective hire's credentials by the Member Districts' new special education directors.

## **5. Reevaluation and Review of IEP**

- a. The BOCES must provide Student A's parent/guardian with a form seeking consent to reevaluate Student A by **Friday, February 28, 2025**. The BOCES must, at a minimum, seek to evaluate Student A's academic abilities and social/emotional status. The BOCES must simultaneously submit a copy of the consent form to the CDE.
  - i. If parent/guardian refuses to sign consent for evaluation within fifteen days of receipt, the BOCES will be excused from conducting the reevaluation, provided the BOCES diligently attempts to resolve disagreements about the scope and location of the evaluation, and to secure consent, and documents such efforts.
  - ii. If the BOCES and parent/guardian cannot agree to the scope of the evaluation, the District must submit to the CDE all documentation evidencing diligent attempts to resolve the disagreement, including but

not limited to copies of correspondence sent to parent/guardian and any responses received (such as emails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Tuesday, March 4, 2025.**

- iii. A determination that the BOCES diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student A, rests solely with the CDE.
  - iv. If the BOCES obtains signed consent, the BOCES must submit a copy of the signed consent to the CDE within 7 days of receiving the signed consent.
- b. If the BOCES obtains signed consent, the BOCES must conduct the reevaluation in accordance with 34 C.F.R. §§ 300.303 through 300.305 by **Friday, May 2, 2025.**
- c. Student A's IEP Team shall convene, at a mutually agreeable date and time, by **Friday, May 9, 2024.** In consideration of the concerns identified in this Decision, Student A's IEP Team must review and, as appropriate, revise Student A's IEP to reflect her current needs.
- d. A copy of Student A's evaluation, IEP, the notice of meeting for the IEP Team meeting, any notes from the IEP Team meeting, and any PWNs issued must be provided to the CDE no later than **Friday, May 16, 2025.** The CDE may determine, in its sole discretion, whether the reevaluation and IEP Team meeting complied with this Decision.
- e. If Student A is no longer enrolled in the BOCES, then the BOCES will be excused from completing the requirements of this section of the Remedies.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
201 E. Colfax Avenue  
Denver, CO 80203

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

## CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, 13; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 31st day of January, 2025.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-17

### Response, pages 1-12

#### *Student A*

- Exhibit A: IEPs
- Exhibit B: Notices of Meeting
- Exhibit C: Consent to Evaluate
- Exhibit D: Evaluations
- Exhibit E: Blank
- Exhibit F: Grade and Attendance Records
- Exhibit G: Progress Reports
- Exhibit H: Email Correspondence

#### *Student B*

- Exhibit I: IEPs
- Exhibit J: Blank
- Exhibit K: Documents regarding IEP Amendment
- Exhibit L: Notices of Meeting
- Exhibit M: Prior Written Notices
- Exhibit N: Blank
- Exhibit O: Blank
- Exhibit P: Grade and Attendance Reports
- Exhibit P, Part 2: Middle School Schedules
- Exhibit Q: Progress Monitoring
- Exhibit R: Email Correspondence

#### *Student C*

- Exhibit S: IEPs
- Exhibit T: Blank
- Exhibit U: Email Correspondence
- Exhibit V: Notices of Meeting
- Exhibit W: Blank
- Exhibit X: Email Correspondence

#### *Student D*

- Exhibit Y: IEPs
- Exhibit Z: Evaluations
- Exhibit AA: Consent to Evaluate
- Exhibit BB: Email Correspondence
- Exhibit CC: Blank

- Exhibit DD: Notices of Meeting
- Exhibit EE: Blank
- Exhibit FF: Email Correspondence

#### *Student E*

- Exhibit GG: IEPs
- Exhibit HH: Notices of Meeting
- Exhibit II: Prior Written Notices
- Exhibit JJ: Evaluations
- Exhibit KK: Grade and Attendance Reports
- Exhibit LL: Miscellaneous Documents
- Exhibit MM: Email Correspondence

#### *Student F*

- Exhibit NN: IEPs
- Exhibit OO: Consent to Evaluate
- Exhibit PP: Evaluations
- Exhibit QQ: Behavior Documentation
- Exhibit RR: Suspension/Expulsion Documentation
- Exhibit SS: Manifestation Determination Documentation
- Exhibit TT: Schedule, Grades, Attendance, and Assigned Work
- Exhibit UU: Notices of Meeting
- Exhibit VV: Prior Written Notices
- Exhibit WW: Email Correspondence

#### *All Students*

- Exhibit XX: Staff Licensure Documents
- Exhibit YY: School's Calendar
- Exhibit ZZ: BOCES and District Policies
- Exhibit AAA: Witness List
- Exhibit BBB: Verification of Delivery of Response

#### **CDE Exhibits**

- Exhibit 1: Press Release regarding BOCES

#### **Telephone Interviews**

- AN Teacher: October 30, 2024; January 16, 2025
- Assistant Principal: October 31, 2024
- BOCES Behavior Specialist: October 29, 2024
- BOCES Director of Special Education: October 30, 2024; January 16, 2025
- BOCES Assistant Director of Exceptional Student Services: October 29, 2024
- Complainant: October 24, 2024
- Director of Alternative School: October 31, 2024