

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

State Complaint 2024:617
Denver Public Schools

DECISION

INTRODUCTION

On December 4, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified five 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, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)² and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”).³

On January 31, 2025 and February 21, 2025, 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 December 4, 2023. Information prior to December 4, 2023 may be considered to fully investigate all allegations.

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

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

³ The Rules are codified at 1 C.C.R. 301-45.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)⁴ of the IDEA:

1. The District did not provide Student educational services to enable him to participate in the general education curriculum and progress towards his annual Individualized Education Plan (“IEP”) goals following multiple disciplinary changes in placement between December 4, 2023 to present, as required by 34 C.F.R. § 300.530(d)(1).
2. The District did not either conduct a functional behavior assessment (“FBA”) or review Student’s behavior intervention plan (“BIP”) and modify it as necessary to address Student’s behavior, after determining that Student’s conduct was a manifestation of his disability during manifestation determination reviews held between January 2024 to March 2024, as required by 34 C.F.R. § 300.530(f)(1).
3. The District did not review and, as appropriate, revise Student’s IEP from January 2024 to present to address Student’s behavior, as required by 34 C.F.R. § 300.324(b).
4. The District did not fully implement Student’s Individualized Education Program (“IEP”) between May 14, 2024 to present because it:
 - a. Did not provide the dedicated adult support identified in Student’s IEP, as required by 34 C.F.R. § 300.323(c).

Additionally, the Complaint raises the following allegation subject to the CDE’s jurisdiction under C.R.S. § 22-32-147 and Rule 2620-R-2.07:

5. The District did not properly restrain Student during incidents in March 2024 and October 2024 because:
 - a. It used restraint in a non-emergency and without extreme caution, as prohibited by PPRA Rule 2.01(1)(a);
 - b. It did not first use less restrictive alternatives or determine that less restrictive alternatives would be inappropriate or ineffective under the circumstances, as required by PPRA Rule 2.01(1)(b); and
 - c. It administered restraint through staff who have not received training, as prohibited by PPRA Rules 2.02(1)(a)(iii) and 2.03.

⁴ The CDE’s state complaint investigation determines if the District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁵ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student attends fifth grade at a District elementary school (“School”). *Interview with Parent*. He is a social and caring young man with a lot of friends. *Interview with Affective Needs Teacher (“AN Teacher”)*. Student loves playing soccer and video games. *Interviews with AN Teacher and Parent*. He has difficulty advocating for his needs and often feels like he is being blamed. *Id.*
2. Student qualifies for special education and related services under the Serious Emotional Disability and Other Health Impairment disability categories. *Exhibit A*, p. 191.

B. Student’s 2023 IEP and BIP

3. In October 2023, the District convened Student’s IEP Team for his annual review. *Exhibit O*, p. 2. That IEP Team meeting resulted in an IEP dated October 11, 2023 (“2023 IEP”). *Exhibit A*, pp. 2-32.
4. At that time, Student performed significantly below grade level in reading and math; his reading abilities were at a kindergarten level, while his math skills were at a first-grade level. *Id.* at p. 9. The 2023 IEP stressed that Student needed support with emotional regulation to close those academic gaps. *Id.* at p. 5.
5. Student’s SED impacted his ability to “regulate his emotions, control his impulses, and maintain safety.” *Id.* at p. 16. Additionally, Student is “easily triggered by peer reactions, being denied a request, and needing help with a task or interaction, which can lead to unsafe behaviors such as property destruction and physical aggression.” *Id.*
6. Along with academic goals, the 2023 IEP included two social/emotional goals and one self-determination goal. *Id.* at pp. 17-23. The social/emotional goals read as follows:
 - “By October 2024, [Student] will verbally state what he is feeling to a member of the staff 75% of the time when [Student] is feeling overwhelmed as a measured by observations from staff.”
 - “By October [] 2024, [Student] will be able to implement and effectively use his coping skills when he is feeling overwhelmed or upset 75% of the time as observed by mental health provider and support staff.”

⁵ The appendix, attached and incorporated by reference, details the entire Record.

Id. at p. 18. The self-determination goal targeted Student’s ability to step away from peer-to-peer conflicts and use an appropriate strategy, such as ignoring the peer, having a snack, or talking to an adult. *Id.* at p. 22.

7. The 2023 IEP identified more than 20 accommodations tied to Student’s emotional regulation, such as frequent warnings before transitions, safety monitoring as needed, and limiting the number of instructions. *Id.*
8. The 2023 IEP required the District to provide Student the following special education and related services:
 - Specialized Instruction
 - 350 minutes per week of direct literacy instruction provided by a special education teacher outside the general education classroom;
 - 300 minutes per week of direct math instruction provided by a special education teacher outside the general education classroom;
 - 500 minutes per week of direct social/emotional instruction provided by a special education teacher or mental health professional outside the general education classroom.
 - Social Work Services
 - 120 minutes per week of direct social work services provided by a social worker outside the general education classroom.

Id. at pp. 25-26. Student also received indirect occupational therapy, social work services, and specialized instruction. *Id.*

9. Under the 2023 IEP, Student spent less than 40% of his day in the general education setting. *Id.* at pp. 27-28. The IEP noted that Student had been in this environment for the last year and “had seen significant growth and improvement.” *Id.* This environment allowed Student access to specialized instruction inside a supportive therapeutic setting. *Id.*
10. The 2023 IEP included a BIP (“2023 BIP”) that targeted Student’s aggression. *Exhibit B*, p. 1. The BIP hypothesized that Student’s aggression served to obtain attention from peers and adults, escape work, and access a preferred item. *Id.*
11. The 2023 BIP outlined setting event strategies, antecedent strategies, behavior teaching strategies, and reinforcement strategies designed to reduce the frequency of Student’s physical aggression. *Id.* at p. 2. Additionally, the 2023 BIP contained a detailed crisis intervention plan that provided guidance on how staff should respond to Student’s varying states of escalation. *Id.* at pp. 3-5. The crisis intervention plan was broken down into three

categories: when Student was beginning to escalate, when Student was escalated, and when Student was beginning to de-escalate. *Id.* Within each category, the plan described what that behavior would look like and provided “do’s” and “don’ts” for staff. *Id.*

C. Affective Needs Classroom during 2023-2024 School Year

12. Under the 2023 IEP, Student spent most of his school day in School’s affective needs classroom (“AN classroom”). *Interview with AN Teacher.* On a typical day, Student had access to general education peers during math instruction in the general education classroom, lunch, recess, and specials classes (such as STEM and PE). *Id.* In the AN classroom, Student received academic support with math and literacy instruction, as well as social/emotional instruction and support. *Id.*
13. During the 2023-2024 school year, the AN classroom served anywhere from six to nine students. *Id.* The AN classroom staff included AN Teacher, Affective Needs Social Worker 1 (“Social Worker 1”), and three to four paraprofessionals. *Interviews with AN Teacher and Social Worker 1.*

D. Behavioral Challenges during the 2023-2024 School Year

14. Student experienced significant behavioral challenges during the 2023-2024 school year. *Interviews with AN Teacher, Assistant Principal 1, Social Worker 1, and Parent.* Though Student had behavioral issues in third grade, his struggles intensified during fourth grade. *Interview with Assistant Principal 1.* School staff were seeing escalations following conflicts with peers; these escalations often resulted in physical aggression towards other students or staff. *Interview with AN Teacher.*
15. On January 23, 2024, the District amended Student’s BIP to address non-preferred staff members: “When a staff member is non-preferred and [Student] expresses that through verbal statement or aggression, staff should switch out to a new person.” *Exhibit A, p. 1; Exhibit B, p. 12.*
16. The District conducted a manifestation determination review (“MDR”) on February 13, 2024, after Student had been suspended five times for incidents involving fighting or physical aggression. *Exhibit L, pp. 1-9.* At that point, Student’s suspensions totaled approximately eight days. *Id.*
17. The MDR Team determined that the underlying incident was a manifestation of Student’s disability and was not due to the District’s failure to implement Student’s IEP or BIP. *Id.* at p. 9.
18. A prior written notice (“PWN”) embedded in the MDR paperwork reflected the MDR Team’s agreement to amend Student’s BIP to ensure Student had access to safe spaces throughout the building. *Id.* at p. 8. Additionally, the PWN indicated the MDR Team considered starting Student’s reevaluation early but decided to wait since his BIP had recently been amended. *Id.*

19. That same day, the District amended Student's BIP to specify that Student "should have access to a 'safe space' in multiple areas in the building (1st floor, 2nd floor) to de-escalate." *Exhibit B*, p. 13. If Student became escalated away from the AN classroom, this ensured Student would have a space nearby to de-escalate without having to travel back to the AN classroom or the Zen Zone. *Interview with AN Teacher*.
20. The District held a second MDR on February 28, 2024, after Student was suspended for two days on February 13, 2024, for an incident involving verbal and physical aggression. *Exhibit L*, at pp. 12-13. Once again, the MDR team concluded that Student's behavior was a manifestation of his disability and that his behavior was not a result of the District's failure to implement his IEP or BIP. *Id.* at p. 13.
21. This time, the MDR Team decided to move forward with Student's reevaluation and begin a new FBA. *Id.* at p. 13. Following the MDR, the District did not review or revise Student's BIP. *Interview with AN Teacher*.

E. March 2024 Incident

22. On March 12, Student and a classmate ("Classmate 1") got into a disagreement during lunch. *Exhibit I*, p. 3. Student walked around the table to where Classmate 1 was seated. *Id.* Paraprofessional 1 stood in between Student and Classmate 1, but Student bypassed Paraprofessional 1 and slapped Classmate 1. *Id.* Classmate 1 started to go after Student. *Id.* AN Teacher and School Psychologist arrived to assist. *Id.*
23. AN Teacher tried to verbally deescalate Student while Paraprofessional 1 blocked Student and Classmate 1 from engaging with each other. *Id.* Paraprofessional 1 offered Student a piggyback ride out of the cafeteria. *Id.* Student accepted the offer, and Paraprofessional 1 carried Student to the playground. *Id.*
24. Once outside, Interim Principal insisted on having a conversation with Student about the incident and conditioned Student's access to recess on his participation in the conversation. *Id.* at pp. 3-4. Student told Interim Principal to leave him alone. *Id.* at p. 4. AN Teacher was present for this interaction. *Id.*; *Interview with AN Teacher*. This action by Interim Principal was not consistent with the 2023 BIP, which specified that staff should not engage with Student until there was a noticeable drop in escalation. *Exhibit B*, pp. 4-5. Even then, staff were to provide Student with personal space and cool-down time before engaging him with two options (such as "Would you like to use sand or draw?"). *Id.*
25. Interim Principal then told the other students on the field to stop playing soccer to prevent Student from being able to join. *Exhibit I*, p. 4; *Interview with AN Teacher*. This angered Student, and he walked towards the field with clenched fists. *Exhibit I*, p. 4. Paraprofessional 1 used her hand to block Student from going towards the field. *Id.* She then placed Student in a single-person low hold. *Id.* This hold lasted one minute or less. *Id.* at p. 2.

26. Assistant Principal 1 directed Paraprofessional 1 to release the hold and, with the help of Social Worker 1, attempted to verbally deescalate Student. *Id.* at p. 4. Student then charged at Interim Principal and hit her three times. *Id.*
27. This prompted Assistant Principal 1 and AN Teacher to place Student in a two-person high hold restraint. *Id.* After three minutes, they released the hold and continued to de-escalate Student by talking to him and rubbing his back. *Id.*
28. Following this incident, AN Teacher and Assistant Principal 1 verbally notified Parent of the use of restraint. *Id.* at p. 6. They also documented the block, hold, and restraint using the District’s forms. *Id.* at pp. 1-6; *Interviews with AN Teacher and Assistant Principal 1.*
29. During this investigation, Parent expressed concern about Assistant Principal 1’s use of the phrase “preventative hold.” *Interview with Parent; Complaint*, p. 3. According to Parent, Assistant Principal 1 said she placed Student in a “preventative hold” when she saw that Student’s fists were clenched. *Interview with Parent; Complaint*, p. 3. When Parent questioned whether holds can be used preventatively, Assistant Principal 1 indicated she used preventative holds during the last nine years. *Complaint*, p. 3. In response to similar questioning as part of this investigation, Assistant Principal 1 stated that she only used holds in emergency situations. *Interview with Assistant Principal 1.*
30. The District’s incident report form—which was prepared contemporaneously—does not indicate that Student was placed in an additional hold between when he clenched his fists and when he hit Interim Principal. *Exhibit I*, p. 2. AN Teacher prepared the incident report form, and it was reviewed and signed by five other staff members. *Id.* at pp. 9-10.
31. The District acknowledged that Student was restrained on March 12, 2024, in the incident report form and in its Response submitted during this investigation. *Id.* at pp. 1-11; *Response*, p. 7.

F. Additional MDRs and Provision of Educational Services during Removals

32. The District conducted additional MDRs on March 21, 2024, April 24, 2024, and April 29, 2024. *Exhibit L*, pp. 15-42. In total, the District completed five MDRs for Student during the 2023-2024 school year. *Id.* at pp. 1-42. Student was suspended for approximately 17 days that school year. *Id.* All the underlying incidents involved verbal or physical aggression. *Id.* Student typically received a one- or two-day suspension for each incident. *Id.*
33. At the time of these MDRs, the reevaluation—including an FBA—was already in progress. *Interview with AN Teacher.* The District did not review or make any further revisions to Student’s BIP following these MDRs. *Id.* At the time, AN Teacher wanted to focus on implementing Student’s BIP with fidelity before making any further changes. *Id.* While AN Teacher indicated the BIP was reliably implemented within the AN classroom, issues arose outside of the AN classroom, particularly when administrators became involved. *Id.*

Administrators had a need to “control” Student’s escalations and often focused on consequences, instead of de-escalating Student. *Id.* As a result of these “power struggles,” administrators sometimes ignored Student’s BIP (even though they were aware of its provisions) and guidance provided by AN classroom staff. *Id.*

34. After each MDR, Student returned to the AN classroom, and no other changes were made to his placement. *Interviews with AN Teacher and Parent.*
35. Once a student has been removed from his placement for more than ten days, District policy requires school staff to conduct an MDR for each subsequent disciplinary action. *Interview with Senior Manager for Elementary Special Education (“Sped Senior Manager”).* This policy applies even when the subsequent incidents are similar to the incident that previously led to an MDR and even where the MDR Team found it to be a manifestation of the student’s disability. *Id.*
36. Parent and her advocate expressed concern about this policy during this investigation. *Interview with Parent; Complaint*, p. 5. Parent asserted that the policy—as implemented—resulted in Student being continually removed for behavior that had already been determined to be a manifestation of his disability. *Interview with Parent.*
37. Student did not have any access to schoolwork on the days he was suspended. *Interviews with AN Teacher and Parent.* This was the true for Student’s first ten days of removal, as well as all subsequent days. *Id.*
38. The District has written procedures regarding MDRs. *Exhibit P*, pp. 149-54. Following an MDR, the procedures separate into three categories: where the behavior is a manifestation of the student’s disability, where the behavior is not a manifestation and expulsion is not being considered, and where the behavior is not a manifestation and is expulsion is being considered. *Id.* at p. 153. Only the latter two sections—where the MDR Team finds the behavior was not a manifestation of the student’s disability—address providing educational services after the tenth day of removal. *Id.* Based solely on the District’s procedures, a staff member looking for guidance after finding behavior to be a manifestation would not know that services needed to be provided after the tenth day of removal. *See id.*

G. Reevaluation and Progress Monitoring

39. Following the MDR on February 28, the District moved forward with Student’s reevaluation. *Interview with AN Teacher.* Student’s triennial reevaluation was due on May 18, 2024. *Exhibit A*, p. 34.
40. On March 13, Parent provided the District consent to reevaluate Student in the areas of communicative status, academic performance, social/emotional status, health, and motor abilities. *Exhibit D*, pp. 1-2; *Exhibit Q*, p. 159-60.

41. The District completed the reevaluation on May 13, 2024. *Exhibit C*, pp. 9-42. Student's assessments in the areas of academic performance and social/emotional status are relevant to this investigation.
42. On the Weschler Individual Achievement Test – Fourth Edition (“WIAT”), Student scores in all academic areas fell in the extremely low or very low range. *Id.* at pp. 19-20. Depending on the subject, these scores placed Student at a kindergarten or first grade level. *Id.* The WIAT showed regression in reading comprehension. *Id.* at p. 21
43. Social Worker 1 completed an FBA on April 18, 2024, as part of the reevaluation. *Interview with Social Worker 1; Exhibit C*, pp. 1-9. At the time, Student's most recent FBA was from November 2021, when he was in second grade. *Exhibit L*, p. 1.
44. For the FBA, Social Worker 1 gathered data over a ten-day period. *Exhibit C*, p. 9. During that period, Student exhibited verbal aggression, physical aggression, or property destruction 12 times. *Id.* Some of the incidents contained all three behaviors, while some contained only one or two of the identified behaviors. *Id.* Most of the incidents were of medium to low intensity and lasted from 15-30 minutes. *Id.*
45. AN Teacher and Parent completed the ratings scales for the Behavior Assessment System of Children – Third Edition. *Id.* at pp. 29-30. AN Teacher rated Student's aggression as clinically significant, while Parent's ratings fell within the at-risk range. *Id.*
46. During the 2023-2024 school year, Student made progress on all his annual goals. *Exhibit M*, pp. 1-7. However, the pace of Student's progress dramatically slowed after February 2024. *Id.* From February to May 2024, Student made little, if any, progress on his goals. *Id.*

H. 2024 IEP

47. Following the reevaluation, the District convened a multidisciplinary team to review Student's eligibility for special education and related services based on the reevaluation. *Exhibit 11*, p. 35-40. Student continued to be eligible for special education. *Id.*
48. Student's IEP Team met on May 14, 2024, to review and, as necessary, revise Student's IEP. The May 14 IEP Team meeting resulted in a new IEP dated April 24, 2024 (the original date the IEP Team was scheduled to meet) (“2024 IEP”). *Exhibit A*, pp. 65-103.
49. The 2024 IEP contained updated academic data. *Id.* at pp. 70-76. This data showed that Student exceeded the average annual expected growth on i-Ready assessments in math and literacy. *Id.* at pp. 73-76. However, Student continued to perform significantly below grade level. *Id.*
50. The 2024 IEP laid the framework for Student to receive dedicated adult support in the classroom. *Id.* at pp. 81-88. The information gathered by the District showed that 80% of the incidents that led to Student being suspended occurred during unstructured times. *Id.* at p.

81. Forty percent of the events took place at lunch or recess, and 60% of the incidents occurred when Student was engaged in competitive play with peers. *Id.*

51. Per the 2024 IEP, Student required dedicated adult support in the general education classroom, as well as during unstructured times in the AN classroom. *Id.* at p. 89. As envisioned by the IEP Team, the dedicated adult would remain near Student in these settings to monitor peer interactions and provide social support to prevent escalations. *Id.* Prior to unstructured periods, the dedicated adult would review expectations and appropriate strategies with Student. *Id.*

52. The 2024 IEP included new goals in all academic areas, social/emotional wellness, and self-determination. *Id.* at pp. 90-95.

53. The accommodations from the 2023 IEP were retained in the 2024 IEP, along with a dozen new accommodations. *Id.* at pp. 95-96.

54. The 2024 IEP required the District to provide Student the following special education and related services:

- Specialized Instruction

- 400 minutes per week of direct literacy instruction provided by a special education teacher outside the general education classroom;
- 300 minutes per week of direct math instruction provided by a special education teacher outside the general education classroom;
- 450 minutes per week of direct social/emotional instruction provided by a special education teacher or mental health professional outside the general education classroom.

- Social Work Services

- 120 minutes per week of direct social work services provided by a social worker outside the general education classroom.

Id. at pp. 99-100. Student also continued to receive indirect occupational therapy, social work services, and specialized instruction. *Id.* As mentioned above, the IEP Team also determined that Student needed the support of a dedicated adult for five hours per day. *Id.* at p. 99.

55. Student remained in the general education setting for less than 40% of his day. *Id.* at p. 101. This environment had a smaller student-to-teacher ratio and offered Student access to staff with more experience with escalations and behavioral needs. *Id.*

56. The 2024 IEP also contained an updated BIP (“2024 BIP”) based on the new FBA. *Exhibit B*, pp. 15-21. The 2024 BIP targeted Student’s aggression and destruction of property. *Id.* at p. 16. While retaining information from the 2023 BIP, the 2024 BIP also included additional setting event strategies, antecedent strategies, behavior teaching strategies, and reinforcement strategies. *Id.* at pp. 16-17. The 2024 BIP contained the same detailed crisis intervention plan, providing staff guidance on exactly how to respond to Student’s varying states of escalation. *Id.* at pp. 17-20.

I. Affective Needs Classroom during 2024-2025 School Year

57. This school year, the AN classroom has six students “on average.” *Interview with AN Teacher*. Shortly after the school year began, the AN classroom’s social worker resigned. *Id.* In response, the District assigned two mental health “float” providers who worked in the AN classroom until a replacement could be hired. *Id.* The replacement social worker, Social Worker 2 started in October 2024. *Id.* At that point, the AN classroom was staffed by AN Teacher and Social Worker 2, along with several paraprofessionals. *Id.*

J. Dedicated Adult Support

58. On May 14, 2024, when the IEP Team determined Student needed dedicated adult support, less than 14 days were left in the school year. *Exhibit N*, p. 1.

59. Once the IEP was finalized, the School had the ability to hire a someone to support Student. *Interview with Sped Senior Manager*. No additional approvals were needed from District administration. *Id.* However, at that point in the school year, new staff members were not being hired. *Id.*

60. The School did not hire a paraprofessional over the summer or post the job before the school year started. *Interviews with AN Teacher, Parent, and Sped Senior Manager*. Indeed, the job was not posted until a few weeks into the school year. *Interview with Parent*.

61. Before the 2024-2025 school year started on August 21, 2024, AN Teacher met with general education teachers, administrators, and AN classroom staff to review Student’s IEP. *Interview with AN Teacher*. At the beginning of the year, the AN classroom had three to four paraprofessionals depending on the time of day, as some staff members had modified schedules (coming late or leaving early on certain days). *Id.*; *Exhibit N*, p. 1. The needs of the AN classroom necessitated five paraprofessionals. *Interview with AN Teacher*.

62. In late September or early October, the School hired an additional paraprofessional for the AN classroom. *Interviews with AN Teacher and Parent*. However, the new paraprofessional and the AN classroom were not a good match. *Id.* Parent—who worked as a paraprofessional elsewhere in the School—was forced to swap with the new hire. *Interview with Parent*. As a result, Parent now works as a paraprofessional in the AN classroom with Student. *Id.*

63. During this investigation, the AN classroom continued to lack adequate paraprofessional support as one of the paraprofessionals was on leave. *Id.* The District attributed this to an ongoing paraprofessional shortage in the state. *Interview with Sped Senior Manager.*
64. As a result of the paraprofessional shortage, staff members rotated to serve Student. *Interviews with AN Teacher and Parent.* Though Student always had some form of adult support, he often did not have the dedicated adult support required by the 2024 IEP, as the paraprofessional would be working with Student and one of his classmates. *Id.* Parent estimated that Student received 1:1 support only 50% of the time that she worked in the AN classroom. *Interview with Parent.*
65. According to AN Teacher, Student works well with a variety of paraprofessionals. *Interview with AN Teacher.* Rotating the paraprofessionals supporting Student allows him to develop a relationship with all the paraprofessionals in the AN classroom. *Id.* This is helpful when Student becomes frustrated with one of the paraprofessionals and makes it easy for another paraprofessional to intervene. *Id.* Even if the AN classroom were fully staffed, AN Teacher does not envision Student receiving 1:1 support from a single person. *Id.*
66. During Fall 2024, Student's progress on his annual goals was inconsistent. *Exhibit M*, pp. 51-58. Though he made progress on his self-determination and writing goals, Student's progress was insufficient on his remaining annual goals. *Id.* AN Teacher acknowledged Student had made less progress this school year than last year. *Interview with AN Teacher.* She attributed this reduction to inadequate paraprofessional support, fluctuations with mental health staff, and inconsistency from School administration regarding rules and discipline. *Id.*

K. Behavioral Challenges during the 2024-2025 School Year

67. Student's behavioral challenges continued during fifth grade in the 2024-2025 school year. *Interview with AN Teacher.* In September 2024, Student received six days of out-of-school suspension for three incidents. *Exhibit 8*, pp. 3-5; *Exhibit L*, pp. 2-3. The incidents involved destruction of property, physical aggression, and use of threatening language. *Exhibit 8*, pp. 3-5.
68. Student was suspended an additional four days in October 2024 for destruction of school property and physical aggression. *Id.* at pp. 2-4.
69. On October 9, 2024, another student ("Classmate 2") purposely tried to upset Student. *Exhibit I*, p. 22. Once Student became escalated, he started chasing Classmate 2. *Id.* Classmate 2 ran outside, and Student started to follow him. *Interview with AN Teacher.* Dean of Students placed Student in a standing restraint to prevent Student from exiting the building, fearing he would harm Classmate 2: "The hold was to prevent violence toward the other student." *Id.*; *Exhibit I*, pp. 12-23. During the restraint, Dean of Students stood slightly behind Student and held his arms at his side. *Exhibit I*, pp. 12-23. The restraint lasted three minutes. *Id.* at p. 15.

70. Dean of Students completed the District’s restraint report form. *Id.* at pp. 12-23. On the form, Dean of Students offered only a few sentences describing the incident. *Id.* That sentence did not describe any less restrictive alternatives that were attempted prior to Student being placed in a restraint. *Id.* However, Dean of Students checked boxes indicating that the following were attempted before Student was restrained: increased proximity to student, communicated through touch to guide the student, verbal or nonverbal redirection, requested that the student take some space, requested that other staff manage the student, verbally praised student for demonstration of de-escalation or calming, reminded student of incentive for demonstrating appropriate behavior, clarified or modified expectations, moved away from the student, and contacted the office. *Id.* at p. 21.
71. When asked, AN Teacher—who witnessed the incident—could not recall whether any less restrictive alternatives were used, but AN Teacher questioned why Student was placed in a restraint when staff could have tried to block the doors to prevent his exit. *Interview with AN Teacher.* The urgency of the situation raises questions about whether Dean of Students could have attempted so many less restrictive alternatives before placing Student in a hold. *Id.*
72. The District acknowledged that Student was restrained on October 9, 2024, in the incident report form and in its Response submitted during this investigation. *Exhibit I*, pp. 12-23; *Response*, p. 6.
73. On October 24, 2024, the District conducted an MDR regarding a separate incident that occurred on October 16. *Exhibit L*, pp. 43-49. At the time, Student’s removals did not total ten days. *Id.* at p. 43.
74. The MDR Team determined that Student’s behavior was caused by or had a substantial relationship to his disability. *Id.* at p. 47. Additionally, the team found that the incident was not due to the District not implementing Student’s IEP or BIP. *Id.*
75. During the MDR, the team agreed to amend Student’s BIP to address forced choices. *Id.* That amendment was completed the same day. *Exhibit A*, p. 189-90.

L. District’s Restraint Policies, Procedures, and Practices

76. The District follows Crisis Prevention Institute’s Nonviolent Crisis Intervention program (“NCI”). *Interview with Senior Manager of Behavior and Mental Health (“Senior Behavior Manager”).*
77. The District regularly offers three different NCI trainings: an eight-hour initial course, a five-hour refresher course, and a verbal de-escalation course. *Id.* At least two initial courses and two refresher courses are available each month, often more. *Id.*
78. Staff working in affective needs programs must be NCI-certified according to District policy. *Id.*; *Exhibit P*, p. 50. At the same time, the District strongly encourages school administrators,

school psychologists, social workers, special education teachers, and special education paraprofessionals to complete NCI training. *Interview with Senior Behavior Manager.*

79. New staff members are expected to complete training “as soon as possible,” though the District does not have a definitive deadline for completion. *Id.*
80. The District tracks which staff members have completed training based on program registrations and sign-in sheets. *Id.* However, building administrators bear responsibility for ensuring staff working in affective needs programs have completed NCI training. *Id.*
81. Since August 2023, at least six different principals have worked at School. *Interviews with Assistant Principal 1, Assistant Principal 2, AN Teacher, and Parent.* Additionally, School has experienced turnover in its assistant principal roles. *Id.* During this investigation, School staff were not aware of whether anyone in School’s administration tracked staff completion of NCI training. *Id.*
82. In this investigation, the District produced lists of School staff who were NCI-certified during the 2023-2024 and 2024-2025 school years. *Exhibit J*, pp. 1-3. Seven School staff members completed restraint training in 2023-2024. *Id.* at p. 1. None of those staff worked in the AN program. *Id.* Thirty-seven staff School staff members became NCI-certified during the 2024-2024 school year. *Id.* at pp. 2-3.
83. AN Teacher and Assistant Principal 1 restrained Student on March 12, 2024. *Exhibit I*, pp. 4-5. During an interview, AN Teacher said she initially became NCI-certified in Fall 2023 and had completed two refresher courses since then. *Interview with AN Teacher.* Similarly, Assistant Principal 1 indicated she had been NCI-certified for two years and completed yearly refresher courses. *Interview with Assistant Principal.*
84. However, the District’s records do not show that either AN Teacher or Assistant Principal 1 had completed training within two years of the incident. *Exhibit J*, pp. 2-3. Assistant Principal 1 is not even listed in the documents produced by the District. *Id.* And the records show that AN Teacher completed an initial training course on October 26, 2024 (though email correspondence suggests School staff were encouraged to complete the initial course even if they were already NCI-certified). *Id.*; *Exhibit Q*, p. 101.
85. Dean of Students performed the restraint on October 9, 2024. *Exhibit I*, p. 16. The District’s logs do not list Dean of Students. *Exhibit J*, pp. 2-3. However, on the incident report form, Dean of Students checked the box indicating that she had previously completed restraint training. *Exhibit I*, p. 18.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not provide Student educational services following his disciplinary changes of placement, as required by 34 C.F.R. §§ 300.530(b)(2) and 300.530(d)(1). This noncompliance resulted in a denial of FAPE.

The first allegation in Parent’s Complaint relates to Student access to educational services after his disciplinary changes of placement.

A. Provision of Educational Services

Once a student has been removed from his educational placement for ten school days, the IDEA requires a school district to provide the student with 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 had been removed from his educational placement for ten school days by at least February 14, 2024. (FF # 20.) At that point, the District became obligated to provide educational services to Student on each subsequent day of removal. District staff acknowledged that Student did not receive any educational services on subsequent days of removal and, indeed, had no access to any of his schoolwork. (FF # 37.)

Typically, the School suspended Student for one or two days following each disciplinary incident. (FF # 32.) The short duration of Student’s repeated suspensions did not excuse the District from ensuring Student has an opportunity to continue to participate in the general education curriculum and make progress towards his goals. Here, the educational services might have been providing Student a packet of work for home or allowing Student to take his computer home so he could have virtual access to his social/emotional instruction.

For these reasons, the CDE finds and concludes that the District did not provide Student with educational services following his tenth day of removal, as required by 34 C.F.R. §§ 300.530(b)(2) and 300.530(d)(1). This resulted in noncompliance with the IDEA.

B. Materiality of the District’s Noncompliance

Such noncompliance can result in a denial of FAPE where the error is material. *See Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). This materiality standard does not require that a child “suffer demonstrable harm.” *Holman v. Dist. of Columbia*, 67 IDELR 39 (D.D.C. 2016). Instead, “the crucial measure” is the “proportion of services mandated to those provided.” *Id.*

Here, the District erred by not providing Student with any educational services or supports during seven days of removal in Spring 2024. (FF #s 32, 37.) Though these seven days may seem immaterial in the context of an entire school year, it is important to remember that Student had already been removed for ten days without any access to his education. (*Id.*) The seven additional days nearly doubled his time away from his specialized services and supports due to discipline.

The seven days without services also occurred between February 14, 2024 and April 23, 2024, a relatively short time period. This undoubtedly impacted Student's ability to make progress on his academic goals and his social/emotional goals. Though Student made progress on annual goals during the 2023-2024 school year, some progress does not show that the District's noncompliance was without impact to Student. Student's progress on all his goals stagnated during this same period; indeed, Student did not make any progress on his goals after February 2024. (FF # 46.) The reevaluation also showed regression in the area of reading comprehension. (FF # 42.) If Student had been provided educational services during his removals, perhaps Student progress would have remained on the same upward trajectory from earlier in the school year.

For these reasons, the CDE finds the District's noncompliance resulted in a denial of FAPE that entitles Student to an award of compensatory services, as detailed below. *See Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018).

Conclusion to Allegation No. 2: The District did not review Student's BIP following MDRs held in February and March 2024, as required by 34 C.F.R. § 300.530(f)(1). This noncompliance did not result in a denial of FAPE.

The second allegation in Parent's Complaint relates to the District's alleged inaction after Student's MDRs. In particular, Parent asserts that the District did not review and revise Student's BIP or conduct an FBA following the MDRs held between January 2024 and March 2024.

A. Review of Student's BIPs following MDRs

Once an MDR Team determines that a student's behavior was a manifestation of the student's disability, the IDEA requires the IEP Team to either: (1) conduct an FBA (unless the district had previously completed an FBA) and implement a BIP, or (2) review the existing BIP and modify it as necessary. 34 C.F.R. § 300.530(f)(1).

Here, the District inconsistently complied with the requirements of § 300.530(f)(1). During the relevant time period, the District conducted three MDRs: on February 13, 2024, February 28, 2024, and March 21, 2024. (FF #s 16, 20, 32.) After the first MDR, the District amended Student's BIP to clarify that Student should have access to safe spaces throughout the School building. (FF #s 18, 19.)

Following the second MDR on February 28, the District agreed to reevaluate Student, including performing an FBA. (FF # 21.) No review of Student's BIP occurred and, indeed, that box was not checked on the MDR paperwork. (*Id.*) Similarly, the District did not review Student's BIP after the

MDR on March 21. (FF # 33.) Meanwhile, the FBA was not completed until April 18, nearly seven weeks after the MDR on February 28. (FF # 43.)

Under the IDEA, the District was required to review and, if necessary, modify Student's BIP following the MDRs on February 28 and March 21. Once an MDR Team has determined a student's behavior to be a manifestation of his disability, § 300.530(f)(1) provides school districts with two options: (1) conduct an FBA and develop a BIP, or (2) review and revise, if necessary, an existing BIP. 34 C.F.R. § 300.530(f)(1). The first option is only available if the district has not previously completed an FBA. *Id.* (A district may "[c]onduct [an FBA], unless the [school district] had conducted [an FBA] before the behavior that resulted in the change of placement occurred.") (emphasis added). The plain language of the regulation does not allow a district to satisfy the IDEA's requirements by conducting a subsequent FBA; of course, the district would be free to initiate an FBA consistent with 34 C.F.R. § 300.303 (and upon parent's consent) at any time.

Here, the District had previously completed an FBA (albeit in 2021), and Student had a BIP in place. (FF #s 10, 43.) Therefore, to comply with § 300.530(f)(1), the District needed to review Student's BIP. The Findings of Fact do not indicate that the District took the required action; instead, the District moved forward with Student's reevaluation (which was laudable though, alone, insufficient) and did not review Student's BIP after either the February 28 or March 21 MDRs. (FF #s 21, 33.) For these reasons, the CDE finds and concludes that the District did not comply with 34 C.F.R. § 300.530(f)(1). This resulted in procedural noncompliance with the IDEA.

B. Impact of 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). However, noncompliance with a procedural requirement amounts to a denial of FAPE only where the noncompliance: (1) impeded the student'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 District had a detailed BIP in place for Student. (FF #s 10-11.) That BIP was developed by Student's IEP Team in October 2023 and revised in January and February 2024 following behavioral incidents. (FF #s 10, 15, 19.) Following his reevaluation, Student's IEP Team prepared a new BIP in May 2024. (FF # 56.) In large part, the 2024 BIP mirrored the 2023 BIP; there were no significant changes. (*Id.*) Both BIPs targeted Student's aggression, though the 2024 BIP also addressed Student's property destruction. (FF #s 10, 11, 56.)

The similarities in the BIPs suggest that even if the District reviewed Student's BIP following the MDRs in February and March 2024 no significant changes would have been made. Moreover, though 34 C.F.R. § 300.530(f)(1) required the District to review Student's BIP, it did not require the District to make any changes. *See* 34 C.F.R. § 300.530(f)(1). For these reasons, the CDE finds

and concludes that the District's noncompliance with 34 C.F.R. § 300.530(f)(1) did not impede Student's right to a FAPE, impede Parent's opportunity to participate in any decision-making process, or deprive Student of an educational benefit. No denial of FAPE occurred.

C. Repeated MDRs

During this investigation, Parent and her advocate expressed concern about the District's use of repeated MDRs. (FF # 36.) Simply put, Parent alleged the District conducted MDRs too frequently for the same behavior that had previously been found to be a manifestation of Student's disability. (*Id.*) The IDEA absolutely requires school districts to complete MDRs once a student has been removed for more than ten consecutive days or the student's short-term removals total more than ten days and constitute a pattern. 34 C.F.R. §§ 300.530(e), 300.536. Yet, school districts may perform MDRs "anytime a child exhibits maladaptive behavior." *Avila v. Spokane Sch. Dist. #81*, CV-10-0408-EFS, 114 LRP 47881 (E.D. Wa. 11/03/14); *see also Denver Pub. Schs.*, 124 LRP 34353 (SEA CO 08/27/23) (finding that a district can preemptively conduct an MDR if it so chooses).

The IDEA does not prohibit a school district from repeatedly disciplining a student for behavior that has previously been deemed to be a manifestation of the student's disability. *See* 34 C.F.R. § 300.530. However, implicit in the IDEA's disciplinary provisions is a principle that disfavors using discipline to address behaviors that are a result of the student's disability. *Weld RE-5J Sch. Dist.*, 120 LRP 25001 (SEA CO 07/14/20) (citing CDE Guidance Memorandum on discipline). Those behaviors should be addressed through the IEP process rather than via the disciplinary process. *Id.*

The IDEA arguably seeks to avoid the repeated cycle of MDRs by requiring districts to undertake activities to better understand and support a student's behavior (such as completing an FBA, developing a BIP, or reviewing a BIP) following a determination that a student's behavior was a manifestation of his disability. *Id.* § 300.530(f)(1). While the District's policy might not be a best practice, it is not plainly inconsistent with the IDEA.

Conclusion to Allegation No. 3: The District reviewed and, as appropriate, revised Student's IEP, as required by 34 C.F.R. § 300.324(b). The District complied with the law.

With her third allegation, Parent asserts that the District did not review and revise Student's IEP to address his behavior, as required by 34 C.F.R. § 300.324(b).

A. Legal Obligation to Review and Revise IEPs

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). In developing an IEP, the IEP Team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address behavior that impedes the student's learning or that of other students. 34 C.F.R. § 300.324(a)(2)(i).

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress. *Andrew F.*, 137 S. Ct. at 998. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA contemplates that a student's IEP may need to be reviewed and revised more frequently to address, in part, lack of expected progress toward the annual goals, a student's anticipated needs, or other matters. See 34 C.F.R. §§ 300.324(a)(4)-(6), (b); *Andrew F.*, 137 S. Ct. at 994. The U.S. Department of Education confirmed that an "IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it." *Questions and Answers on Andrew F. v. Douglas Cty. Sch. Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17).

B. Review and Revision of Student's IEPs

This allegation concerns the District's obligation to review and revise Student's IEP during the 2023-2024 and 2024-2025 school years to address Student's ongoing behavior challenges. Student's IEPs and accompanying BIPs undoubtedly included positive behavioral interventions and strategies; the question is only whether the District should have reviewed and, if necessary, revised Student's IEPs to address his ongoing behavioral challenges. Indeed, Student was suspended for 17 days during the 2023-2024 school year, and, as of October 16, 2024, he had already faced seven days of suspensions during the 2024-2025 school year. (FF #s 32, 67, 68.)

Here, the CDE finds and concludes that no further review of Student's IEPs was required by the IDEA. Student's IEP Team developed his 2023 IEP and BIP in October 2023. (FF # 3, 10.) In January and February 2024, the District made small adjustments to Student's BIP following behavioral incidents. (FF #s 15, 19.) Those adjustments were specifically tied to the underlying behavioral incidents. (*Id.*)

The District reevaluated Student in March and April 2024, before convening his IEP Team to develop a new IEP in May 2024. (FF #s 39, 48.) During the pendency of the reevaluation, AN Teacher focused on implementing Student's BIP with fidelity before making any further changes. (FF # 33.) Though she indicated the BIP was reliably implemented by AN classroom staff, issues arose when administrators became involved in incidents outside the AN classroom. (*Id.*) While administrators were familiar with Student's BIP, they often opted not to follow Student's BIP, and their actions further escalated Student. (*Id.*) In October 2024, the District amended Student's BIP to address a recent behavioral incident. (FF # 74.)

Within the span of one year, the District developed two IEPs and two BIPs and adjusted Student's BIP three times. (FF #s 39, 48, 33, 74.) During the 2023-2024 school year, Student made progress on his annual goals; however, his progress was less consistent during the 2024-2025 school year. (FF #s 46, 66.) The decline in progress could be attributed to the lack of dedicated adult support (as addressed in conclusion to Allegation No. 4 below) rather than a deficient IEP. The Findings

of Fact show that the District made a concerted effort to understand and address Student's behavior.

In some ways, this allegation duplicates the concerns addressed in conclusion to Allegation No. 2 above. In that conclusion, the CDE found that the District did not review Student's BIP following MDRs, as required by 34 C.F.R. § 300.530(f)(1). That provision of the IDEA *required* the District to review Student's BIP following a triggering event. *See* 34 C.F.R. § 300.530(f)(1). Meanwhile, 34 C.F.R. § 300.324(b) contains a fluid obligation to review and revise a student's IEP at least annually but perhaps more often. *Id.* § 300.324(b). This difference accounts for the varying conclusions to Allegations No. 2 and 3.

Conclusion Allegation No. 4: The District did not fully implement Student's IEP, as required by 34 C.F.R. § 300.323(c). This noncompliance resulted in a denial of FAPE.

The fourth allegation in the Complaint relates to implementation of the dedicated adult support required by the 2024 IEP. Specifically, Parent asserts that the District still has not provided Student with the level of support required by his IEP.

A. Requirements for IEP Implementation

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

A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). However, "as soon as possible" does not necessarily mean immediately. *See D.D. ex rel. V.D. v. N.Y.C. Bd. of Ed.*, 465 F.3d 503, 514-15 (2nd Cir. 2006). The IDEA imposes a "flexible requirement" for implementation that "permits some delay between when the IEP is developed and when the IEP is implemented." *Id.* at 514. However, the basis for the delay matters. *Id.* The factors to be considered include, amongst others:

- (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP.

Id. Additionally, as part of its implementation obligation, a school district must make sure that each teacher and related services provider is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications,

and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d).

B. Accessibility of Student’s IEP

First, the CDE must determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the alleged implementation concerns arise from hiring adequate staff rather than lack of knowledge regarding the need for dedicated adult support or Student’s IEP generally. Regardless, AN Teacher met with general education teachers, administrators, and AN classroom staff prior to the 2024-2025 school year to review Student’s IEP. (FF # 61.) Accordingly, all attendees were aware of the requirements of Student’s IEP, including the dedicated adult support. (*Id.*) For these reasons, the CDE finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

C. Dedicated Adult Support

Based on the Findings of Fact, the CDE finds and concludes that the District did not provide Student with the dedicated adult support required by his IEP during the 2024-2025 school year. (FF #s 58-65.) The 2023 IEP was finalized on May 14, 2024, when only 14 school days remained in the school year. (FF # 58.) Though the IDEA requires IEPs to be implemented “as soon as possible,” some delays are permissible. *See D.D.*, 465 F.3d at 514-515. The CDE finds the delay in implementation in Spring 2024 to be acceptable. It would be unreasonable to expect the District to hire and train a new support person for Student with such little time left in the school year.

However, once the 2024-2025 school year began, the District’s ongoing delay in implementation became unacceptable. The District did not post the job opening until several weeks into the school year. (FF #s 60, 62.) In late September or early October—nearly two months into the school year—the District hired a paraprofessional to provide Student’s dedicated adult support. (FF # 62.) Once it became clear that the new hire was not compatible with Student and/or the AN classroom, the District rotated Parent, a School employee, into the AN classroom to provide support to Student and his classmates. (*Id.*) During this investigation, the AN classroom remained understaffed, and Student received dedicated adult support only 50% of the time. (FF #s 63, 64.) While the CDE recognizes that a shortage of paraprofessionals exists, that shortage does not excuse the District from fully implementing Student’s IEP. *See Denver Pub. Schs.*, 124 LRP 15404 (SEA CO 05/02/24) (holding a district accountable for implementing an IEP despite staff shortages). For these reasons, the CDE finds and concludes that the District did not fully implement Student’s IEP, as required by 34 C.F.R. § 300.323(c). This resulted in noncompliance with the IDEA.

D. Materiality of Noncompliance

When a district does not implement a “material”, “essential”, or “significant” provision of a student’s IEP, such noncompliance amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van*

Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that omitting an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that not implementing “significant provisions of the IEP” resulted in a denial of FAPE). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail.” *Id.* But a child’s educational progress, or lack thereof, may indicate whether there has been more than a “minor shortfall in the services provided.” *Id.*

Here, the District omitted the dedicated adult support required by Student’s IEP for nearly the first two months of the 2024-2025 school year. (FF #s 58-64.) Even once the District hired additional staff, staff schedules still prevented Student from receiving the dedicated 1:1 adult support throughout his school day. (*Id.*) Instead, an AN classroom staff member simultaneously supported Student and one of his classmates. (*Id.*)

The dedicated adult support was a key component of Student’s IEP. Indeed, the addition of this support was the key change made by Student’s IEP Team in response to his behavioral challenges during the 2023-2024 school year. (FF #s 47-56.) The IEP Team hoped the adult support would head off peer-to-peer conflicts and, in turn, decrease Student’s escalations. (FF # 51.) During Fall 2024, the District suspended Student for eight days. (FF # 68.) Perhaps, if Student had received the dedicated adult support required by his IEP, these behavioral incidents would have decreased and Student’s access to his education would have increased. As noted above, the noncompliance has, to date, spanned half of the 2024-2025 school year. For these reasons, the CDE finds and concludes that the District’s noncompliance was material and resulted in a denial of FAPE. This denial of FAPE entitles Student to an award of compensatory services. *See Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

E. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been in if not for noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dept. of Ed.*, 118 LRP 43765 (SEA CO 06/22/2018). The purposes of the IDEA guide compensatory awards, and those purposes include providing children with disabilities a FAPE that meets the particular needs of each child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the District denied Student access to his dedicated adult support—in whole or in part—for half of the school year. Additionally, as detailed in the conclusion to Allegation No. 1, the District did not provide Student with educational services on seven days during Spring 2024. The CDE

finds and concludes that an award of 25 hours of specialized literacy instruction, 20 hours of specialized math instruction, and 30 hours of specialized social/emotional instruction is necessary to restore Student to the position he would be in but for the District's noncompliance. This award addresses both areas of noncompliance.

Conclusion to Allegation Nos. 5(a)-(b): The District's use of restraint in the March 2024 incident complied with the PPRA. The District used restraint in a non-emergency situation without first attempting less restrictive alternatives in October 2024. This resulted in noncompliance with PPRA Rule 2.01.

Part of the fifth allegation addresses the propriety of the District's use of restraint during incidents in March 2024 and October 2024. Specifically, Parent has asserted that the District used restraint in non-emergency situations without first using less restrictive alternatives.

A. Use of Restraint on March 12 and October 9

The PPRA defines "restraint" as "any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, and chemicals." PPRA Rule 2.00(8). "Physical restraint" means "the use of bodily physical force to involuntarily limit an individual's freedom of movement for *one minute or more*." PPRA Rule 2.00(8)(c) (emphasis added). However, "physical restraint" specifically excludes:

- A physical intervention lasting less than one minute for the protection of the student or others or to prevent the destruction of property;
- A brief holding of a student by one adult for the purpose of calming or comforting the student;
- Minimal physical contact for the purpose of safely escorting a student from one area to another; and
- Minimal physical contact for the purpose of assisting the student in completing a task or response.

PPRA Rule 2.00(8)(c)(i)-(iv).

Ordinarily, the CDE must first determine whether a student was restrained; however, here, the District has acknowledged that Student was restrained during the incidents in March and October 2024. (FF #s 31, 72.)

B. The District's Basis for the Restraints

Under the PPRA, the District must have an appropriate basis for the use of restraint. The PPRA requires that restraint may:

- Only be used in an emergency with extreme caution after the failure of less restrictive alternatives (or a determination that such alternatives would be inappropriate or ineffective);
- Never be used as a punitive form of discipline or as a threat to gain control of a student’s behavior; and
- Be used only for the period of time necessary and using no more force than necessary.

PPRA Rule 2.01(1)-(3). Here, Parent’s Complaint alleged that the District used restraint in non-emergency situations and without first attempting less restrictive alternatives.

Restraint may be used in cases of emergency. *Id.* “Emergency” means “serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury.” PPRA Rule 2.00(4). “Bodily injury” includes “physical pain, illness, and any impairment of physical or mental condition.” PPRA Rule 2.00(1). Even in an emergency, the PPRA permits the use of restraint only after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). PPRA Rule 2.01(1). Less restrictive alternatives include positive behavior supports, de-escalation, and restructuring the environment. *Id.*

i. **March 2024 Incident**

During the March 2024 incident, Assistant Principal and AN Teacher restrained Student after he charged at Interim Principal and hit her several times. (FF #s 22-27.) Student remained in the restraint for three minutes, before he was released and staff continued to try to de-escalate Student. (FF # 27.) Here, an imminent threat of bodily injury existed for Interim Principal. Indeed, bodily injury had already occurred before the restraint was utilized. (FF # 26.) For this reason, the CDE finds and concludes that the situation constituted an emergency under the PPRA.

Staff tried to verbally de-escalate Student, used a block, and even placed Student in a brief one-person hold before utilizing the restraint. (FF #s 22-27.) While staff worked to verbally de-escalate Student, he ran towards Interim Principal and hit her, ending their attempts to resolve the situation through less restrictive alternatives. (FF # 26.) Given that the situation escalated quickly, it is not clear what other less restrictive alternatives School staff could have attempted at that point. Any delay likely would have resulted in injury to Interim Principal. Therefore, the CDE has determined that the District attempted less restrictive alternatives consistent with the PPRA. For these reasons, the CDE finds and concludes that Assistant Principal and AN Teacher had an appropriate basis to use restraint under the PPRA during the March 2024 incident.

During this investigation, Parent expressed concern about Assistant Principal’s use of “preventative holds.” (FF # 29.) As this decision makes clear, restraint can only be used in emergency situations after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). PPRA Rule 2.01(1). In an emergency situation, staff may restrain a student in response to a “serious, probable, imminent threat of

bodily injury.” *Id.* In doing so, restraint may be used to *prevent* harm. While Parent may believe Assistant Principal meant she used restraint before an emergency arose, the incident report form and interviews with staff both indicated that the restraint at issue occurred after Student hit Interim Principal. (FF #s 25-30.)

ii. **October 2024 Incident**

During the October 2024 incident, Dean of Students placed Student in a restraint to prevent Student from chasing Classmate 2 out of the building. (FF # 69.) Student became escalated after Classmate 2 purposely provoked him, and Dean of Students feared Student would physically harm Classmate 2. (*Id.*) The CDE recognizes Dean of Students’ concern for Classmate 2’s safety, especially given Student’s history of physical aggression. (*Id.*) However, at the time the restraint was used, Student was inside the building, and Classmate 2 was outside the building. (*Id.*) The separation suggested an emergency did not exist—at least not yet. Nothing else in the incident report indicated the existence of an emergency. (FF #s 69-71.)

Additionally, the Findings of Fact suggest that Dean of Students had less restrictive alternatives available at the time she utilized restraint. (*Id.*) Such alternatives included blocking the exit or removing Classmate 2 from the playground. (FF # 71.) Though Dean of Students checked boxes indicating the de-escalation strategies she attempted before using restraint, the commentary on the form does not confirm the use of any of those strategies. (FF # 70.)

As a result, the CDE finds and concludes that the situation did not constitute an emergency under the PPRA. Therefore, the CDE has determined that the District did not have an appropriate basis to use restraint under the PPRA during the October 2024 incident. This resulted in noncompliance with the PPRA. Given the compensatory education awarded above, the CDE has not ordered any additional Student-specific remedy to correct the noncompliance.

Conclusion to Allegation No. 5(c): The District did not ensure staff using restraint completed restraint training, inconsistent with PPRA Rule 2.3. This resulted in noncompliance.

The remainder of the fifth allegation concerns the use of restraint by untrained staff. Parent alleges the School staff involved in the incidents in March 2024 and October 2024 were not properly trained.

The PPRA requires school districts to “ensure” staff using restraint complete training. PPRA Rule 2.3. In part, such training must include a continuum of prevention and de-escalation techniques and nationally recognized physical management and restraint practices. *Id.* Staff must complete training at least every two years. *Id.*

Here, the District has not shown that staff involved in the restraints in March and October 2024 had completed restraint training. (FF #s 82-85.) Though Assistant Principal and AN Teacher said they previously completed training, they could not identify specifically when the training

occurred. (FF # 82.) The District produced documentation showing which of School's staff members attended training offered by the District that school year and did not include Assistant Principal, AN Teacher, or Dean of Students. (FF #s 82-85.) Ultimately, the PPRA places responsibility on the District to "ensure" staff using restraint have completed training. PPRA Rule 2.3. Without better documentation, the CDE simply cannot determine that the District met its obligation under the PPRA. For these reasons, the CDE finds and concludes that staff utilizing restraint were not properly trained, as required by PPRA Rule 2.3. This resulted in noncompliance with the PPRA. Below, the CDE has ordered a remedy to correct this noncompliance.

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic and likely to impact the future provision of services for all students with disabilities in the District 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 state complaint systems are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Provision of Educational Services After Removal

Nothing in the Findings of Fact suggests that the District universally declines to provide students educational services after the tenth day of removal. With regard to Student, the noncompliance stemmed from AN Teacher overlooking the need to provide Student with educational services even though his suspensions were typically only one day. (FF #s 32, 37.) The short duration of Student's suspensions also made it difficult for AN Teacher to put together a plan to provide Student with services before he returned to School.

However, the District's procedures related to MDRs do not align with the requirements of the IDEA. Under the IDEA, a student with a disability must receive educational services after ten days of removal, regardless of the outcome of the MDR. 34 C.F.R. §§ 300.530(c)-(d). The District's procedures suggest that educational services are only required for students whose behavior is not a manifestation of their disability. (FF # 38.) For this reason, the CDE finds and concludes that the noncompliance related to educational services is systemic.

Reviewing BIP after MDRs

The Findings of Fact do not indicate that the noncompliance related to reviewing Student's BIP following the MDR is systemic. Indeed, the District reviewed and revised Student's BIP following MDRs in February 2024 and in October 2024. (FF #s 19, 74.) The noncompliance appears to stem

a misunderstanding that the pending FBA was sufficient to satisfy the requirements of 34 C.F.R. § 300.530(f)(1).

Implementation of IEPs

The Findings of Fact do not suggest that the District's failure to provide Student's dedicated adult support is a systemic concern. This noncompliance arose from School administration's delay in hiring a paraprofessional to support Student and from a general state-wide paraprofessional shortage. (FF # 60, 62, 63.) AN Teacher was aware of the requirements of Student's IEP but, without adequate staff, could not ensure Student's IEP was fully implemented. (FF #s 61, 64.)

REMEDIES

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

1. Providing Student educational services following his disciplinary changes of placement, as required by 34 C.F.R. §§ 300.530(b)(2) and 300.530(d)(1).
2. Reviewing and, if necessary, modifying Student's BIP following MDRs held in February and March 2024, as required by 34 C.F.R. § 300.530(f)(1).
3. Fully implementing Student's IEP, as required by 34 C.F.R. § 300.323(c).

Additionally, the CDE concludes that the District did not comply with the following PPRA requirements:

4. Using restraint in a non-emergency situation without first attempting less restrictive alternatives, as required by PPRA Rule 2.01.
5. Ensuring staff using restraint complete restraint training, as required by PPRA Rule 2.3.

The CDE has the authority to order the District to take remedial actions to bring the District into compliance with the IDEA. *CDE State-Level Complaint Procedures*, ¶ 12. The CDE has the same enforcement authority for restraint investigations as state-level complaints under the IDEA. PPRA Rule 2.07(9)(b); C.R.S. § 22-32-147(5). The remedies below address the District's noncompliance with both the IDEA and the PPRA.

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

1. Corrective Action Plan

- a. By **Monday, March 31, 2025**, the District 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 District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Senior Manager of Elementary Special Education, Senior Manager of Behavior and Mental Health, the SEIS assigned to School, School's administrators (including any principal, assistant principal(s), and dean(s) of students), AN Teacher, and Social Worker 2 must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.530, 300.323(c) and PPRA Rules 2.1 and 2.3, by **Monday, April 21, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE no later than **Monday, April 28, 2025**.

3. Procedure Development – MDRs

- a. The District must revise its written procedures regarding MDRs. As revised, the procedures should provide staff guidance on the provision of educational services after the tenth day of removal, consistent with 34 C.F.R. § 300.530. These procedures must be submitted to the CDE by **Monday, April 21, 2025**.
- b. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized.
- c. Upon approval, the District must ensure that all special education teachers, social workers, and school psychologists receive a copy of the new procedures no later than **Monday, May 19, 2025**. Evidence that the procedures were shared with staff, such as a copy of the email sent, must be provided to the CDE no later than **Friday, May 23, 2025**.

4. Procedure Development – Restraint Training

- a. The District must develop written procedures outlining how the District will ensure staff utilizing restraint and seclusion are trained, consistent with PPRA Rule 2.3. These procedures should set forth how the District will track compliance with PPRA Rule 2.3, both at the administrative level and the school level. These procedures must be submitted to the CDE by **Monday, April 21, 2025**.
- b. Any proposed procedure must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized.

- c. Upon approval, the District must ensure that all school administrators (principals, assistant principals, and deans of students) receive a copy of the new procedures no later than **Monday, May 19, 2025**. Evidence that the procedures were shared with staff, such as a copy of the email sent, must be provided to the CDE no later than **Friday, May 23, 2025**.

5. Compensatory Education Services

- a. Student shall receive **25 hours of direct specialized literacy instruction** provided by a District special education teacher. All 25 hours must be completed by **Friday, December 19, 2025**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward his IEP goals.
- b. Student shall receive **20 hours of direct specialized math instruction** provided by a District special education teacher. All 20 hours must be completed by **Friday, December 19, 2025**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward his IEP goals.
- c. Student shall receive **30 hours of direct specialized social/emotional instruction** provided by a District special education teacher. All 30 hours must be completed by **Friday, December 19, 2025**, though Parent and the District are free to allocate the services however they see fit (i.e. weekly sessions, monthly, etc.). These services shall be designed to advance Student toward his IEP goals.
- d. By **Monday, May 5, 2025**, the District shall schedule all compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via email, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule—including the dates, times, and durations of planned sessions, to the CDE no later than **Monday, May 12, 2025**. If the District and Parent cannot agree to a schedule by Monday, May 5, 2025, the CDE will determine the schedule for compensatory services by **Friday, May 23, 2025**.
- e. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempted to meet with Parent and documented such efforts. A determination that the District diligently attempted to meet with Parent and, thus, should be excused from providing compensatory services, rests solely with the CDE.
- f. Parent may opt out of some or all compensatory services.

- g. To verify that Student has received the compensatory services required by this Decision, the District must submit records of the services provided to the CDE by the second Monday of each month until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. The District must communicate with the selected provider to obtain this information.
- h. These services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. These services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). If for any reason the District fails to provide a scheduled session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the monthly service log.

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 District does not meet the timelines set forth above, it may adversely affect the District’s annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13; PPRA Rule 2.07(9)(c). 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 3rd day of March, 2025.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-10

- Exhibit 1: Request for Release of Records
- Exhibit 2: IEP
- Exhibit 3: BIP
- Exhibit 4: IEP Amendment
- Exhibit 5: IEP Amendment
- Exhibit 6: MDR Documentation
- Exhibit 7: MDR Documentation
- Exhibit 8: Behavior Detail Report
- Exhibit 9: Suspension Documentation
- Exhibit 10: MDR Documentation
- Exhibit 11: Reevaluation
- Exhibit 12: Private Evaluation
- Exhibit 13: FBA
- Exhibit 14: MDR Documentation
- Exhibit 15: IEP Amendment
- Exhibit 16: PWN
- Exhibit 17: Restraint Documentation
- Exhibit 18: MDR Documentation
- Exhibit 19: Discipline Matrix

Response, pages 1-7

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations and Assessments
- Exhibit D: PWNs
- Exhibit E: Blank
- Exhibit F: Attendance Records
- Exhibit G: Blank
- Exhibit H: Discipline Matrix

- Exhibit I: Restraint Documentation
- Exhibit J: Staff Restraint Training Records
- Exhibit K: Restraint Training Materials
- Exhibit L: MDR Documentation
- Exhibit M: Progress Reports and Report Cards
- Exhibit N: School Calendars
- Exhibit O: Communication Logs
- Exhibit P: Policies and Procedures
- Exhibit Q: Correspondence
- Exhibit R: Witness Information
- Exhibit S: Verification of Delivery to Parent

Reply, pages 1-4

Telephone Interviews

- Affective Needs Teacher: January 29, 2025
- Assistant Principal 1: January 22, 2025
- Assistant Principal 2: January 22, 2025
- Parent: January 29, 2025
- Senior Manager of Behavior and Mental Health: January 23, 2025
- Senior Manager of Elementary Special Education: January 23, 2025
- Social Worker 1: January 24, 2025