

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

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**State Complaint SC2025-524**  
**Adams County School District 14J**

**DECISION**

**INTRODUCTION**

On February 28, 2025, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state complaint (“Complaint”) against Adams County School District 14J (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three 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”)<sup>2</sup> and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”).<sup>3</sup>

On both March 14, 2025 and April 1, 2025, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in an impasse, and the CDE resumed the investigation on April 24, 2025.

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

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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 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.

<sup>3</sup> The Rules are codified at 1 C.C.R. 301-45.

noncompliance shall be limited to events occurring after February 28, 2024. Information prior to February 28, 2024 may be considered to fully investigate all allegations.

### **SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. The District did not fully implement Student’s Individualized Education Program (“IEP”) from January 1, 2025 to present because it:
  - a. Did not provide Student with the behavior supports listed in the IEP and Behavior Intervention Plan (“BIP”), as required by 34 C.F.R. § 300.323(c).
2. The District did not review and, as appropriate, revise Student’s IEP from January 2025 to present to address Student’s behavior, as required by 34 C.F.R. § 300.324(b).

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

3. The District did not properly restrain and/or seclude Student during incidents between January 1, 2025 to present because:
  - a. It used restraint and/or seclusion in non-emergency situations and without extreme caution, as prohibited by PPRA Rule 2.01(1)(a);
  - b. It used restraint and/or seclusion for more than the period of time necessary, as prohibited by PPRA Rule 2.01(3)(a).
  - c. It did not provide proper notification and documentation of the use of restraint and/or seclusion, as required by PPRA Rule 2.04(2)(c)-(e).

### **FINDINGS OF FACT**

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

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<sup>4</sup> 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.

<sup>5</sup> The appendix, attached and incorporated by reference, details the entire Record.

### **A. Background**

1. Student attended seventh grade at a District middle school (“School”) during the 2024-2025 school year. *Interview with Dean of Students*. This was Student’s first year at School, having attended part of sixth grade at another District middle school. *Id.*
2. Student qualifies for special education and related services under the disability categories of serious emotional disability, other health impairment, and speech or language impairment. *Exhibit A*, p. 1.
3. Student can be a funny, social, and charismatic young man. *Interviews with Paraprofessional and Special Education Teacher*. He does best when he has established relationships with teachers and staff. *Id.* Student has difficulty staying on task for longer periods of time and understanding what behavior is not appropriate for the school setting. *Id.*

### **B. Student’s IEP**

4. Student’s IEP dated August 7, 2024 (“IEP”) was in effect at the beginning of the 2024-2025 school year. *Exhibit A*, pp. 1-31. After Student’s behavior escalated during Spring 2024, the District reevaluated Student during Summer 2024. *Exhibit C*, p. 1. This IEP resulted from that reevaluation. *Exhibit A*, pp. 1-19; *Interview with Dean of Students*.
5. The IEP reviewed Student’s present levels of performance and his recent reevaluation. *Exhibit A*, pp. 1-19. On a recent Woodcock-Johnson IV Test of Achievement, Student’s scores in all areas fell below the second percentile. *Id.* at p. 11. While math was a relative area of strength, Student’s reading scores were below the 0.1 percentile with an age equivalency of five years old. *Id.* Behaviorally, Student had difficulty staying in his assigned class and avoiding physical aggression. *Id.* at p. 13.
6. As noted in the 2024 IEP, Student’s disabilities impacted his ability to access and make progress in the general education curriculum. *Id.* at p. 19. He needed continued support to close academic achievement gaps and participate fully. *Id.* Additionally, Student’s speech impairment affected his ability to communicate academically and socially. *Id.*
7. The IEP contained eight annual goals in the areas of social/emotional wellness, communication, reading, math and writing. *Id.* at pp. 20-24.
8. The 2024 IEP included nearly thirty accommodations designed to support Student’s behavior and his academic work, including, in part:
  - Positive reinforcement and positive redirection;
  - Frequent breaks/breaks as needed;
  - Abbreviated assignments;

- Text at his ability level; and
- 1-2 step directions.

*Id.* at pp. 24-25.

9. The IEP required Student to receive the following specialized instruction and related services:

- Specialized Instruction:
  - 120 minutes per day of direct specialized instruction provided by a special education teacher outside the general education classroom. The instruction should be split into 60 minutes per day for literacy instruction and 60 minutes per day for math instruction.
- Mental Health Services:
  - 180 minutes per month of direct mental health services provided by a mental health provider outside the general education classroom; and
  - 60 minutes per month of indirect mental health services provided by a mental health provider outside the general education classroom to consult with Student’s teachers and plan materials.
- Speech/Language Therapy:
  - 120 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education classroom.

*Id.* at pp. 27-28. The IEP noted that both the mental health services and speech/language therapy would be provided in a virtual setting. *Id.*

10. Under the IEP, Student spent 40-79% of his day in the general education classroom. *Id.* at p. 29.

11. The IEP acknowledged Student’s need for a behavior intervention plan (“BIP”). *Id.* at p. 19. The BIP, which was developed at the same time as Student’s IEP, targeted Student’s verbal and physical aggression. *Exhibit B*, at p. 1. The BIP hypothesized that Student engaged in aggression to obtain attention from adults and peers. *Id.* No other target behaviors were identified. *Id.* at pp. 1-2.

12. The BIP set forth strategies for three different setting events: adult attention, peer attention, and unstructured environments. *Id.* at pp. 2-4. These strategies included reinforcing positive behavior, teaching Student how to use appropriate communication methods, reminding Student of expected behaviors, and increasing structured environments. *Id.*

13. Additionally, the BIP outlined antecedent strategies designed to decrease the likelihood of the target behavior. *Id.* These were organized by area of need as follows:

- Environmental Modifications to Help Decrease Verbal Threats/Profanity
  - Modifying the physical environment to minimize triggers, including seating Student near positive role models and avoiding peers that trigger him;
  - Providing a quiet, designated workspace;
  - Adjusting seating assignments to avoid sensory overload; and
  - Removing or minimizing access to items that provoke anxiety or frustration.
- Clear and Consistent Expectations to Help Decrease Verbal Threats/Profanity
  - Privately redirecting Student and reminding him of classroom rules; and
  - Refraining from engaging in power struggles with Student.
- Preventative Strategies to Help Decrease Physical Aggression
  - Transitioning separately from classmates in the hallway;
  - Using consistent classroom expectations;
  - Using daily point sheet for behaviors;
  - Addressing verbal threats immediately; and
  - Teaching Student to ask for breaks before becoming escalated.
- Choice and Control to Help Decrease Physical Aggression
  - Using positive reinforcement strategies; and
  - Providing Student with choices regarding his environment, schedule, or activities.
- Positive Reinforcement to Help Decrease Physical Aggression
  - Use of positive reinforcement strategies, and
  - Use of incentives, tokens, or point systems.

*Id.* at pp. 2-4.

14. For behavior teaching strategies, the BIP specified that Student should receive direct instruction of emotional regulation skills (including strategies to help manage emotions and deep breathing exercises or mindfulness techniques) and communication skills (including alternative ways to express feelings, active listening, and perspective-taking). Student also needed to be taught problem solving strategies, social skills, assertiveness skills, self-advocacy techniques, coping strategies, conflict resolution skills, and replacement behaviors. *Id.* at pp. 2-4.
15. The BIP directed staff to use positive reinforcement, such as verbal praise, tangible rewards, and positive attention to decrease the target behavior. *Id.* at p. 2. If Student demonstrated the desired behavior, staff could allow him to take a short break to “escape” from the task. *Id.* at p. 3.

### **C. Beginning of 2024-2025 School Year**

16. Near the beginning of the school year, Special Education Teacher gave a snapshot of Student’s IEP and BIP to his teachers and administrative staff. *Interviews with Dean of Students and Special Education Teacher.* Dean of Students and Paraprofessional recalled receiving the snapshot from Special Education Teacher. *Interview with Dean of Students and Paraprofessional.* Special Education Teacher also spoke with Student’s teachers to brainstorm ways to support him in the classroom. *Interview with Special Education Teacher.*
17. During the 2024-2025 school year, Student started his day in a special education classroom where he received literacy instruction from Special Education Teacher. *Id.* Special Education Teacher devoted 20-30 minutes per week of this class to a social/emotional curriculum which targeted, for example, identifying triggers, finding coping strategies, and exercising self-advocacy skills. *Id.*
18. Academically, Student continued to work on his sight words. *Id.* His reading level remained significantly below grade level, and he cannot independently write sentences. *Id.* Student relied on staff or technology to read passages aloud to him and utilized sentence stems or copied sentences written by paraprofessionals. *Id.*
19. Even though it was not required by his IEP, Paraprofessional accompanied Student throughout his school day, except science class when he received support from another paraprofessional. *Interview with Paraprofessional.* Aside from his specialized literacy instruction, Student attended general education classes where he received either co-taught instruction from Special Education Teacher or modified classwork and assistance from Paraprofessional. *Interviews with Paraprofessional and Special Education Teacher.*
20. When Student found his independent work to be too stressful, he could work in another space, such as Special Education Teacher’s classroom or the Annex. *Interview with Special Education Teacher.* The Annex consists of two classrooms connected by a hallway to one of School’s gymnasiums. *Interview with Dean of Students.* An affective needs classroom (“AN

classroom”) and a classroom for students with Autism Spectrum Disorders (“ASD classroom”) are located within the Annex. *Id.*

#### **D. Implementation of Student’s BIP**

21. The District did not consistently use daily points sheets or another reward system during the 2024-2025 school year. *Interviews with Dean of Students, Paraprofessional, and Special Education Teacher.* At the outset of the school year, Dean of Students met with Student to discuss setting some behavior goals. *Interview with Dean of Students.* Student chose to work on reducing profanity, completing work, and advocating for himself. *Id.; Exhibit E*, pp. 1-6. Dean of Students created a point sheet based on these goals, whereby Student could earn a bag of chips if he followed expectations and earned 75% of his daily points. *Interview with Dean of Students; Exhibit D*, pp. 1-6. The point sheet system remained in place for only a few weeks before Student lost interest. *Interview with Dean of Students; Exhibit D*, pp. 1-6.
22. Dean of Students trialed a new system at the beginning of second semester. *Interview with Dean of Students.* Under the “three-strikes system,” Student received a strike (or warning) for certain types of lower-level behavior (such as inappropriate language or leaving the classroom without permission). *Interviews with Dean of Students and Paraprofessional.* Student did not receive a disciplinary referral unless he received three strikes for similar behavior in one day. *Id.* Student received a tangible reward if he made it through the day without any strikes. *Interview with Paraprofessional.* However, Student was not able to focus on the reward, because he thought it seemed unattainable. *Id.* During the first two months of this system, Student earned two rewards: one in January and two in February. *Exhibit D*, pp. 7-9. This system was discontinued in March 2025. *Id.*
23. Early in the school year, Student transitioned to classes before or after his peers to avoid unstructured time in the hallways. *Interview with Paraprofessional.* However, Student disliked leaving class early or late, so the practice was abandoned. *Id.*
24. Student took frequent breaks and had access to various spaces in the building for breaks. *Interviews with Dean of Students, Paraprofessional, and Special Education Teacher.* Depending on the day, sometimes Student needed a mental break to reset, get water, or walk around. *Interview with Special Education Teacher.* Staff did not deny Student access to breaks. *Interviews with Paraprofessional and Special Education Teacher.*
25. Student had preferential seating in his classes. He was seated near a peer role model or near a door whenever possible. *Interview with Paraprofessional.* All of School’s classes have assigned seats, so it was easy for staff to specify the peers seated next to Student. *Id.*
26. Student did best when staff set and enforced consistent expectations. *Id.* In his general education classes, either Paraprofessional or the teacher would address Student’s behavior, depending on who was closest to him. *Id.* Staff tried to give instructions and redirection as close as possible to Student to minimize peer attention. *Id.* They also provided Student with

positive praise upon finishing assignments. *Interviews with Paraprofessional and Special Education Teacher.*

27. The District's behavior reports do not indicate whether staff consistently provided private redirection, reminders of classroom rules, or choices during the incidents that ultimately led to discipline. *Exhibit E*, pp. 1-13. During an incident in March 2025, Dean of Students asked Student to leave a classroom after Student repeatedly refused to follow the teacher's directions. *Id.* at p. 1. Student refused to leave, so Dean of Students gave Student a choice between leaving the class or having his peers leave the room. *Id.*

#### **E. Student's Escalating Behavior**

28. During Fall 2024, Student received ten disciplinary referrals. *Exhibit E*, pp. 7-13. The referrals resulted from physical aggression, verbal aggression, use of profanity, derogatory comments, racial slurs, and disruptive behavior. *Id.* The resulting disciplinary action included conferences with Student, conferences with Parent, use of no-contact contracts, time-outs, and suspensions. *Id.* In total, Student received four days of in-school suspension ("ISS") and a partial day of out-of-school suspension ("OSS").
29. Student's behavior escalated in the second semester of the school year. *Interviews with Dean of Students, Paraprofessional, and Special Education Teacher.* In addition to verbal aggression, staff saw a marked increase in Student's use of racial slurs and sexually suggestive comments to staff and peers. *Interviews with Dean of Students and Special Education Teacher.*
30. Through March 28, 2025, Student had received 11 disciplinary referrals. *Exhibit E*, pp. 1-7. The referrals resulted from destruction of property, possession of a vape pen, fighting, use of racial slurs, use of sexual gestures, profanity, violation of rules regarding technology, and defiance. *Id.* The resulting disciplinary action included conferences with Student, time-outs, three days of ISS, and six days of OSS. *Id.*
31. The 11 disciplinary referrals did not include behavioral incidents which did *not* result in a disciplinary referral. *Id.* at pp. 1-7, 13-21. Paraprofessional's notes detailed approximately 36 additional events that occurred between January 8, 2025 and April 21, 2025. *Id.* at pp. 13-21. These incidents arose from similar behaviors as Student's disciplinary referrals.
32. Student served ISS in the Annex. *Interview with Dean of Students. Id.* During ISS, Student was in the AN classroom with support from Paraprofessional or another School staff member *Interviews with Dean of Students, Paraprofessional, and Special Education Teacher.* Once Student was suspended, Dean of Students or Paraprofessional would gather Student's work from his teachers, so he could work on it during his suspension. *Id.*
33. During a manifestation determination review ("MDR") on March 7, 2025, the District agreed to conduct a new functional behavior assessment ("FBA"). *Response*, p. 14; *Reply*, p. 2.

However, the District did not provide Parent consent to evaluate until March 31, 2025, while this investigation was underway. *Reply*, p. 2. Parent initially provided consent but withdrew it on April 2, 2025. *Response*, p. 14.

#### **F. Student's Attendance and Progress Reports**

34. At the same time, Student's absences increased. *Exhibit I*, pp. 1-3. During Fall 2024, Student was absent less than 20 days. *Id.* However, as of May 21, 2025, he had missed 40 days of school during Spring 2025. *Exhibit Q*, pp. 1-3.
35. Across the board, Student showed little, if any, progress on his annual IEP goals during the 2024-2025 school year. *Exhibit I*, pp. 9-16. With regard to his reading goals, Special Education Teacher even noted that a recent assessment showed year-over-year regression. *Id.* at pp. 12-14. On his goal targeting reading high frequency words, Student could not read any words after three quarters of a school year. *Id.* He also made insufficient progress on his writing goals. *Id.* at pp. 15-16. For two quarters of the school year, Student refused to even provide a writing sample or practice his writing skills. *Id.*
36. Similarly, Student made no progress on his communication goal during the first and second quarters "due to high number of absences and difficulty working in group settings." *Id.* at pp. 11-12. He did advance towards his communication goal in the third quarter. *Id.* His progress report shows "progress made" on his social/emotional wellness goals without any supporting commentary or data, making it difficult to ascertain whether Student truly made progress and whether that progress was as expected. *Id.* at pp. 9-10.

#### **G. Use of Restraint and Seclusion during Spring 2025**

37. The Complaint did not identify any specific incidents in which Student was allegedly restrained or secluded. *Complaint*, pp. 2-3. Instead, the Complaint broadly suggested that Student had been physically removed from spaces and that he was effectively secluded when he was isolated away from his peers. *Id.*
38. The District's behavior logs referenced two incidents during Spring 2025 in which staff used their physical presence to direct Student's behavior. *Exhibit E*, pp. 3, 5. The first incident occurred on January 28, 2025, when a staff member broke up a fight in the boys' bathroom. *Id.* at p. 5.
39. The second incident took place on February 14, 2025. *Id.* at p. 5. Student refused to walk to the Annex as instructed. *Id.* He used racial slurs and threatened to use physical aggression if staff came closer. *Id.* Staff spread their arms out in the hallway to prevent Student from running but did not physically contact Student. *Id.* Principal assisted in calming Student so he could return to class. *Id.*
40. As detailed above, the District acknowledged that Student used the AN classroom in the Annex for ISS and time-outs. *Response*, pp. 16-17; *Interviews with Dean of Students*,

*Paraprofessional, and Special Education Teacher.* Student was not alone in the AN classroom during his ISS but, instead, received support from Paraprofessional or another staff member. *Interviews with Dean of Students, Paraprofessional, and Special Education Teacher.* The doors to the AN classroom and the Annex were never locked or blocked. *Id.* Student sometimes left the AN classroom and the Annex, contrary to direction from Paraprofessional or other staff members. *Id.*

## **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District did not implement Student’s IEP, as required by 34 C.F.R. § 300.323(c). The noncompliance resulted in a denial of FAPE.**

The Complaint’s first allegation relates to the implementation of the behavioral supports in Student’s BIP during Spring 2025. Specifically, Parent has alleged that the District relied on exclusionary discipline to address Student’s behavior instead of implementing Student’s BIP.

### **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).

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). Special Education Teacher provided a snapshot of Student’s IEP and BIP to relevant School staff, including Dean of Students, Paraprofessional, and Student’s teachers, around the beginning of the 2024-2025 school year. (FF # 16.) Paraprofessional and Dean of Students

confirmed this took place and attested to their familiarity with Student's IEP and BIP. (*Id.*) For these reasons, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

### **C. Implementation of Student's BIP**

Here, the Findings of Fact demonstrate that the District did not implement Student's BIP during Spring 2025. School staff undoubtedly worked to implement key portions of Student's BIP. For example, staff provided Student with positive praise when he finished work, assigned him preferential seating near positive role models, and gave Student access to breaks at various spaces in the building. (FF #s 24-26.)

However, the District did not have Student transition between classes separately from his peers. (FF # 23.) Though the District attempted a daily point sheet in Fall 2024, the strategy was abandoned within the first month of school. (FF # 21.) In Spring 2025, staff utilized a three-strikes system. (FF # 22.) However, Student felt the rewards under the three-strike system were unattainable and lost interest. (*Id.*) Indeed, in the first month, Student only earned one reward. (*Id.*) No other token or reward system was used during the 2024-2025 school year. (FF #s 21-22.)

The District's behavior logs do not indicate whether staff privately redirected Student, reminded him of classroom rules, or provided Student with choices during the leadup to disciplinary events. (FF # 27.) The CDE acknowledges that behavior logs need not contain such information; however, additional detail helps to show that a BIP was implemented with fidelity, especially prior to incidents resulting in discipline. Moreover, at least one entry in the behavior log reflects a flawed understanding of Student's BIP. In March 2025, Dean of Students asked Student to leave a classroom after Student repeatedly refused to follow the teacher's directions. (*Id.*) Student refused to leave, so Dean of Students gave Student a choice between leaving the class or having his peers leave the room. (*Id.*) She technically gave Student a choice; however, that choice did not align with his BIP. Student's BIP hypothesized that peer attention played a key role in Student's undesirable behaviors. (FF # 11.) The choices offered by Dean of Students did not minimize the peer attention or even offer Student a choice between two desirable options. (FF # 27.) An example of a choice more consistent with Student's BIP would have been: do you want to leave the classroom and have a snack or leave the classroom and go for a walk?

Finally, Student's BIP required that he be taught *a lot* of skills, including emotional regulation skills (like strategies to manage emotions, deep breathing exercises, and mindfulness techniques), communication skills (like alternative ways to express feelings, active listening, and perspective-taking), problem solving strategies, social skills, assertiveness skills, self-advocacy techniques, coping strategies, conflict resolution skills, and replacement behaviors. (FF # 14.) Special Education Teacher provided Student with 20-30 minutes of instruction per week on identifying triggers, using coping strategies, and mindfulness. (FF # 17.) Additionally, Student met with a virtual mental health provider to target his IEP's social/emotional wellness goals, which related to emotional regulation and social skills. (FF # 9.) But, given the lack of progress monitoring data or other information about Student's sessions, it is unclear whether the instruction provided by the District satisfied the extensive requirements of his BIP. (FF # 36.)

The IDEA mandates that IEPs, including BIPs, be implemented fully, not in a piecemeal fashion. Here, though the District made an effort to implement portions of Student’s BIP, the entire BIP was not implemented with fidelity during Spring 2025. For that reason, the CDE finds and concludes that the District did not comply with 34 C.F.R. § 300.323.

#### **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, Student’s eligibility under SED and his behavioral history indicate that his BIP was an essential part of his IEP. As detailed above, the District omitted key components of Student’s BIP—such as staggered transitions, use of daily point sheets, and use of a token system—for nearly an entire school year. Additionally, the Findings of Fact do not demonstrate that the District provided Student all the behavior teaching strategies identified in the BIP. (FF #s 9, 17, 36.) Collectively, these implementation issues undoubtedly impacted Student’s behavior at School and, in turn, his ability to access his education.

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 but for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the District's noncompliance impeded Student's access to all aspects of his education. Without proper behavioral supports, Student could not successfully navigate the general education environment. This resulted in additional discipline and absences. As a result, Student missed time in general education, as well as his specialized instruction and related services. The CDE finds an award of 20 hours of mental health services to be appropriate. These services will help Student develop the skills he needs to better manage his behaviors in the School setting (and which were required by his BIP).

**Conclusion to Allegation No. 2: The District did not review and revise Student's IEP in Spring 2025 to address his escalating behavior, as required by 34 C.F.R. § 300.324(b). The noncompliance resulted in a denial of FAPE.**

The second allegation in the Complaint concerns the District's obligation to review and revise Student's IEP to address his escalating behavior during Spring 2025.

#### **A. Obligation to Review and Revise IEP**

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*, 69 IDELR 174, 580 U.S. 386 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew F.*, 137 S. Ct. at 994. The U.S. Department of Education recently emphasized the importance of reviewing and revising a student's behavioral supports, noting that:

If the child's IEP already includes behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the child's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of children with disabilities and ensure FAPE are appropriately implemented so as to avoid an overreliance on, or misuse of, exclusionary discipline in response to a child's behavior.

*Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161, Question A-6 (OSEP 2022) (hereinafter, *Discipline Q&A*).

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

Here, Student's behavior escalated significantly during Spring 2025. (FF #s 28-31.) Staff utilized the three-strike system to try to reduce Student's disciplinary referrals. (FF # 22.) Still, by March 2025—halfway through second semester—Student had 11 behavior referrals compared to 10 behavior referrals during the *entire* first semester. (FF #s 28-31.) As such, Student was on pace to double his disciplinary referrals during second semester.

While Student's disruptive behavior became even more frequent, the nature of the behavior also broadened. (*Id.*) Historically, Student had struggled with verbal and physical aggression, but, in Spring 2025, Student was disciplined for a variety of offenses, including destruction of property, possession of a vape pen, fighting, use of racial slurs and sexual gestures, profanity, and general defiance. (FF #s 11, 28-31.) At the same time, Student's absences dramatically increased, and he made no progress towards his annual goals, even regressing on his literacy goals. (FF #s 34-36.)

The changes in Student's behavior, spike in disciplinary referrals, increase in absences, and lack of progress were red flags that obligated the District to review and revise Student's IEP. These changes indicated that the strategies in the BIP were not working. And, indeed, Student's BIP targeted only aggression and perhaps was not designed to address the other types of behavior Student now demonstrated. (FF # 11.) When part of the BIP seemed to not work, staff simply abandoned that strategy. (FF #s 21-23.) After the daily points sheets proved unsuccessful in Fall 2024, Dean of Students utilized the three-strikes system in Spring 2025. (*Id.*) However, this system was not created by Student's IEP Team, and no steps were taken to ensure this system complied with Student's IEP and BIP. (*Id.*)

Despite these red flags, the District took no action. Only after Parent filed this Complaint did the District agree to conduct a new FBA and, even then, the District delayed sending home the consent form. (FF # 33.) The District now blames Parent for withdrawing consent for the FBA during the pendency of this investigation; however, the District's obligation to review and revise Student's IEP was initiated much earlier.

For these reasons, the CDE finds and concludes that the District did not review and revise Student's IEP during Spring 2025 to address Student's escalating behavior, resulting in procedural noncompliance with 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(1).

## **C. 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 developed a detailed BIP for Student in August 2024 based on the IEP Team’s understanding of Student at that time. (FF # s 11-15.) As the school year progressed, it became clear that the supports and strategies in the BIP were not effective. (FF #s 28-31.) Student’s suspensions and absences increased significantly during Spring 2025, resulting in Student missing more and more time in the classroom. (FF #s 34-36.) The District implemented the three-strikes system to reduce the use of exclusionary discipline. (FF # 22.) But when that system was not effective, the District simply abandoned it instead of convening Student’s IEP Team to review and revise Student’s IEP. The District’s inaction impeded Parent’s opportunity to participate in any decision-making process and deprived Student of an educational benefit. For these reasons, the CDE finds and concludes that the District’s noncompliance with 34 C.F.R. § 300.530(f)(1) resulted in a denial of FAPE.

#### **D. Compensatory Services**

The District’s noncompliance under both Allegation No. 1 and Allegation No. 2 resulted in Student not having adequate behavioral supports to allow him to access his education. The compensatory services awarded for Allegation No. 1 compensates Student for all IDEA noncompliance, and no additional award of compensatory services is necessary here.

**Conclusion to Allegation No. 3: The District did not restrain or seclude Student during incidents in Spring 2025. Therefore, the PPRA did not apply.**

The third allegation in the Complaint relates to the alleged use of restraint and seclusion during Spring 2025. Parent has not alleged that Student was improperly restraint or secluded on any specific day but, instead, asserts that the District effectively secluded Student when he was restricted to the Annex or to the AN Classroom. (FF # 37.)

#### **A. Meaning of Restraint and Seclusion**

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).

Meanwhile, “seclusion” refers to “the placement of an individual alone in a room from which egress is involuntarily prevented.” PPRA Rule 2.00(9). Seclusion does not include the use of a time-out. PPRA Rule 2.00(9)(b). During a time-out, a student has limited access to potentially rewarding people or situations but is not physically prevented from leaving the designated time-out space. *Id.*

### **B. District’s Use of Restraint and Seclusion**

Here, nothing in the Findings of Fact indicates that the District restrained or secluded Student during Spring 2025. No documentation suggest Student was restrained, and no staff member recalled any incidents in which any bodily force or other method or device was used to involuntarily limit Student’s freedom of movement. (FF #s 38-39.)

The District acknowledged that Student was, at times, sent to the Annex or to the AN classroom for a time-out or to serve ISS. (FF #s 32, 40.) However, during these incidents, Student was not alone but, instead, was accompanied by a paraprofessional or another staff member. (*Id.*) Additionally, School staff did not physically prevent Student from leaving the Annex. (FF # 40.) Indeed, Paraprofessional even recalled times when Student left the Annex on his own volition, against the direction from staff. (FF # 40.)

For these reasons, the CDE finds and concludes that the District did not restrain or seclude Student during Spring 2025. Therefore, the PPRA does not apply, and no further analysis of the District’s compliance with its provisions—such as whether the use of restraint was appropriate under the circumstances—is necessary.

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature and likely to impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).**

Pursuant to its general supervisory authorities, 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).

Here, nothing in the Findings of Fact indicates that the noncompliance extended beyond Student. Teachers and staff working with Student were familiar with his BIP and consistently implemented portions of his BIP. But, in the end, the BIP was not implemented with fidelity across all environments. Staff members discussed alternative strategies to support Student’s behavior during regularly scheduled team meetings but neglected to initiate a formal process to review Student’s BIP in light of his behavioral changes. Accordingly, the CDE finds and concludes that the District’s noncompliance was not systemic.

### **REMEDIES**

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

1. Implementing Student’s IEP in Spring 2025, as required by 34 C.F.R. § 300.323.
2. Reviewing and revising Student’s IEP in Spring 2025 to address his escalating behavior, as required by 34 C.F.R. § 300.324(b).

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

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

- a. By **Friday, July 11, 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, Principal, Dean of Students, and Special Education Teacher must each read this Decision in its entirety, as well as the requirements of 34 C.F.R. §§ 300.323 and 300.324, by **Monday, August 4, 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 CDE no later than **Monday, August 11, 2025**.

### **3. Completion of FBA and Review of IEP and BIP**

- a. By **Friday, September 19, 2025**, the District must conduct an FBA of Student. To allow Student time to readjust to the school environment, the FBA may not begin before **Tuesday, September 2, 2025**. The FBA must include:
  - i. Consultation with a behavioral specialist who has demonstrated experience in this area;
  - ii. Interviews with Parent and staff who have observed Student's behaviors;
  - iii. Observations of Student in both structured and unstructured settings;
  - iv. A detailed summary statement concerning the function(s) of Student's behaviors;
  - v. Confirmation of the summary statement through formal observation of behavior, antecedents, and consequences; and
  - vi. Development of competing behavior summary to identify desired behavior, common reinforcing consequences, and alternative behaviors.
- b. Consent for the FBA must be obtained no later than **Friday, August 22, 2025**. If Parent does not provide consent by that date, the District shall be excused from completing the FBA but must still convene Student's IEP Team in accordance with 3(c) below.
- c. The District must convene Student's IEP Team, at a mutually agreeable date and time, by **Friday, September 26, 2025**. In consideration of the FBA, Student's performance during the 2024-2025 and 2025-2026 school years, and the concerns noted in this Decision, the IEP Team should review and, as appropriate, revise Student's current IEP and BIP. The IEP Team must ensure Student's IEP and BIP adequately address his behavioral needs in accordance with 34 C.F.R. § 300.324(a)(2)(i).
- d. By **Monday, October 6, 2025**, the District must provide copies of the FBA, BIP, notice of the IEP Team meeting, and finalized IEP to the CDE.

### **4. Compensatory Services**

- a. Student shall receive **20 hours of direct mental health services** provided by a mental health provider selected by the District. These services must be provided in 1:1 setting and, if possible, must be provided in person. All compensatory services must be provided to Student no later than **Friday, February 13, 2026**.

- b. These services must be designed to advance Student toward his annual IEP goals and must target areas of social/emotional need identified in Student's IEP or BIP.
- c. By **Friday, August 15, 2025**, District must request consent for the provision of compensatory services from Parent. By **Friday, August 29, 2025**, Parent shall provide written consent for the provision of compensatory services to the CDE and the District. If Parent does not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by District, this written consent shall be provided by Parent to Director. The District must then provide the written consent to CDE.
- d. If Parent timely provides consent, the District shall schedule compensatory services in collaboration with Parent. District shall submit the schedule of compensatory services to the CDE by **Friday, September 12, 2025**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
  - i. Any delay in beginning the provision of compensatory services must be approved by the CDE.
  - ii. If the District and Parent cannot agree to a schedule by **Friday, September 12, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parent, including, but not limited to, copies of correspondence sent to Parent and any response received (such as emails), contact logs, and meeting notes, by **Monday, September 15, 2025**.
  - iii. By **Monday, September 29, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that the District is excused from providing the compensatory services.
- e. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to collaborate with the District within this time, the District will be excused from delivering compensatory services to Student, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to collaborate with Parent and should thus be excused from providing compensatory services to Student rests solely with the CDE.
- f. Monthly consultation between the provider(s) delivering compensatory services and Student's case manager shall occur to evaluate Student's progress towards applicable IEP goals/BIP objectives and adjust instruction accordingly. The purpose

of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals/BIP objectives. The District must submit documentation that these consultations have occurred by the second Monday of each month, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- g. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the second Monday of each month until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- h. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance him toward IEP goals and objectives. These compensatory 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 they are not deprived of the instruction they are entitled to (including time in general education).
- i. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate 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's State Complaint Procedures*, Section E, ¶ 2. If either party disagrees with this Decision, the filing of a Due Process Complaint is

available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *Id.*; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 9th day of June, 2025.



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Ashley E. Schubert  
Senior State Complaints Officer

## APPENDIX

### Complaint, pages 4

- Exhibit 1: IEP and BIP

### Response, pages 17

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: BIP Implementation
- Exhibit E: Behavior Logs & Discipline Records
- Exhibit F: Blank
- Exhibit G: MDR Documentation
- Exhibit H: Progress Monitoring
- Exhibit I: Report Cards and Attendance
- Exhibit J: Notices of Meeting
- Exhibit K: Prior Written Notices
- Exhibit L: District Calendar
- Exhibit M: Policies and Procedures
- Exhibit N: Correspondence
- Exhibit O: List of District and School Staff
- Exhibit P: Verification of Delivery to Parent
- Exhibit Q: Supplemental Attendance Records
- Exhibit R: Student's Schedule

### Reply, pages 4

- Exhibit 2: Email Correspondence
- Exhibit 3: Recording of MDR Meeting

### Telephone Interviews

- Dean of Students: May 21, 2025
- Director: May 22, 2025
- Paraprofessional: May 21, 2025
- Parent: Neither Parent nor advocate responded to request for interview
- Special Education Teacher: May 21, 2025