

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

**State-Level Complaint 2019:563
El Paso County District 49**

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on October 2, 2019 by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹ On October 25, 2019, the parties agreed to try and resolve the Complaint allegations through mediation and to extend all applicable timelines for that purpose. On December 2, 2019, Parent withdrew her mediation request, and the investigation and all applicable timelines were reinstated.

Based on the written Complaint, the SCO determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from October 2, 2018 through October 2, 2019 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

² Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Determining Student's behavior was not a manifestation of his disability during a manifestation determination review (MDR) held on September 4, 2019, consistent with 34 C.F.R. § 300.530(e);
2. Failing to implement Student's IEP during the 2019-20 school year by:
 - a. Failing to ensure Student's Behavior Intervention Plan was followed, consistent with 34 C.F.R. § 300.323;
 - b. Failing to provide social work services, consistent with 34 C.F.R. § 300.323.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,³ the SCO makes the following FINDINGS:

A. Background

1. Student is a fourteen-year-old currently eligible for special education and related services under the disability category of Serious Emotional Disability (SED). Student began the 2019-20 school year as an eighth-grade student at Middle School. *Ex. 3, p. 1.*
2. Student is described as a kind and helpful individual who enjoys spending time with his friends and creating music. *Ex. B-2, p. 3.* Student enjoys collaborative, hands-on classwork, especially in science class. *Ex. 3, p. 3.*
3. At the beginning of the 2018-19 school year, however, Student began exhibiting physically aggressive behavior at home and increased attention seeking behavior within the school setting, such as being disruptive and loud in class. *Interviews with Parent and School Psychologist.* For instance, Student received a one-day suspension following a significant behavioral escalation at Middle School on November 9, 2018. *Ex. E, pp. 4-5.* The following week, Parents admitted Student to Hospital where he received a diagnosis of Mixed Bipolar Disorder. *Complaint, p. 2; Ex. 3, p. 16.*
4. Following this hospitalization, Student displayed a significant increase in disruptive and defiant behaviors at Middle School. *Interview with Principal.* From January to May 2019 Student received 10 office referrals, primarily for disrespectful and defiant behaviors

³ The appendix, attached and incorporated by reference, details the entire record.

directed toward teachers and staff. *Ex. D*, pp. 5-12. This behavior included using profanity, threatening others with harm, yelling, eloping from class, arguing about assigned work, and sleeping in class. *Ex. 3*, p. 23. Based on Student’s behavior and updated mental health diagnosis, the District conducted a reevaluation in May 2019—primarily in the area of social emotional functioning—and the IEP team updated Student’s IEP and BIP on May 24, 2019. The District completed a functional behavioral assessment (FBA) as part of this reevaluation. *Ex. 5*, p. 1. The IEP team ultimately changed Student’s disability category from Other Health Impairment (OHI) to SED.

5. Nevertheless, Student’s behavioral problems continued at the beginning of the 2019-20 school year as he received a second disciplinary referral on September 3, 2019 following an incident described in the findings below. The District then held a manifestation determination review (MDR) meeting on September 4, 2019.
6. Parent alleges that the District failed to timely provide the mental health services specified in Student’s IEP, and failed to implement certain aspects of Student’s BIP. Parent further contends that the District improperly determined at the MDR that Student’s behavior on September 3, 2019 was not a manifestation of his disability.

B. Implementation of Student’s IEP and BIP

7. Prior to addressing implementation of the at-issue provisions of Student’s IEP and BIP, the SCO first reviews accessibility and Middle School staff knowledge of Student’s IEP and BIP. The District ensures that general education teachers, related services providers, and other staff are informed of their responsibilities for implementing IEPs. For example, a special education manual explains expectations regarding the provision of special education and related services. Pursuant to this manual, case managers are responsible for ensuring that student’s IEPs are properly implemented. Case managers are “special education teacher[s] assigned to a student to ensure the systemic implementation of special education and related services.” *Ex. B*, p. 14.
8. Case managers are required to maintain consistent communication with the student, parents, general education teachers, and anyone else involved in the school setting. This communication begins at the start of the school year by providing all general education teachers a snapshot of an IEP to inform them of their responsibilities. Case managers then advise all of these individuals if there are updates to an IEP throughout the year, as well as ensure that IEPs are being properly implemented. *Id.* at pp. 13-15; *Interview with Director*.
9. Case Manager—who heads Middle School’s Affective Needs (AN) program—was the special education teacher responsible for implementing Student’s IEP during the 2019-20 school year. At the beginning of each semester, Case Manager compiles a packet of information on individual students in the AN program for their general education

teachers and others responsible for implementing IEPs and BIPs. *Interview with Case Manager*. This packet contains a snapshot of the student's IEP, a copy of their BIP, pre-referral forms to use during disciplinary incidents, and general strategies for working with students in the AN program. Additionally, Case Manager meets with teachers to explain this information and answer questions. *Id.* These actions are consistent with an email Case Manager sent to Director, School Psychologist, and Principal on August 1, 2019, which stated in part: "I have already spoken with [Student's] teachers, shared his BIP with them, and I am scheduled to meet with them to go more in depth into how they can support him." *Ex. J-4*, p. 24.

10. Case Manager credibly explained her process for monitoring compliance with IEPs and BIPs in the general education setting. To do this, Case Manager spends extensive time in the general education classroom, and consistently communicates with paraprofessionals to ensure IEPs and BIPs are implemented. Case Manager also speaks directly to general education teachers and students to ensure the plans are followed with fidelity. *Interview with Case Manager*. This is consistent with an email Case Manager sent on August 8, 2019 to thirty-three teachers and staff at Middle School detailing specific ways to support Student. The email began, "I know that I keep sending out information regarding [Student]. I honestly don't want to over communicate . . . but it is really, really important that we all be on the same page with him!" *Ex. J*, p. 1.
11. Based on the above procedures, the SCO finds that the District has proper policies in place to inform teachers and related service personnel of their obligations concerning IEPs and BIPs. The SCO now turns to Parent's allegations regarding implementation of specific provisions of Student's IEP and BIP.
12. The first implementation issue raised by Parent pertains to the mental health services specified in Student's IEP for the 2019-20 school year. Specifically, Student's IEP called for him to receive 20 minutes a week, or 80 total minutes a month, of direct mental health services "provided by a district appointed mental health provider to support him with processing interpersonal problems." *Ex. 3*, p. 26.
13. Though August 1, 2019 was the first day of class, the District did not hire a mental health provider for Middle School until the middle of that month. *Response*, p. 3; *Interview with Director*. Specifically, the District hired a school psychologist who met with Student on August 20 and 28, 2019 for 45 minutes each session in order to make up the missed weeks at the beginning of the year. *Ex. F*, pp. 1-2. Because Student's IEP required 80 minutes of direct mental health services per month, the SCO finds that Student received an additional 10 direct mental health service minutes in August 2019. Based on these facts, the SCO finds that the District properly implemented Student's IEP by providing the requisite mental health service minutes, despite the initial delay.

14. The second implementation issue raised by Parent pertains to the provision related to social skills, specifically described in Student's BIP for the 2019-20 school year as building positive relationships between Middle School staff and Student, making Student "earn" snacks, disengaging when Student began to argue, and completing organizational checks. *Ex. 5*, pp. 3-4. In terms of availability of snacks, Student's BIP states he is to have "access to snacks on schedule approved by case manager." *Ex. 5*, pp. 3-4. Parent and Case Manager spoke about this subject via email on August 2, 2019. Case Manager explained that the policy at Middle School stated that students are only allowed to eat before school and at lunch in the cafeteria. Students are not allowed to eat in the hallway and during class unless they have a medical issue and a note from their doctor. However, Case Manager also explained that Student could earn snacks using his point sheet. *Ex. J-4*, pp. 29-30. Based on these facts, the SCO finds that the District appropriately implemented this provision of Student's BIP.
15. With respect to improving relationships with staff, Student's BIP requires that staff "[d]evelop a positive foundational relationship with [Student] that includes frequent one-on-one interactions with him around something positive he is doing or a subject of personal interest to him. Point out as frequently as possible some positive comments about something he is doing and improved." *Id.* at pp. 3-4.
16. Case Manager explained that she emphasized the importance of building a positive relationship with Student to all of Student's general education teachers at the beginning of the school year. This is bolstered by an email exchange between Case Manager and Math Teacher on August 14, 2019, in which Math Teacher explained: "He did well for me for the most part. I don't ever engage with him, I just give him reminders and walk away . . . oh, and emphasize how I care about him." *Ex. J*, p. 9. According to Case Manager, Student developed a positive relationship with Math Teacher and would seek him out when he was upset. *Interview with Case Manager*.
17. Regarding contact with Student when he becomes confrontational, Student's BIP states "[w]hen [Student] begins to argue . . . staff should: temporarily back off a demand by engaging in a relationship building interaction, when mood improves, provide two choices of how to meet expectations, disengage verbally and reduce proximity, and periodically provide non-verbal cues to remind of expectations." *Ex. 5*, pp. 3-4.
18. The SCO finds that Principal, Case Manager, and other staff members did not engage Student when he became agitated or dysregulated, consistent with the BIP. As discussed in more detail below at FF # 20 and 22-23, Middle School staff spoke calmly with Student, explained several options, gave him physical space, and followed the pre-referral process to help him rectify two separate disciplinary situations.
19. Lastly, regarding organizational checks, Student's BIP requires that Case Manager provide "once a week organization support . . . to include: backpack, assignment, and

grade checks.” *Id.* at pp. 3-4. Case Manger explained that she did go through Student’s backpack with him weekly to look for missing assignments, to work on overall organization, and to help reinforce and teach executive functioning skills. Case Manager described this as an ongoing process with not only Student, but with all students in the AN program. *Interview with Case Manager.*

C. Disciplinary Incidents and September 4 MDR

20. Prior to the disciplinary incident resulting in the September 4 MDR, Student was involved in a behavioral incident on August 16, 2019 that resulted in a one-day suspension. That morning Student demanded Case Manager return his phone—which he had forgotten the day prior—and began yelling and punching his fist into his hand. Student became extremely agitated, leaving and returning to the school building several times. Case Manager remained calm with Student, repeatedly explaining the option as to how he could earn his phone for the lunch period via his point sheet. *Ex. D*, pp. Student continued to yell at Principal, Case Manager, and the school resource officer. *Interview with Principal.* In accordance with Student’s BIP, none of these individuals directly confronted him. *Interview with Principal.* Case Manager described Student’s behavior as irrational, stating it did not appear he knew what he was saying or doing, and that he had gone to a “place of rage.” *Interview with Case Manager.*
21. On August 20, 2019, Parent emailed Principal asking for clarification on the August 16, 2019 behavioral incident, and requesting an IEP team meeting “to discuss how we are going to move forward to prevent something like this from happening again.” *Ex. J-4*, pp. 46-47. An IEP team meeting was scheduled for September 4, 2019. *Id.* at p. 54.
22. On September 3, 2019, Student reported to the AN classroom in a good mood, turned in his cell phone to Case Manager, and went to class. He returned one hour later and told Case Manager he had skipped first period and slept in the bathroom instead. He laid on the floor of the AN classroom and tried to sleep. Student began politely asking for his phone, but then became more aggressive and called Case Manager vulgar names. Case Manager gave Student multiple options, to include going to second period and discussing a consequence for skipping class later in the day, remaining in the AN classroom and completing work from first period, or going to the self-containment room adjacent to the AN classroom. Student decided to go to the self-containment room, and again laid on the floor. *Ex. D*, pp. 1-2.
23. Case Manager also afforded Student additional time to process, before again reminding him of his options. *Id.* However, Student continued to escalate, threw a phone at Case Manager, and threw a chair across the classroom. After Student threw the chair a second time, Case Manager called Middle School security for assistance, and Student grabbed his phone and began loudly playing a song with crude lyrics. Principal and Case Manager then attempted to escort Student to the office to complete a disciplinary

referral. Once at the office, Student continued to make inappropriate comments toward Case Manager and Principal, and he eventually walked out of the office and left Middle School grounds. *Ex. D*, pp. 1-3.

24. That same day, Principal emailed Parent explaining that Student would be suspended for three days for his behavior that morning. Principal explained that he knew there was already a meeting scheduled for the next day, but he wanted Parent to know about the suspension prior to the meeting. Shortly thereafter, Principal emailed Parent again, writing, "I apologize – I neglected to mention in my previous email that tomorrow's meeting will also be a manifestation meeting." *Ex. J-2*, p. 7. Principal attached a "Notice of Meeting" to this email explaining that the meeting would now be an MDR, and that Principal, Classroom Teacher, School Psychologist 2, Coordinator, Director, and Case Manager would be in attendance. *Ex. H*, p. 6. Parent explained that had she been provided with more notice, she would have invited her educational advocate to attend the meeting. *Interview with Parent*.
25. On September 4, 2019, the District conducted an MDR regarding Student's conduct on September 3, 2019. At the beginning of the meeting, Parent stated that she wanted additional academic testing for Student and indicated she wanted to look for alternative placements within the District. *Interview with Director*. Parent also stated she did not want to have an MDR, but Director insisted the team conduct the MDR. *Interviews with Principal and Parent*.
26. The assembled manifestation determination team (the "MDT") spent a significant portion of the meeting discussing Student's behavior from the previous day. Parent and Case Manager disagreed on whether Student acted purposefully. *Interview with Director*. Case Manager stated that Student was in control of his behavior because he was smiling throughout the incident and could articulate what he was going to do. *Id.* The MDR report provides, "[w]hat was interesting was that he was doing all of this with low tone of voice (not yelling) and a smile on his face. He did not appear to be angry or out of control, but rather seemed to be enjoying the situation." *Ex. E-3*, p. 2.
27. Case Manager contrasted this behavior with the August 16, 2019 behavioral incident, where Student had behaved more impulsively and out of control. Director stated that on September 3, 2019 Student was in total control of his behavior, knew what he was doing, and was simply being defiant: "It was not like he did not understand what he was doing, when you're really SED, you don't know what's happening." *Interview with Director*.
28. Though the MDT discussed whether Middle School had properly implemented Student's BIP, Director stated that the MDT did not otherwise discuss Student's IEP, including the May 2019 evaluation. *Id.* Rather than discuss Student's underlying disability or any evaluation results, the MDT focused its discussion on whether his behavior was

consistent with the eligibility criteria for SED. Specifically, the MDT considered one section of the SED guidelines describing “Inappropriate types of behavior or feelings under normal circumstances.” *Response*, pp. 1-2. This section states that SED does not include behaviors that are “solely oppositional, willful, and understood by the student.” *Response*, pp. 1-2; *Ex. J*, pp. 16-17.

29. Based on this criteria, the MDT, except for Parent, found that Student’s behavior was not a manifestation of his disability or a result of the District’s failure to implement his IEP or BIP. The MDR report states: “this incident was choice behavior by [Student] as he was able to process his choices and give rationale statements of his choices as he was making them. He was also given numerous times to make better choices and turn his day around.” *Ex. E-3*, p. 5.
30. At the end of the meeting, Principal announced that Student’s suspension would be increased from 3 days to 10 days, with a recommendation that Student be expelled. The District subsequently held an expulsion hearing on September 25, 2019 during which Student was expelled until June 2020. Following the expulsion hearing, the District completed a reevaluation of Student in November 2019. However, Student remains expelled and is receiving homebound services through the District. *Interviews with Director and Parent*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District’s failure to provide Parent sufficient notice of the MDR resulted in a procedural violation of IDEA. The District’s failure to review all relevant information in Student’s file during the MDR also resulted in a procedural violation of IDEA. Collectively, these procedural violations resulted in a substantive violation of IDEA.

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

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

possible relationship between the misconduct in question and the child's disability (or disabilities), and to proceed cautiously with disciplinary action." *Id.*

An MDR examines whether a child's misconduct was directly and substantially related to the child's disability, and must be performed within ten days of "any decision to change the placement of a child with a disability because of a violation of a code of student conduct" 34 C.F.R. § 300.530(e)(1). However, nothing in the IDEA prohibits a school district from conducting an MDR prior to a change in placement. *North Middlesex Regional Sch. Dist.*, 119 LRP 39609 (SEA MA 8/9/19) (concluding that "convening a Team meeting to discuss a child's disciplinary violations before an MDR is required may lead to changes in the IEP that prevent additional suspensions . . ."). A change of placement occurs if a disciplinary removal is for more than ten consecutive school days, to include an expulsion, or if the child has been subjected to a series of disciplinary removals that constitutes a pattern. 34 C.F.R. § 300.536.

As an initial matter here, the SCO notes that the District was not required to conduct an MDR on September 4, 2019 because Student's suspension on September 3, 2019 for three days did not result in a change in placement. The District had already scheduled an IEP meeting for September 4, pursuant to Parent's request August 20, to discuss additional supports for Student based on his emerging behavioral issues. The day before the scheduled IEP meeting, Student exhibited misconduct that resulted in a three day suspension. It was then that the District decided to convert the previously scheduled IEP meeting to an MDR meeting. As described below, how the District conducted this early MDR violated IDEA.

While the IDEA does not prohibit convening an MDR meeting before a change in placement occurs, the District's early use of the MDR process in this case is inconsistent with IDEA. First, rather than use the previously scheduled IEP meeting to address emerging behavioral challenges, the District converted it to an MDR. In doing so, the District frustrates the IDEA's preference for utilizing the IEP process to address problematic behavior, rather than the "student code of conduct." *CDE Guidance Memorandum on Discipline*. This fact alone, however, would not have raised concerns had the District used the MDR to better understand the misconduct, as well as to review and revise Student's IEP and BIP, in an effort to prevent future removals. *North Middlesex Regional Sch. Dist.*, 119 LRP 39609 (SEA MA 8/9/19). Instead, the District used the MDR process to immediately increase Student's suspension from three to ten days, a decision that resulted in a disciplinary change of placement. The decision to increase the days of removal was based solely on the outcome of the MDR. This meant that the early MDR resulted in Student receiving seven additional days of suspension/removal, without ever engaging in any other misconduct. Combined, these facts support a conclusion that the District's early use of the MDR process in this case was not consistent with the purpose of IDEA's disciplinary procedures. The CDE cautions school districts when conducting MDR meetings prior to disciplinary changes of placement that they are not subverting the spirit of IDEA in doing so.

The IDEA also specifies that relevant members of a student’s IEP team participating in an MDR must be determined by the district and the parent. 34 C.F.R. § 300.530(e)(1). Thus, because a parent has the right to invite additional participants to the MDR, school districts must notify parents of an MDR early enough in advance of the meeting to ensure that they will have an opportunity to attend and participate. *Id.*; 34 C.F.R. § 300.322(a)(1). Meeting notices must indicate the purpose, time, and location of the meeting and who will be in attendance, and provide information related to the participation of other individuals on the IEP team who have knowledge or special expertise about the child. 34 C.F.R. § 300.322(b)(1). Failing to adequately inform parents regarding school district participants in an MDR may result in a violation of IDEA. *See Cherry Creek School District #5*, 56 IDELR 149 (SEA CO 1/24/11).

Here, the SCO finds and concludes that the District provided Parent inadequate notice that the September 4, 2019 IEP team meeting would be an MDR meeting. Principal emailed Parent less than twenty four hours before the IEP team meeting stating that it would also be an MDR. There is no evidence in the Record of any discussion regarding whether other individuals should have been included or involved in the MDR. Additionally, Parent stated that had she been given more notice, she would have invited her educational advocate to attend the MDR. Accordingly, the SCO concludes this error resulted in a procedural violation of IDEA and denied Parent the opportunity to meaningfully participate in the meeting.

As part of an MDR, the IDEA also requires the school district, parents, and relevant members of the IEP team to “review all relevant information in the [child’s] file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents” 34 C.F.R. § 300.530(e)(1). The list of relevant information that may be reviewed by the MDT at an MDR is not exhaustive. *71 Fed. Reg. 156, 467190* (August 14, 2006). “All the statute requires is that, before reaching a manifestation determination, the team must review the information pertinent to that decision” *Fitzgerald v. Fairfax Cnty. Sch. Bd.*, 556 F. Supp. 2d 543, 559 (E.D. Va. 2008). Also, there is nothing “in the statute or the regulations . . . that limits a manifestation determination review only to the disability that served as the basis for the eligibility determination.” *Letter to Yudien*, 103 LRP 37911 (OSEP 8/1/03).

The SCO finds and concludes that the MDT did not review all relevant information in Student’s file, resulting in a procedural violation. As noted at FF #28, Director conceded that the MDT did not review Student’s IEP or the May 2019 evaluation during the MDR. The IDEA explicitly requires that an IEP be reviewed as part of an MDR, and the May 2019 evaluation was instrumental in developing Student’s IEP. Moreover, the May 2019 evaluation included an FBA, which specifically addressed Student’s behavioral issues. The May 2019 evaluation—to include the FBA—was thus relevant information that should have been reviewed by the MDT. *See Lewiston Sch. Dept.*, 116 LRP 253 (SEA ME 8/14/15) (finding that because an evaluation was the basis for the development of the Student’s IEP there was a “presumption that it should have been part of the MDR process”).

Additionally, the MDT incorrectly focused on Student's disability category rather than on Student's underlying disability. To demonstrate, the MDT did not discuss Student's recent diagnosis—bipolar disorder—but rather focused on whether Student's behavior was consistent with the eligibility criteria for SED. The MDT focused almost exclusively on whether Student exhibited choice behavior rather than Student's disability-related needs as set forth in the IEP and BIP. An MDT should examine all relevant information – here at a minimum Student's IEP, BIP, May 2019 evaluation and FBA, and November 2019 evaluation – to examine how his disability manifests in the school setting. IDEA requires the MDT to determine whether a student's conduct “was caused by, or had a direct and substantial relationship to, the child's disability.” 34 C.F.R. § 300.530(e)(1)(i). Overall, the MDT did not consider the student-specific data in the record to properly consider whether the September 3, 2019 conduct was directly and substantially related to Student's disability. Accordingly, the SCO concludes this error resulted in a procedural violation.

Having concluded that the District's failure to provide Parent adequate notice of the MDR and that the District's failure to consider all relevant information in Student's file during the MDR resulted in procedural violations, the SCO must determine if the violations resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if it: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Here, because these violations collectively contributed to an MDR conducted inconsistent with IDEA, the SCO concludes that it resulted in a denial of FAPE. Both violations significantly impeded Parent's opportunity to participate in the decision making process regarding the provision of FAPE to Student. First, the failure to provide adequate notice denied Parent the opportunity to provide input as to who should attend the MDR. Second, the MDT failed to review all relevant information in Student's file, to include an IEP. Third, the MDT focused on an incorrect legal standard, specifically whether Student's behavior was a manifestation of his disability category rather than his disability itself.

As a matter of policy, CDE will not overturn a manifestation determination through a state complaint decision. IDEA mandates that manifestation determinations be completed by an MDT, including parents, who know the student best. If a state complaint investigation, such as this one, concludes that a school district made a determination inconsistent with IDEA's MDR procedures or makes a determination that is inconsistent with student-specific data in the record, CDE will direct the school district to conduct an MDR that remedies the deficiencies and concerns noted in the Decision. *See Cherry Creek School District*, 118 LRP 437679 (SEA CO 6/22/18).

Conclusion to Allegation No. 2: The District properly implemented Student’s IEP and BIP during the 2019-20 school year, consistent with 34 C.F.R. § 300.323.

Under IDEA, local education agencies are required to provide eligible students with disabilities a FAPE by providing special education and related services individually tailored to meet the student’s unique needs and provided in conformity with an individualized education program developed according to the Act’s requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the District, must implement a student’s IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, the District must ensure that each teacher and service provider responsible for implementing a student’s IEP is informed of “his or her specific responsibilities related to implementing the child’s IEP” and “the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d)(2).

The SCO finds and concludes that the District properly ensured all general education teachers and others staff at Middle School were informed of their responsibilities for implementing Student’s IEP and BIP. As described more fully in FF #7-10, the District has in place proper guidance and procedures to ensure staff are knowledgeable regarding IEPs. The responsibility to inform teachers of information related to IEPs—and on an ongoing basis whenever changes occur—falls on case managers. Case managers are also responsible for communicating with all involved—including students, parents, and all Middle School staff—to ensure IEPs are being properly implemented. As detailed in FF #9-10, Case Manager complied with—and went above and beyond—District guidance to ensure IEPs and BIPs were followed with fidelity. Additionally, emails in the Record illustrate that Case Manager maintained consistent communication with Student’s general education teachers regarding his needs and progress.

In addition to informing teachers of their responsibilities regarding a student’s IEP, however, school districts must ensure that the IEP is being implemented. 34 C.F.R. § 300.323(c). This obligation includes ensuring that all identified services are being consistently provided. *Id.* Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

In this case, the SCO finds and concludes that the District properly implemented Student’s IEP and BIP. First, as noted in FF #13, though the District did not provide Student with direct mental health service minutes due to staffing issues the first two weeks of August 2019, a school psychologist was hired and provided Student with 90 minutes of direct mental health service minutes across two meetings in August 2019. These services surpassed the 80 minutes per month of direct mental health services required by Student’s IEP.

Second, as detailed in FF #16, Case Manager credibly explained that she stressed the importance of developing a positive relationship with Student to all of his general education

teachers, and that Student did begin to develop a relationship with Math Teacher. Moreover, Student only attended Middle School in 2019 for the month of August, and the BIP provision requiring positive relationship development would necessarily take more time to implement.

Third, as detailed in FF #14, Case Manager and Parent discussed Middle School's policy regarding snacks with regard to Student's BIP. The BIP specifically provides for snacks "on schedule approved by case manager." This necessarily gave Case Manager a high degree of control over how this provision was to be implemented. Accordingly, the SCO finds no error in the policy that Student earn access to snacks via his point sheet. This was consistent with the rules of the AN program, and designed as a means to promote positive behavior. Additionally, there is no evidence in the Record that any of Student's behavioral outbursts had anything to do with an inability to access food.

Fourth, as detailed in FF #20 and #22-23, all written narratives of the August 16, 2019 and September 3, 2019 behavioral incidents, as well as the interviews conducted as part of this investigation, indicate that Case Manager, Principal, and others properly followed Student's BIP. On both occasions, no one directly engaged Student when he became escalated, but rather backed off physically, remained calm, and attempted to deescalate Student by explaining his options. Only when Student became physically confrontational, or it was clear that the disengagement strategy was proving unsuccessful, did staff engage student.

Finally, as detailed in FF #19, Case Manager credibly explained that she conducted organizational checks with Student on an ongoing basis, as well as with the other students in the AN program.

REMEDIES

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

- a) Failing to provide Parent with adequate notice of the manifestation determination meeting, consistent with 34 C.F.R. §§ 300.322, 300.530(e), (h);
- b) Failing to conduct a manifestation determination, consistent with 34 C.F.R. § 300.530(e).

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

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

- a) Training with Director, all District special education coordinators, Principal and any other Middle School employees responsible for determining suspensions or recommending expulsions, and any other District staff deemed appropriate by the District who regularly participate in or are likely to participate in MDRs, on the requirements of 34 C.F.R. § 300.530(e), (h), and the content of this Decision, no later than **February 21, 2020**.
 - b) Training materials for the above-described training must be submitted to CDE for review and approval **at least 14 days prior to the delivery of training**.
 - c) Evidence that this training has occurred must be documented (i.e. training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets, with roles noted) and provided to CDE no later than **March 1, 2020**. These trainings may be conducted in-person, or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. If the individuals identified in paragraph 1(a) are no longer employed by the District when the training occurs, District may train staff occupying identical roles in order to demonstrate compliance with this remedy.
- 2) **By February 15, 2020**, the District shall reconvene the Student’s multidisciplinary team to conduct an MDR anew as follows:
- a) The District shall consult with Parent prior to the MDR to determine the composition of the MDT that will conduct the review, consistent with 34 C.F.R. § 300.530(e)(1), (h);
 - b) In addition to Parents, District staff, and relevant members of Student’s IEP team, the MDT shall include School Psychologist, and if Parent requests, a person qualified to interpret the results of any evaluation results to be discussed, and qualified to speak about Bipolar disorder in general, and Student’s diagnoses specifically;
 - c) The MDT must review all relevant information in Student’s file, including but not limited to the May 2019 evaluation report, May 2019 FBA, and the November 2019 evaluation report;
 - d) The MDT shall document with specificity the discussion at the MDR, including what information was discussed and considered, and how that information supports the MDT’s conclusion in the new MDR;
 - e) Documentation evidencing completion of the above steps shall be submitted to **CDE by March 1, 2020**. Documentation shall include the MDR and meeting notes, and prior written notice. The CDE will determine, in its sole discretion, whether the documentation submitted sufficiently evidences that the District complied with IDEA procedures in conducting the MDR, as well as whether the outcome was consistent with student-specific data in the record.

- f) If the outcome of the new MDR concludes that Student's behavior was a manifestation of his disability, the District must create a clear record of the MDT's determination as it relates to Student's expulsion. Additionally, under this circumstance, the District must comply with 34 C.F.R. § 300.530(f) by reviewing Student's BIP and modifying it as necessary to address the behavior and return Student to the placement from which he was removed, unless Parent and District agree to a change in placement as part of the modification of his BIP. Finally, the IEP team must convene within two weeks if there is a determination that Student's conduct on September 3, 2019 was a manifestation of his disability, to discuss whether Student is entitled to compensatory education. The District must provide documentation of this determination to CDE within two (2) weeks of the IEP meeting.

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

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

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

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

CONCLUSION

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

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

Dated this 8th day of January, 2020.

Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-4

- Exhibit 1: Suspension letter dated 9/4/19
- Exhibit 2: Email correspondence dated 9/5/19
- Exhibit 3: IEP dated 5/24/19
- Exhibit 4: PWN dated 9/4/19
- Exhibit 5: BIP dated 5/27/19
- Exhibit 6: Evaluation report dated 5/24/19
- Exhibit 7: Evaluation report dated 10/30/18
- Exhibit 8: MDR report dated 9/3/19
- Exhibit 9: Email correspondence dated 8/14/19
- Exhibit 10: Email correspondence dated 7/28/19
- Exhibit 11: Email correspondence dated 8/20/19

Response, pages 1-4

- Exhibit A: District discipline policies
- Exhibit B: District special education policies
- Exhibit B-2: IEP dated 12/7/18
- Exhibit B-3: IEP amendment dated 12/7/18
- Exhibit B-4: IEP dated 12/7/18
- Exhibit C: IEP dated 12/7/18
- Exhibit C-2: IEP dated 5/24/19
- Exhibit D: Behavior records
- Exhibit D-2: Discipline records
- Exhibit D-3: Pre-referral forms
- Exhibit D-4: Suspension notices
- Exhibit D-5: Suspension letter dated 9/4/19
- Exhibit D-6: Expulsion letters dated 9/25/19
- Exhibit E: MDR report dated 2/25/19
- Exhibit E-2: MDR report dated 5/8/19
- Exhibit E-3: MDR report dated 9/3/19
- Exhibit F: Mental health service logs
- Exhibit F-2: Attendance records
- Exhibit F-3: Attendance records
- Exhibit F-4: Mental health service records
- Exhibit G: PWNs dated 5/8/19 & 9/4/19
- Exhibit H: Various notices of meetings
- Exhibit I: Grade reports
- Exhibit I-2: IEP progress reports

Exhibit J: Various email correspondence
Exhibit J-2: Various email correspondence
Exhibit J-3: Various email correspondence
Exhibit J-4: Various email correspondence
Exhibit K: List of District personnel
Exhibit L: PWN dated 10/16/19

Reply, pages 1-4

Exhibit 12: Email correspondence dated 9/3/19
Exhibit 13: copy of District's narrative response

Interviews with:

Parent
Case Manager
School Psychologist
Principal
Coordinator
Director