

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

**State-Level Complaint 2021:535
Pueblo 70 (Rural) School District**

DECISION

INTRODUCTION

On December 6, 2021, the (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against Pueblo 70 (Rural) School District (“District”).¹ The State Complaints Officer (“SCO”) determined that the Complaint identified one (1) allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from December 6, 2020, through December 6, 2021, for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Improperly determined Student’s behavior was not a manifestation of his disability during a manifestation determination review (“MDR”) held on or about November 1, 2021, in violation of 34 C.F.R. § 300.530(e).

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

FINDINGS OF FACT

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

A. Background

1. Student is 16 years old and currently attends an online District high school (“Online School”). *Interview with Parent, Exhibit A*, p. 1. Student is a polite and respectful young man, with an interest in rap music. *Interviews with Parent, Case Manager, and School Psychologist; Exhibit A*, p. 3. Academically, Student requires support in reading and math, and he sometimes struggles with anxiety, angry outbursts, depression, and impulsive behavior. *Interviews with Parent, Case Manager, and School Psychologist; Exhibit A*, p. 5.
2. During the 2020-2021 academic year, Student attended a brick-and-mortar District high school (“School”). *Interviews with Parent, Case Manager, Director of Special Education, and School Psychologist*. At that time, Student received special education and related services under a 2020 IEP. *Exhibit A*, p. 1. On March 29, 2021, Student was involved in a violation of District’s code of conduct (“Code of Conduct”) and was suspended from School. *Id.*
3. An MDR meeting was held on April 1, 2021, and it was determined that the at-issue behavior was a manifestation of Student’s disability. *Id.* Student did not receive any social/emotional or behavioral supports under the 2020 IEP, so District proposed to reevaluate Student to determine the extent of his social/emotional needs. *Id.*
4. District reevaluated Student in May 2021. *Exhibit U*, p. 2. The reevaluation showed that Student struggled with focus and attention. *Id.* School Psychologist also recommended that Student be monitored for depression based off observations provided by Parent and one of Student’s teachers (although Student’s assessment results were not clinically significant for depression). *See id.; Interview with School Psychologist*.
5. In June of 2021, a properly constituted multi-disciplinary team (“MDT”) discussed the reevaluation results and determined Student continued to qualify for special education and related services (though his disability category changed from Specific Learning Disability to Other Health Impaired). *Interviews with Parent, Case Manager, and School Psychologist; see Exhibit A*, pp. 1-2. A properly constituted IEP Team then developed a new IEP for Student (“2021 IEP”). *See id.; Interviews with Parent, Case Manager, and School Psychologist*.
6. This investigation concerns the 2021-2022 academic year, when Student was a sophomore at School receiving services under the 2021 IEP. *Exhibit A*, p. 1-2; *Interviews with Parent, Case Manager, and School Psychologist*.

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

B. The 2021 IEP

7. The 2021 IEP reviews Student's present levels of academic achievement and functional performance, documenting grades, state assessment results, and observations obtained during the reevaluation. *Exhibit A*, pp. 3-5.
8. The 2021 IEP indicates Student has deficits in reading and math, and that he requires support to access grade level instruction in those areas. *Id.* at p. 5. Student has been diagnosed with anxiety and depression, and he struggles with focus and organization. *Id.*
9. The 2021 IEP indicates the IEP Team discussed behavioral supports for Student through a Behavior Intervention Plan ("BIP"), but Parent did not think one was necessary and thus a BIP was not developed. *Id.*; *Interviews with Case Manager and School Psychologist*.
10. Case Manager conducted an informal transition assessment to develop post-school goals. *Exhibit A*, p. 5. Student said he would like to work in the music industry. *Id.* The 2021 IEP contains postsecondary goals for Student in Education/Training and Employment, but the IEP Team determined an Independent Living Skills goal was not needed. *Id.* at p. 6.
11. The 2021 IEP contains the following annual goals:
 - a. Goal # 1 (Reading): "In order for [Student] to be successful in the music industry, he will achieve at least a 70% on all reading assessments by 5/31/2022 as measured by ESS staff." *Id.* at p. 7-8.
 - b. Goal # 2 (Social/Emotional Wellness): "When given taught emotional regulation skills and an opportunity to work with the School Psychologist, [Student] will successfully identify 3 emotional regulation strategies that can be used to manage depression, anxiety, or angry outbursts to prepare for post-secondary education and/or employment." *Id.* at p. 8.
 - c. Goal # 3 (Mathematics): "In order for [Student] to be successful in the music industry, [Student] will achieve at least a 70% on all math assessments by 5/31/2022 as measured by ESS staff." *Id.* at pp. 8-9.
12. The 2021 IEP contains accommodations to help Student access the general education curriculum. *Id.* at p. 9. The accommodations include repeating information and checks for understanding, reducing distractions to help with attention and focus (i.e., small group settings), and shortened assignments due to low academic fluency and processing speed. *Id.*

13. One accommodation requires that District “[c]onsider continual monitoring for depression” consistent with School Psychologist’s recommendation during the reevaluation. *Id.*; *Interviews with Case Manager and School Psychologist*. To monitor for depression, Case Manager engaged in daily check-ins with Student, and frequently asked him how things were going. *Interviews with Case Manager and School Psychologist*.
14. The Service Delivery section provides for 180 minutes of weekly direct specialized instruction, with one hour of direct support in reading, math, and academic support classes. *Exhibit A*, p. 12. It also provides for 30 minutes of psychological services from the School Psychologist and 30 minutes of indirect case management each month. *Id.* In addition, Student may access a trusted adult for support if he experiences anxiety during the day. *Id.*
15. The IEP Team determined it was appropriate for Student to be in the general education class at least 80 percent of the time. *Id.* at pp. 12-13.
16. The 2021 IEP was in effect at the start of the 2021-2022 academic year, when classes began at School on August 12, 2021. *Exhibit A*, p. 1; *Exhibit N*, p. 1.

C. Implementation of the 2021 IEP (August 12, 2021 to October 25, 2021)

17. Case Manager and School Psychologist were responsible for providing services under the 2021 IEP. *Exhibit A*, p. 12; *Interviews with Case Manager and School Psychologist*. Case Manager met with Student daily and worked with general education teachers to ensure he received accommodations as necessary. *Interview with Case Manager*; see *Exhibit A*, p. 12.
18. Case Manager met with Student daily to provide him with required services, and Student was enrolled in two support classes to receive academic support in his core classes. *Interview with Case Manager*; *Exhibit F*, p. 2. Case Manager would frequently check-in with Student to see how he was doing, and Student was told he could access Case Manager or School Psychologist for anxiety, although he rarely did so. *Interview with Case Manager*.
19. Psychological services were provided through School Psychologist’s Social Skills group, which is a small group that meets regularly to work on emotional regulation. *Interview with School Psychologist*; *Exhibit I*, p. 3. During Social Skills group, students work on emotional regulation strategies, such as mindfulness exercises, breathing techniques to manage anxiety, and calming strategies to manage anger. *Interview with School Psychologist*.
20. Service logs indicate Student attended a Social Skills group session for 60 minutes on September 27, 2021. *Exhibit I*, p. 3. There was another Social Skills group held on October 19, 2021, but Student was absent from School and did not attend. *Id.*; *Interview with School Psychologist*. Shortly thereafter, Student was suspended from School and expelled so the missed session could not be rescheduled. *Exhibit I*, p. 3; *Interview with School Psychologist*.

D. Disciplinary Incidents

21. During the fall of 2021, Student was disciplined for several violations of the Code of Conduct. *See Exhibit L*, pp. 17-18; *Interviews with Director of Special Education, Case Manager, Parent, and School Psychologist*.
22. On September 7 and 8, 2021, Student was given warnings for wearing an inappropriate shirt and was told to change or turn the shirt inside out. *Exhibit L*, p. 18.
23. On September 17, 2021, Student was assigned to lunch detention for being tardy to class several times. *Id.*
24. On September 23, 2021, Student wore a purple bandana as a mask, which was associated with gang activity. *Id.*; *Interview with Director of Special Education*. Student was reportedly defiant when confronted by staff and was given “Friday School” (i.e., after-school detention) as punishment. *See Exhibit L*, p. 18. Later the same day, Student was observed pointing his phone at another student as if the phone was a gun. *Exhibit L*, p. 18. The incident was reported to School administration. *Interviews with Case Manager, School Psychologist, and Director of Special Education*. The other student involved was one of Student’s friends, and because the behavior was viewed as “joking around” School administration did not consider it a credible threat requiring a threat assessment. *Id.*
25. Parent was notified about the incident by phone on September 29, 2021, and a record of the phone conversation was detailed in Student’s disciplinary log. *Exhibit L*, p. 17.
26. On September 27, 2021, Student was warned for wearing an inappropriate shirt to School and was asked to change or put on a sweatshirt. *Id.* School administration spoke with Student, and he promised not to wear the shirt again. *Id.*
27. On October 18, 2021, Student was given “Friday School” due to being late to class ten times. *Id.*
28. None of the incidents from September 7 through October 18 resulted in removals or suspensions from School. *See Exhibit L*, pp. 17-18; *Interviews with Director of Special Education, Case Manager, and Parent*.
29. On October 25, 2021, an educational resource specialist assessed Student’s computer given internet connection issues. *Exhibit K*, p. 2. The educational resource specialist found profanity written on the outside of the computer, along with references to marijuana written on the inside of the computer. *Id.* Due to the profanity, Student’s backpack was searched, and an alcoholic beverage (a wine cooler) was found wrapped in a t-shirt. *Id.*

30. Student was verbally aggressive with administration when the decision was made to search his backpack. *Id.* Upon questioning, Student indicated that he took the alcoholic beverage from home and was planning to give it to another student after school to pay a debt. *Id.*
31. Parent was notified on the same day and was asked to take Student home. *Id.* at p. 4. Parent was informed that Student was being suspended from School for five days (October 26 - 29 and November 1) due to a violation of the Code of Conduct. *Exhibit L*, p. 1. When Parent arrived, she was provided with a copy of the Procedural Safeguards Notice and prior written notice (“PWN”) of District’s intent to hold an expulsion review to determine if Student would be allowed to return to School or be expelled. *Exhibit K*, p. 4; *Exhibit L*, p. 1. The PWN indicated an MDR would be held prior to the expulsion review. *See Exhibit L*, p. 1. Parent also received a Notice of Meeting for the MDR. *Exhibit E*, pp. 1-2.
32. The MDR and expulsion review were scheduled for November 1, 2021. *Exhibit K*, p. 1.

E. The November 1, 2021 MDR

33. Student, Parent, Student’s stepfather, Case Manager, School Psychologist, Director of Special Education, a school counselor, and District’s Director of Student Services, collectively the manifestation determination review team (“MDRT”), participated in the MDR. *Exhibit K*, p. 5. A District assistant principal who issued the suspension also attended to give a report about the October 25, 2021 incident. *Interviews with Case Manager and Parent.*
34. The MDR occurred less than a week after the October 25, 2021 incident, and at the time, Student had only been removed from classes for a total of five days during the 2021-2022 academic year. *See Exhibit K*, pp. 2. Student was given assignments to work on during his suspension, but he chose not to complete them. *Interview with Parent.*
35. The MDRT reviewed the information in Student’s file, including the 2021 IEP, disciplinary history, and teacher observations. *Exhibit K*, p. 2. The MDRT then “went around the room” to solicit input from all members and interviewed Student about the incident. *Exhibit K*, pp. 2-5; *Interviews with Director of Special Education, Case Manager, School Psychologist, and Parent.* School Psychologist provided information on Student’s social/emotional needs based on School Psychologist’s observations of Student and the results of the reevaluation, which School Psychologist administered. *Interviews with School Psychologist.*
36. Student told the MDRT that he was planning on giving the alcoholic beverage to a friend after school to pay that friend back for a debt, and that he was aware there had been a recent change to District policy around alcohol that made it a more serious offense. *Exhibit K*, pp. 2-5; *Interviews with Director of Special Education, Case Manager, School Psychologist, and Parent.* District’s drug and alcohol policy recently changed to a zero-tolerance policy

where any amount of alcohol is actionable through suspension or expulsion, to mirror District's zero-tolerance policy around marijuana. *Interviews with Director of Special Education and Case Manager.*

37. The MDRT discussed the context of the events preceding Student's behavior and his explanation for the behavior. *Exhibit K*, pp. 2-5; *Interviews with Director of Special Education, Case Manager, School Psychologist, and Parent.* The MDRT determined the behavior in question—bringing alcohol to School—was not directly related to Student's anxiety or depression because he was not consuming the alcohol himself and intended to give it to a friend after class. *Interviews with Case Manager and School Psychologist.*
38. The MDRT also discussed whether the behavior in question might be a manifestation of his disability because it was impulsive behavior. *Interviews with Director of Special Education, Case Manager, School Psychologist, and Parent.* One of Student's annual goals targets emotional regulation, and Parent reports he sometimes engages in impulsive behavior and does not think through to consequences of his actions. *Interview with Parent; Exhibit A*, p. 8.
39. The MDRT determined, however, that the behavior in question was not impulsive because (1) Student took measures to conceal the alcoholic beverage by putting it in his backpack wrapped up in a t-shirt, (2) Student planned to bring the alcohol to School in order to give it to a friend to pay back a debt, (3) Student indicated he was not coerced or asked by anyone to bring the alcoholic beverage to School, and (4) Student admitted that he knew bringing alcohol to School was a violation of the Code of Conduct (and that the penalty had been recently changed to make consequences more severe). *Exhibit K*, pp. 2-5; *Interviews with Director of Special Education, Case Manager, School Psychologist, and Parent.* As a result, the MDRT determined Student's actions were not impulsive, but rather thoughtful and planned. *Interviews with Case Manager, Director of Special Education, and School Psychologist.*
40. The MDRT ultimately determined the at-issue behavior—because it was not driven by emotion or impulsivity—did not have a direct and substantial relationship to Student's disability. *Exhibit K*, p. 3; *Interviews with School Psychologist, Case Manager, and Director of Special Education.*
41. The MDRT also discussed whether the behavior was a direct result of District's failure to implement the 2021 IEP. *Exhibit K*, p. 3. Aside from the Social Skills group that Student missed while absent on October 19, 2021, the MDRT determined Student received all the services and accommodations Student was entitled to under the 2021 IEP during the 2021-2022 academic year. *Id.*; *Exhibit I*, p. 3. As a result, the MDRT determined Student's behavior was not the direct result of a failure to implement the 2021 IEP. *Exhibit K*, p. 3.

42. All MDRT members, apart from Parent and Student's stepfather, agreed that the behavior was not a manifestation of Student's disability. *Interview with Parent*. Parent indicates Student receives outside therapy and used to take medication for depression, but there were no changes to Student's medication or outside support in connection with this disciplinary incident (Student weaned off his depression medication during the summer before classes started and has been in private therapy consistently since summer). *Id.*

E. The Code of Conduct and the Expulsion Review

43. The Code of Conduct provides that a principal or designee may suspend or recommend expulsion of a student who violates the District Board of Education policy on student conduct involving drugs and alcohol ("Alcohol Policy"). *Exhibit L*, p. 7. It is a violation of the Alcohol Policy for a student to possess, use, sell, distribute, exchange, or be under the influence of alcohol, drugs, or other controlled substances. *Id.* at p. 9. Students violating the Alcohol Policy shall be subject to disciplinary sanctions, which may include suspension and/or expulsion from school and referral for prosecution. *Id.*

44. When a student is suspected of using alcohol or a controlled substance, if information warrants, the student's parent/guardian will be requested to attend a conference at school. *Id.* at p. 15. The conference may include sharing the data collected, explaining consequences of involvement with drugs/alcohol, developing a plan of action, and offering the parent or guardian general information and resources related to substance abuse. *Id.*

45. After the MDRT determined the October 25, 2021 incident was not a manifestation of Student's disability, District moved into an expulsion review to determine if Student would be expelled for the violation of the Code of Conduct. *Interviews with Parent, Case Manager, and School Psychologist*. The assistant principal who issued the suspension recommended expulsion for the remainder of the 2021-2022 academic year. *Id.*; *Exhibit L*, p. 2.

46. At the November 1, 2021 expulsion review, Parent was provided with a letter indicating that the recommendation to expel Student would be presented to the Board of Education on November 16, 2021, and that she could appeal the recommendation. *Id.* Parent was surprised by the decision to expel Student for possession of a single alcoholic beverage and indicated District should have considered other options under the Code of Conduct, such as suspension. *Interview with Parent*. Student was not allowed to return to School while the appeal was pending. *Id.*

47. Other options available under the Code of Conduct include suspension and/or arranging a meeting to discuss treatment options with a parent and develop a plan of action. *See Exhibit R*, pp. 1-12. Nevertheless, when Parent appealed District's decision, the Board of Education unanimously voted to uphold the recommendation for expulsion. *See Exhibit Z*.

48. Student's expulsion officially took effect on November 17, 2021. *Exhibit L*, p. 3.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District properly reviewed all relevant information in Student's file in determining that his behavior was not a manifestation of his disability during the MDR held on November 1, 2021, consistent with 34 C.F.R. § 300.530(e).

The allegation accepted for investigation concerns whether the MDRT properly determined Student's behavior was not a manifestation of his disability. Specifically, Parent alleges the behavior on October 25, 2021 was a manifestation of Student's disability due to impulsivity.

IDEA's Disciplinary Protections for Students with Disabilities

"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.*

The MDR

A student's behavior must be determined to be a manifestation of the student's disability if: (1) the behavior in question was "caused by, or had a direct and substantial relationship to" the student's disability, or (2) the behavior in question was a result of the school district's failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1). Such a determination triggers additional obligations for the school district. *Id.* § 300.530(f). If the behavior is a manifestation, the school district should return the student to his or her prior placement. *Id.* On the contrary, if the behavior is not a manifestation of the student's disability, the school district may discipline the student in the same manner as a non-disabled student. *Id.* § 300.530(c).

In determining whether the behavior was a manifestation of the student's disability, the school district, parents, and relevant members of the MDRT must "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." *Id.* § 300.530(e)(1). The list of relevant information that may be reviewed by the MDRT 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).

Here, the MDRT concluded that Student's October 25, 2021 behavior was neither caused by nor had a direct and substantial relationship to Student's disability or a consequence of District's failure to implement the 2021 IEP. (FF # 40). The MDRT concluded that Student planned to bring the contraband to School and took measures to conceal the contraband in his backpack, which demonstrated the behavior was not impulsive. *Id.* On November 1, 2021, a knowledgeable and properly convened MDRT reached this result through a thorough review of the conduct in question and the relevant information in Student's file. *See* (FF # 33-42).

The MDRT considered the 2021 IEP and Student's social/emotional annual goal built around emotional regulation to determine that Student struggles with emotional regulation and angry outbursts. (FF # 11, 35). The MDRT also examined Student's disciplinary history, noting that Student has had multiple violations of the Code of Conduct during the 2021-2022 academic year, although none of those violations resulted in removals from School. (FF # 21-28).

School Psychologist, who administered the social emotional assessments for Student's reevaluation in May of 2021, provided input on his social/emotional needs. (FF # 35). Case Manager also provided input, as she engaged in daily check-ins with Student and provided him with specialized instruction under the 2021 IEP. *See* (FF # 18, 33, 35). Based on this input and the 2021 IEP, the MDRT determined Student struggled with anxiety and depression. *See* (FF # 35, 37). Parent also reported that Student sometimes exhibits impulsive behavior. (FF # 38).

In addition to information from Parent and teachers and service providers, the MDRT considered information from Student. (FF # 36). Student indicated he was not coerced or asked to bring the alcohol to School, and he planned to give the alcohol to a friend after class to pay the friend back for debt. *Id.* The SCO cautions District that questions and information about choice-based behavior (i.e., knowing right from wrong)—such as Student here admitting that he knew bringing alcohol to School was a violation of the Code of Conduct—are not proper considerations when determining whether a behavior is directly and substantially related to a student's disability. (FF # 39). Instead, the focus must be directly on the relationship between the behavior and the student's disability. Had the MDRT's inquiry been limited to these questions, or had the questions been determinative, the review would not have been deemed consistent with IDEA.

With this information, the MDRT discussed the incident alongside Student's disability and considered whether circumstances indicated the behavior bore a relationship to his disability. (FF # 37-42). The MDRT did not undertake "a generalized discussion about the types of behavior associated with [his] particular disability." *Bristol Twp. Sch. Dist. v. Z.B.*, 67 IDELR 9 (E.D. Pa. 2016) (holding that an MDRT violated the IDEA when it took a "global" approach to deciding whether a teenager's ADHD played any role in his alleged physical assault of a teacher). Here, the MDRT determined that the behavior in question—taking an alcoholic beverage to School—was not a manifestation of Student's disability by analyzing the facts and circumstances surrounding the behavior. (FF # 37-42).

The MDRT noted that while Student has anxiety and depression, he planned to give the alcoholic beverage to another student, and it was not for him to consume to self-medicate. *See* (FF # 37). Student exhibits impulsive behavior, but the MDRT found that he had a premeditated reason to bring the alcohol to School (paying a friend back for a debt), that he took steps to conceal it in his backpack (it was wrapped up in a T-shirt), and no one coerced him or asked him to bring the alcohol to School. (FF # 38-39).

The MDRT found those factors demonstrated Student's behavior was not impulsive and was instead thoughtful and planned. *Id.* The MDRT therefore concluded the behavior was not directly and substantially related to Student's disability. (FF # 40).

In terms of IEP implementation, the MDRT found that the at-issue behavior was not a direct result of District's failure to implement the 2021 IEP. (FF # 41). The 2021 IEP has been in effect since August 12, 2021, the first day of classes for the 2021-2022 academic year. (FF # 16).

Student's teachers were sufficiently informed of their responsibilities under the 2021 IEP. *See* (FF # 7-15). The 2021 provides for 180 minutes of weekly direct instruction from Case Manager, 30 minutes of indirect case management from Case Manager, and 30 minutes of psychological services from School Psychologist each month. (FF # 14). Case Manager confirms that she consistently provided Student with the direct instruction and indirect case management required under the 2021 IEP from the start of classes through October 25, 2021, and that she met with Student daily to check in and see how he was doing. (FF # 18). Both Case Manager and School Psychologist told Student they were available to talk, and the 2021 IEP allowed Student to leave class to access them for anxiety, although he rarely did so. (FF # 14, 18).

Service logs for the psychological services confirm that Student was given 60 minutes of psychological services through the Social Skills class in September, and a Social Skills class was scheduled for October 19, 2021, but Student did not attend. (FF # 19-20). He was suspended less than a week later before the missed service minutes could be rescheduled. (FF # 20).

Parent did not raise any concerns with IEP implementation, and the MDRT found that the at-issue behavior was not a direct result of District's failure to implement the 2021 IEP. (FF # 41). The SCO accordingly finds and concludes the MDRT properly determined that Student's October 25, 2021 behavior was not the result of District's failure to implement the 2021 IEP.

Overall, the SCO finds and concludes that, in consultation with CDE Content Specialist 1 and CDE Content Specialist 2, the MDRT engaged in a student-specific analysis into the facts and circumstances of the behavior in question and properly determined that the October 25, 2021 behavior was not a manifestation of Student's disability.

REMEDIES

The SCO finds and concludes that District did not violate any requirements of the IDEA. Accordingly, there are no remedies ordered pursuant to the IDEA and my authority as an SCO.

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 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 4th day of February, 2022.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-3

Response, pages 1-6

- Exhibit A: IEP
- Exhibit B: none
- Exhibit C: PWN
- Exhibit D: none
- Exhibit E: Notices of Meeting
- Exhibit F: Service Logs
- Exhibit G: none
- Exhibit H: none
- Exhibit I: Progress Monitoring
- Exhibit J: none
- Exhibit K: MDR Paperwork
- Exhibit L: Discipline Info for 2021-2022
- Exhibit M: none
- Exhibit N: District Calendar
- Exhibit O: Attendance
- Exhibit P: Information from Parents to Board
- Exhibit Q: Correspondence
- Exhibit R: Code of Conduct
- Exhibit S: Staff with Knowledge of Allegations
- Exhibit T: Verification of Delivery
- Exhibit U: Evaluation Report
- Exhibit V: Determination of Eligibility
- Exhibit W: Discipline Log 2020-2021
- Exhibit X: Additional Notice of Meeting
- Exhibit Y: Consent to Evaluate
- Exhibit Z: Recording of Board Meeting

Telephonic Interviews:

- Case Manager: January 20, 2022
- Director of Special Education: January 20, 2022
- Parent: January 21, 2022
- School Psychologist: January 20, 2022