

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

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**State-Level Complaint 2024:535**  
**Mesa County Valley School District 51**

**DECISION**

**INTRODUCTION**

On March 15, 2024, 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-level complaint (“Complaint”) against Mesa County Valley School District 51 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified four 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. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “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 March 15, 2023, to the present 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.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to develop, review, and revise an Individualized Education Program (“IEP”) that was tailored to meet Student’s individualized needs, specifically by failing to ensure that behavioral strategies and supports in Student’s Behavioral Intervention Plan (“BIP”) adequately addressed Student’s behavioral needs from April 2023 to present, in violation of 34 C.F.R. § 300.324(a)(2)(i).

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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.

2. Amended Student's IEP without agreement of Parent and outside an IEP team meeting in May or June 2023, in violation of 34 C.F.R. § 300.324(a)(6).
3. Deprived Parent of meaningful participation in the development, review, and revision of Student's IEP, specifically by failing to consider Parent concerns during an IEP Team meeting on or about November 13, 2023, in violation of 34 C.F.R. §§ 300.321(a) and 300.324(a).
4. Failed to appropriately respond to Parent's request for amendment of Student's education records on or about November 13, 2023, in violation of 34 C.F.R. §§ 300.618(a)-(c) and 300.619.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is a ten-year-old fourth grader whose home school is a District school. *Exhibit A*, p. 1. Since October 2022, Student has been enrolled at a Separate School ("Separate School") specializing in behavioral intervention. *Id.* at p. 3; *Exhibit 1*, p. 3.
2. Student is eligible for special education and related services under the primary disability category of Serious Emotional Disability ("SED") and secondary category of Other Health Impairment ("OHI"). *Exhibit A*, p. 1.
3. Student is a gifted athlete and enjoys playing and watching football. *Id.* at p. 3; *Interview with Parent*. Student has difficulty regulating his emotional state and exhibits physical and verbal aggression against people and property. *Response*, pp. 2-3; *Exhibit C*, pp. 1-2. When upset or frustrated, he will also elope from the classroom, school, and school property entirely. *Exhibit C*, p. 1.
4. Parent is concerned that District did not offer a BIP with strategies and supports to adequately address Student's behavioral needs. *Complaint*, p. 3. He is also concerned that an IEP was inappropriately created or amended outside an IEP Team meeting and that he was denied meaningful participation in the IEP development process. *Id.* at p. 4. He is also concerned that a notation in Student's disciplinary record and IEP is misleading, and that District did not offer a hearing after it declined to amend Student's records. *Id.* The District denies each of Parent's concerns. *Response*, p. 1.

#### **B. Student's Behavior and IEP/BIP: Spring 2023**

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

5. Student attended preschool through the first part of third grade at District neighborhood schools with an IEP in effect. *Exhibit 1*, pp. 1-3; *Exhibit C*, pp. 4-5.
6. In October 2022, due to increased concerns around Student's behavior, the IEP Team, including Parent, agreed to change Student's placement to Separate School to help Student "work on self-regulation and reduce aggressive behavior towards staff and students." *Exhibit 1*, p. 3; *Exhibit C*, p. 5.

#### The 2022 IEP

7. The IEP in effect in March 2023 was Student's IEP dated October 20, 2022. *See Exhibit 4-D*, pp. 1-16.
8. Student's IEP reviewed his present levels of performance, needs and impact of disability, annual goals, and accommodations. *See id.*
9. As noted in his IEP, Student's disability affects his social/emotional skills such that he is unable to participate in a general education environment due to exhibiting a high level of verbal and physical aggression. *Id.* at p. 9.
10. The IEP contained two annual goals in the areas of social/emotional wellness. *Id.* at pp. 9-10.
11. The IEP provided numerous accommodations, including, in part, adult line of sight, prior notification and adult support with all transitions, frontloading on schedule changes, time and a safe place to calm down when Student is escalated or shut down, wait time to allow for processing, and no more than two-step directions. *Id.* at pp. 10-11.
12. Under the IEP, Student received the following special education and related services:
  - Specialized Instruction: 120 minutes per week of direct mental health services provided by a mental health provider.
  - Social-Emotional Instruction: 300 minutes per week of direct instruction targeting Student's social-emotional skills provided by a special education teacher.
  - Academic Access: 1,005 minutes per week of academic instruction provided by a special education teacher.

*Id.* at pp. 13-14. "These instructional services and supports include both tailoring instruction to [Student's] unique interests and abilities, as well as line of sight supervision during both structured and unstructured times during the school day." *Id.* at p. 13.

13. All students at Separate School receive line of sight monitoring utilizing an extensive camera system in the school building and on school property. *Interviews with Principal and Case Manager 1.*

14. Student spends 0% of time in the general education environment. *Exhibit 4-B*, p. 15; *see id.* at p. 13.

*The BIP*

15. The IEP included Student's BIP. *Exhibit 4-E*, pp. 1-5. Student's BIP was updated March 31, 2023 ("March BIP") based on a comprehensive functional behavioral assessment ("FBA") conducted in January 2023 to understand the function of Student's behavior and determine if it had changed. *Exhibit 1*, p. 5; *Response*, p. 3; *Exhibit C*, pp. 5, 29-30.

16. The March BIP identified Student's target behaviors as verbal and physical aggression and elopement. *Exhibit 4-E*, p. 2. Specifically, Student "exhibits a cycle of behaviors that begins with verbal aggression towards students and staff that leads to eloping from the environment"; "[w]hen escape or avoidance is interrupted (staff or students approach, speak or watch him where he can see), he exhibits intensive verbal and physical aggression to escape the interaction." *Id.* The function of his elopement was described as escape/avoidance to unpleasant stimuli. *Id.*

17. The BIP outlined setting event strategies, such as giving Student a warning around any changes to his schedule, frequent reminders of upcoming transitions, non-contingent breaks, and a safe place and time to calm down when he is upset. *Id.* at pp. 2-3.

18. Listed antecedent strategies designed to reduce the target behaviors included:

- Use "prompt, help, wait" strategies when Student engages in inappropriate actions;
- Provide scheduled, noncontingent sensory breaks throughout the day and additional breaks to regulate following recess and specials;
- Give only two-step directions, then wait for compliance before giving any additional prompts;
- When redirecting Student, use short concise phrases with wait time in order to prevent increased escalation; and
- Identify a safe place for Student to go where adults will limit verbal interactions.

*Id.*

19. The BIP also included behavior teaching strategies, such as teaching Student how to gain appropriate attention from others, self-monitor his emotions, and access appropriate breaks where adults will limit verbal interactions with him. *Id.*

20. As reinforcement strategies, the BIP identified:

- Provide intermittent reinforcements at random times of day any time that Student is demonstrating self-regulated behavior;
- Provide opportunities to earn preferred activities when meeting behavior expectations; and
- Withhold verbal reinforcement (without withholding adult safety and proximity) until Student is calm and ready to re-engage.

*Id.*

21. In general, for every year a student has exhibited negative behaviors, it takes approximately one month of implementing a BIP with fidelity to see progress on a student’s behavior goals. *Interview with Case Manager 2; Consultation with CDE Specialist 1.* For a student whose negative behaviors have performed their functions for many years, it necessarily can take an extended period of time to see new behavioral skills be generalized in any meaningful way. *Id.*
22. In the Spring of 2023, Parent became concerned that Student had “developed a pattern of becoming frustrated and leaving [his designated calm down spot],” including leaving school campus entirely. *Exhibit 1, p. 4; Interview with Parent; see Complaint, p. 3.*
23. On April 13, Student was involved in a major behavior incident that resulted in physical injury to staff and Student’s suspension. *Exhibit 4-A; Exhibit C, p. 6; see Exhibit 1, pp. 5-6.* Student was having a behavior reset out of the classroom after throwing an object at staff. *Exhibit 4-A, p. 1.* Student became escalated and verbally aggressive, then began punching, kicking, and choking a staff member before staff physically intervened. *Id.; see Exhibit 4-F.*
24. Following this incident, Parent requested a reevaluation be conducted as soon as possible due to concerns that Student may have additional disabilities that had not been identified, and therefore that Student’s primary disability as reflected in his IEP may be inaccurate. *Exhibit 1, p. 6; see Exhibit C, p. 4.* The IEP Team agreed. *Exhibit 4-B, p. 2.*
25. Four IEP Team meetings were held from this point through February 2024. The SCO will describe each in turn as relevant to the Complaint allegations.

### **C. The May 2023 Reevaluation and IEP**

#### **May 22, 2023 Reevaluation**

26. The District completed Student’s reevaluation, at Parent’s request, on May 22, 2023. *Exhibit C, pp. 4-28.* The purpose of the reevaluation was to “determine the most appropriate category/categories of disability eligibility” and update Student’s IEP. *Exhibit C, p. 4; Response, p. 3.* Student was reevaluated in the areas of cognition, adaptive skills,

communication, auditory processing, social-emotional, academic, and fine motor skills. *Exhibit C*, pp. 5-6.

27. The reevaluation noted Student had 23 major disciplinary incidents during the 2022-2023 school year. *Id.* at p. 6. It includes a summary of Student's major behavior incidents from August-October 2022 while attending prior District neighborhood school, a summary of Student's out of school suspensions from September 2022-February 2023 at Separate School, and a specific note around Student's recent April 13 major behavior incident. *Id.* at p. 6-7.
28. School Psychologist 1 administered the Behavior Assessment System for Children ("BASC-3") to evaluate Student's social, emotional, behavioral, adaptive, and executive function skills. *Id.* at p. 17. Results indicated that Student was having significant difficulty managing his emotions and behaviors at home and school. *Id.* at p. 21. Specifically, Student was having high levels of anxiety and difficulty maintaining attention, engaging in negative self-talk, threatening to hurt others, and becoming physically aggressive with other students and adults. *Id.* When angry, Student loses control, throws objects or breaks items, and is unable to calm down easily. *Id.*
29. School Psychologist 1 also administered the Social Responsiveness Scale ("SRS-2") to assess aspects of Student's social behavior. *Id.* at pp. 21-22. Student's overall score was within the "severe" range, indicating that deficiencies in reciprocal social behavior are clinically significant and lead to severe interference with everyday social interactions. *Id.* at p. 22. Specifically, Student was demonstrating behaviors that were severe in nature in the areas of social cognition, social communication, social motivation, restricted interests, and repetitive behaviors. *Id.*
30. Educational Audiologist ("Audiologist") administered the Test of Sustained Auditory Attention ("ACPT") and Test for Auditory Processing Disorders ("SCAN-3"). *Id.* at pp. 26-27. Testing indicated Student experiences significant difficulty with sustained auditory attention tasks. *Id.* at p. 27. Audiologist concluded Student's auditory processing abilities will likely be stressed when he is in a listening situation where competing noises or activity may be present. *Id.*
31. Audiologist provided suggested classroom accommodations and teaching strategies for reducing the impact of auditory attention difficulty in a learning environment, including a quiet area relatively free from auditory distraction, development of a cueing system to help Student be aware of times when he may not be attentive, and listening breaks from extended activities. *Id.*

#### May 2023 IEP

32. On May 22, a properly convened multidisciplinary team ("MDT") met to review the results of the reevaluation and determine Student's continuing eligibility for special education services. *Exhibit 1*, p. 8; *see Response*, p. 3. The MDT included Coordinator, Case Manager 1, Speech

Language Pathologist, Mental Health Provider, Audiologist, Building Administrator, School Psychologist 1, and Occupational Therapist, along with Parent and two of Parent's family members. *Exhibit A*, p. 67. The MDT reviewed the reevaluation and changed Student's qualifying disability from Other Health Impairment to Serious Emotional Disability and Other Health Impairment. *Exhibit 1*, p. 8; *Exhibit A*, pp. 62-67.

33. Student's 2022 IEP was then reviewed and revised at the same meeting (the "May IEP") *Interviews with Special Education Coordinator ("Coordinator"), Case Manager 1, and Mental Health Provider; see Exhibit A*, pp. 48-61. Based on the May reevaluation and MDT's eligibility determination, the May IEP updated Student's primary and secondary disability categories. *Exhibit A*, p. 48.
34. The IEP detailed Student's present levels of performance, including information from the May reevaluation, teacher and Parent input, and observations around Student's behavioral progress. *Id.* at pp. 50-52.
35. Teachers reported Student has built relationships with preferred staff members and has been able to identify what motivates him. *Id.* at 50. Teachers reported concerns around Student's significant social/emotional challenges, noting students and staff have expressed fear over Student's dangerous and unpredictable behaviors. *Id.*
36. The IEP noted the accommodations Student uses in class, including a "point/color sheet to support the facilitation of conversations around his behavior." *Id.*
37. Student's school day is divided into 8 blocks lasting between 30 and 70 minutes each. *Interview with Case Manager 1; see Exhibit 11*. During each block, Student and staff report on Student's behavior using a series of colors indicating how well he is meeting his safety goals. *Id.* Student's behavior charts are then emailed home to Parent. *Id.* Staff report this accommodation has been effective at times, as Student has expressed pride when his color sheets reflect a good day and discussing them with Student provides staff with insight into Student's perspective around his behavior. *Interviews with Coordinator and Case Manager 1*.
38. The Parent Input section is comprehensive and includes reported concerns about Student's recent major behavior incident (FF # 23) and observations around Student's physical aggression at home. *Exhibit A*, p. 53.
39. The IEP Team developed four annual goals in the area of social/emotional wellness. *Id.* at pp. 54-56. These goals included one "new skill":

When [Student becomes] dysregulated, he will request a break as taught (either verbally or by pointing to a card to indicate a break), go to a designated place (opportunity room or vestibules by the playground), and request staff to process with him when he is ready (either by verbally requesting or putting his thumb up), as evidenced by a decrease in time spent in a dysregulated state.

*Id.* at p. 56. This skill included the visual cue of “thumbs-up” for Student to request a break and indicate he is ready to process due to observations that when Student is frustrated, he needs minimal verbal interaction in order to reduce further escalation and elopement. *Interview with Case Manager 1; see Exhibit 4-E*, pp. 2-3. This is the same visual cue Student uses with Parent at home. *See Exhibit A*, p. 25.

40. The May IEP did not designate one specific place that Student was expected to go for a break; instead, Student was able to choose from a variety of areas, including the lobby, opportunity room, and cubbies in the hallway. *Interviews with Coordinator, Case Manager 1, and Mental Health Provider; see Exhibit A*, p. 56.

41. Parent signed the May IEP as an IEP Participant and in acknowledgement of his receipt of Procedural Safeguards. *Exhibit A*, p. 49.

42. “The IEP team, including [Parent], agreed that a meeting [would] be held in August prior to school starting to look at goals, accommodations, and service delivery to ensure [Student] has a successful start to the 2023-2024 school year.” *Id.* at p. 61; *Exhibit 1*, p. 8; *Interview with Parent; Interview with Coordinator and Case Manager 1*.

43. The BIP attached to the May IEP is the same BIP that was amended on March 31, 2023 (FF # 15). *Exhibit B*, pp. 19-23.

44. Case Manager 1 filed the May IEP with the District special education records office after the May IEP Team meeting in preparation for the August meeting. *Complaint*, p. 4; *Interview with Case Manager 1*.

45. On August 10, prior to the planned August 15 IEP Team meeting, Parent went to District’s special education records office and requested and received a copy of Student’s IEP. *Exhibit 1*, p. 6; *Interview with Parent*. Parent asserts the IEP he received was created by Case Manager 1 in June 2023 and that there was no IEP created at the May meeting. *Complaint*, p. 4; *Exhibit 1*, p. 8; *Interview with Parent*. Therefore, Parent is concerned that the IEP he received on August 10 was an IEP created outside the May and August IEP Team meetings and without his participation. *Complaint*, p. 4; *Exhibit 1*, p. 8. Parent is also concerned that the IEP “did not include any of the assessment reports or recommendations from the team at the May meeting.” *Exhibit 1*, p. 8.

46. The SCO finds the IEP that Parent picked up on August 10 is the same May 2023 IEP created at the May IEP Team meeting and filed at the District office by Case Manager 1. The only difference between the two documents is the May IEP includes the signatures for IEP Team Participants and Parent’s procedural safeguards, and the document picked up by Parent on August 10 necessarily has blank signatures to be filled in at the August IEP Team meeting. *Compare Exhibit A*, pp. 48-61, *with Exhibit 6-B*. This is a logical discrepancy considering the May IEP was filed with District’s records office in preparation for the August meeting. *Interviews with Coordinator and Case Manager 1; see Exhibit A*, p. 61. No other IEP was



created or amended between the May and August IEP Team meetings. *Interviews with Coordinator and Case Manager 1*.

47. The SCO also finds the May 2023 IEP considered the assessment reports and recommendations from the May meeting. The May 2023 IEP notes Student was recently evaluated and contains a lengthy special education/interventions section describing Student's social and behavioral progress gleaned from the reevaluation. (FF #s 33-34). The May 2023 IEP also includes four social/emotional annual goals, including a new skill around Student using visual cues to request a break and indicate when he's ready to process with staff. (FF # 39). Further, the attached BIP includes numerous strategies and supports, including providing Student with a safe place to go where adults will limit verbal interactions with him and withholding verbal reinforcement until Student is regulated. (FF #s 17-20). These strategies and supports are consistent with the reevaluation's findings around Student's emotional regulation and auditory processing challenges, and with Audiologist's recommended accommodations. (FF #s 28-31). Finally, Student's primary disability category was changed as a result of the reevaluation (FF # 32).

#### **D. The August 2023 IEP and IEP Team Meeting**

48. On August 15, a properly convened IEP Team meeting was held to review Student's IEP with new Separate School staff. *Exhibit 1*, p. 8; *Response*, p. 2; *Interview with Parent*; *Interviews with Coordinator and Case Manager 1*. IEP Participants included, in part, Parent, Student's ABA therapist, and Parent's advocate. *Exhibit A*, p. 35; *Exhibit 1*, p. 8.
49. The IEP Team reviewed the annual goals developed by the May IEP and revised them for specificity. *See Exhibit A*, pp. 40-42. Behavior tracking was added to Student's accommodations around the point/color sheet described in the May IEP. *Id.* at p. 42. Otherwise, the August 2023 IEP was not materially changed from the May IEP. *Compare Exhibit A*, pp. 34-46, with *Exhibit A*, pp. 48-67.
50. There was no change to Student's BIP. *Exhibit B*, pp. 19-23.

#### **E. Student's Behavior: August – November 2023**

51. On August 31, Student had a major behavior incident involving verbal and physical aggression and elopement resulting in his suspension. *Exhibit F*, p. 1. Student refused to attempt a writing assignment, became escalated, threw classroom objects, and ultimately eloped from the classroom and school. *Id.* While outside, Student picked up a nail and rocks, which he used to throw at staff and school property. *Id.*
52. Between August 31 and October 23, Student had no disciplinary referrals. *Response*, p. 3.
53. On October 23, Student had a major behavior incident involving verbal aggression with students and staff resulting in his suspension. *Exhibit F*, p. 3. Student was outside for recess,

refused to return back to class, and began threatening students and staff. Ultimately, Student managed to take a staff radio, which was used to verbally threaten another student and overheard by the entire school. *Id.*

54. Student had several other major behavior incidents in the Fall involving verbal and physical aggression, elopement, and property damage. *Id.* at pp. 5, 7, 9, 11; *Exhibit F*, pp. 7-10; *Interviews with Parent and Case Manager 2*.

#### **F. The November 2023 IEP Team Meeting**

55. On November 13, 2023, the IEP Team held a meeting at Parent’s request to address continued concerns around Student’s behavior. *Exhibit 1*, p. 8; *Response*, pp. 4-5. The IEP Team included, in part, Parent and Parent’s advocate, along with Student’s new case manager (“Case Manager 2”), who became Student’s special education teacher in September 2023. See *Exhibit A*, p. 19; *Interview with Case Manager 2*.

#### **November 2023 IEP**

56. The IEP Team reviewed Student’s present levels of performance and teacher and Parent concerns and revised Student’s IEP. *Exhibit A*, pp. 18-33.
57. The IEP describes Student’s major behavior incidents since the start of the 2023-2024 school year. *Id.* at pp. 20-21. A November 13 update to the IEP notes: “Behavioral incidents include 1 incident for detrimental behaviors and disorderly conduct disruptive behavior, and 2 incidents for third degree assault/disorderly conduct.” *Id.* at p. 20.
58. Teachers reported Student has effectively demonstrated the ability to use the lobby as a de-escalation spot when he is willing go to there and reported continued concerns around Student’s engaging in threats directed at peers and staff that often lead to significantly unsafe levels of behavior. *Id.*
59. The IEP Team discussed Student’s protocol for de-escalation and determined that staff will continue to follow de-escalation procedures pursuant to Student’s BIP. *Id.* Parent reported Student uses “thumbs up, thumbs down” at home when ready to discuss what is upsetting him, and that is the same procedure followed at school. *Id.*; *Interview with Coordinator*.
60. Parent also voiced concern that a specific notation in Student’s Discipline Profile and on the November 2023 IEP—“2 incidents for third degree assault/disorderly conduct”—was inappropriate and misleading because there was “no evidence of the police being called or any citations written” in response to Student’s relevant behavior incidents. *Exhibit 1*, p. 9; *Response*, p. 6; *Interview with Parent*.
61. District coded these two incidents in Student’s Disciplinary Profile as “400 – Assault 3<sup>rd</sup> Degree assault or Disorderly Conduct” and “V00 – Other Violations Physical Aggression,” pursuant to State coding requirements for reporting discipline data and because both involved physical

aggression and assaultive behavior. *Response*, p. 6. This notation also appears in the November 2023 IEP's discipline section. See *Exhibit A*, p. 20.

62. Parent requested that this notation be changed or removed. *Complaint*, p. 4 ("Parent[] requested this be changed."); *Response*, p. 6 ("Parent requested the school delete the coding of these incidents . . ."); *Interviews with Parent and Coordinator*.
63. In response, District explained to Parent its obligation to report discipline data to the State using a disciplinary matrix and State-created coding, which is not dependent on law enforcement initiating a criminal case. *Response*, p. 6; *Interview with Coordinator*. Specifically, Coordinator consulted with District's counsel to confirm the procedures around reporting/coding disciplinary data and confirmed that notation could not be changed in the Student Discipline Profile; confirmed that the discipline information on the IEP was correct; and relayed that information back to Parent. *Interviews with Parent and Coordinator*.
64. There was no further follow-up from District or Parent around this request. *Interviews with Parent and Coordinator*.
65. District's written policies contain guidance around parents' right to inspect and review education records of student with a disability, see *Exhibit K*, pp. 58-99, but do not include guidance around parents' requests to amend student records. See *id.* District's Director of Special Education ("Director") reports that requests for amendment of student education records fall under the general education records department umbrella, including requests made by a parent of a child with a disability. *Interview with Director*.

#### November 2023 BIP

66. Student's BIP was revised along with his August 2023 IEP at the November IEP Team meeting, based on an interview with Case Manager 2, classroom observations, records review, and behavior incident reports. *Exhibit B*, pp. 8-13.
67. The lobby was designated as Student's "calm down" spot in setting event and antecedent strategies after staff determined that was safest place for him go when escalated. *Id.* at p. 10. Specifically, it is where staff has the most control and best opportunity to monitor Student and is the most successful spot in keeping Student away from negative peer interactions. *Id.*; *Interviews with Coordinator, Principal, and Mental Health Provider*. Student was not to use other areas for de-escalation "as it is difficult for him to not engage with other students who are in the hallway for transitions or are out of program." *Exhibit B*, p. 10.
68. Considering Separate School's resources and safety procedures, the lobby's proximity to staff and their monitoring capabilities, staff observations, and Student's behavior, the SCO finds it was reasonable for District to designate the lobby as the most appropriate spot for Student to deescalate. *Consultation with CDE Content Specialists 1 and 2*.
69. The following note was added to the BIP:

Staff has been trained to allow [Student] to leave when he want[s] to access the Lobby for a break whenever he wants. Staff does not speak to [Student] if he goes directly to the Lobby, and will verify visually that he is in the designated area. They will not approach him until he gives the visual cue of thumbs up indicating he is ready to process with [staff]. [Student] will receive a brief verbal prompt if he has left the room but is out of program and not proceeding to the Lobby.

*Exhibit B*, p. 9.

70. A behavior teaching strategy was added around teaching Student that he and staff will use a “coping strategy card” on his desk to request that he take a break in the lobby. *Id.* p. 10. This strategy was added to provide Student with a non-verbal option for requesting a break. *Interview with Case Manager 2*. Teaching Student how to use visual cues is an appropriate behavior teaching strategy to address Student’s auditory processing challenges and pattern of escalating during verbal interaction. *Consultation with CDE Content Specialist 2*.
71. Parent asserts it was his understanding that a new FBA would be conducted and new BIP developed shortly after the August IEP Team meeting and is concerned that they were not completed by the time of the November meeting. *Exhibit 1*, p. 8; *Reply*, p. 7. Nevertheless, at the November meeting the “Team agreed that Student’s current FBA/BIP should be reevaluated and the team will reconvene in January to discuss the results and make any modifications to plans as required.” *Exhibit A*, p. 33; *see also id.* p. 25. That same day, District also sought and obtained Parent’s written consent to conduct the FBA. *Exhibit D*, pp. 5-6.

### **G. Student’s Behavior and Reevaluation: January 2024**

72. On January 23, 2024, Student had a major behavior incident in which he eloped and caused significant property damage to the school. *Exhibit 1*, pp. 9-10; *Exhibit F*, pp. 17-18. Student became frustrated in class during reading and struggled to go to the lobby, his designated de-escalation spot per his BIP, at staff’s request. *Exhibit F*, p. 17; *see Exhibit B*, p. 10. Student walked around the school building, climbed the fence to the playground, and picked up and threw rocks, ultimately breaking the lobby window. *Exhibit F*, p. 17; *Exhibit 1*, pp. 9-10.
73. An FBA was completed on January 26 based on classroom observations over a ten-day window, daily classroom progress monitoring data, ABC data collection tool, staff interviews, student discussions, and discipline records. *Exhibit C*, p. 1. The function of Student’s behavior was described as escape and avoidance and attention seeking; attention seeking was a newly identified function since the January 2023 FBA. *Exhibit C*, p. 3.
74. Data indicated that Student’s behaviors become very intense and dangerous very quickly, with only 10 seconds between a setting event and exhibiting aggressive behaviors. *Id.* Student had behavioral incidents involving verbal or physical aggression directed at staff, students, or both 6 times during the 10-day collection window. *Id.* at p. 1. Student had a behavioral incident requiring adult intervention in 7 of the 10 days, ranging from 2-4 per day. *Id.*

75. The most frequent time that Student was observed to exhibit negative behaviors were during social emotional learning (“SEL”) and reading instruction. *Id.* These activities are non-preferred and Student exhibits a pattern of not wanting to engage which leads to behaviors during these activities. *Id.*
76. Findings of the disciplinary review indicated Student was only going to the lobby as his designated de-escalation spot 50% of the time and often goes other places in the school when angry. *Id.* Student has frequent check-ins with Principal to do physical activities, such as taking a walk or playing football, in an attempt to help Student re-establish a calm demeanor. *Id.*
77. The FBA notes that Separate School is District’s most restrictive setting; there is no interaction with the general education environment. *Id.* Even so, Student’s behavioral incidents occur nearly daily and often have resulted in verbal threats being made to students and staff, physical aggression directed at staff and students, and significant property destruction. *Id.*
78. Parent felt the FBA was comprehensive, specifically noting its identification of Student’s work avoidance of non-preferred tasks, which is an area Parent wanted addressed in Student’s BIP. *Interview with Parent; see Exhibit C, p. 1.*

#### **H. The February 2024 IEP and BIP**

##### *February 2024 IEP*

79. On February 20, the IEP Team, including Parent, Student’s grandmother, and Student’s Juvenile Diversion representative, met to review the January FBA and review and revise Student’s IEP and BIP as necessary. *Exhibit A, p. 2; Response, p. 4; Interview with Parent; Interviews with Case Manager 2 and Mental Health Provider.*
80. The IEP Team reviewed Student’s present level of performance, current progress with behavior goals, and teacher and Parent concerns, and revised Student’s IEP. *See Exhibit A, pp. 1-17.*
81. Teachers reported Student wants friends but often engages in negative attention-seeking behaviors in an attempt to gain them, specifically noting concerns that Student continues to use intensive verbal aggression towards students and staff. *Id.* at p. 4.
82. Teachers also reported that Student has been taught to take breaks in the lobby because he is more successful when he takes his self-selected breaks there. *Id.* at p. 5. During the first two weeks of the third quarter, Student took a total of 21 breaks, 11 of which either did not initiate in the lobby or Student behaved out from his lobby break. *Id.*
83. Parent voiced continued concerns around Student using the lobby as a break point as he feels it is easy for him to leave and not have the supervision he requires. *Id.* at p. 9; *Interview with Parent.* In response, staff reiterated to Parent that Student would attempt to elope regardless of where he was and that the lobby continued to be the safest option. *Interviews with*

*Coordinator and Case Manager 2.* The lobby remained Student's designated calm down spot. See *Exhibit B*, pp. 3-4.

### February BIP

84. A new BIP was also developed at the February 20 meeting. See *Exhibit B*, pp. 1-7; *Interviews with Coordinator and Case Manager 2.* Specifically, the Team discussed two procedures that were revised in Student's BIP. *Exhibit B*, p. 2.
85. First, the Team agreed that Student's reset time in the lobby should be reduced. *Id.* Previously, Student's resets were 15 minutes for verbal aggression and 30 minutes for physical aggression. *Id.*; *Interviews with Parent and Case Manager 2.* The Team decided Student will instead have 10-minute resets, as staff observations showed long periods of "break" time tend to increase Student's frustration and because Student has the same 10-minute reset time at home and Parent reported it was effective. *Exhibit B*, p. 2; *Interviews with Parent, Case Manager 2, and Mental Health Provider.*
86. Second, the Team agreed that because Student can become very aggressive if people speak to or approach him when escalated, no one will follow him if he leaves class and staff will watch him via cameras. *Id.* If Student leaves the campus, a school resource officer ("SRO") will be contacted and he or she will follow and monitor for safety. *Id.* If Student makes a self-harm statement and then leaves the school, staff will monitor for safety and follow from a distance while awaiting law enforcement support. *Id.* This procedure was revised based on Parent's safety concerns around elopement and staff observations that Student escalates when staff follow him. *Interview with Coordinator.*
87. The BIP Strategies/Outcomes Worksheet was significantly revised as a result of the January FBA and these two agreed-upon procedures. See *Exhibit B*, pp. 2-5. Specifically, antecedent, behavior teaching, and reinforcement strategies were reorganized under the categories of general recommendations, escape and avoidance, attention seeking, and elopement, in line with the FBA's determination around the functions of Student's behavior. *Id.* at pp. 2-4.
88. A new setting event strategy was added: check-in with a trusted adult upon Student's arrival at school to discuss concerns, coping strategies, and goals for the day. *Id.* at p. 3; *Interview with Case Manager 2.* Check-in with a trusted adult upon arrival at school is an appropriate setting event strategy to foster communication with Student and provide staff with information at the beginning of the school day around anything that may impact Student's functioning at school. *Consultation with CDE Content Specialist 2.*
89. New antecedent strategies targeting Student's escape and avoidance of non-preferred tasks were added: provide choices and processing time to allow Student to make meaningful choices and reduce Student's work demands by, for example, doing even or odd problems *Exhibit B*, p. 4; *Interviews with Case Manager 2 and Mental Health Provider.* Non-contingent

breaks with preferred staff was also added as an antecedent strategy to address attention-seeking behaviors. *Exhibit B*, p. 4.

90. Another strategy was added to both antecedent strategies and reinforcement strategies to address Student's attention-seeking behavior: allow Student to share successful behavior choices with home and staff. *Id.* This strategy was included to focus on times Student is able to make positive behavior choices and teaching Student to gain appropriate attention by sharing those successes. *Interviews with Case Manager 2 and Mental Health Provider.*
91. New behavior teaching strategies were added to target Student's elopement and ensure Student was taught the rules around certain strategies, including teaching Student that breaks will be 10 minutes long in the lobby, that he will earn football breaks only for safely working in class, and that if Student leaves the lobby without an adult with him, his time will reset to earn football breaks. *Exhibit B*, pp. 4-5. These new teaching strategies were appropriate to address Student's elopement given the new rules and processes around accessing the lobby and earning time for preferred activities for safely working in class. *Consultation with Content Specialist 2.*
92. A new reinforcement strategy was added as a general recommendation: pair the most desired reinforcement choice with safely completing the least desired academic choice, i.e., pair football with an SEL lesson. *Exhibit B*, p. 3. To specifically address Student's attention-seeking behavior, a new reinforcement strategy was added to provide Student with the opportunity to earn time with a preferred adult to do an activity of his choosing for working safely in the classroom. *Id.*
93. A new reinforcement strategy was also added to the BIP to address elopement: "The teacher will start a timer and keep track of how long [Student] has worked in the safe and expected way and then seek a staff member" to engage in a preferred activity with Student. *Id.*

#### **I. Student's Continuing Behavior and Lack of Progress**

94. A progress report dated March 25, 2024, indicated Student was making insufficient progress on all four social/emotional annual goals. *Exhibit 13*, pp. 1-2. The report noted that results should be interpreted with caution, however, "as [Student] was absent due to suspensions from behavioral incidents that occurred this quarter." *Id.*
95. Staff reports that Student has had some success, albeit inconsistently, with the behavioral supports and strategies in the February 2024 BIP. *Interviews with Case Manager 2 and Mental Health Provider.* For example, Student's shorter resets are at times effective in preventing further escalation and returning Student to class more quickly. *Interview with Case Manager 2.* Student is also, at times, able to have pockets of success in safely working in the classroom to play football or take a walk with Principal. *Interviews with Case Manager 2, Principal, and Mental Health Provider.*

96. Parent is concerned that Student has not shown any improvement in behavior goals; indeed, Student's behavior has continued to escalate. *Interview with Parent*. Parent is therefore concerned for Student's safety and the safety of other students and staff at Separate School, as it does not seem to have the necessary facilities or resources to ensure everyone's safety when Student is escalated. *Id.*; *Complaint*, 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: The District appropriately developed, reviewed, and revised Student's BIP between March 2023 and March 2024 to adequately address Student's behavioral needs, consistent with 34 C.F.R. § 300.324(b). No IDEA violation occurred.**

Parent's concern is that District failed to develop, review and revise BIPs that were tailored to meet Student's individualized needs by failing to include behavioral supports and strategies that adequately addressed Student's behavioral needs.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

#### **A. IEP Development Process**

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a). An IEP must include a statement of the student's present levels of academic achievement and functional performance, including a statement explaining how the child's disability impacts the student's involvement and progress in the general education curriculum. *Id.* § 300.321(a)(1). In developing an IEP, the IEP team must also consider the use of positive behavioral interventions and supports to address behavior for a student whose behavior impedes his ability to learn. *Id.* § 300.324(a)(2)(i).

#### **Review and Revision of the IEPs**

Although the IDEA does not promise a particular educational or functional outcome for a student with a disability, 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.



*Andrew F.*, 580 U.S. at 400. 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. *Id.*

“Under 34 C.F.R. § 300.324(b), IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; information about the child provided to, or by, the parent; the child’s anticipated needs; or other matters such as the behavior that led to short-term disciplinary removal including the impact on the child’s learning or that of others.” *Questions and Answers: Addressing the Needs of Children with Disabilities and the IDEA’s Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22).

Here, District developed, reviewed, and revised Student’s IEPs at properly constituted IEP Team meetings in May, August, and November 2023 and February 2024 held to address his lack of improved behavior, review the results of a reevaluation, and/or at Parent’s request. (FF #s 32, 48, 55, 79). The IEPs describe Student’s behaviors and how those behaviors impact Student’s educational needs and contain a statement of the services to be provided to support those unique needs. (FF #s 10-12, 39, 80). They also include a statement that Student exhibits behavior that requires a BIP, and each IEP includes a BIP, which was often revised along with the IEPs. (FF #s 15, 43, 50, 66, 84).

For these reasons, the SCO finds and concludes that the development process for Student’s IEPs in effect during the relevant time period complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206. Next, the SCO turns to the second question of whether the behavioral supports and strategies were substantially appropriate. *Id.* at 207.

## **B. Substantive Adequacy of the IEPs**

An IEP is “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 Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a).

### **Behavioral Strategies and Supports**

Parent’s concern is that the behavioral supports and strategies in Student’s BIPs failed to adequately address Student’s behavioral needs.

For a student whose behavior impedes their learning, the IEP must, among other things, also “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.324(a)(2). IEPs must address any behaviors that are impeding learning, including by causing student to miss instruction or avoid work. *Id.*

Here, the March 2023 BIP was developed after an FBA was conducted to understand the function of Student's behavior (FF # 15). Informed by the FBA, the BIP targeted Student's problem behaviors of verbal and physical aggression and elopement. (FF # 16). It includes setting event strategies around frontloading Student on his schedule and transitions, as well as antecedent strategies including giving two-step directions and providing a safe place for Student to take breaks where staff will limit verbal interaction, due to Student's identified tendency to escalate and/or elope during verbal interactions (FF #s 17-18). It also identified behavior teaching strategies to teach Student what appropriate breaks look like and how he can safely access them, and reinforcement strategies including withholding verbal reinforcement when Student is escalated and providing opportunities for Student to earn preferred activities when meeting behavior expectations. (FF #s 19-20).

At Parent's request and due to continued concerns around Student's behavior, District completed a reevaluation of Student in May 2023 and reviewed and revised Student's IEP at an IEP Team meeting based on that reevaluation, including updating his primary disability from OHI to SED to reflect the MDT's new eligibility determination. (FF #s 26, 32-33). The IEP Team also developed a new annual goal and skill around Student appropriately requesting and accessing a safe place when dysregulated using a visual cue to reduce further escalation and elopement, consistent with the strategies in the March 2023 BIP. (FF # 39).

Due to Student's major behavior incidents during the Fall of 2023 and at Parent's request, the IEP Team held another meeting in November 2023 and reviewed and revised Student's IEP and BIP. (FF #s 55, 66). Based on observations around Student's recent behavior incidents and patterns, the IEP Team determined the school lobby was the safest place for Student to access when dysregulated and updated the BIP to reflect that designation. (FF # 67). Student's de-escalation procedures were revised to indicate staff will allow Student to access the lobby for a break whenever he wants, will not speak to him or approach until he gives the visual cue of thumbs-up, and will otherwise monitor him via camera. (FF # 69). A new behavior teaching strategy was also added around using a visual cue card on Student's desk to request he take a break. (FF # 70). The Team determined that staff would continue to follow these de-escalation procedures pursuant to the BIP but agreed that a new FBA should be completed and new BIP developed based on the findings. (FF #s 59, 71).

The IEP Team met again in February 2024 to review the results of the January 2024 FBA and review and revise Student's IEP and BIP. (FF # 79). Parent voiced continued concerns around use of the lobby as a break point and District reiterated its determination that the lobby was the safest place available. (FF # 83). The IEP Team did, however, make significant revisions to the BIP as a result of the January 2024 FBA which carefully considered the function of Student's behavior and included strategies and supports targeting those functions. (FF #s 84-93). Specifically, as to the function of escape and avoidance, the BIP added antecedent strategies to provide Student choices and give processing time to allow Student to make meaningful choices and reduce Student's work demands (i.e. by doing even or odd problems) to address Student's pattern of escaping/avoiding non-preferred tasks. (FF # 89). To address the function of attention seeking,

the BIP added an antecedent and reinforcement strategy to allow Student to share positive behavior choices with home and staff (FF # 90) and an antecedent strategy to provide non-contingent breaks with preferred staff (# 89). Several new reinforcement strategies were also added around an opportunity to earn breaks with preferred staff to do a preferred activity for safely working in class. (FF #s 92-93). The BIP also established a new staff procedure around elopement to address safety concerns, reduced the length of time of his lobby breaks, and included new behavior teaching and reinforcement strategies around his de-escalation breaks in the lobby intended to curb elopement (FF #s 85-86, 91).

In summary, the District developed BIPs to include supports and strategies to address Student's target behaviors based on comprehensive FBAs and other evaluations. (FF #s 7, 15, 32, 79). Despite these supports and strategies, Student has continued to have behavior incidents at school, many of which resulted in disciplinary removal from his educational environment. (FF #s 23, 51-54, 72). Parent is concerned that Student's behavior has not shown much improvement and, in fact, continues to escalate. (FF # 96). Nevertheless, staff reported intermittent success since implementing the February 2024 BIP strategies, specifically with Student appropriately accessing the lobby for shorter resets and earning football time with Principal for safely working in the classroom (FF # 95).

While the IDEA "does not promise a particular educational or functional outcome for a student with a disability," it does provide a process for developing, reviewing, and revising an IEP to address a child's unique needs, including providing a behavioral plan with supports and strategies that adequately address a student's behavioral needs. *Andrew F.*, 580 U.S. at 400. In this case the SCO finds that the District followed that process here with respect to the February 2024 BIP.

For these reasons, and in consultation with CDE Content Specialists 1 and 2, the SCO finds and concludes that Student's BIPs include appropriate strategies and supports to adequately address Student's behavioral needs, and therefore, the IEPs were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances, consistent with 34 C.F.R. §§ 300.320(a)(2) and 300.324(a)(2). There is no IDEA violation.

**Conclusion to Allegation No. 2: District did not create or amend Student's IEP without agreement of Parent and outside an IEP Team meeting. There is no violation of 34 C.F.R. § 300.324(a)(6).**

Parent is concerned that an IEP was created or amended, outside an IEP Team meeting and without his participation, during the Summer of 2023.

Student's IEP was reviewed and revised at the May 22, 2023 IEP Team meeting based on the results of the May reevaluation. (FF # 33). Parent asserts that there was no IEP created at the May meeting (FF # 45). However, the May 2023 IEP, among other things, updated Student's primary disability category from OHI to SED based on the MDT's eligibility determination that same day, so necessarily an IEP was created at the May meeting. (FF # 33). The IEP Parent picked up on August 10 from the District records office is the same IEP created in May, signed by him at

the May IEP meeting, and filed with the District office, albeit without the signatures from the May IEP Team participants; nothing else was changed to the IEP between May and August. (FF # 46).

Therefore, the SCO finds and concludes that an IEP was not created or amended over the Summer of 2023. There is no IDEA violation.

**Conclusion to Allegation No. 3: Parent meaningfully participated in the development, review, and revision of Student's IEP, including during the November 13, 2023 IEP Team meeting, consistent with 34 C.F.R. §§ 300.321(a) and 300.324(a). No IDEA violation occurred.**

Parent is concerned that he was denied meaningful participation in the IEP development and review/revision process, specifically at the November 13, 2023 IEP Team meeting.

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Systema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 1998). "Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate." 34 C.F.R. § 300.322(a). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering a parent's concerns for enhancing the education of his or her child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests in the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options based on the individual needs of the student. *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. RE-1*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 119 LRP 28108 (SEA CO 3/22/18). However, parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parent's position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Parents, however, do not have "veto power" over IEP team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/15/15). An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services." *Id.*

Here, the November 13, 2023 IEP Team meeting was convened at Parent's request and both Parent and Parent's advocate attended. (FF # 55). Parent voiced continued concerns around Student's safety, disputed Student's disciplinary suspensions and how they were calculated, and questioned a notation on Student's disciplinary record and IEP (FF #s 56, 60). Coordinator consulted with District's counsel and explained to Parent why the notation appeared as it did. (FF # 63). To further address concerns around Student's safety, District added new supports and strategies to Student's BIP to address elopement (FF #s 67, 69) and agreed to conduct a new FBA and further develop the BIP based on its findings. (FF # 71).

While Parent may have disagreed with District's responses or the IEP's services, the Record reflects that District listened to Parent's concerns and was responsive to them. District also incorporated some of Parent's requests into the IEP, including adjusting Student's de-escalation procedures to include the same visual cue Parent uses at home (FF # 59) and agreeing to conduct a new FBA and develop a new BIP at Parent's request (FF # 71). Parent asserts that District agreed to and should have conducted an FBA earlier in the 2023-2024 school year. (FF # 71). However, given the amount of time it takes for a student to show progress after implementation of a BIP (FF # 21), the SCO finds it was appropriate for District to allow time to monitor Student's progress with the August IEP and BIP before reevaluating him. Therefore, the SCO finds and concludes that Parent meaningfully participated in the November 13, 2023 IEP Team meeting. No IDEA violation occurred.

Parent is also concerned that he was denied meaningful participation in the IEP development, review, and revision of the IEPs at other meetings and that the IEPs did not reflect his concerns.

Here, Parent attended each IEP Team meeting and often invited participants, such as his advocate, Student's outside providers, and/or family members. (FF #s 32, 48, 55, 79). Each IEP contains a section for parent input documenting Parent's observations and concerns. (FF #s 34, 38, 56, 60, 79-80). And the IEPs include some of Parent suggestions, such as using the "thumbs up" visual cue and 10-minute resets, both of which Parent also uses at home. (FF #s 39, 59, 85). Given District's willingness to convene IEP meetings, address Parent's concerns, and review and revise Student's IEP and BIP regularly, the record does not support Parent's assertion that he was denied meaningful participation in the IEP process.

For these reasons, the SCO finds and concludes that Parent meaningfully participated in the IEP Team meeting on November 13, 2023, and in the IEP development, review, and revision of the IEPs at other meetings. There is no IDEA violation.

**Conclusion to Allegation No. 4: District failed to appropriately respond to Parent's request for amendment of Student's education records on or about November 13, 2023, in violation of 34 C.F.R. §§ 300.618(a)-(c) and 300.619. This violation did not result in the denial of FAPE.**

Parent is concerned that District refused his request to amend a notation in Student's disciplinary record and/or IEP and failed to offer a hearing after refusing the amendment.

The IDEA establishes a procedure by which parents can request amendment of a student's educational records. 34 C.F.R. § 300.618. Specifically,

a parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the student may request that the participating agency that maintains the information to amend the information.

*Id.* § 300.618(a). The school district must decide “within a reasonable period of time” whether to amend the information. *Id.* § 300.618(b). If the school district declines to amend the records, it must inform the parent of the refusal and advise the parent of the right to a hearing. *Id.* § 300.618(c). The SCO must first determine whether Parent requested to amend an educational record—Student's IEP or disciplinary record—at the November 13, 2023 IEP Team meeting.

Here, Parent was concerned that a notation in Student's disciplinary record and included in Student's IEP—“third degree assault”—was misleading because Student was not charged with any crime by law enforcement over the related disciplinary incidents. (FF # 60). Parent voiced his concern at the November IEP Team meeting and asked that it be changed. (FF # 62). Coordinator, who was present at the IEP Team meeting, consulted with District's counsel about Parent's request, indicating an understanding that there was a request to amend by Parent (FF # 63).

For these reasons, the SCO finds and concludes that Parent's request to change or delete information in Student's disciplinary record and/or IEP was a request to amend Student's education records, triggering District's obligations under 34 C.F.R. § 300.618. The SCO must next evaluate District's response to the request under § 300.618(b)-(c).

Here, in response to Parent's request and after consulting with District's counsel, Coordinator explained to Parent that the notation in Student's Discipline Profile was made using a disciplinary matrix based on State reporting requirements, and that because it was part of mandatory reporting, the “assault” notation could not be changed in Student's Discipline Profile (FF #s 61, 63); it is unclear whether there was further discussion around changing the language in the IEP. However, it is clear that after District's explanation to Parent around why it was declining to amend the disciplinary record and/or IEP, there was no further follow-up on the issue by either Parent or, critically, District, which did not offer Parent a hearing after declining his request to amend. (FF # 64). School districts are bound by IDEA's procedural requirements around amendment of student special education records even if the district has a seemingly valid reason for refusing a parent's request for amendment, as the District did here.

Therefore, the SCO finds and concludes that the District violated its procedural obligations under § 300.618(c).

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of the IDEA are only actionable to the extent they impeded the child's right

to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of an educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Here, Parent is concerned the disciplinary notation of "assault" is misleading in that it suggests criminal charges were filed related to Student's behavioral incidents when there were none (FF # 60). Parent's misunderstanding of District's requirements around disciplinary reporting and disagreement around purportedly misleading verbiage on the November IEP did not *significantly* impede Parent's opportunity to participate in the decision-making process or otherwise impede Student's access to a FAPE. Thus, the SCO finds and concludes that the failure to offer Parent a hearing around the record amendment issue did not result in a denial of FAPE.

**Systemic IDEA Violations: This investigation demonstrates a violation that is systemic and will likely impact the future provisions 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 authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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 SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the violation stemmed primarily from District's lack of written procedural guidance around parents' requests to amend education records for students with disabilities. (FF # 65). While Director reported all requests to amend student records are to go through the general education records department, even requests made by parents of a student with a disability, District's written policies do not reflect this procedure or otherwise provide guidance around requests to amend student education records. (FF # 65). The SCO accordingly finds and concludes that the District's violation is systemic and may impact future students with disabilities if not corrected. The SCO has ordered District to submit updated written guidance around parents' requests to amend student education records to correct this systemic violation.

### **REMEDIES**

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

- a. Failing to appropriately respond to Parent's request for amendment of Student's education records, in violation of 34 C.F.R. §§ 300.618(a)-(c) and 300.619.

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

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

- a. By **June 13, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as to not recur as to Student and all other Students with disability for whom 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 District’s timely correction of the areas of noncompliance.

## **2. Final Decision Review**

- a. Director, Coordinator, and all other special education administrators must review this decision, as well as the requirements of 34 C.F.R. §§ 300.618(a)-(c) and 300.619. This review must occur no later than **July 13, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **July 20, 2024**.

## **3. District Procedures**

- a. By **July 13, 2024**, District must submit updated written guidance to ensure compliance with 34 C.F.R. §§ 300.618(a)-(c) and 300.619.
  - i. At a minimum, the updated procedure must offer clear guidance on advising parents of their right to a hearing when District declines a parent’s request to amend a student education record for a student with a disability.
  - ii. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
  - iii. District must ensure that all special education administrators and providers in District receive a copy of the procedure no later than **August 23, 2024**. Evidence that the procedure is shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **August 30, 2024**.

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  
1560 Broadway, Suite 1100



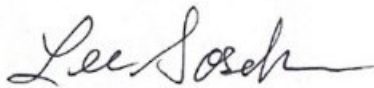
Denver, CO 80202-5149

**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 CDE.

**CONCLUSION**

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

Dated this 14th day of May, 2024.



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Lee Sosebee  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-6**

- Exhibit 1: Parent's Timeline
- Exhibit 2: Attendance Record
- Exhibit 3: Video Timelines
- Exhibit 4: School Layout

### **Response, pages 1-7**

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: PWNs
- Exhibit F: Behavior Logs
- Exhibit G: Attendance Records
- Exhibit H: Progress Reports
- Exhibit I-1: Communications
- Exhibit I-2: Communications
- Exhibit I-3: Communications
- Exhibit I-4: Communications
- Exhibit J: School Calendar
- Exhibit K: District Policies
- Exhibit L: Relevant District and School Staff
- Exhibit M: Verification of Delivery
- Exhibit O: Manifestation Determinations

### **Reply, pages 1-12**

- Exhibit 4: Student Education Records, Notes, Etc.
- Exhibit 5: Student Education Records, Notes, Etc.
- Exhibit 6: Student Education Records, Notes, Etc.
- Exhibit 7: Student Education Records, Notes, Etc.
- Exhibit 8: Student Education Records, Notes, Etc.
- Exhibit 9: Student Education Records, Notes, Etc.
- Exhibit 10: Student Education Records, Notes, Etc.
- Exhibit 11: Parent Copy of Color Sheets
- Exhibit 12: Parent Generated Contact List
- Exhibit 13: Progress Reports

### **Telephone Interviews**

- Director of Special Education: April 15, 2024
- Special Education Coordinator: April 15, 2024
- Principal: April 15, 2024
- Case Manager 1: April 17, 2024
- Case Manager 2: April 17, 2024
- Mental Health Provider: April 17, 2024
- School Psychologist 2: April 17, 2024
- Parent: April 18, 2024