

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 2010: 516**

**Cherry Creek School District #5**

**DECISION**

**INTRODUCTION**

This is a state-level complaint (Complaint) dated 12/02/2010, which was filed on 12/06/2010.

The Complaint was filed by an attorney for The Legal Center for People with Disabilities and Older People (Complainant) on behalf of the parent [Parent] of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

In order to comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA)) and the IDEA<sup>2</sup> and to protect the anonymity of the Complainant, [Parent] and [Parent's] child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be abbreviated as follows and redacted prior to publication:

The Legal Center (The Legal Center) for People with Disabilities, (Complainant);  
[Parent], Parent [Parent];  
[Student], Child of [Parent], [Student];  
[Student's] age of [Age] [Age];  
[Complainant Legal Counsel], Complainant's Legal Counsel [Complainant Legal Counsel];  
[Student's Aunt], [Student's] Aunt [Student's Aunt];  
[Treatment Facility Coordinator], [Treatment Facility] Coordinator [Treatment Facility Coordinator];  
[GAL], [Student's] court appointed Guardian Ad Litem [GAL];  
[DHS Case Worker], Department of Human Services Case Worker [DHS Case Worker];  
[School] Middle School [School];  
[Current School] [Current School];  
Cherry Creek School District #5 (the District);  
[Superintendent], District Superintendent [Superintendent];  
[Assistant Superintendent], District Assistant Superintendent [Assistant Superintendent];

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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 CFR § 300.1, *et seq.*

<sup>2</sup> FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974 to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

[District Special Education Director], District Executive Director of Student Achievement Services [District Special Education Director];  
[Executive Director], District Executive Director of Middle School Education [Executive Director];  
[Principal], [School] Principal [Principal];  
[Assistant Principal], Assistant Principal [Assistant Principal];  
[Administrative Assistant], Administrative Assistant to [Assistant Principal], [Administrative Assistant];  
[Manifestation Coordinator], District Manifestation Coordinator [Manifestation Coordinator]; and  
[District Legal Counsel], District Internal Legal Counsel [District Legal Counsel].

The Complaint consisted of five pages and Exhibits 1-4.

The State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaints process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to those regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO, between the dates of 09/03/2010 and 09/07/2010 is:

Whether the District committed procedural violations of 34 CFR § 300.530(e)(1) and, if so, whether the procedural violations significantly impeded [Parent's] opportunity to participate in the manifestation determination.

On 12/07/2010, the District's [Special Education Director] was notified of Complainant's allegations in a letter which included a complete copy of the Complaint and Exhibits 1 through 4. The District was specifically directed to supply the SCO with:

- A. A written Response fully responding to each of the Complaint allegations; and
- B. Documentation supporting the District's Response, including, but not limited to:
  - 1. The District's policies and procedures, in effect during the relevant time frame, that address manifestation determinations;
  - 2. Any notices or prior written notices provided by the District to the parents consistent with 34 CFR § 300.503 regarding the manifestation determination or expulsion process;
  - 3. Verification of the dates on which the IDEA procedural safeguards notice was provided to [Student's] parent between 12/07/2009 and 12/07/2010, and a copy of the most recent procedural safeguards notice provided;
  - 4. Any other written communications or correspondence between District staff or between the parents and District staff relevant to the manifestation determination process or expulsion process; and
  - 5. Any other documentation that the District deems necessary or useful for the Department to consider in conducting this investigation.

On 12/21/2010, the District's Response (pgs. 1-10), and Exhibits (A through J) were timely received.

On 12/21/2010, the SCO sent Complainant a complete copy of the Response by overnight mail.

On 12/22/2010, Complainant filed a Request for Extension of Time to extend the Reply due date from 01/01/2011 to 01/11/2011.

On 12/23/2010, the SCO entered an Order Extending the Reply due date from 01/03/2011 to 5:00 p.m. on 01/07/2011.

On 01/07/2011, Complainant's 13 page Reply and Exhibits (5 through 7) were timely received.

On 01/07/2011, the SCO sent District's Legal Counsel a complete copy of the Reply and exhibits by U.S. mail.

On 01/12/2011, the SCO closed the Record.

### **[COMPLAINANT'S] COMPLAINT ALLEGATIONS**

Complainant's Complaint contains two allegations which are summarized below:

1. The District's 09/02/2010 letter, notifying [Parent] of [Student's] pending manifestation determination, failed to inform [Parent] of her right to include "relevant members of [Student's] IEP Team" in the manifestation determination process; and
2. [Parent] was denied the opportunity to include relevant members of [Student's] IEP Team in the manifestation determination held on 09/07/2010, in violation of 34 CFR § 300.530(e)(1).<sup>3</sup>

**Summary of Proposed Remedies:** a) [Parent] be afforded the opportunity to provide input concerning the relevant members of the IEP Team; and b) Thereafter, the manifestation determination meeting be reconvened with the relevant members of the IEP Team in order to make a manifestation determination.

### **THE DISTRICT'S RESPONSE**

The District's Response<sup>4</sup> is summarized below:

1. Denied that the District failed to inform [Parent] of her right to include relevant members of [Student's] IEP Team in advance of the 09/07/2010 manifestation determination; and
2. Denied that [Parent] was not given the opportunity to include relevant members of [Student's] IEP Team at the 09/07/2010 manifestation determination.

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<sup>3</sup> Final Regulations implementing the Individuals with Disabilities Education Act at 34 CFR Part 300, *et seq.* Hereafter, the IDEA regulations will be referred to by section number only (e.g., § 300.000).

<sup>4</sup> The District's 10 pg. Response consisted of a cover letter, pgs. 1-2; a 'Position Statement,' renumbered as pgs. 3-8; and a summary 'Request for Information,' renumbered as pgs. 9-10.

## **[COMPLAINANT'S] REPLY**

The relevant portions of [Complainant's] Reply are summarized below:

1. Reiterated that the District failed to inform [Parent] in advance of her right to include relevant members of [Student's] IEP Team in the 09/07/10 manifestation determination meeting; and
2. Reiterated that [Parent] was denied the opportunity to include relevant members of [Student's] IEP Team at the 09/07/2010 manifestation determination.

## **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>5</sup> the SCO makes the following FINDINGS:

### **Factual Background:**

1. At the time of the Complaint, [Student] was [Age] years of age. [Student] had an IEP, having been identified as a child with two physical disabilities (i.e., ADHD and Bi-Polar) as well as a specific learning disability.<sup>6</sup>
2. Presently, [Student] attends [Current School], a private school, although, at the time of the manifestation determination (MD) meeting, [Student] was attending [School].

### **MD Meeting Notice Supplied to [Parent].**

3. It appears that [Superintendent] received notification from the district attorney's office on or about 07/21/2010 that criminal charges had been filed against [Student].<sup>7</sup> Upon receipt of that information, and consistent with District policies on suspension and expulsion of students,<sup>8</sup> on or about 09/01/2010, [Superintendent] elected to implement expulsion review proceedings against [Student].
4. Because [Student] is a child with a disability and consistent with District policies on the disciplining of students with disabilities,<sup>9</sup> [Assistant Principal] contacted [Parent] concerning the need to schedule a MD meeting.
5. There is no dispute that [Assistant Principal] spoke with [Parent] by telephone on 09/02/2010 and again on 09/03/2010. The parties agree that, during the 09/02/2010 telephone conversation, [Assistant Principal] advised [Parent] that, because of the pending criminal charges, a MD meeting needed to be scheduled in order to determine whether [Student's] alleged

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

<sup>6</sup> Exhibit F, pgs. 11 and 13-15.

<sup>7</sup> Exhibit J, pgs. 10 and 33-42.

<sup>8</sup> Exhibit J, pg. 10 and Exhibit A.

<sup>9</sup> Exhibit B and Response.

criminal conduct was a manifestation of [Student's] disability. The parties also agree that on 09/03/2010, [Assistant Principal] again telephoned [Parent] to advise her of the specific date and time of the MD meeting and that he would be hand-delivering a letter confirming the date, time and purpose of the MD meeting.<sup>10</sup>

6. However, the parties provided conflicting information concerning the content of the two telephone conversations. [Assistant Principal] asserted that during both telephone conversations he advised [Parent] that she "had rights in the MD process and that she could bring persons to the meeting to speak on behalf of [Student] or [Parent]."<sup>11</sup> Conversely, [Parent] asserted that [Assistant Principal] did not notify [Parent] that she had the right to bring anyone to the MD meeting to speak on behalf of [Student] or [Parent].<sup>12</sup> [Assistant Principal] also asserted that during the 09/03/2010 telephone conversation, he "advised her of who would be in attendance at the meeting."<sup>13</sup>

7. The parties agree that late in the afternoon on 09/03/2010, [Assistant Principal] hand delivered an envelope to [Parent's] residence and personally handed the envelope to [Student's Aunt]. The parties also agree that the envelope contained a letter from [Assistant Principal] dated 09/02/2010 which confirmed the purpose, date and time of the MD meeting. In his affidavit, [Assistant Principal] suggested, but did not directly state that, in addition to the letter, the envelope contained a copy of the Educational Rights of Parents of Children with Disabilities brochure (hereafter 'Procedural Safeguards Notice').<sup>14</sup> Conversely, [Parent] flatly denied that the envelope contained any attachments.<sup>15</sup>

8. The 09/02/2010 letter which [Assistant Principal] hand delivered to [Parent's] residence on 09/03/2010 provided in relevant part:

We received notification that [Student] has pending [criminal] charges. Because of the potential danger of this type of behavior, and in accordance with the requirements of the [IDEA], a manifestation *hearing* will be held on September 7, 2010 at 12:00 PM in the Main office Conference Room at [School]. The purpose of this *hearing* is to determine whether [Student's] behavior is a manifestation of [Student's] handicapping condition as outlined in [Student's] [IEP]. If [Student's] behavior is not related to [Student's] handicapping condition, the school will request an expulsion review which would be held at the [District].

If the behavior is found to be related to [Student's] handicapping condition, an IEP review will be conducted to determine if any changes in services are needed to assist [Student]. We have enclosed a copy of the [Procedural Safeguards Notice]. . .<sup>16</sup>

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<sup>10</sup> Exhibits C and #5, Affidavits of [Assistant Principal] and [Parent].

<sup>11</sup> Exhibit C, Affidavit of [Assistant Principal].

<sup>12</sup> Exhibit #5, Affidavit of [Parent].

<sup>13</sup> Exhibit C, Affidavit of [Assistant Principal], pg. 2.

<sup>14</sup> Exhibit C, Affidavit of [Assistant Principal] and Exhibit D, pgs. 2-36.

<sup>15</sup> Exhibit #5, Affidavit of [Parent].

<sup>16</sup> Exhibit D, pg. 1(emphasis added). See also Exhibit #3.

The 09/02 letter was signed by [Assistant Principal]. The SCO notes that the letter mischaracterizes the MD as a “hearing” rather than a “meeting.”<sup>17</sup> Nor does the letter indicate the identity (i.e., minimally position or title) of relevant IEP Team members who will be attending the meeting.

9. The District’s relevant policies on the Discipline of Students with Disabilities (Discipline Policies) set forth the District’s MD procedures:

Manifestation Determination

Within 10 school days from the date of the decision to take disciplinary action that will result in a disciplinary change of placement, relevant members of the student’s IEP team, [*as determined by the parent and the LEA*] including the student’s parents, shall review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents, to determine whether the student’s behavior was a manifestation of the student’s disability.<sup>18</sup>

The SCO notes that pivotal language (i.e., the language italicized in brackets, above) is omitted from the District’s MD procedures. The omitted language is the very IDEA regulatory language which [Parent] alleges the District violated in scheduling the MD meeting.

10. Given the credible evidence in the Record, the SCO specifically finds:

- Key language (i.e. “*as determined by the parent and the LEA*”) is omitted from the District’s Discipline Policies on MD procedures to be followed in a MD process;<sup>19</sup>
- The District’s Discipline Policies on MD procedures are defective;
- [Assistant Principal’s] job duties included overseeing special education procedures required by the IDEA for in-building MD meetings.<sup>20</sup>
- In conjunction with his duties, it is more likely than not that [Assistant Principal] relied on the District’s defective Discipline Policies on MD procedures when communicating with [Parent] about the MD meeting;
- In relying on the District’s defective MD procedures, it is more likely than not that [Assistant Principal] did not verbally advise [Parent] on either 09/02/2010 or 09/03/2010 of the District or [School] staff who would be attending the MD meeting;
- The 09/02/2010 letter constituted a MD meeting notice;
- The 09/02/2010 letter did not advise [Parent] of the District or [School] IEP Team members who would be attending the MD meeting;

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<sup>17</sup> Id. See also Exhibit #3 which notified [Parent] of the MD using ‘hearing’ and ‘hearing officer’ language.

<sup>18</sup> Exhibit B, pg. 1 (emphasis added).

<sup>19</sup> Id.

<sup>20</sup> Exhibit C, Affidavit of [Assistant Principal].

- The 09/02/2010 letter did not notify [Parent] of her right to invite “relevant members of [Student’s] IEP Team”;
- It is more likely than not that the 09/02/2010 letter did not include a copy of the Procedural Safeguards Notice;
- Even if the Procedural Safeguards Notice had been enclosed with the letter, this would not have supplied [Parent] with notice concerning the IEP Team members from the District or [School] who would be attending the MD meeting; and
- Because [Parent] did not have notice as to which IEP Team members from the [School] or District would be attending the meeting, she could not make an informed decision as to other relevant IEP Team members who should attend the MD meeting.

**Participants at the MD meeting.**

11. There is no dispute that the following persons attended the 09/07/2010 MD meeting: [Manifestation Coordinator]; [Principal]; [Assistant Principal]; [Special Education Teacher]; [School Counselor]; [Student]; [Parent]; [Student’s Aunt]; [GAL]; [Treatment Facility Coordinator]; and [DHS Case Worker].<sup>21</sup>

12. The parties agree that [Parent] invited [Student’s Aunt] to the MD meeting. [Parent] claims that [Student’s Aunt] attended the meeting merely to provide personal support to [Parent] and [Student] and not for the purpose of participating in the meeting.<sup>22</sup> The District claims that the fact that [Student’s Aunt] attended the meeting is evidence that [Parent] knew she could invite persons to speak on behalf of [Student].<sup>23</sup>

13. There is conflicting information concerning three other persons who attended the 09/07/2010 MD meeting (i.e., [GAL], [Treatment Facility Coordinator] and [DHS Case Worker]):

- [Parent] flatly denies that she invited [GAL], [Treatment Facility Coordinator] or [DHS Case Worker] to the MD meeting.<sup>24</sup> Additionally, [Treatment Facility Coordinator] stated that she was informed of the MD meeting by [DHS Case Worker] and attended the meeting on behalf of the Treatment Facility.<sup>25</sup>
- [Assistant Principal] denied that he invited [Treatment Facility Coordinator] to the meeting but admitted that, at some date prior to the 09/07/2010 meeting, [GAL] and [DHS Case Worker] had contacted either [School] or [Assistant Principal] inquiring about the date and time of the meeting.<sup>26</sup>

14. Given the credible information in the Record, the SCO finds:

<sup>21</sup> Exhibits #2 and G, Affidavit of [Manifestation Coordinator].

<sup>22</sup> Exhibits #5, Affidavit of [Parent] and #6, Affidavit of [Student’s Aunt].

<sup>23</sup> Response, pg. 6.

<sup>24</sup> Exhibit 5, Affidavit of [Parent], Complaint and Reply.

<sup>25</sup> Exhibit 7, Affidavit of [Treatment Facility Coordinator].

<sup>26</sup> Exhibit C, Affidavit of [Assistant Principal].

- [Student’s Aunt] attended the 09/07/2010 MD meeting for the purpose of supplying emotional support to [Parent] and [Student] and not for the purpose of providing IEP Team input;
- The [GAL], [DHS Case Worker] and [Treatment Facility Coordinator] are court appointed personnel and [Parent] did not ask these three persons to attend the 09/07/2010 MD meeting;
- It was only when [Parent] arrived at the MD meeting that she first learned the identity of the IEP Team participants attending the meeting;
- As the MD meeting progressed, [Parent] realized that other persons (i.e., [Student’s Psychiatrist], [Student’s Therapist] and [Family Therapist]) should be present at the meeting to supply relevant information concerning [Student’s] disability;<sup>27</sup>
- During the MD meeting, [GAL] noted that [Student] had recently been evaluated by [Family Therapist] at the behest of the court and this person might have additional information;<sup>28</sup>
- During the MD meeting, [GAL] attempted unsuccessfully to reach [Family Therapist] by telephone;<sup>29</sup>
- As a result of the MD meeting, [Parent] was mailed a letter dated 09/09/2010 which advised that “the *hearing officer* at this meeting determined that the behavior of concern *was not* a manifestation of [Student’s] handicapping condition” and, as a result, an expulsion review hearing was scheduled for 09/13/2010;<sup>30</sup> and
- As a result of the 09/13/2010 expulsion hearing, [Superintendent] sent [Parent] a letter dated 09/22/2010 advising that [Student] had been expelled for one calendar year, until 09/20/2011.<sup>31</sup>

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact (FFs), the SCO enters the following CONCLUSIONS OF LAW:

#### **Allegation #1 – The MD Meeting Notice Supplied to [Parent].**

1. Under the IDEA, *a child with a disability* receiving special education and related services under an IEP *and the child’s parent* are entitled to specific procedural protections in conjunction with District disciplinary actions brought against the child for violation of a code of student conduct. §§ 300.530 through 300.536.

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<sup>27</sup> Complaint, pg. 4 and Affidavit of [Parent’s].

<sup>28</sup> Exhibit G, Affidavit of [Manifestation Coordinator]; and Exhibit #5, [Affidavit of Parent].

<sup>29</sup> Id.

<sup>30</sup> Exhibit I, pg. 1 (emphasis added). The SCO notes that at Pg. 2 of Exhibit I was a conflicting District form letter addressed to ‘Dear Parent’ which advised that the MD was made by “the IEP team with your input.” See also MD Meeting Agenda, Exhibit 2.

<sup>31</sup> Exhibit J, pg. 2.



2. Prior to suspending or expelling a child with a disability for more than 10 school days, the District must adhere to strict discipline procedures to first determine whether the child's conduct which violated the code of conduct was a manifestation of the child's disability. The relevant portion of the IDEA regulation concerning discipline procedures provides:

...

Manifestation determination.

(1) *Within 10 school days* of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, *the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--*

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

Section 300.530(e)(1) through (3) (emphasis added).

3. The District argues that as a result of the two telephone calls, (i.e., on 09/02/2010 and 09/03/2010) [Parent] was twice supplied verbal notice of her right to have people present at the MD meeting "who could speak on behalf of [Student]." Further, that the Procedural Safeguards Notice, contained in the 09/02/2010 letter, supplied [Parent] with written notice of this right.<sup>32</sup>

4. The SCO is not persuaded by the District's arguments. The District's Discipline Policies concerning MD procedures omitted pivotal language (i.e., "as determined by the parent and the LEA"). (FF # 9). [Assistant Principal] relied on the District's defective MD procedures when he communicated with [Parent] (both verbally and in writing) to schedule the MD meeting. (FF #10).

5. [Assistant Principal's] 09/02/2010 letter constituted a MD meeting notice. (Finding of Fact (FF) #s 7-8 and 10). [Assistant Principal's] verbal and written communications to [Parent] concerning the 09/07/2010 MD meeting failed to inform [Parent] of the relevant members of [Student's] IEP Team whom the [District] and [School] would have at the MD meeting. (FF #10). Nor did the 09/02/2010 meeting notice include a copy of the Procedural Safeguards Notice. (FF #10). Furthermore, even if [Parent] had been supplied with a copy of the Procedural

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<sup>32</sup> Response, pg. 8.

Safeguards Notice, this would not have informed [Parent] of relevant members of the IEP Team that [School] or the District would have at the meeting. (FF # 10).

6. Neither [Assistant Principal's] verbal communications nor the District's meeting notice complied with § 300.530(e) and this constituted a procedural violation of the IDEA. Because [Parent] did not know the relevant IEP Team members whom the District and [School] would have at the MD meeting, it follows that she could not make an informed decision concerning other relevant IEP Team members whom she should bring to the meeting to supply information concerning [Student's] disability. (FF #10). Consequently, the District's procedural violation significantly impeded [Parent's] opportunity to participate in the MD meeting.

7. The MD process is a collaborative meeting of district staff, the parent, and relevant members of the student's IEP team who meet to:

... analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. . . . [A] child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability.

Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. pg. 46720 (August 14, 2006). The MD meeting is not an adversarial hearing process where the district and the parent present witnesses to a hearing officer in support of their respective positions. The District's policies, which refer to the MD meeting as "hearing," demonstrate a fundamental misunderstanding of § 300.530(e). [Assistant Principal's] comment that [Parent] "could bring persons to the meeting to speak on behalf of [Student] or [Parent]" (FF #6) and the District's 09/02/2010 letter to [Parent] stating that "the hearing officer at this meeting determined that the behavior of concern was not a manifestation of [Student's] handicapping condition . . ." (FF #14) reflect the District's noncompliant misunderstanding of § 300.530(e).

8. Having sustained the first Complaint allegation, the SCO need not reach the second Complaint allegation.

### **REMEDIES**

The District violated the IDEA requirements concerning manifestation determinations at 34 CFR § 300.530(e).

To remedy this violation, the District is ordered to take the following actions:

- 1) Consistent with 34 CFR § 300.530(e) and this Decision, the District shall:
  - a) Within **two business days** after the receipt of this Decision, i) contact [Complainant's Legal Counsel] to determine relevant members of [Student's] IEP Team (as determined by [Parent] and the District) who need to attend the meeting (either in person or by telephone); and ii)

Schedule a MD meeting on a mutually agreeable date and time within 10 school days of the date of this Decision;

- b) **By 02/04/2011**, reconvene a MD meeting with the District, [Parent] and relevant members of [Student's] IEP Team and ensure the District, [Parent] and relevant IEP Team members review all relevant information to determine whether i) [Student's] conduct was caused by, or had a direct and substantial relationship to [Student's] disabilities; or ii) If [Student's] conduct was the direct result of the District's failure to implement the IEP.
- 2) **No later than 02/09/2011**, submit to the Department documentation that the MD meeting occurred, including copies of the MD meeting notice(s), prior written notice(s), meeting notes and the resulting manifestation determination. The documentation must be fully compliant with the IDEA and this Decision.
- 3) **No later than 02/24/2011**, submit to the Department a corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must, at a minimum, provide for the following:
- a) **By 03/11/2011**, submission of all revised District written policies, procedures, forms, notices and website information, consistent with the IDEA and this Decision.
  - b) **By 03/01/2011**, submission of the name and title of all proposed trainers and a complete copy of all proposed MD training materials consistent with the IDEA and this Decision.
  - c) **By 04/25/2011**, conduct staff training of the MD processes, policies and procedures consistent with the IDEA and this Decision. The District's training shall include the following staff:
    - i) All building level administrators (i.e., principals and assistant principals) at every school within the District;
    - ii) All District level special education administrators (i.e., directors, assistant directors, coordinators, facilitators, etc.); and
    - iii) All other individuals who are or may be responsible for implementing the District's MD policies or procedures or facilitating MD meetings.
  - d) **By 05/05/2011**, submission of evidence that such training has occurred (i.e., complete copies of training schedule(s), agenda(s), curriculum/training materials, the name and title of each trainer, and legible attendee sign-in sheets which include each attendee's job title and school).

Please submit the CAP and all other documentation detailed above to the Department as follows:

Colorado Department of Education  
Exceptional Student Leadership Unit  
Attn.: Joyce Thiessen-Barrett, Senior Consultant  
1560 Broadway, Suite 1175  
Denver, CO 80202-5149

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

The enclosed sample template provides suggested formats for the CAP and includes sections for “improvement activities” and “evidence of implementation of change.”

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 24th day of January, 2011.

*Jeanine M. Pow*

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Jeanine M. Pow, Esq.  
State Complaints Officer

**Appendix A**  
**2010:516 Record**

**[Complainant's] Complaint, pgs. 1 through 5;**

Exhibit 1 09/02/2010 Letter to [Parent] from [Assistant Principal]

Exhibit 2 09/07/2010 Manifestation Determination (MD) Meeting Agenda

Exhibit 3 09/09/2010 Letter to [Parent] from [Principal]

Exhibit 4 Undated form letter from [District Manifestation Coordinator]

**District's Response, pgs. 1-8;**

Exhibit A [District] Policy: JKD-1, Suspension or Expulsion of Students, pgs. 1-3

Exhibit B [District] Policy: JKD-2, Discipline of Students with Disabilities, pgs. 1-5;  
Expulsion Review Process – Hearing Review Checklist, pgs. 6-7;  
Expulsion Review Process - Due Process Checklist, pgs. 8-9; and  
Expulsion Review Process Sample Letters, pgs. 10-14.

Exhibit C Affidavit of [Assistant Principal], pgs. 1-4

Exhibit D 09/02/2010 Letter to [Parent] from [Assistant Principal], pg. 1  
Procedural Safeguards Notice, pgs. 2-36

Exhibit E Affidavit of [Administrative Assistant], pgs. 1-2

Exhibit F [Student's] 04/16/2010 IEP, pgs. 1-21

Exhibit G Affidavit of [District Manifestation Coordinator], pgs. 1-3

Exhibit H 10/22/2010 Notice of Meeting, pgs. 1-2  
04/13/2010 Notice of Meeting, pgs. 3-4

Exhibit I 09/09/2010 Letter to [Parent] from [Former Principal], pg. 1; and  
Undated form letter from [District Manifestation Coordinator], pg. 2

Exhibit J 09/22/2010 Letter to [Parent] from [Executive Director], pg. 1;  
09/22/2010 Letter to [Parent] from [Superintendent], pgs. 2-3;  
09/20/2010 [Hearing Officer's] Findings of Fact & Recommendation, pgs. 4-5;  
09/21/2010 Memo to [Assistant Superintendent] from [Executive Director], pg. 6;  
and  
Expulsion Packet, pgs. 7-52.

**[Complainant's] Reply, pgs. 1 through 13;**

Exhibit 5 Affidavit of [Parent];

Exhibit 6 Affidavit of [Aunt]; and

Exhibit 7 Affidavit of [Savio House Coordinator].