

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

State-Level Complaint 2018:505
Denver Public School District

DECISION

INTRODUCTION

This state-level complaint (Complaint) was properly filed on February 6, 2018, by the mother (Mother) of a student (Student) who attends school in the Denver Public School District (School District). Student is currently identified as an eligible child with a disability under the Individuals with Disabilities Education Act.¹

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified five allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.²

COMPLAINT ALLEGATIONS

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

1. By failing to follow IDEA's disciplinary procedures when it changed Student's placement on or about January 29, 2018;
2. By failing to implement Student's IEP, including failing to provide accommodations and failing to follow the Student's plan pertaining to behavior;
3. By failing to conduct a comprehensive evaluation, specifically in the area of social emotional needs;
4. By failing to review, revise and develop an appropriate IEP to meet Student's needs including but not limited to addressing concerns around Student's behavior;

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

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

5. By failing to provide Parent meaningful participation in the IEP meeting held December 20, 2018, including failing to provide evaluations prior to the IEP meeting and voting on different aspects of the IEP.

FINDINGS OF FACT

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

2016-2017 School Year

1. At all times relevant to the Complaint, Student has lived with Mother. Student is currently a kindergartner and at the time of the filing of this Complaint was enrolled at School.⁴ Student qualifies for special education and related services.
2. Based on the record and report from School staff, Student has exhibited significant behaviors, including throwing, hitting, kicking, spitting, cursing and eloping, that have impacted his access to the academic environment and the safety of the school environment since the beginning of the 2016-2017 school year when he was attending Neighborhood School.⁵
3. While at Neighborhood School, Student was evaluated for eligibility for special education services. According to Mother and Advocate, Student was determined eligible with a Significant Emotional Disability (SED). Mother reports that she disagreed with that determination and reached out to School District regarding her concerns. School District and Mother reached an agreement in which Student would transfer to a school believed better equipped to meet Student's needs, the documentation relating to the referral for special education and subsequent evaluation and eligibility determination would be removed from Student's record and School would initiate the special education process again.⁶
4. Student's transfer to School occurred after the 2016 Thanksgiving break. It is unclear the dates Student actually attended during the month of November and December because at some point, according to Mother and School staff, Mother agreed to keep Student home until he was privately evaluated.⁷ Upon receipt of

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

⁴ School is a fully inclusive charter school with Transdisciplinary teaching teams in its second year of existence.

⁵ The SCO did not conduct any investigation as it pertained to Student's time at Neighborhood School. Interviews with Principal, Assistant Principal and Case Manager. Exhibit G.

⁶ Interview Mother, Assistant Principal and Advocate.

⁷ The exact dates are not relevant to this investigation and the information is only provided for background as the Student records do not reflect what was reported by witnesses.

the evaluation towards the end of January/early part of February, Student returned to School.

5. Case Manager and Assistant Principal report that as soon as Student began attending, he began exhibiting significant behaviors including cussing, spitting, eloping and throwing things.⁸
6. On February 10, 2017, School convened a meeting to discuss Student and his educational needs. At that time, School initiated the referral to begin the evaluation process to determine Student's eligibility for special education services. The basis for the referral stated "[Student] has shown the need for additional support in order to access his educational environment. Some strategies that were attempted were visual schedules, breaks, first/then, clear expectations, visual supports, brief language, making a plan, and specific adult support." The areas of concern included impulsivity, short attention span and defiant behavior which included knocking things off shelves, throwing items, striking, spitting and inappropriate touch towards adults.⁹ Mother signed the consent that same day.
7. In late February, School and Mom agreed to retain Student and move him back to preschool due to concerns that the demands of kindergarten were aggravating Student's behavior and he was behind in school readiness.¹⁰
8. On April 4, 2017, School issued the Evaluation Report (April 2017 Evaluation). The report consisted of the following evaluations:
 - a) A vision screening;
 - b) A hearing screening;
 - c) In the area of General Intelligence Assessments-
 - i) A Kaufman Assessment Battery for Children -Second Edition (KABC-2) performed by School Psychologist;
 - ii) Formal observations: peer to peer comparison on two occasions in the classroom;
 - d) In the area of Communicative Status Assessments-
 - i) Preschool Language Scales Fifth Edition (PLS 5) evaluated by SLP 1;
 - ii) Pragmatic Language Skills Inventory (PLSI) evaluated by SLP 1;
 - iii) Informal Observation on March 8, 2017 and Informal Language Sample collected by SLP 1;

⁸ Exhibit F; Interview with General Education Teacher, Case Manager and Assistant Principal.

⁹ Exhibit B.

¹⁰ Student was also young for Kindergarten. Specifically, School staff was concerned with the increased number of transitions, the higher demands and the added structure. What is notable is that Student had already attended two years of preschool. Interviews with Principal, Assistant Principal, Case Manager, Advocate and Mother; Exhibit O.

- iv) Colorado K-12 Speech or Language Impairment Guidelines for Assessment and Eligibility evaluated by SLP 1;
- e) In the area of Academic Performance Assessments
 - i) The WIAT II evaluated by Special Education Teacher 1;
 - ii) Classroom observations evaluated by Special Education Teacher;
- f) In the area of Social and Emotional Assessments-
 - i) BASC-3 completed by Mother and Pre-school General Education Teacher. SCO notes that only Mother's scores were included and ultimately considered in the evaluation;¹¹
 - ii) classroom/recess observation evaluated by Social Worker 1;
- g) Health Assessments-
 - i) Parent Interview evaluated by Nurse 1;
- h) Motor Assessments-
 - i) The Wide Range Assessment of Visual-Motor Abilities (WRAVMA) evaluated by OT Provider 1;
 - ii) Observation/Staff feedback evaluated by OT Provider 1;
 - iii) Informal Motor evaluated by OT Provider 1.¹²

9. The evaluation report summary noted:

Student's behavior does appear to be significantly impacting his ability to access the general education setting. Student would continue to benefit from on-going adaptive and social emotional supports to support his learning and social interactions.... Using the Colorado speech or language impairment guidelines, Student's receptive and expressive language skills are judged to be moderately impacted, and his pragmatic language skills are judged to be severely impacted at school...¹³

10. A meeting was convened on April 5, 2017 to discuss the report and determine eligibility. After reviewing the data, Student was determined eligible for special education services under the disability categories of Other Health Impairment and Speech or Language Impairment. School convened an IEP meeting immediately following the determination to discuss Student's goals and the provision of special education services. While the IEP team reviewed all the components of the IEP at the April 5, 2017 meeting, the IEP was not finalized until May 19, 2017. According to School staff, Advocate and Mother, it was not immediately finalized because School agreed to make revisions to the IEP as requested and recommended by Mother and Advocate.¹⁴

¹¹ Exhibit B.

¹² *Id.*

¹³ *Id.*

¹⁴ The SCO notes Mother signed the initial consent for service on April 5th, 2017 and School began providing services at that time. Exhibit L. Interview Mother, Advocate and Assistant Principal.

11. The April 2017 IEP's Student Needs and Impact of Disability Statement notes concerns in the area of communication, limitation in the area of fine motor skills, mathematics skills, reading skills and social/emotional functioning and limited social skills.¹⁵ Seven goals were developed for Student: two in the area of communication, one in the area of mathematics, one in the area of reading and three in the area of social/emotional wellness. The Least Restrictive Environment (LRE) was determined to be at least 80% of the time in the general education classroom.¹⁶
12. The Service Delivery Statement stated that starting April 6, 2017, the following would be provided:
- Specialized Instruction in speech/language (SPL) 120 minutes/month direct services in the general education classroom;
 - Occupational therapy (OT) 120 minutes/month direct services outside the general education classroom;
 - Psychological services 120 minutes/month direct services outside the general education classroom;
 - Psychological services 60 minutes/month indirect inside the general education classroom;
 - Specialize instruction-literacy 100 minutes/week direct inside the general education classroom;
 - Specialized instruction-literacy 60 minutes/month indirect outside the general education classroom;
 - Specialized instruction-math 80 minutes/month direct services inside the general education classroom;
 - Specialized instruction-math 30 minutes/month indirect services outside the general education classroom;
 - Specialized instruction -other 60 minutes/week direct services outside the general education classroom.¹⁷
13. The April 2017 IEP provided the following accommodations: verbal scripts and adult facilitation for social situations, frequent breaks, visual schedule if needed, clearly portrayed expectations, simple/less language when possible, gestural cues, choices, social skills coaching, multi-sensory strategies to engage and visual timers.¹⁸

¹⁵ Exhibit A.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

14. The IEP also included a behavioral intervention plan (April 2017 BIP) and corresponding Crisis Intervention Plan.¹⁹ The data relied on to develop the April 2017 BIP included formal and informal observation, frequency counts, peer observations, data sheets for frequency and intensity.²⁰ The problem behavior is described as “[Student] will display unsafe behavior (striking with fist, feet, objects, spitting, swearing) when prompted to follow classroom routines and when redirected to obtain power and control.” The progress monitoring section provides “[Student] will be monitored daily by his teacher, special educator, and support staff. The goal is for [Student] to decrease problem behaviors and increase his participation in the classroom.”²¹ Additionally, the Crisis Plan, dated January 18, 2017, provided that after 10 minutes of severe problem behaviors, School would call and inform Mother, after 20 minutes School would call and request Mother to pick up Student and if Mother was not available, School would call DPS safety and security.²²
15. The SCO finds that School did not develop an appropriate BIP as part of the April 2017 IEP. Specifically, the SCO finds that the BIP did not identify the baseline measure of targeted behavior, measurable desired levels of performance, alternative behaviors or measurable criterion for success. Additionally, the April 2017 BIP did not identify the method for progress monitoring.²³
16. By all accounts, including Mother’s, while Student continued exhibiting concerning behaviors throughout the rest of the school year including physical aggression, verbal aggression and eloping, overall Student was able to be redirected upon escalation and the intensity of the behaviors was significantly less. School Psychologist and School Case Manager opined that Student benefitted from preschools very low demands, he could decide between a “free” choice activity or a station activity, staff would often accommodate what he wanted, he was loaded with praise and he got to play more frequently.²⁴ The SCO finds that during the Winter/Spring of 2017, there is insufficient evidence that School collected meaningful progress monitoring data, including Student’s responses to intervention and accommodations. Specifically, there were no progress reports, data or any other documentation to show Student’s behaviors and responses to interventions.

¹⁹ There also was a corresponding April 2017 Health Plan.

²⁰ Exhibit A.

²¹ *Id.*

²² *Id.*

²³ There is no documentation that an FBA was done though School Psychologist reports one was done. Regardless, the resulting BIP was not appropriately detailed to address Student’s behavior.

²⁴ Exhibit M, P and 3; Interview with School Psychologist, Case Manager, Mother and Assistant Principal.

2017-2018 School Year

17. On August 21, 2017, the first day of kindergarten, Student exhibited significant behaviors, similar to what was reported the previous year.²⁵ General Education Teacher reported that he was pushing kids, throwing things across the classroom, using profanities, refusal, exhibiting inappropriate behavior in the bathroom, and being unsafe during movement breaks.²⁶ Due to the intensity of the behaviors, Assistant Principal called Mother to inform her and have her pick up Student.²⁷
18. On August 23, 2017, Assistant Principal notified District Coordinator that Student's team, Mother and her advocate were meeting to discuss Student's behaviors and his transition back to School. In the Assistant Principal words, Student's "behavior has been pretty intense."²⁸ The following day, School convened the meeting and developed Student's escalation cycle management plan (August 2017 Escalation Plan).²⁹ This plan provided that if Student was exhibiting severe problem behaviors for 45 minutes, School would call and inform Mother that Student was escalated. Additionally, it listed all of the accommodations from the April 2017 IEP.³⁰
19. On August 25, 2017, School District arranged for District Support Partner to observe Student at School. District Support Partner observed Student in two classrooms and during recess. Behaviors she observed and documented included running from the classroom, the use of inappropriate language, hiding behind objects, knocking over, throwing and destroying classroom materials, attempting to trip staff, climbing on window sill, noncompliance, and pouring water over self.³¹ It is unclear what if anything was done with that observation at the time.

²⁵ Exhibit F; Interview Mother, Advocate, Case Manager, General Education Teacher, Assistant Principal.

²⁶ *Id.*

²⁷ This corresponded to the Crisis Plan.

²⁸ Exhibit F. Interview Mother, Assistant Principal and Case Manager.

²⁹ SCO notes the document identifies dates the current IEP as May 5, 2017 which date does not correspond to any of the records or interviews. This is plan is also referred to by School Staff as the crisis plan.

³⁰ All parties reported that when Student's behavior was escalated, a School staff member would call Mother or Grandmother. This practice is captured in the Crisis Intervention Plan dated January 8, 2017 but included with the April 5, 2017 BIP. The SCO notes that while there were a number of times Mother chose to pick up Student, the Crisis Plan also required Mother to pick up Student if escalation last a certain amount of time.

³¹ Exhibit F.

20. In response to Student's increased behaviors, School staff began documenting Student's behaviors on August 31, 2017. The data categories included the concerning behaviors, the possible function of the behavior, the academic concerns, the time on task and possible interventions. It did not, however, include antecedent behavior. Case manager was primarily in charge of compiling the data in what they titled "dashboards." The dashboard was compiled of data collected over the span of a week and was numbered. For example, dashboard 1 corresponded to data collection for the time period August 31, 2017 to September 6, 2017. The behaviors documented for this period were 100-150 cursing per day, 25-35 aggressions towards adults and peers per day, eloping 5-10 per day. Dashboard 2 from September 6-September 19-documented that Student exhibited the following behaviors 75-100 cursing per day, inappropriate touching 3-5 per day, aggression 20-50 per day.³²
21. During the month of September, Student continued to exhibit significant behaviors. Case Manager and Assistant Principal report that the team met frequently to discuss Student and how best to support him. Early in September, Case Manager reached out to General Education Teacher to get school work in advance for Student so that he could pre-learn some of the material in hopes of preventing behaviors. Additionally, Assistant Principal attempted to do some individual work with Student and a peer to work on relationship building, recognize success and build good habits. Despite these efforts, Student spent very little time in the general education classroom. The dashboards documented Student's time on task as less than 5 minutes but in some unique situations or with a preferred adult his time on task could be up to 10 minutes. Principal and Assistant Principal report that in addition to the School team meetings, there was frequent communication with Mother in order to keep her informed regarding the interventions they were using, the challenges they were facing and to figure out ways to address the behavioral concerns. However, the SCO notes that during this time, Student was tardy 8 times and absent one day, exacerbating Student's difficulties and negatively impacting Student's transition into a more demanding setting.³³

³² Exhibit F and M; Interview with Mother, Advocate, Assistant Principal and Case Manager. Examples of Student's cursing include "fuck you, fuck off, stop you fucking bitch." Examples of his aggression include punching, sitting and pushing peers and kicking a parent. Eloping examples include leaving classroom and locking himself in a bathroom stall, roaming the halls, running to the stairs and refusing to return to the classroom. Inappropriate touch include pulling his boxers down, punching adults privates, trying to or grabbing women's breasts.

³³ Exhibit F; Interview Case Manager, Mother, Advocate, Assistant Principal, General Education Teacher, and Principal. While kindergarten is still very play based, as noted in the 2016-2017 school year, Student's behaviors were triggered in some ways by added demands and expectations.

22. On October 2, 2017, School Psychologist conducted an FBA (October 2017 FBA). Behavioral observations were the only source of information listed forming the basis of the FBA. School Psychologist reports that both she and Case Manager conducted the observations, however there are no dates for when the observations were conducted, where they were conducted nor information identifying who conducted the observations.³⁴ The FBA lists two targeted behaviors.
- The first behavior described is as follows “[w]hen [Student] becomes upset or doesn’t want to do work, he runs out of the classroom and refuses redirection from adults.” The early onset of behavior occurs “[w]hen academic demand happens, he will refuse to work, will sometimes crawl under the table and refuse redirection...” It states that it occurs most “[d]aily throughout the day.” And occurs least [w]hen he is not challenged by academic expectations or problem solving situations. During preferred tasks.”³⁵
 - The second behavior is described as follows “[Student] will kick, hit or spit at adults and students when he becomes upset. He will strike with hands, feet, or objects. He will also attempt to touch the private parts of adults and laugh as he uses slurs to say “I touched your ____.”” The early onset of the behavior is described as “[Student] will become angry when given a directive. He will curse at adults and other students and resist leaving the classroom with the adult.” The “trigger” includes academic demands and non-preferred tasks. It provides that it occurs most “daily, throughout the day.” And occurs least “[w]hen he is engaged in an activity that he wants to do that is non-academic.”
23. Additionally, the October 2017 FBA lists the accommodations and/or interventions that have been tried which include removing from the classroom, redirecting from the classroom, using multiple adults to keep him safe, giving cool down time before reentering classroom, singing the ABC song, giving choice to go to the cozy corner. There are no data points to demonstrate the effectiveness of the interventions and or accommodations.
24. The SCO finds the October 2017 FBA was not sufficiently comprehensive or detailed to identify the function or purpose of Student’s behavior. First, the October 2017 FBA relied on only one source of information and failed to incorporate data from other sources of information. As for the behavioral observations noted, the SCO finds that it is unclear when the observations occurred, by whom and over what days. Furthermore, the FBA does not specify the frequency and duration in a meaningful way. One example, where the

³⁴ Exhibit B.

³⁵ Exhibit B, page 25.

behavior is listed “hitting, kicking, spitting, cursing, inappropriate touching,” the frequency listed is multiple times daily and the duration is 30-120 minutes. It is unclear if the Student is engaging in all of these activities for up to 120 minutes or one of these activities for this amount of time. Additionally, the SCO finds that if the data School Psychologist relied on, was the significant amounts of frequency data collected since the beginning of September captured in the dashboards, the data was insufficient to develop a working hypothesis as to the function of the behavior. Specifically, School documented frequency and to a certain extent duration of the behaviors but does not document with any specificity the setting event, the antecedent data or the consequence data. Additionally, the FBA groups a number of behaviors that are separated in other documents e.g. hitting, kicking, spitting, cursing, inappropriate touching. In the dashboards, those behaviors fall into three separate categories, i.e. physical aggression, sexualized behavior and verbal aggression.”³⁶

25. Furthermore, the SCO finds the description of the behaviors is not adequately defined in specific, observable and measurable terms. One example is the form states “Occurs Most” and the answer listed is “daily throughout the day.” Another example is “‘Trigger’ to Behavior” and it states “Academic demands, non-preferred tasks.” It does not specify the type of academic demands e.g. is it math, reading, when directions are given, when he is asked to do work on his own, etc. The FBA raises more questions than it answers. Lastly, the SCO finds that the FBA does not reference any measurable data points when looking at the effectiveness of previous accommodations or interventions.³⁷ The SCO finds that the accommodations listed in the FBA do not include the accommodations in the April 2017 IEP or the August 2017 Escalation Plan. Lastly, the SCO finds that School did not obtain Mother’s consent for the evaluation.
26. On October 5, 2017, School conducted a meeting to address the behavioral concerns. The outcome of that meeting was the drafting of an IEP Amendment (October Amendment) in which the School and Parent’s wrote their agreement that Student would have a 1:1 paraprofessional, there would be an updated crisis plan and DPS would implement School District LRE action plan. Additionally, the parties agreed that a reevaluation would be conducted as the April 2017 IEP is not reflective of Student’s needs.³⁸ Mother signed the Consent for Reevaluation (Consent) that same day. The SCO finds that School did not revise nor discuss revising the Behavioral Intervention Plan after completion of the updated FBA.

³⁶ Exhibit F. Interview Mother, Case Manager, Advocate and Assistant Principal.

³⁷ Exhibit B.

³⁸ Exhibit A.

27. The Consent identified general intelligence, communicative status, academic performance, social and emotional status, health and motor abilities as the areas to be evaluated. The Consent provided that School will “review prior records, do classroom observations and do any new and appropriate testing to build the best explanation of [Student] as a learner.”³⁹
28. At this time, given the heightened concerns regarding Student’s behavior and Mother’s frustration, District Coordinator reached out to Mother and School team via e-mail to begin scheduling weekly meetings to discuss data and instructional supports. Additionally, Mother reported that the intention was to also discuss progress monitoring information. In addition to the School team, District Coordinator requested additional family support from the District Family Liaison. The first meeting was scheduled for October 24, 2017.⁴⁰
29. Despite School’s efforts, Mother reports that School called her almost daily regarding Student’s behaviors. She reports that she was frustrated with their inability to handle Student’s behaviors and was concerned about his loss of academic time. Mother acknowledges having frequent contact with School regarding Student’s behavior.⁴¹
30. On October 12, 2017, Student was suspended due to slamming a door on Case Manager’s finger while Student was escalated. He was suspended for two days. Upon completion of the suspension, Mother continued to keep Student out of School through November 17, 2017. Thanksgiving Break was November 20th, 2017 through November 24, 2017. Student returned on November 28th. The SCO finds that Student’s significant absences deprived School the opportunity to consistently implement the April 2017 IEP.⁴²
31. The SCO finds that while School implemented many of the accommodations listed in the April 2017 IEP, School failed to document Student’s response to these interventions and accommodations to determine what was working and was not working. In fact, Student’s behavior seemed to be escalating as the school year went on yet the same accommodations and interventions were being utilized. As for the special education services including speech/language, occupational services and mental health services, the SCO finds it is difficult to assess School’s compliance as Student’s absences, tardies and behaviors all impacted Student’s availability to receive these services. In fact, there was only one month, the month of September, in which Student attended the majority of the days. During that month, the Speech/Language Provider saw

³⁹ Exhibit E.

⁴⁰ Exhibit F. Interview Mother and District Coordinator.

⁴¹ Interview Mother, Advocate, Assistant Principal and Case Manager.

⁴² Exhibit F and G. Interview with Mother, Assistant Principal, Principal and Case Manager.

Student for 90 out of the 120 minutes, the School Psychologist provided 150 minutes out of the 120 minutes,⁴³ and the Occupational Therapist provided 75 minutes out of the 120 minutes listed.⁴⁴

32. Additionally, during time period, School made efforts to schedule the reevaluation but were unsuccessful.⁴⁵
33. Upon Student's return to School in November, Case Manager received coaching/assistance from District Behavior Technician. She was there for the month of December to provide assistance regarding data collection. She reports that she mainly provided assistance to the providers but during her time she was able to conduct one peer and one anecdotal observation. The first one—the peer observation, Student was having a great day. Behavior Technician stated that she “was not sure what she was supposed to do” because he was doing so well.⁴⁶ She did not provide any guidance on progress monitoring. These more positive observations when Student is complying are notably missing from the data collected except for the minimal on task behavior.⁴⁷
34. The Reevaluation Meeting was ultimately held on December 20, 2017. As the Evaluation Report was completed the same day the Reevaluation was convened, the SCO finds that Mother was not provided a copy of the report a reasonable time prior to the December 20, 2017 meeting. However, the SCO also finds that School continued the meeting upon Mother's request to allow for Advocate to be present and provided Mother the opportunity to review the evaluation report.⁴⁸
35. The December 20, 2017 Evaluation Report consisted of the following evaluations and review of records:
 - a) The review of records included:
 - i) the vision screening completed;
 - ii) the hearing screening;
 - iii) In the area of General Intelligence Assessments-

⁴³ Notably this time was spent while Student was escalated and School Psychologist was working on deescalating strategies.

⁴⁴ Exhibit C, F, Q. Interview School Psychologist, Principal, Assistant Principal and Case Manager.

⁴⁵ Exhibit F.

⁴⁶ Interview with Behavior Technician.

⁴⁷ Exhibit A. Interview Case Manager and Behavior Technician. The SCO notes that School District's assistance resulted in improvements, as referenced in FF 39.

⁴⁸ Exhibit A,D and F. Interview Mother, Assistant Principal and Case Manager.

- (1) A Kaufman Assessment Battery for Children -Second Edition (KABC-2) performed by School Psychologist;
- (2) Two formal observations that were conducted the previous year;
- iv) In the area of Communicative Status Assessments-
 - (1) Preschool Language Scales Fifth Edition (PLS 5) evaluated by SLP 1;
 - (2) Pragmatic Language Skills Inventory (PLSI) evaluated by SLP 1;
 - (3) Informal Language Sample evaluated by SLP 1;
 - (4) Colorado K-12 Speech or Language Impairment Guidelines for Assessment and Eligibility evaluated by SLP 1;
- v) In the area of Academic Performance Assessments
 - (1) The WIAT II evaluated by Special Education Teacher 1;
 - (2) Classroom observations evaluated by Special Education Teacher;
- vi) In the area of Social and Emotional Assessments-
 - (1) BASC-3 completed by Mother and Pre-School General Education Teacher; classroom/recess observation and parent interview evaluated by Social Worker 1;
- vii) Health Assessments-
 - (1) Parent Interview evaluated by Nurse 1
- viii) Motor Assessments-
 - (1) The Wide Range Assessment of Visual-Motor Abilities (WRAVMA) evaluated by OT Provider 1;
 - (2) Observation/Staff feedback evaluated by OT 1;
 - (3) Informal Motor evaluated by OT 1;
- b) New evaluative data included
 - i) Observation of current peer to peer comparison by District Behavior Technician dated December 4, 2017 which showed Student working on task 46% of the time as compared to his peer who was on task 92% of the time;
 - ii) Current BASC-C completed by Mother and two Special Education Teachers and evaluated by School Psychologist dated December 14, 2017
 - iii) Current Informal Observation Motor evaluated by School OT dated October 15, 2017. The SCO notes that the information provided in this section is exactly the same information used in the April evaluation even though it is noted as current information.⁴⁹

36. An Eligibility Meeting was held on December 20, 2017 (December 2017 Eligibility Meeting). In attendance were Mother, Assistant Principal, General Education Teacher, School Case Manager, District Coordinator, Speech Language Pathologist 2, School Psychologist and Principal. After review of the evaluation data Mother requested an opportunity to consult with Advocate and resume the meeting at a later time. The School team agreed.⁵⁰

⁴⁹ Exhibit A and B.

⁵⁰ Interview Mother, Principal, Assistant Principal and Case Manager.

37. Student's BIP was also reviewed and revised (December 2017 BIP) at this time. The December 2017 BIP lists the following sources of information: ABC data collection, anecdotal data collection, interviews, questionnaires, direct observation, behavior plan and crisis plan. The BIP provides " [a]dults will offer reinforcement strategies to help [Student] demonstrate a desired behavior to meet his needs. Strategies include staying on task, using a visual schedule sticker chart/safe hand chart to earn tangible rewards, managing frustration in a non-aggressive manner, and expressing needs appropriately."⁵¹ The Progress Monitoring Method provides that he will be monitored daily and the goal is for him to decrease problem behavior and increase participation in the classroom. The desired performance level is increasing the occurrence of the identified alternative behavior and decreasing the occurrence of the behavior of greatest concern. The Criterion for Success states "[s]uccess will be achieved when [Student] participates full in class and handles his frustration and anger by using positive strategies that he is taught in small group."⁵²
38. The SCO finds that School did not conduct a comprehensive reevaluation. Although the reevaluation included a review of a variety of assessment tools and strategies relevant to the specific areas of need and concern, the evaluation lacked the data necessary to change eligibility. The evaluation does not provide a description or documentation of the implementation or intensification of social skills interventions or a variety of other behavioral interventions in the general education setting. It does not include formal assessment or progress monitoring data on social skills, and yet the team determined that the student had an inability to build or maintain interpersonal relationships to the extent that it significantly interfered with the Student's social development. Rather, the focus has been on using intensifications of crisis intervention plan and de-escalation strategies rather than skill building and prevention. Furthermore, the evaluation did not adequately document evidence to justify how the team ruled out OHI factors being the cause of Student's inability to learn, a required component on the SED checklist. In fact, what is well documented in the December evaluation report is Student's inattention, impulsivity and ADHD diagnosis. The evaluation did not sufficiently document that the Student's behaviors were pervasive in more than one setting beyond school. While Assistant Principal noted that he observed Student's behavior at the pediatrician's office, this is not documented in the evaluation report and again, would not be considered pervasive without something more.⁵³

⁵¹ *Id.*

⁵² *Id.*

⁵³ SCO is not making a finding that given a comprehensive evaluation; Student would not meet the criteria for an SED disability. Student's behavior and needs are clearly significant.

39. As for the December 2017 BIP, while the target behavior is more clearly defined, SCO finds that it still was not sufficiently detailed and specific to provide the necessary support to Student. In support of this finding the SCO notes the following: School did not include progress monitoring in the sources of information, the section discussing desired performance level references behaviors of greatest concern and alternative behaviors but does not define what that means, the criterion for success is not measurable and at this point, is unrealistic.
40. After the Winter Break, Student returned to School January 8th, 2018. On January 10th there was an incident where Student threw a walkie talkie at Case Manager.⁵⁴ Case Manager reports needing 7 stitches, suffering a concussion and having to refrain from situations that could potentially lead to hits in the nose region. Student was suspended for one day as a result of the incident. Upon further consideration due to the gravity of the injury, Principal added another day of suspension.⁵⁵
41. During this time period, School reports that upon completion of the suspension, Student was welcome to return to School. Nevertheless, Mother refused to allow Student to return to School until a plan could be devised to address Student's behavior.⁵⁶
42. Meanwhile, School reconvened the eligibility meeting on January 16, 2018. In attendance were Mother, General Education Teacher (by phone), School Case Manager (by phone), Principal, School Psychologist, District Coordinator, Advocate, School OT, Paraprofessional. The outcome of that meeting was an eligibility determination in the area of Other Health Impairment and Serious Emotional Disability. According to Mother, team voted on the determination i.e. thumbs up/thumbs down which was supported by other witness statements and documentation. Mother again voiced her disagreement with the determination that Student had a Serious Emotional Disability. The documentation and statements from School staff support Mother's statement that a vote was taken when discussing eligibility. Accordingly, the SCO finds that School voted as their method of deciding eligibility.⁵⁷
43. The IEP meeting followed the determination of eligibility but was not completed. On or about January 18, 2018, the meeting was reconvened and the IEP meeting was concluded. The December 2017 IEP was updated to contain

⁵⁴ Student had documented Restraint/Transports on December 8, 11, 14, 15, January 8 and 9th, 2018.

⁵⁵ Exhibit F; G and P. Interview Principal, Assistant Principal, Case Manager and Mother.

⁵⁶ Exhibit F; Interviews Mother, Advocate, Principal, Assistant Principal and Case Manager.

⁵⁷ Exhibit F, D, A, B; Interview Principal, Case Manager, General Education Teacher, Mother and Assistant Principal.

additional accommodations including “presenting directions in small chunks and check for understanding, provide processing time for understanding directions and providing responses, provide multi-sensory instructional materials, help identify environmental print, provide materials that are engaging for him, ensure that tasks address only one instructional concept or skill at a time, and offer alternative setting to complete work.”⁵⁸ Furthermore, Student’s Least Restrictive Environment was changed from being in the general education classroom at least 80% of the time (LRE1) to being in the general education class less than 40% of the time (LRE3). A corresponding PWN was issued providing that Student needed a LRE3 placement and described the offer of FAPE.⁵⁹

44. On January 23, 2018, Special Education Director, District Coordinator, Mother and Advocate met to discuss Mother’s concern regarding the eligibility determination and the change from an LRE1 to an LRE3 placement. According to all parties at the meeting, an agreement was reached where the eligibility would be reviewed, Mother would look at Affective Needs (AN) placements, and descriptions of Student’s behaviors would be reviewed and possibly revised. District Coordinator sent an e-mail memorializing the agreement. In addition, School issued a corresponding PWN.⁶⁰
45. Mother continued to keep Student out of school during this time. While School communicated to Mother that Student was welcome to return to School after completion of his suspension, Mother refused to take him back citing concerns regarding School’s ability to address Student’s behavior.⁶¹
46. Meanwhile, given the change in Student’s LRE, School’s concern regarding being able to meet his needs and Mother’s refusal to consider other placements, School conducted a meeting (IAES Meeting) on January 29, 2018 to “temporarily remove [Student] from School.” In attendance were Assistant Principal, School Case Manager, Mother (by phone), Principal, Associate Special Education Director, Speech Language Pathologist 2, Homebound Coordinator and District Coordinator. General Education Teacher was not present. The first item on the agenda was Student’s temporary removal from School. Associate Special Education Director informed Mother that Student’s temporary placement would be in the homebound setting for up to 45 days and he would continue to receive special education services.⁶² Mother voiced her

⁵⁸ Exhibit A.

⁵⁹ Exhibit A, B & F.

⁶⁰ Exhibit D and F. Interview Special Education Director, Mother, Case Manager and District Coordinator.

⁶¹ Exhibit F and Q. Interview Principal and Mother.

⁶² Mother was made aware that School District was considering an interim placement on account of Student’s behavior prior to the meeting.

disagreement with the homebound setting and informed them that she would be unable to schedule time for Student to receive services. School Principal, Assistant Principal and Associate Special Education Director confirmed that School District was utilizing the special circumstance provision for Interim Alternative Educational Settings (IAES). According to school staff, they were not consulted regarding the setting. In fact, School Psychologist testified that Associate Special Education Director specifically stated that it was a School District decision and not the School's. Based on witness statements, the SCO finds that School District made the decision as to Student's placement outside of an IEP team meeting.⁶³ In addition, the SCO finds that based on the record and witness statements, School District only offered the homebound setting and did not allow consideration of any other option.⁶⁴

47. Special Education Director confirmed that School District decided on the homebound setting for his IAES due to the lack of availability of another option and needing additional time to identify an appropriate setting. She stated School District has other LRE3 placements, however, at that time they were all full.
48. The School team next determined whether the incident was a manifestation of Student's disability and determined it was.⁶⁵
49. Mother refused to sign the homebound paperwork until recently. Student has been out of School since January 10, 2018. As of January 29, 2018, Student's placement was formally changed to the homebound setting under the special circumstances for IAES.⁶⁶
50. Mother has recently been in communication with School District to discuss Student's next steps. On April 2, 2018, Mother toured School District's offered placement. Student began attending this new placement on April 4, 2018.
51. Mother has requested an IEE and School District has agreed and is currently coordinating with Mother to have those completed.

CONCLUSIONS OF LAW

⁶³ While there were some discussions that homebound was offered due to Mother's rejection of an Affective Needs (AN) school, the SCO does not find that argument persuasive as Mother strongly voiced her rejection to the homebound setting as well.

⁶⁴ Exhibit D, F and G. Interview School Psychologist, Case Manager, District Coordinator, Mother and Assistant Principal.

⁶⁵ Exhibit G.

⁶⁶ Interview Special Education Director and Mother.

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

Whether the District failed to follow IDEA's disciplinary procedures when it changed the Student's placement on or about January 29, 2018.

The IDEA provides extensive regulations governing the discipline of students with disabilities that are designed to prevent students from being punished for conduct that is the result of their disability and to discourage the use of discipline to change educational placement. When a student with a disability struggles with behavior, the law clearly demonstrates a preference for addressing the problematic behavior through the IEP process rather than through school discipline. To serve these principles, IDEA provides additional procedural safeguards or protections that are triggered when a disciplinary change in placement occurs.

A disciplinary change of placement triggers the District's obligation to conduct a manifestation determination in accordance with 34 CFR § 300.530. A disciplinary change of placement occurs when a student with a disability is removed from his current educational placement and the removal is for more than ten consecutive school days or the student has been subjected to a series of removals that constitutes a pattern. 34 CFR § 300.536. Within 10 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... to determine, 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. 34 C.F.R. §300.530(e)(1). Under normal circumstances, if the School District determines that it was a manifestation of the Student's disability, the IEP team must either 1) conduct an FBA or if one was completed 2) review and modify, if necessary, the BIP. 34 C.F.R. §300.530 (f).

However, IDEA provides that, in special circumstances, School may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. 34 C.F.R. §300.530 (g). The special circumstances include if the child (1) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. 34 C.F.R. §300. 530 (g)(1)-(3). The IDEA adopts the definition in §1365 (h)(3) of the U.S. Criminal Code which involves "(A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or

mental faculty." "The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g)." 34 C.F.R. § 300.531.

In this case, the SCO finds that School District did not follow IDEA's disciplinary procedures when it changed Student's placement on or about January 29, 2018. Specifically, in this case, School District made the decision as to the interim setting instead of leaving the determination to the IEP team. This decision was made outside of the IEP team and without Mother's input. In fact, School Psychologist and Assistant Principal reported that, in their opinion, an AN setting would have been more appropriate to meet Student's needs. Additionally, SCO finds and concludes that the use of the IAES procedures was done largely because School District needed time to find a suitable School and not in contemplation of meeting Student's individual needs and educational goals.

Whether the District failed to implement the Student's IEP, including failing to provide accommodations and failing to follow the Student's plan pertaining to behavior.

Mother alleges that School did not implement Student's IEP, including failing to provide accommodations and failing to follow the Student's plan pertaining to behavior.

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

In addition to informing teachers of their responsibilities regarding a student's IEP, however, the District must ensure that the IEP is being implemented. This obligation includes ensuring that all identified services are being consistently provided. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the

services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement “essential” element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)(*de minimis* failure to implement IEP does not deny FAPE).

This is a difficult analysis. While School failed to adequately address behavior, Mother kept Student out of school for extended periods of time, dropped him off late or picked him up early making it hard to plan effectively to provide required service and work on goals. At this point, the SCO is unable to assess implementation of the IEP because School has not had an opportunity to do so. Student received services when he was there, but due to extended absences and being unavailable due to behaviors the provision of services was not consistent. The SCO cannot fault School for not providing services or working on goals if Student was not present. Accordingly, the SCO does not making a finding against School for failing to implement IEP.

Whether the District failed to conduct comprehensive evaluations, specifically in the area of social emotional needs and review, revise, and develop an appropriate IEP to meet Student’s needs including but not limited to addressing concerns around Student behavior.

An evaluation under IDEA has two primary purposes: 1) to determine whether the child has a disability, and because of the disability needs special education and related services, and 2) to help the IEP team determine the child’s specific needs. 34 CFR § 300.304(b)(1)(i)-(ii); see also 71 Fed. Reg. 46548. In evaluating students for eligibility, the school district must comply with IDEA’s procedural requirements concerning special education evaluations. Specifically, the school district must: (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability; (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; (4) Ensure that assessments and other evaluation materials are selected and administered without racial or cultural bias, are provided in the child’s native language, are valid and reliable, and are administered by trained and knowledgeable personnel; (5) Select assessments relevant to specific areas of educational need; (6) Assess the child in all areas of suspected disability; (7) Make an eligibility determination by a group of qualified professionals and the child’s parents. 34 C.F.R. §§ 300.304 - 300.306. Considering the sufficiency of evaluations following the recent Supreme Court case, *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 137 S. Ct. 988, 997 (U.S. 2017), we should expect evaluations to be sufficiently comprehensive to allow the school to develop an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

The SCO finds and concludes that the District's evaluations were not sufficiently comprehensive to address Student's behavior or to be able to determine Student eligibility in the category of SED.

As for the October 2017 FBA, School relied on only one source of information. As previously discussed, while SCO credits School with the time and dedication it took to collect and compile all the information, the information was not targeted and as a result could not inform practices. It did not include graphic representation or detailed analysis of the setting event data, antecedent data or consequence data to support the hypothesized functions of the behaviors. There is no analysis as to the time of day or day of week related to the behaviors, and there is no progress monitoring data for alternative behaviors/replacement behaviors or evaluation of fidelity of the original BIP.

As for the reevaluation, SCO finds School's evaluation was not sufficiently comprehensive to be able to determine Student eligible in the category of SED. As previously discussed, the reevaluation included a review of a variety of assessment tools and strategies relevant to the specific areas of need and concern, the evaluation lacked the data necessary to change eligibility. Most significantly, the reevaluation did not sufficiently document that the difficulties existed in more than one setting beyond school. It did not include formal assessment or progress monitoring data on social skills to support the team's determination that the student had an inability to build or maintain interpersonal relationships to the extent that it significantly interfered with the Student's social development. Furthermore, there is no description of implementation or intensification of social skills interventions or a variety of other behavioral interventions in the general education setting, just strategies and accommodations and intensifications of crisis intervention plan and de-escalation strategies. It did not document evidence sufficient to rule out that "other health factors" were not inhibiting the student's ability to learn. In fact, what is well documented in December evaluation report is Student's inattention, impulsivity and ADHD diagnosis. Lastly, there are no progress monitoring data included for the IEP goals related to social and emotional skills.

Whether the District failed to review, revise, and develop an appropriate IEP to meet Student's needs including but not limited to addressing concerns around Student's behavior:

The IDEA provides that school districts must review each child's IEP "periodically, but not less than annually." 34 CFR § 300.324(b)(1)(i). Under the IDEA, each school district has an affirmative duty to ensure that a child's IEP team meets no less than annually to review and revise the IEP. 34 CFR § 300.324(b). In conducting an annual IEP review, the IEP team must consider whether the annual goals are being achieved, and revise the IEP, as appropriate, to address any lack of expected progress toward annual goals and in the general education curriculum, the results of any reevaluation, information about the child provided to or by the parents, the child's anticipated needs, or other matters. 34 CFR § 300.324(b). In developing an IEP, the

IDEA requires that IEP teams consider the use of “positive behavior interventions and supports” in the case of a student with a disability whose “behavior” impedes his learning or that of others.” § 34 C.F.R. § 300.324 (a)(2)(i). If a student fails to make progress within a reasonable period of time, however, the district must convene an IEP meeting to address the Student’s lack of progress. 34 C.F.R. §300.324(b).

This is a difficulty analysis. On one hand, the April 2017 IEP, as written, provides not only academic goals but also two goals for Student in the social/emotional area. Additionally, the IEP contains appropriate accommodations based on the 2017 April Evaluation. It also provides direct and indirect psychological services. Despite the appropriateness of these components of the IEP, the accompanying BIP developed at that time and what continued to be used throughout the fall of 2017, was not sufficiently detailed to provide the necessary positive behavioral interventions and supports to address Student’s behavior. Of central concern in this situation, is School’s focus on the crisis intervention plan rather than the positive behavioral interventions and supports and the behavioral intervention plan. To illustrate this, Student’s crisis plan was revised and updated two times during the fall while Student’s BIP was not revised until December 20, 2017, right before Winter Break. Given that Student had, by that time, already been suspended, restrained on more than one occasion, removed from class on an almost daily basis, inflicted injury not only on peers but also on adults, it is concerning that the BIP was not more actively utilized and reevaluated. It is important to note that while Student has many difficult days and behaviors were “intense” and frequent, there were times that Student was able to participate in the general education classroom and be redirected. Given Student’s behavior impeded his learning and that of others, School was required to consider the use of positive behavioral interventions and supports. Accordingly, the SCO finds that School failed to review and revise Student’s IEP as it pertained to Student’s behavior.

Whether the District failed to provide the Parent meaningful participation in the IEP process held December 20, 2018, including failing to provide evaluations prior to the IEP meeting and voting on different aspect of the IEP.

Under the IDEA, public school districts are required to provide children with disabilities with a “free appropriate public education” or (FAPE) by providing special education and related services individual tailored to meet the student’s unique needs, and provided in conformity with an individualized education program (or IEP) that is developed according to the IDEA’s procedures. 20 U.S.C. Sec. 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA contains extensive procedural requirements relating to the development of the IEP, including the requirements that the IEP be a written document, reviewed at least annually, and that it be developed by a team of individuals with knowledge about the child, including a representative of the public agency who is knowledgeable about the availability of resources for the public agency, and that it be based on the input of the IEP participants as well as evaluative data derived from valid, scientifically based assessments conducted in accordance

with the IDEA's requirements. See, e.g. 34 C.F.R. Sec. §§ 300.301-300.304; 300.320-300.324. The IDEA also provides that in the development of an IEP, parents must be afforded the opportunity to attend and participate and that the parents' participation must be meaningful, including giving consideration to their concerns about their child and providing parents with a copy of the IEP. 34 C.F.R. §§ 300.321 (a)(1), 300.322(f), and 300.324(a)(1)(ii). The U.S. Supreme Court has cited parental involvement as a priority in crafting IEPs, explaining that the "nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representative will fully air their respective opinions on the degree of progress of a child's IEP should pursue." *Endrew F. v. Douglas County Sch. Dist.* RE-1, 69 IDELR 174 (2017).

The SCO finds School and School District encouraged Mother's participation in Student's programming, including considering and implementing her recommendations and requests for revisions, scheduling meetings to address concerns and scheduling them at mutually agreeable times, continuing meetings when Mother needed additional time, and providing requested documentation, etc. However, in respect to Student's determination of eligibility, School's practice of "voting" or doing a "thumbs up, thumbs down" is contrary to IDEA's goal of cooperative educational planning that could have deprived Mother of meaningful parent participation. Additionally, Mother's receipt of the evaluation report the day of the eligibility could have deprived her of an opportunity to review the information and provide input. Nevertheless, in these two situations, School and School District remedied these two situations by continuing the eligibility meeting on Mother's request, allowing Mother additional time to review the evaluation report and have her advocate present, setting up additional times to meet to discuss concerns regarding the eligibility category. In this situation there were three meetings to discuss eligibility and review the corresponding IEP. Additionally, Mother and advocate were able to have a separate meeting with Special Education Director to discuss concerns and discuss next steps to address those concerns. Accordingly, SCO does not find School denied Mother Meaningful Parent Participation.

REMEDIES

The SCO has concluded that the School District committed the following violations of IDEA:

1. Failure to comply with IDEA's disciplinary procedures as it pertains to IAES placements. (34 C.F.R. § 300.530 (g));
2. Failure to conduct a comprehensive evaluation (34 C.F.R. § 300.305(c)).
3. Failure to develop, review and revise IEP, as it pertains to appropriate positive behavioral interventions and supports and other strategies for the child (34 C.F.R. § 300.324);

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

- 1) By no later than May 7, 2018, the School District must submit to the Department a proposed Corrective Action Plan (CAP) that addresses each violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the School District is responsible. The CAP must, at a minimum, provide for the following:
 - a. Submission of compliant, written policies and procedures and compliant forms that address the cited violation, as applicable, no later May 21, 2018.
 - b. By August 31, 2018, District must provide training, by a qualified trainer whether employed by the District or an outside consultant, to School level special education team, including the building administration, the school psychologist and school social worker, on conducting comprehensive social/emotional evaluations for special education eligibility and to guide intervention planning, foundations of Functional Behavioral Assessment and the development of Behavior Intervention Plans and including a review of the procedural requirements for conducting such evaluations. This includes training on the explicit instruction and progress monitoring of alternative (replacement) behaviors and pro-social behaviors.
 - i. Evidence that such training has occurred must be documented (i.e., training schedules (s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department no later than September 14, 2018.
 - c. Conduct a functional behavioral assessment (FBA) as soon as possible but no later than May 7, 2018. The FBA must include the following:
 - i. Consultation with a behavioral specialist who has demonstrated experience in this area;
 - ii. Detailed identification of Student's negative behaviors, including intensity, duration, and a detailed assessment of antecedents and consequences;
 - iii. A detailed summary statement concerning the function of Student's behavior;
 - iv. Confirmation of the summary statement through formal observation of behavior, antecedents, and consequences;
 - v. Development of competing behavior summary to identify desired behavior, common reinforcing consequences, and alternative behaviors.
 - vi. If Student is unavailable or Mother has not signed the appropriate consent, School District will not be found in violation of the CAP for failure to do complete it within the required time frame.
 - d. Review and revise Student's BIP within 5 days of completion of the FBA.
 - e. The SCO notes that School District is providing Mother Independent Educational Evaluations.

- f. Compensatory Services:
- i. While SCO found School District in violation of disciplinary procedures when it changed Student's placement to homebound, the SCO notes Mother hindered School District's ability to provide services by rejecting School District's offer for homebound services. Accordingly, the SCO does not find that School District owes compensatory services for all services Student missed as a result to his placement in the homebound setting. However, the SCO finds it appropriate that School District provide compensatory services to address Student's social/emotional goals that would have been addressed during the 8 weeks Student was homebound.
 - ii. The District shall provide Student with 360 minutes of direct mental health service time. This service time can be one-to-one or in small group setting. To document the provision of these services, the District must submit service logs to CDE by September 14, 2018.
 - iii. Within 10 days of receipt of this Decision, the District must meet with Parent to discuss and schedule compensatory services. If Parent refuses to meet with the District within this time period, the District will be excused from providing compensatory services, provided that the District diligently attempts to meet with Parent and documents its efforts. The determination that the District has diligently attempted to meet with Parent and should therefore be excused from providing these services rests solely with the CDE.
 - iv. These compensatory services shall be provided during the 2017 summer break. The parties shall cooperate in determining how the compensatory education services will be provided, with special consideration to student's needs and stamina. The District must submit the schedule to the Department no later than May 15, 2018.
 - v. If the IEP team determines a summer program may better meet Student's needs, the program can be done in lieu of the mental health service minutes.
 - vi. The services shall be provided at a location of the District's choosing, provided that the location is suitable for the delivery of educational services, e.g., library or classroom, and at a convenient location, i.e., not more than 15 miles from Parent's residence.
 - vii. If Parent refuses the ordered compensatory education, Parent must notify the Department of the refusal in writing no later than April 20, 2018.
 - viii. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any

reason, the District fails to provide a tutor for a scheduled compensatory education session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the Department of the change in the monthly service log.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the School District's timely compliance with this Decision. Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn: Beth Nelson
1560 Broadway, Suite 1100
Denver, Colorado 80202-5149

Failure by the School District to meet the timelines set forth above will adversely affect the School District's annual determination under the IDEA and will subject the School District to enforcement action by the Department.

CONCLUSION

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

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

Dated this 6th Day April of 2018,

Jacqueline Esquibel
State Complaints Officer

Appendix

Complaint, pp 1-12

- Exhibit 1: Evaluation Report
- Exhibit 2: Individualized Educational Program dated December 19, 2017
- Exhibit 3: Behavior Detail Report for the 2016-2017 and 2017-2018 school year
- Exhibit 4: E-mail Communications

Response, pp 1-13

- Exhibit A: All IEPs including behavioral support plans or crisis plans, for the Student from the 2016-2017 school year to present
- Exhibit B: Eligibility determinations and evaluation reports from 2016-2017 school year to present
- Exhibit C: All service logs, progress monitoring data, verification of accommodations and modifications provided to Student, assessment data, for the 2017-2018 school year
- Exhibit D: All notices of meeting and prior written notices issued for the 2017-2018 school year
- Exhibit E: All requests for consent to evaluate for the 2017-2018
- Exhibit F: All correspondence by School District
- Exhibit G: All disciplinary records that pertain to Student, including incident reports, notices to parent, manifestation determination documentation, documentation regarding any suspensions, and any e-mails among School District, School and parent regarding incident
- Exhibit H: Complete name, title and contact information for each School District and School staff member who has knowledge of the facts underlying the Complaint allegations and other relevant documentation
- Exhibit I: All policies and procedures maintained by the School District relating to the provision of special education services, addressing behavioral concerns, disciplinary procedures, Least Restrictive Environment and parental participation

Documents upon SCO's Request:

- Exhibit J: E-mail communications
- Exhibit K: Sign in sheet from dated December 19, 2017
- Exhibit L: E-mail communications
- Exhibit M: Dashboards
- Exhibit N: Sign-In sheet dated January 29, 2018
- Exhibit O: Student's Enrollment History
- Exhibit P: E-mail communications regarding restraints
- Exhibit Q: Student's Attendance Report

Reply: No written Reply provided

Exhibit 3: Behavior Detail Report

Exhibit 4: E-mail Communications

Interviews with:

Mother

Advocate

Principal

Case Manager

General Education Teacher

Assistant Principal

School Psychologist

County Social Worker

Behavioral Technician

Special Education Director

District Coordinator