

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

State-Level Complaint 2024:570
Thompson School District R2-J

DECISION

INTRODUCTION

On June 10, 2024, an attorney (“Complainant”) filed a state-level complaint (“Complaint”) on behalf of the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ against Thompson School District R2-J (“District”). The Colorado Department of Education (the “CDE”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the CDE has the authority to investigate alleged noncompliance that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from June 10, 2023, to the present for the purpose of determining if noncompliance occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Improperly determined Student’s educational placement on or about January 17, 2024, specifically by:
 - a. Failing to ensure the placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8);

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

- b. Making a significant change to Student’s educational placement without consideration of a reevaluation, in violation of ECEA Rule 4.03(8)(b)(ii); and
- c. Failing to provide Parent with prior written notice (“PWN”) of Student’s change of placement, in violation of 34 C.F.R. § 300.503(a)-(b).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is fifteen years old and, during the first semester of the 2023-2024 school year, was a ninth grader at a school (“School”) in District. *Complaint*, pp. 1, 8. From January 9, 2024, through the end of the school year, Student attended an online school (“Online School”) in District. *Id.*
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and a specific learning disability (“SLD”). *Complaint*, p. 1; *Exhibit A*, p. 1.
3. Student is highly social, athletic, and he enjoys dirt biking and other hands-on activities. *Interview with Parent; Exhibit A*, p. 48. He struggles with academic engagement and self-regulation when faced with challenging social situations. *Exhibit A*, pp. 2, 8-9.
4. Complainant is concerned that District unilaterally changed Student’s placement to an online setting outside the IEP Team process, without consideration of a reevaluation, and without prior written notice (“PWN”) to Parent. *Complaint*, pp. 1, 4, 7. District asserts that Student’s change in placement was appropriately made by his IEP Team and pursuant to District policy, and therefore denies allegation 1(a). *Response*, pp. 5-7. District admits allegation 1(b) and admits allegation 1(c) in part. *Id.* at pp. 7-8. District has also offered to provide Student with 100 hours of direct specialized instruction by a special education teacher and 6 hours of direct mental health services as compensatory education services. *Id.* at p. 9.

B. April 2023 IEP

5. Student’s IEP in effect during the 2023-2024 school year, until April 2024, was dated April 23, 2023 (“2023 IEP”). *Complaint*, p. 4; *see Exhibit A*, pp. 1-35.
6. The 2023 IEP describes Student’s present levels of performance, including significant concerns around Student’s academic engagement and stamina. *Exhibit A*, pp. 6-8. Specifically, “[w]hen Student is faced with work he feels is too challenging, he may demonstrate work

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

avoidance behaviors . . . includ[ing] shutting down or accessing games on his computer or phone.” *Id.* at 8. Teacher input reflects that when staff is able “to work with Student 1:1, [Student] works so hard. He asks questions, he tries, he listens, and he thinks.” *Id.* at p. 6. However, teachers reported that Student “will not complete work without an adult sitting next to him”; “[i]f he doesn’t receive the 1:1 attention during work time, nothing gets done.” *Id.*

7. The 2023 IEP also describes the impact of Student’s disability on his involvement in the general curriculum and reiterates that Student “works best in 1:1 situations with a teacher” and otherwise has significant difficulty beginning or completing academic work. *Id.* at p. 9. Therefore, “Student would benefit [from] continued direct small group support and explicit instruction to address his academic needs . . . [and] direct support in gaining problem-solving skills and build his social/emotional skills.” *Id.*
8. The 2023 IEP indicates Student exhibits behavior that requires a Behavior Intervention Plan (“BIP”) and the BIP is included within the IEP. *Id.* at pp. 11, 13-15.
9. The 2023 IEP includes six annual goals, one each in the areas of Self-Regulation, Executive Functioning, Social/Emotional, Writing Fluency, Math Fluency, and Reading Comprehension. *Id.* at pp. 17-29.
10. The 2023 IEP includes 13 accommodations to ensure Student can access and make effective progress in the general curriculum. *Id.* at p. 30.
11. The 2023 IEP’s service delivery statement identifies the following services, all provided outside the general education setting:
 - 1,000 minutes per month of direct specialized instruction from an Affective Needs special education teacher;
 - 800 minutes per month of direct specialized instruction from a Resource special education teacher to support academic growth in math, reading, and writing;
 - 120 minutes per month of direct mental health services from a mental health provider to support progress toward social/emotional goals; and
 - 15 minutes per month of indirect occupational therapy (“OT”) services to support Student and staff in planning and implementing sensory-based strategies for improving Student’s school performance.

Id. at p. 33.

12. The 2023 IEP reflects that it was appropriate for Student to be in general education between 40% and 79% of the time. *Id.* at p. 34. The IEP Team determined this was the most appropriate placement because Student “can access general education content and interact with his same

age peers” with “accommodations . . . in place for [Student] to be successful in the general education setting.” *Id.* The Team considered the option of more than 80% in general education but rejected that option “due to the lack of time receiving support from the Affective Needs and [special education] staff for social, emotional, and behavior support that [Student] needs in order to be successful with the general education environment.” *Id.*

C. District’s Policies and Procedures: Placement Determinations

13. District’s Director of Special Education (“Director”) described how placement determinations are made for students with disabilities. *Interview with Director.* Generally, a student’s placement is determined by the IEP Team in consideration of an evaluation. *Id.*
14. While Director reported that District follows state-level procedural guidance around placement determinations, Director concedes that District does not currently have written policies and procedures around IEP placement determinations. *Id.*
15. Director described how District ensures staff are aware of their obligations under the IDEA, including annual training at the beginning of each school year, ongoing professional development training, and utilizing special education coordinators to directly support staff on a weekly basis. *Id.*
16. District Policy JKD/JKE-R, Section C (“the Policy”) is part of District’s policy on suspension/expulsion of students and describes the process that applies “when the district receives notification that a student has been charged in juvenile or district court with a crime of violence or unlawful sexual behavior as those terms are defined by state law.” *Exhibit K*, pp. 4-5. District’s basis for the Policy is Colorado’s school discipline statute, Colo. Rev. Stat. § 22-33-105(5)(a)-(c). *Complaint*, p. 6; *Response*, p. 1.
17. Under the Policy, when a school district receives notification that a student has been charged with a crime of violence or unlawful sexual behavior, “the Board or its designee will make a preliminary determination whether it will proceed with an expulsion hearing, based on . . . [w]hether the student has exhibited behavior that is detrimental to the safety, welfare and morals of other students or school personnel.” *Exhibit K*, p. 4. “If it is determined that the student should not be educated in the schools of the district, the district may suspend or expel the student, in accordance with [District’s policy on suspension/expulsion].” *Id.* at p. 5.

Alternatively, suspension or expulsion proceedings may be postponed, pending the outcome of the court proceedings. If the suspension or expulsion proceedings are postponed, the student will not be permitted to return to school during that period. An appropriate alternative education program, including but not limited to, an online program . . . will be established for the student during the period pending the resolution of the juvenile proceedings.

Id. The Policy is generally applicable to all students in District, whether in the general education or special education setting. *Interview with Director.*

18. When District receives notification that a student has been charged with a crime triggering the Policy, it convenes an intensive discipline team (“IDT”) to review the notification and make a preliminary determination regarding whether the student’s behavior poses a safety risk to other students and staff, such that the student should be removed from his current school. *Id.* The decision whether to remove a student from his or her current educational setting is based on the information the IDT has available at the time. *Id.* In cases involving students with disabilities, Director is a member of the IDT and communicates the IDT’s determination to the IEP Team. *Id.* The IEP Team is then responsible for convening a meeting and following the procedures outlined in District’s “Safe School Concerns: Disabilities Planning Process.” *Exhibit K, p. 6; Interview with Director.*
19. The Disabilities Planning Process describes the “process [to] be used if serious safety concerns arise for students with disabilities.” *Exhibit K, p. 6.* Pursuant to this procedure, if such a concern arises, the IEP team “will need to convene to hold a Disabilities Planning Meeting,” facilitated by a special education coordinator. *Id.* The IEP Team is directed to review the student’s 1) present levels, including any outside evaluations that are available; 2) current placement, including accommodations; 3) safety concerns/documentation; and 4) recommended safety restrictions. *Id.* If the IEP Team determines a student’s placement should be changed, the “IEP team will follow change of placement procedures as outlined in IDEA.” *Id.*

D. Student’s Change of Placement

20. On January 5, 2024, Student was charged with a class four felony, based on an alleged incident that occurred in August 2021. *Complaint, p. 1; Response, p. 1; see Exhibit F, p. 5.* That same day, District was notified of Student’s charges via a “School Notification” from the District’s Attorney’s office. *Response, p. 1; Interview with Director; see Exhibit F, p. 5.*
21. Upon receiving this notification, District convened an IDT to review the notification of Student’s charges and make a decision regarding whether his behavior posed a safety risk such that he should be removed from School. *Interview with Director.* Director was a member of the IDT here given Student’s IDEA-eligibility. *Id.*
22. The IDT determined that “Student exhibited behavior that is detrimental to the safety, welfare, and morals of the other students” at School and that Student’s removal from School “was required to ensure the safety of students and staff while the underlying criminal charges were adjudicated.” *Response, pp. 1-2.* The IDT made this determination based solely on the nature of the charges, which was the only information available at that time. *Interview with Director; Reply, p. 2.* While Student had several prior disciplinary incidents at School, “from class disruptions to bullying, and to bringing fireworks to school,” Student had not previously

demonstrated behavior related to the alleged incident resulting in these charges. *Complaint*, p. 5; *Interview with Parent*; *Exhibit A*, p. 40; *see Exhibit F*.

23. On January 10, Parent received a call from District staff notifying her that Student would be removed from School and “placed in [Online School] per board policy,” effective immediately. *Complaint*, p. 4; *Interview with Parent*; *see Exhibit 3*, p. 1; *Exhibit L*, p. 7. District had also drafted a letter to Parent with information regarding Student’s placement in Online School, dated January 9, 2024; however, due to apparent miscommunication, Parent did not receive this letter until May 10. *Complaint*, p. 5; *see Exhibit G*, p. 1; *Exhibit L*, pp. 5-8, 123. In this “Notification of Admin Placement Letter,” District explained that it was suspending its disciplinary process for the duration of Student’s court proceedings, “in accordance with [the Policy],” and that he would “be administratively placed into an online educational setting.” *Exhibit 5*, p. 1. On January 12, a District Special Education Coordinator (“Coordinator”) emailed Parent to “set up a virtual IEP planning meeting” to “discuss what [Student’s] special education supports will look like while he attends [Online School].” *Response*, p. 2; *Exhibit L*, p. 120. Parent and Coordinator agreed to meet the following week. *Id.*
24. On January 17, District held what it termed a “Disability Planning Meeting” for Student. *Complaint*, p. 6; *Response*, p. 2; *Exhibit 8*. There is no direct written documentation of the meeting participants and, based solely on the relevant parties’ inconsistent recollections and indirect documentation, the state complaints officer (“SCO”) cannot confirm the meeting participants other than Parent, Coordinator, and Student’s school social worker. *Interviews with Parent, Director, and Assistant Principal; Written Questionnaires of School Social Worker and Special Education Teacher*; *see Exhibit L*, p. 126.
25. District asserts the meeting participants, including Parent, “ultimately agreed [with the IDT’s] determination that [Student’s] removal from his current location was appropriate to ensure the safety of others”; “further determined that [Student] could continue to receive a free appropriate public education within an online setting—[Online School]; and “collectively agreed that [Student] would receive substantially the same services while attending [Online School].” *Response*, p. 3. Those services included “special education services from his current special education providers,” whose classes Student would join remotely; remote occupational therapy once per week; remote mental health services for 30 minutes once per week; and general education curriculum from Online School’s program. *Id.*
26. Parent disputes whether and to what extent District staff considered Student’s least restrictive environment (“LRE”) designated in his IEP, the accommodations and services Student was receiving and their compatibility with Online School, any current evaluation data, or other placement options and District’s reasons for rejecting them. *Reply*, pp. 1-2; *Interview with Parent*. Parent also reports that while she did not agree with Student’s placement in Online School, she acquiesced since it was the only option presented, though she did not sign any documentation regarding Student’s change of placement at this meeting. *Interview with Parent*; *see Exhibit G*.

27. District memorialized the services Student would receive in Online School in a “Daily Schedule” that was provided to Student and Parent following the meeting, which “reflected the time of [Student’s] special education services, the email addresses for each of the providers, and links to access his services remotely.” *Response*, p. 3; *Exhibit G*, pp. 2-3; see *Exhibit L*, pp. 125-26.
28. However, District “acknowledges that it issued no Prior Written Notice [to Parent] describing the [District’s] rationale [for the change of placement], supporting evaluations and records, or other options considered and the team’s reasons for rejection those options.” *Response*, p. 3. Even so, District argues that “any failure to do so” did not significantly impede Parent’s right to participate in the decision-making process around the provision of FAPE for Student—evidenced by Parent’s ability to obtain an attorney and file this Complaint—or otherwise impede Student’s right to a FAPE. *Id.* at p. 8.
29. The only written documentation around the January 17 meeting and Student’s change of placement is the “Daily Schedule.” See *id.*; *Reply*, p. 1; *Exhibit G*. When asked by Parent for documentation regarding Student’s change of placement following Student’s removal to Online School, Coordinator noted “this was not an IEP decision, so we do not have documentation of a placement change.” *Exhibit L*, p. 6.
30. Complainant asserts the January 17 meeting was not an IEP Team meeting, citing Coordinator’s explanation that “the meeting . . . held on January 17 was a planning meeting and not an IEP meeting. The IEP Team did not make the determination to change placement, the change in placement occurred due the board policy being enacted.” *Complaint*, p. 7; *Reply*, p. 1; *Exhibit L*, p. 42. Complainant further notes this meeting did not include the same procedural requirements as an IEP Team meeting; specifically, District did not provide Parent a Notice of Meeting (“NOM”) prior to the meeting, issue PWN to Parent of the change of placement after the meeting or create a new or amended IEP documenting Student’s change of placement and the services he would be receiving at Online School. *Complaint*, p. 7; *Reply*, p. 1; see *Exhibit L*, p. 68.
31. District acknowledges that the January 17 meeting “was neither noticed as an IEP meeting nor referred to as an IEP meeting.” *Response*, p. 2. However, District asserts that the January 17 meeting was an IEP Team meeting in practice, if not in name, noting that Parent was invited to the meeting; the meeting was scheduled in advance; the participants in attendance would otherwise constitute an IEP Team; Parent knew the topic of discussion was Student’s educational placement and the provision of FAPE; and the participants, including Parent, “collectively agreed” that Online School was an appropriate placement. *Id.* at pp. 3, 6. Therefore, District argues that Student’s “change in placement to an online setting was made by his properly constituted IEP team.” *Id.* at p. 7.³

³ In support of this assertion, District cites *Mesa County Valley School District 51*, 124 LRP 6361 (SEA CO 01/06/24), which recognized the four factors described by District as “relevant for determining if a particular meeting should be recognized as an IEP meeting,” even if not noticed as one. *Id.* However, these factors are not exhaustive, and the lack of any written documentation around the January 17 meeting—including

32. Given the lack of written documentation of the meeting participants and the parties' inconsistent recollections, the SCO finds that all required IEP Team members were not in attendance at the January 17 meeting. Further, the procedural requirements that generally evidence an IEP meeting are absent here—District did not issue a NOM or PWN to Parent and there was no IEP document reflecting Student's change in placement at this time. (FFs # 28-20). Accordingly, based on a preponderance of evidence, the SCO finds and concludes that the January 17 meeting was not a properly constituted IEP Team meeting.
33. Complainant asserts that, even assuming a properly constituted IEP Team meeting occurred, it was not the IEP Team who made the determination to change Student's placement to Online School; instead, District "administratively changed his placement in an attempt to circumvent the procedures and protections of the IDEA." *Complaint*, pp. 1, 4; *Reply*, pp. 1-2. Complainant contends that District should have either involved the IEP Team in its preliminary determination regarding Student's placement or used the IDEA's disciplinary procedures to effectuate Student's removal for safety-related reasons. *Complaint*, pp. 1, 3-4; *Reply*, p. 2.
34. District asserts that it appropriately followed the procedures set out in the Policy and state statute regarding safety-related removals of students, arguing that the procedure it followed here "is permitted as long as [District] ensures that the student continues to receive the services required for FAPE." *Response*, pp. 5-7. District contends that it was not required to use the IDEA's disciplinary provisions because "the IEP team developed services tailored to [Student's] individualized needs and determined that an online program was appropriate after taking into consideration the safety concerns arising from [Student's] alleged criminal conduct." *Id.* at p. 7.
35. In addition to Student, District has identified one other IDEA-eligible student in District who was removed from school during the 2023-2024 school year based on the Policy. *Interview with Director; Exhibit N*. In that case, after District initiated the removal but before the IEP Team could convene to determine an appropriate alternative placement, the student was unenrolled from District. *Exhibit N*.

E. Student's Online School Experience

36. Once placed in Online School, Student immediately struggled to access and engage with the online educational programming. *Complaint*, p. 7; *Response*, p. 4; see *Exhibit L*, pp. 144-46. On January 24, Parent expressed concerns to Student's teachers that Student was not accessing Online School independently, stating "he needs in person help/assistance, or he will continue to fall further and further behind." *Complaint*, pp. 7-8; *Exhibit L*, p. 124. District staff unsuccessfully attempted to engage Student in the online setting, including sending screenshots and video tutorials of how to access the remote learning platform, reminding

documentation of the meeting participants or a new or revised IEP document reflecting the placement change—are also relevant here. (FF #s 24, 29-30).

Student of service times, and offering to assist Parent and Student outside of school hours. *Response*, p. 4; *see Exhibit L*, pp. 112, 124, 129, 144-46.

37. On February 16, Student's special education teachers recognized Student had not been attending class virtually, with one noting "[Student] was willing to come to [virtual class] one day when I reached out to him via [District's virtual classroom platform]," but that she hadn't "seen him since." *Exhibit L*, p. 116. District's online monitoring platform indicated Student was rarely, if ever, operating his school laptop during his scheduled classes, and Parent "believes he was able to access class with a teacher once or twice during his time in [Online School]." *Response*, p. 4; *Complaint*, p. 7; *see Exhibit O*, pp. 1-11.
38. Due to concerns around Student's pending court proceedings, and the negative impact Student's inability to engage academically in the virtual setting may have on those proceedings, Parent admits to "completing some of [Student's] [Online School] assignments and tests for him." *Complaint*, p. 7; *see Exhibit A*, p. 41.
39. On April 15, Parent's advocate reached out to Director regarding "substantial concerns about [Student's] identified needs and whether he's had appropriate access to his education over these past months." *Exhibit L*, pp. 96-97. Director responded that Student was "placed on safety restrictions due to significant charges"; the District was "operating under school board policy to implement a temporary safety placement into [Online School]"; and that an IEP team meeting should be convened "to review and adjust [Student's services] as needed." *Complaint*, p. 8; *Response*, p. 4; *Exhibit L*, p. 23.

F. April 2024 IEP

40. On April 30, a properly convened IEP Team, including Parent, met for Student's annual review and developed a new IEP ("2024 IEP"). *Complaint*, p. 8; *Response*, p. 4; *see Exhibit A*, pp. 36-54. Student's change of placement to Online School was first documented in the 2024 IEP. *Exhibit A*, pp. 36, 39.
41. The 2024 IEP describes Student's present levels of performance, noting "Student was not able to complete his second semester at School due to a situation outside of the school. He was attending class and showing good effort" while at School, but since transitioning to Online School, Student "has struggled to access his classes and [special education] services." *Id.* at p. 39.
42. The parent and student input section reflects that Student and Parent let the IEP Team know Parent had been completing some of Student's Online School assignments. *Id.* at p. 41. It also notes "[Student] wants to return to in-person learning as soon as that is possible," and Parent would like Student to have a 1:1 paraprofessional for the entire school day, as "[Student] does not know how to access his services virtually." *Id.*

43. The 2024 IEP contains three annual goals, one each in the areas of Social Emotional, Reading Comprehension, and Math Calculation. *Id.* at pp. 48-49.

44. The 2024 IEP's service delivery statement identifies the following services:

- 225 minutes per week of direct Affective Needs services, provided by an Affective Needs teacher;
- 675 minutes per week of direct Resource services, provided by a Resource special education teacher;
- 30 minutes per week of direct mental health services, provided by a Social Worker; and
- 15.5 minutes per week of indirect occupational therapy, provided by an OT.

Id. at p. 52.

45. The 2024 IEP reflects that it was appropriate for Student to remain in general education between 40% and 79% of the time. *Id.* at p. 53. The Team considered the option of Student having a smaller percentage of his day in general education to focus on his mental health needs, "but agreed that a fairly even split between [special education] and general education was appropriate for him." *Id.*

46. The 2024 IEP included PWN explaining that:

[Student] is expected to return to in-person learning by the start of his 10th grade year. The situation that prevented him from doing so for the majority of his second semester should be resolved, so this IEP was written with the expectation that he will be an in-person student. Virtual learning has not been successful and both he and [Parent] have expressed their frustration with the current learning environment.

Id. at p. 54.

47. Despite recognizing that the online educational environment had not been successful for Student, and Parent's reiteration that Student still did not know how to access his services virtually (FF # 42), District did not provide additional supports or services to Student at this time or through the remainder of the school year. *Response*, p. 3; *Reply*, p. 3; *see Exhibit A*, pp. 39, 41, 54.

G. Progress on Annual IEP Goals and Student's Current Status

48. District "acknowledges that at [the 2024 IEP] meeting, the IEP team should have increased its supports for Student, whether by providing in-person support to help him access the online

services or in-person learning at an alternate location.” *Response*, p. 4. Nevertheless, District contends that “[d]espite sporadically attending his special education services, [Student] continued to make progress within the general education curriculum while attending [Online School], noting he “passed each of his general education courses during the Spring 2024 semester” and “made progress on his Social/Emotional and Reading Comprehension IEP goals.” *Response*, p. 5; see *Exhibit L*, p. 141; *Exhibit I*, p. 4.

49. Complainant disputes that Student made progress in Online School, noting that, by District’s own admission in the 2024 IEP, “[v]irtual learning has not been successful” for Student. (FF # 46). Further, Complainant asserts that any reported progress is negated by Parent’s admission to completing some of Student’s assignments and tests. (FF #s 38, 42).
50. There are no progress reports on annual IEP goals from Student’s time in Online School, although teacher input in the 2024 IEP notes that Student had made progress in the areas of Social/Emotional and Reading Comprehension. *Exhibit A*, pp. 39-40; see *Exhibit I*. Student’s final grade reports reflect an “unsatisfactory” grade in one of his virtual special education classes and passing grades in all of his general education classes. *Exhibit I*, pp. 3-4. However, given the lack of progress reporting, District’s recognition that Online School was unsuccessful for Student, Parent’s admission to completing some of Student’s assignments, and the data from District’s online monitoring system indicating “Student was rarely, if ever, operating his school laptop during his scheduled classes,” the SCO finds that any reporting on Student’s progress during his time in Online School is inconsistent with the IDEA, and therefore is unreliable.
51. On May 16, the criminal charges against Student were dropped and the case dismissed. *Complaint*, p. 8; *Exhibit 15*; see *Exhibit L*, p. 67. Student is scheduled to begin his 10th grade year in-person at School this August. *Response*, p. 5.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District improperly determined Student’s educational placement by: (a) not ensuring Student’s placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8); (b) making a significant change to Student’s educational placement without consideration of a reevaluation of Student, as required by ECEA Rule 4.03(8)(b)(ii); and (c) not providing PWN to Parent of Student’s change of placement, as required by 34 C.F.R. § 300.503(a)-(b). District also did not follow the proper disciplinary change of placement procedures and did not afford Student and Parent any of IDEA’s procedural disciplinary protections, as required by 34 C.F.R. §§ 300.530-536. This resulted in a denial of FAPE.

Parent’s concern is that District unilaterally changed Student’s placement from School to Online School outside the IEP Team process.

A. Placement Determinations under IDEA

A child’s placement—a term used to denote the provision of special education and related services—is determined by the IEP Team, including parents, and must be individualized, as well as based on the student’s IEP. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Endrew F. v. Douglas Cnty. Sch. Dist.*, 71 IDELR 68 (OSERS 12/07/17). Specifically, school districts must ensure that the placement decision is made by a group of persons, including parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); *see also id.* §§ 300.321(a)(1), 300.324, 300.501(c).

Here, District changed Student’s educational placement from School to Online School in January 2024. (FF #s 20-35). The SCO finds and concludes that the decision to change Student’s placement was made wholly outside of the IEP process. Upon receiving notice of Student’s charges, District’s IDT met and determined, based solely on the nature of the charges, that Student posed a safety risk and should be immediately removed from School and placed in Online School—there was no involvement by Parent, Student, or the IEP Team in making this determination. (FF #s 20-23). And because the determination was made based solely on the nature of the charges, District’s placement decision was also made without considering the meaning of any evaluation data and the placement options. (FF #s 21-22). Further, the subsequent “Disability Planning Meeting” between Parent and members of the IEP Team did not constitute a properly convened IEP Team meeting. (FF # 32). Due to the lack of written documentation around Student’s change of placement, including no PWN to Parent, it is not clear how, or to what extent, the January 17 meeting participants came to a determination that Student could receive a FAPE in Online School. (FF #s 26, 28-29). However, any role the IEP Team played in Student’s change of placement was after District’s initial determination to remove Student from School. (FF #s 20-25).

For these reasons, the SCO finds and concludes that District did not ensure Student’s placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8).

B. Significant Change of Placement

Any significant change in placement, such as a move from a brick-and-mortar school to an online setting, must be made upon consideration of reevaluation and “only by an IEP Team with the addition of those persons conducting such reevaluation unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 C.F.R. § 300.324(a)(4).” ECEA Rule 4.03(8)(b)(ii)(B); *see Weld RE-5J Sch. Dist.*, 77 IDELR 148 (SEA CO 07/14/2020) (holding that a move to a placement where

student was completely removed from the general education environment and taught one-on-one by a special education teacher constituted a significant change in placement).

Here, the SCO finds that District made a significant change to Student's placement by moving him from School, an in-person setting, to Online School in January 2024. (FF #s 20-35). District admits it did not consider a reevaluation of Student in making this significant change of placement and, as previously determined, Student's change of placement was made entirely outside the IEP process. (FF # 32). Accordingly, the SCO finds and concludes that District did not follow the significant change of placement procedures, as required by ECEA Rule 4.03(8)(b)(ii).

C. Prior Written Notice of Change in Placement

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Systema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, "the IDEA establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Doe ex rel. Doe v. Todd Cnty. Sch. Dist.*, 625 F.3d 459, 464 (8th Cir. 2010).

One of the procedural safeguards is the requirement that school districts provide PWN to parents whenever the district proposes to change a student's educational placement. 34 C.F.R. § 300.503(a)(1); *Doe*, 624 F.3d at 465. Among other things, the PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation, procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP Team considered and the reasons why those options were rejected; and a description of any other factors related to the District's proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(3), (6)-(7).

PWN must be provided so that parents have enough time to fully consider and respond to the proposed action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). "The purpose of [the PWN] requirement is to ensure that parents receive sufficient information about where the agency proposes to place their child and why that placement was chosen, so that parents may reach an informed conclusion about whether the placement will provide an appropriate education." *Smith v. Squillacote*, 800 F. Supp. 993, 998 (D.D.C. 1992).

Here, District admits it did not issue PWN to Parent regarding Student's change of placement from School to Online School. (FF #s 4, 28). Accordingly, the SCO finds and concludes that District did not provide Parent with PWN of its decision to change Student's placement, as required by 34 C.F.R. § 300.503.

D. Implication of IDEA's Disciplinary Provisions

i. IDEA's Disciplinary Protections for Students with Disabilities

Complainant suggests that in the absence of IEP Team involvement in District’s initial safety determination, District should have used the IDEA’s disciplinary provisions to effectuate Student’s change of placement. (FF # 33). District asserts that it properly followed the procedures set out in the Policy and state statute regarding safety-related removals of students. (FF # 34). This concern raised by Complainant is directly related to the allegation accepted for investigation—it involves the same change of placement, timeframe, IEP, and documents—and thus it is critical to consider in determining whether District provided Student a FAPE. Both parties had the opportunity to address this issue during the investigation.

The IDEA includes extensive provisions governing the discipline of children with disabilities. See 34 C.F.R. §§ 300.530-300.536. The regulations are premised on the principle that children should not be penalized for conduct that is the result of a disability." *CDE, Guidance Memorandum Re: Discipline of Students with Disabilities*, at 1 (March 19, 2012), https://www.cde.state.co.us/sites/default/files/documents/cdesped/download/pdf/guidance_disciplineofchildren.pdf; see also 71 Fed. Reg. 46720 (Aug. 14, 2006) (providing that “a child with a disability may display disruptive behaviors characteristic of the child's disability and ... should not be punished for behaviors that are a result of the child's disability”).

Implicit in IDEA's disciplinary provisions is a “principle that disfavors [using] discipline to make changes in the educational placement of a child with a disability. Rather, where a child with a disability has issues with behavior or self-control, [IDEA] shows a preference for dealing with those issues via the IEP process rather than via the disciplinary process.” *CDE, Guidance Memorandum Re: Discipline of Students with Disabilities*, at 1. Accordingly, for a student with a disability, the IDEA requires school districts to “take a careful look at any possible relationship between the misconduct in question and the child's disability (or disabilities), and to proceed cautiously with disciplinary action.” *Id.*

For instance, a removal that constitutes a disciplinary change of placement requires that the school district, within ten school days of any decision to change a student’s placement, hold a manifestation determination review to determine whether the student’s conduct was a manifestation of his disability or of the district’s failure to implement the IEP. 34 C.F.R. § 300.530(e). If the IEP Team determines the student’s conduct was a manifestation of his or her disability or of the district’s failure to implement the IEP, certain additional safeguards are triggered, including the requirement that the student be returned to the placement from which he was removed, unless the parents and district agree otherwise. *Id.* § 300.530(f)(2). If the IEP Team determines the conduct was not a manifestation of the student’s disability, then the district may apply “the relevant disciplinary procedures [applicable] to children without disabilities in the same manner and for the same duration,” which may exceed 10 days of removal. *Id.* § 300.530(c).

In enacting the IDEA’s disciplinary provisions, “Congress did not leave school administrators powerless to deal with dangerous students.” *Honig v. Doe*, 484 U.S. 305, 323-25, 328 (1988). Several options are available, consistent with the IDEA, for districts faced with a student who presents safety concerns.

For instance, the IDEA expressly authorizes school officials to unilaterally remove a student to an interim alternative educational setting (“IAES”)—without consideration of whether the misconduct was a manifestation of the child’s disability—for up to 45 school days in three “special circumstances.” *Id.* § 300.530(g). If these special circumstances exist, the IAES “shall be determined by the IEP Team.” *Id.* §§ 300.530(g), 300.531. In situations where a special circumstance does not exist, a school district that “believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others” may request an expedited hearing seeking a hearing officer’s order to place the student in an IAES. *Id.* § 300.532(a). A school district may also seek injunctive relief from the courts if the district believes a student is substantially likely to injure himself or others if he or she remains in the current educational placement. *Honig*, 484 U.S. at 323-25, 328.

In this case, the SCO finds and concludes that District changed Student’s educational placement for disciplinary reasons without using the “IEP process” or any of the IDEA’s disciplinary protections.

i. What Constitutes a Disciplinary Change of Placement

Discipline of a student with a disability may result in a change to the student’s placement and trigger the IDEA’s procedural protections. *See* 34 C.F.R. §§ 300.530, 300.536. A disciplinary change of placement occurs if: (1) a student has been removed from her current educational placement for more than ten consecutive school days or (2) a student has been subjected to a series of short-term removals that total more than ten school days and constitute a pattern. *Id.* § 300.536(a).

In the discipline context, “administratively shortened school days occur when a child’s school day is reduced solely by school personnel, rather than the child’s IEP Team or placement team, in response to the child’s behavior.” *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 81 IDELR 138 (OSERS 2022). Indeed, “disciplinary actions and programmatic changes” “that result in denials of access to, and significant changes in, a child’s educational program,” for 10 consecutive school days or more, constitute a change of placement. *Id.*

These types of actions are generally considered disciplinary removals, triggering the procedures and protections in 34 C.F.R. §§ 300.530 through 300.536, unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child’s IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement. *Id.*; *Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act*, 121 LRP 33345 (OSEP 09/30/21), G-3 (indicating that virtual learning provided during the pandemic may be appropriate for a child with a disability, so long as it “provides the child . . . meaningful opportunities to be educated and interact with nondisabled peers in the regular education environment”); *see also San Luis Valley Bd. of Coop. Educ. Servs.*,

123 LRP 20939 (SEA CO 03/04/23) (finding student was not educated with nondisabled children in a separate “Turn It Around Room” outside of general education to the same extent he would have been in the placement required by the student’s IEP). Further, “whether a proceeding is [labeled] disciplinary or not does not dictate whether the [student’s] underlying conduct or behavior ‘violated a code of student conduct’” implicating the IDEA’s disciplinary provisions. *K.C. ex rel. M.D. v. Reg’l Sch. Unit 73*, 616 F. Supp. 3d 63, 75 (D. Maine 2022).

ii. *Whether a Disciplinary Change of Placement Occurred*

In this case, Student was removed from School pursuant to the Policy and the state school discipline statute. (FF #s 17-19). These provisions are facially disciplinary in nature. That the Policy and state statute contemplate that “suspension or expulsion proceedings may be postponed, pending the outcome of the court proceedings,” does not place removals of this nature outside the IDEA’s disciplinary provisions. Otherwise, District would be bound by IDEA’s disciplinary procedures in the case of a student with a disability whose completed behavior violates a code of conduct, but excepted from compliance with those procedures in the case of a student with a disability who has merely been *alleged* to have engaged in behavior that *would* violate a code of conduct, if proven. Such a result is inconsistent with IDEA’s purposes and federal guidance.

Against this backdrop, the SCO finds and concludes that Student’s removal to Online School was a “disciplinary change of placement” under the three-factor test provided by the IDEA regulations and federal guidance. *See* 34 C.F.R. § 300.536(a); *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 81 IDELR 138 (OSERS 2022).

First, Student was not afforded the opportunity to continue to appropriately participate in the general curriculum. Student’s IEP required that he be in the general education setting between 40% and 79% of the time, in-person at School, and included numerous accommodations to ensure he could access and progress in the general curriculum. (FF #s 10-12). By contrast, Student’s access to the general curriculum at Online School required Student to access and engage with a virtual setting independently. (FF # 25).

Second, Student was unable to receive the services specified in his IEP because Student was completely unable to access the remote learning setting independently. (FF # 36-37, 41-42, 46). Although District staff were aware shortly after Student’s placement in Online School that he was not accessing an education via the virtual environment, District did not increase services or supports or consider alternative placement options to address those concerns. (FF #s 36-37, 47-48).

Third, Student was not educated with non-disabled peers to the same extent as in his IEP-designated placement at School. Even if Student were to have engaged with his virtual special education classes, his only peer interactions would have been outside the general education setting, and Student’s peers would have been at School in-person while he participated through video, a far different experience than Student’s placement at School provided. (FF # 25).

District asserts that the safety removal procedure it followed for Student here was appropriate under the Policy and state statute, citing two prior CDE Final Decisions for support: *Jefferson County School District R-1*, 121 LRP 24046 (SEA CO 04/08/21) and *Jefferson County School District R-1*, 66 IDELR 148 (SEA CO 05/28/15).

In *Jefferson County*, 121 LRP 24046 (SEA CO 04/08/21), the student was admitted to a hospital for mental health concerns where he was arrested for assault. The district held a threat assessment (“TA”) meeting, including parent and the student, where the parties “discussed the events leading to the student’s hospitalization and asked the student questions about the incident at the hospital.” *Id.* The TA team then determined that the student should be temporarily removed to remote instruction for safety reasons, citing the student’s “history of concerning behaviors” and the recent hospital incident. *Id.* In *Jefferson County*, 66 IDELR 148 (SEA CO 05/28/15), the district held a TA meeting, including parent and the student, to discuss “three significant events during the course of a week” that gave rise to the district’s safety concerns around the student. The district determined that the student should be removed from his current educational placement to a separate program on an interim basis for imminent safety reasons. *Id.* In both instances, the CDE concluded the district’s temporary removal of the student for safety reasons did not constitute a disciplinary change of placement under the IDEA.

The SCO finds these two prior Decisions are factually distinguishable from the circumstances here, namely because Student and Parent were not at all involved in District’s placement decision and the conduct that led to Student’s removal was not based on recent behavior that presented an imminent threat. (FF #s 20-22). However, to the extent CDE’s conclusions regarding disciplinary change of placement in these two prior Decisions conflict with the conclusion regarding a disciplinary change of placement in this Decision, the prior guidance is not consistent with IDEA’s preference that removal of students with disabilities be accomplished via the IEP process and with recent federal guidance and developments in case law in student discipline. See *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 81 IDELR 138 (OSERS 2022); *Bd. of Educ. of Mamaroneck Union Free Sch. Dist.*, 124 LRP 11328 (S.D.N.Y. Mar. 31, 2024) (“[A] school district may not unilaterally remove a student with a disability from a placement if the district believes the student to be a safety risk.” (citing *Honig v. Doe*, 484 U.S. 305, 321 (1988))). Therefore, these two prior Decisions should not be relied upon for guidance related to disciplinary changes of placement under the IDEA.

Moreover, in this case, the state discipline statute and the Policy are directed at the general education environment, though they apply to all students, including students with disabilities. (FF # 17). However, irrespective of any generally applicable state statute or District policy, it remains the responsibility of District to educate children with disabilities in the least restrictive environment in which they can receive an appropriate education and to follow the IDEA’s procedural requirements around placement and discipline. District’s unilateral removal of Student from School without the procedural protections of IDEA’s disciplinary provisions is inconsistent with those requirements. (FF #s 20-35). Because District did not follow the IDEA’s provisions around disciplinary changes of placement here, the SCO finds and concludes that

District's removal process did not afford Student and Parent any of IDEA's procedural disciplinary protections, as required by 34 C.F.R. §§ 300.530-536.

E. Denial of FAPE

Procedural noncompliance results in a denial of FAPE only if it (1) impedes a student's right to a FAPE, (2) significantly impedes the parent's opportunity to participate in the decision-making process, or (3) causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001); *see also Jefferson Cnty.*, 66 IDELR 148 (finding a denial of FAPE when District did not hold an IEP Team meeting before changing Student's placement and did not issue PWN to Parent).

Here, Student's change of placement was not based on Student's IEP, but instead was entirely inconsistent with Student's IEP, which designated his LRE as between 40% and 79% in the general education setting, in-person at School (FF # 12). District's placement determination was also made outside the IEP Team, including Parent and Student, and therefore without the benefit of information from those most familiar with Student's individualized needs and special education services. (FF # 20-24). The January 17 meeting was not a properly constituted IEP Team meeting, and, in any event, any IEP Team involvement came too late; the placement determination had already been made by the IDT. (FF #s 30-34). District also did not provide Parent PWN of Student's change of placement, which left Parent without information on how the participants at the January 17 meeting came to the determination that Student could receive a FAPE in Online School, the other placement options available and why they were rejected, and any other factors related to the District's proposed change of placement, such as how the IDT came to its preliminary safety determination. (FF #s 26-29). Without PWN, Parent could not reach an informed conclusion about whether the placement in Online School would provide an appropriate education for Student and what her options were if she disagreed with District's proposed placement. (FF #s 26, 28, 30, 32).

Further, although District staff made some attempt to engage Student with the online learning platform, District did not review Student's services or his progress in Online School until an IEP meeting several months following his placement there, and only after inquiries from Parent's advocate. (FF #s 36-39, 40). The IEP Team agreed Student had been unsuccessful in the online setting, but District did not offer increased supports or consider alternative educational settings (FF #s 41-48). Further, there are no progress reports from Student's time in Online School, and Student's grade reports are unreliable. (FF # 50). Finally, District's unilateral removal procedure here deprived Student and Parent of the procedural safeguards afforded by the IDEA's disciplinary change of placement procedures.

As a result, Student missed nearly one semester's worth of in-person instruction designated by his IEP. Accordingly, the SCO finds and concludes that District's noncompliance impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process around Student's change of placement and caused a deprivation of educational benefit to Student.

F. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of Educ.*, 118 LRP 43765 (SEA CO 06/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, there are no progress reports on annual IEP goals from Student’s time in Online School, and Student’s grade reports are unreliable. (FF # 50). However, the parties agree that online schooling was unsuccessful for Student (FF #s 41-42, 46), and a full semester of lost progress is significant. District has offered to provide Student with 100 hours of direct specialized instruction by a special education teacher and 6 hours of direct mental health services. (FF # 4). The SCO finds and concludes that this is a reasonable amount considering Student’s individualized needs and the missed instruction, which totaled approximately 145 hours. (FF # 11) Accordingly, the SCO awards Student 100 hours of specialized instruction and 6 hours of mental health services.

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic in nature and will likely impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authorities, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are “critical” to the State Enforcement Agency’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the noncompliance stemmed from the District’s lack of written policies and procedures around changes of placement for students with disabilities and District’s application of its policies regarding suspension/expulsion to students with disabilities in a manner inconsistent with IDEA. (FF #s 13-19). Indeed, this noncompliance almost impacted at least one other student and, if not corrected, has the ability to impact the future provision of services for all students with disabilities in District. (FF # 35). The SCO accordingly finds and concludes that the District’s noncompliance is systemic.

REMEDIES

The CDE concludes that District did not comply with the following IDEA requirements:

- a. Ensuring the placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8).
- b. Making a significant change to Student’s educational placement in consideration of a reevaluation, as required by ECEA Rule 4.03(8)(b)(ii); and
- c. Providing Parent with prior written notice (“PWN”) of Student’s change of placement, as required by 34 C.F.R. § 300.503(a)-(b).
- d. Making a disciplinary change of placement without ensuring Student and Parent were afforded the procedural safeguards provided by IDEA’s disciplinary procedures, as required by 34 C.F.R. §§ 300.530-536.

To demonstrate compliance, District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Monday, September 9, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance 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 District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, any District administrators or staff who are members of District’s IDT, District’s Safety & Security Team, any other District administrators supporting or supervising District’s obligations under the IDEA, including District’s special education coordinators, and all individuals who serve as case managers who are employed by District at the beginning of the 2024-2025 school year must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501, 300.503 and ECEA Rule 4.03(8). This review must occur no later than **Monday, September 16, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Monday, September 23, 2024**.

3. Policy and Procedure Review

- a. By **Wednesday, October 9, 2024**, District must submit written procedures or guidance detailing the steps staff must take to ensure changes of placement,

including disciplinary changes of placement implicating existing District and state disciplinary provisions, are conducted consistent with 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501, 300.503, 300.530-536, and ECEA Rule 4.03(8).

- i. At a minimum, the written procedures must offer clear guidance on:
 1. Changing a student’s placement for any purpose;
 2. Changing a student’s placement for disciplinary reasons, including when students with disabilities are charged with crimes of violence or unlawful sexual behavior;
 3. The IEP Team’s obligation to consider a reevaluation when making a significant change to a student’s placement; and
 4. Issuing PWN when District proposes to change a student’s placement.
- b. The District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. The District must ensure that all District administrators or staff who are members of District’s IDT, District’s Safety & Security Team, special education administrators, and case managers in the District receive a copy of the procedures no later than **Friday, November 8, 2024**. Evidence that the procedures were shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Wednesday, November 13, 2024**.

4. Training

- a. Director, any other District administrators supporting or supervising District’s obligations under the IDEA, including District’s special education coordinators, and all individuals who serve as case managers who are employed by District at the beginning of the 2024-2025 school year must complete training provided by CDE on change of placement procedures, including disciplinary change of placement procedures. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, 300.501, 300.503, 300.530-536, and, and ECEA Rule 4.03(8).
- a. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training

may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.

- b. Such training shall be completed no later than **Friday, January 10, 2025**. Evidence that this training occurred must be documented (i.e. training schedules, legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, January 24, 2025**.

5. Reevaluation and Review of IEP

- a. The District must provide Parent with a form seeking consent for a reevaluation of Student by **Friday, September 6, 2024**. The reevaluation must include an assessment of Student's present levels of functioning, Student's progress or regression on IEP goals, and any other assessment the IEP Team deems necessary.
 - i. If Parent refuses to sign consent for evaluation within 10 days of receipt, the District will be excused from conducting the reevaluation, provided the District diligently attempts to resolve disagreements about the scope of the evaluation and secure signatures and documents such efforts. A determination that District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student, rests solely with CDE.
- b. District must convene Student's IEP Team, at a mutually agreeable date and time, within 30 days of the reevaluation and no later than **December 6, 2024**. In consideration of the reevaluation and Student's current academic performance, Student's IEP Team must review and, as necessary, revise Student's current IEP, in accordance with 34 C.F.R. § 300.320, to address Student's unique needs and the concerns identified in this Decision.
- c. By **December 27, 2024**, the District must provide copies of the signed consent for reevaluation, evaluation report, notice of the IEP meeting, and finalized IEP to the CDE Special Education Monitoring and Technical Assistance Consultant.

6. Compensatory Education Services

- a. Student shall receive the following in-person compensatory services:
 - i. **6,000 minutes (100 hours) of direct specialized instruction** provided by a licensed and qualified special education teacher, including an appropriately licensed and qualified special education teacher currently employed by the District; and

- ii. **360 minutes (6 hours) of direct mental health services** provided by a licensed and qualified mental health provider, including an appropriately licensed and qualified mental health provider currently employed by the District.
- b. These service minutes must target Student's IEP goals. All services must be completed by **August 9, 2025**.
- c. By **Wednesday, September 11, 2024**, District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services to the CDE no later than **Friday, September 13, 2024**. If District and Parent cannot agree to a schedule by **Wednesday, September 11, 2024**, the CDE will determine the schedule for compensatory services by **Friday, September 20, 2024**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from providing compensatory services if District diligently attempts to meet with Parent and documents its efforts. The determination that District has diligently attempted to meet with Parent and should therefore be excused from providing compensatory services rests solely with CDE.
 - ii. Parent may opt out of some or all of the compensatory services.
- d. Monthly consultation between the providers delivering compensatory services and Director or the Director's Designee shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory education services have been furnished. Consultation logs must contain the name and title of the provider and the date, duration, and a brief description of the consultation.
- e. To document the provision of these compensatory services, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been provided. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.

- f. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, 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 CDE of the change in the monthly service log.
- g. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).

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

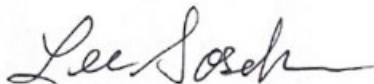
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 9th day of August, 2024.



Lee Sosebee, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-10

- Exhibit 1: April 2023 IEP
- Exhibit 2: Behavior Detail Report
- Exhibit 3: Contact Log
- Exhibit 4: Emails
- Exhibit 5: District Letter
- Exhibit 6: District Policy
- Exhibit 7: Emails
- Exhibit 8: Notice of Meeting
- Exhibit 9: Emails
- Exhibit 10: Emails
- Exhibit 11: Emails
- Exhibit 12: Emails
- Exhibit 13: Emails
- Exhibit 14: April 2024 IEP
- Exhibit 15: Emails

Response, pages 1-11

- Exhibit A: IEPs
- Exhibit C: Notices of Meeting
- Exhibit D: Evaluation
- Exhibit F: Behavior Incidents
- Exhibit G: Change of Placement Documents
- Exhibit H: Attendance Records
- Exhibit I: Report Cards & Progress Monitoring
- Exhibit J: School Calendar
- Exhibit K: District Policies and Procedures
- Exhibit L: Correspondence
- Exhibit N: Verification of Delivery
- Exhibit O: Additional Documents
- Exhibit N: Other Student Information

Reply, pages 1-4

Telephone Interviews

- Parent: July 19, 2024
- Director: July 11, 2024
- Assistant Principal: July 11, 2024

- Judicial Officer: July 17, 2024

Written Questionnaires

- Learning Center Teacher: July 24, 2024
- School Social Worker: July 23, 2024