

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

State Complaint SC2025-636
Jeffco Public Schools

DECISION

INTRODUCTION

On November 21, 2025, the advocate (“Advocate”) for the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Jeffco Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified five allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

On January 20, 2026, the CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A final written decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after November 21, 2024. Information prior to November 21, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

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.

² The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. District did not develop, review, and revise an individualized education program (“IEP”) from November 21, 2024 to present that considered the use of positive behavioral interventions and supports, and other strategies—specifically goals, accommodations and/or a behavior intervention plan (“BIP”)—to address behavior impeding Student’s learning or that of others, as required by 34 C.F.R. §§ 300.320(a)(2), (4), 300.324(a)(2)(i).
2. District did not either conduct a functional behavior assessment (“FBA”) or review Student’s BIP and modify it as necessary to address Student’s behavior, after determining that Student’s conduct was a manifestation of his disability during a manifestation determination review (“MDR”) held in April 2025, as required by 34 C.F.R. § 300.530(f)(1).
3. District did not properly determine Student’s educational placement in September 2025 because it:
 - a. Did not ensure the placement decision was made by a group of persons that included Parents 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); and
 - b. Made a significant change to Student’s educational placement without consideration of a reevaluation, as required by ECEA Rule 4.03(8)(b)(ii).
4. District did not properly determine Student’s eligibility and educational need at a meeting in September 2025 because it did not ensure that information obtained from a variety of sources—specifically from observations and about Student’s adaptive behavior—was documented and carefully considered, as required by 34 C.F.R. § 300.306(c)(1)(ii).
5. District did not properly determine at a MDR held in November 2025, if the conduct in question was (a) caused by, or had a direct and substantial relationship to, Student’s disability or (b) the direct result of District not implementing the IEP, as required by 34 C.F.R. § 300.530(e)(1).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 11 years old and, during the 2024-2025 school year, was in fifth grade at a District school (“School 1”). *Exhibit A-2*, p. 7. During the 2025-2026 school year, Student attended sixth grade at both School 1 and another District school (“School 2”). *Exhibit A-3*, pp. 1-3.

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

Student is eligible as a child with an other health impairment (“OHI”) and a serious emotional disability (“SED”). *Id.* at p. 1.

2. Student has been identified as a gifted and talented learner in general intellectual ability. *Exhibit A-2*, p. 11. Math is a relative strength. *Id.* at p. 9. He is kind, funny and creative. *Interviews with Parent, Student’s special education teacher and case manager at School 1 (“Case Manager 1”), and the school psychologist at School 1 (“School Psychologist”).*
3. Student struggles with emotional regulation and executive functioning. *Exhibit A-3*, p. 5. When he becomes anxious or dysregulated, he seeks control and may have verbal outbursts or shutdown. *Id.*

B. District Policies, Procedures and Practices for Addressing Behavior

4. When students are demonstrating externalizing or internalizing behaviors, District conducts a functional behavioral assessment (“FBA”) to collect data and determine the function, or purpose, of the behavior. *Interviews with District’s assistant directors of special education for School 1 and School 2 (“Assistant Director 1 and Assistant Director 2”).* All mental health providers in District are trained by a mental health coordinator and district behavior analysts on how to conduct an FBA and develop a behavior intervention plan (“BIP”). *Id.* Staff also receive additional mentoring from District while conducting their first FBA. *Id.*
5. That information is then used to develop a BIP designed to reduce the target behavior and teach skills to replace the target behavior. *Id.* The BIP should include strategies to proactively teach desired behaviors and react to undesired ones. *Id.* The IEP will also include goals to help the student develop skills to reduce the need for a BIP, accommodations to address behaviors and services to work on those goals. *Id.*
6. Once students are approaching 10 days of removal, District conducts a manifestation determination review (“MDR”). *Interviews with Assistant Director 1, School Psychologist and Case Manager 1.* If the team at the MDR determines that the behavior is a manifestation of the student’s disability or that District did not implement the IEP, then they conduct an FBA if they have not already and review the BIP. *Id.* If needed, the BIP is revised to address the behaviors that led to the removals. *Id.*
7. District policy JK-2 governs the discipline of students with disabilities. *Response*, p. 6; *Exhibit I-1*, pp. 1-3. For student’s with an IEP, JK-2 requires a team including parents and relevant members of the student’s IEP team to consider whether the behavior was a manifestation of a student’s disability or the district did not implement the IEP after any disciplinary change of placement. *Exhibit I-1*, pp. 1-2.
8. If the behavior was a manifestation, the disciplinary change of placement would be discontinued and District would either conduct an FBA and implement a BIP or review any existing BIP and modify it as necessary. *Id.* at p. 2. If the behavior is not a manifestation, the

student would be provided with educational services during the change of placement “to enable the student to continue to participate in the general education curriculum...and to progress toward meeting” their goals. *Id.*

C. 2024 IEP

9. Parent, Case Manager 1, Student’s fifth grade teacher (“Fifth Grade Teacher”), School 1’s principal (“Principal 1”) and School Psychologist met on November 12, 2024 to develop a new IEP (“2024 IEP”) for Student. *Exhibit A-1*, p. 19.
10. At that time, Case Manager 1 had to go into Fifth Grade Teacher’s classroom once or twice a week to help with Student’s behavior. *Id.* at p. 3. Fifth Grade Teacher checked Student’s backpack daily to ensure the items in it were “appropriate.” *Id.* Student required between two to four redirects and five to 45 minutes to comply with directions and get back to work. *Id.* Student struggled to pay attention during math, requiring frequent redirections to complete work. *Id.* at p. 4. As of November 2024, Student had a D in reading, Cs in science and social studies and Bs in writing, spelling and math. *Id.*
11. Student was receiving 180 minutes per month (“MPM”) of direct instruction from School Psychologist in both a group and one-on-one setting. *Id.* at p. 6. During group, Student could be a good participant, but other times required frequent redirection. *Id.* Student had good insights into his behavior during group but was not yet able to generalize what he learned. *Id.* Student mostly required modeling and one or two prompts to use his coping skills but had made progress on his goal to use coping skills with less prompting. *Id.* at pp. 6-7.
12. Student met his prior goal of earning 75% of his daily points by having a calm body and appropriate language, completing work and not taking things. *Id.* at p. 7. However, his performance varied significantly day to day. *Id.*
13. The Student Needs statement indicated Student had difficulty following adult directions, impacting his ability to participate in general education. *Id.* When not emotionally regulated, Student “shuts down, does not attend, and does not complete/engage in the expected tasks.” *Id.* Student required a BIP and no other special factors applied. *Id.* at p. 8.
14. Student’s self-determination goal was to “comply with adult requests that are related to a nonpreferred task or activity with 3 or fewer prompts in 80% of opportunities” from a baseline of six. *Id.* His social and emotional wellness goal was to demonstrate the ability to use coping skills to regulate his emotions independently, by earning a three on an included rubric, from a baseline of 1.5. *Id.* at pp. 8-9.
15. The 2024 IEP included nine accommodations, including the following relevant here: (1) “[t]eacher and student requested breaks for emotional regulation”; (2) preferential seating “to allow room to move around and close proximity to teacher and close access to his safe

place”; (3) “[d]aily backpack check (morning and afternoon)”; (4) “[d]aily desk/locker check”; (5) “[u]se First/Then language”; and (6) process behavior incidents with student. *Id.* at p. 9.

16. The 2024 IEP required the following services to support Student’s “ability to use coping strategies and follow directions for nonpreferred tasks”: (1) 180 MPM of direct instruction from a mental health provider outside of general education and (2) 220 MPM of direct instruction from a special education teacher outside of general education. *Id.* at p. 11. Student’s least restrictive environment (“LRE”) was general education more than 80% of the time, specifically 95.6% of the time. *Id.* at p. 12.
17. According to the embedded prior written notice (“PWN”) the 2024 IEP team considered evaluating Student to determine if he met eligibility criteria for autism spectrum disorder and agreed to consider that eligibility criteria during Student’s re-evaluation the following year. *Id.* at pp. 13-14. The IEP team also considered reducing his time with a mental health provider but decided against that. *Id.* at p. 13.
18. During the meeting, Parents and school providers agreed that Student was having a harder time transitioning from preferred to nonpreferred tasks, but he was lying less and calming down quicker after incidents. *Id.* at p. 14. The team agreed to have an adult watch to make sure Student checked out with Case Manager 1 daily. *Id.* Parent noted that Student responded well to a weighted blanket, and the IEP team agreed to have a weighted lap pad available in his “safe place.” *Id.*

D. 2024 BIP

19. The IEP team also discussed a BIP (“2024 BIP”) for Student. *Id.* at p. 15. Student’s problem behaviors had changed, but the function still appeared to be avoiding nonpreferred work. *Id.* When asked to start a nonpreferred task or stop a preferred task, Student would “ignore the adult, stare at the adult, make noises or speak with unusual tone of voice, continue what he was doing, and/or hide behind a desk, under a table, or create a barricade around himself.” *Id.* It could require multiple adults and up to 45 minutes to redirect Student. *Id.*
20. The 2024 BIP included six setting event strategies to reduce the impact of setting events: (1) “check ins with trusted adult throughout the day”; (2) morning backpack check for distracting items; (3) “ongoing, frequent home school communication”; (4) increased supervision when using computer or during unstructured times; (5) frequent breaks; and (6) warnings about changes in routine or schedule. *Id.* at pp. 15-16.
21. It also included five antecedent strategies to decrease the likelihood that the behavior would occur: (1) remind Student about his coping skills; (2) prompt Student to “ask for a break or to ask for space”; (3) supervised safe space to calm down, as an alternative to hiding under furniture; (4) present Student with two options when he is not following directions; and (5) use of first/then language, where the then option is a preferred task. *Id.*

22. There were five behavior teaching strategies Student would learn to increase the likelihood of the replacement behaviors: (1) identifying cues in his mind/body that he was becoming frustrated; (2) stating his feelings; (3) asking for a break; (4) asking for space; (5) developing and practicing coping strategies. *Id.*
23. To reinforce the replacement behaviors, Student could earn time for a preferred activity or with a preferred adult and could earn a “preselected reward when he use[d] a coping skill appropriately” or followed an adult directive. *Id.*

E. Student’s Behavior at School 1

24. Prior to the 2024 IEP team meeting, Student did not have any behaviors significant enough to result in an entry in the behavior detail report during the 2024-2025 school year. *Exhibit B-1*, pp. 4-5. However, he did get written up for disruptive behavior in the “Classroom Behavior Tab.” *Id.* Classroom teachers can use the classroom behavior tab to document behaviors that do not require administrative intervention to identify behavior patterns or keep a record of classroom disruptions. *Interview with School Psychologist.*
25. He was written up in the classroom tab once in August, twice in September, four times in October and twice in November. *Exhibit B-1*, pp. 4-5; *Exhibit 2*, pp. 4-7. Six incidents involved compliance with adult directives to complete work or return objects while three involved conflicts with peers. *Id.* This included playing in an unsafe or threatening manner with a rock and scissors. *Id.*
26. After the 2024 IEP team meeting, Student’s behavior increased in both intensity and frequency. *Response*, p. 2; *Exhibit B-1*, p. 4-5; *Interviews with Case Manager 1 and School Psychologist.*

Date	Behavior	Consequence
11/22/24	Student refused to turn off computer.	.5 day in school suspension (“ISS”)
12/3/24	Peer threatened to "take [Student] down with his shoulder and end him." Student threatened to end peer too.	Communication contract
12/10/24	Student did not listen to teacher and left class. Student lifted chair and played instrument in hallway.	Parent call
12/19/24	Student threatened to break peer’s arm during a game at recess.	2 day suspension
1/7/25	Student violated an agreement regarding expected communication with peer.	Loss of recess
1/27/25	Student would not give pen to teachers.	Principal responded
1/28/25	Student hit peers on the head with a Chromebook for a “social experiment” to see their reactions.	Staff responded
1/30/25	Student would not do work, Case Manager 1 spent 45 minutes before getting Student to take a reading test.	Support from Case Manager 1

1/31/25	1) Student refused request from lunch person and cussed several times. 2) Student refused to hand over device when alarm was going off and disrupting peers.	1) Time in office replacing sign 2) Out of class 25 minutes
2/13/25	Student cussed at peers and called them inappropriate names.	Missed specials to work on "appropriate ways to communicate anger"
2/24/25	Student brought pepper spray to School 1 "for protection from other kids on his walk home."	2 day suspension
2/26/25	1) Student brought disruptive items from home and would not turn them over. Refused to work. 2) Student refused to go to specials without his stickers. 3) Student threatened to hire an assassin to kill band teacher when told he would be removed for blocking door. He also threatened to bomb the building if removed when going over the incident with administration.	1) Restorative conference 2) Restorative conference 3) 4 day suspension. 1 day ISS. Building threat assessment
3/13/25	Student made shooting gun motions in class and toward peers.	2 day suspension
3/25/25	Student stole scissors and played in "unsafe" way. He stole gum and pens from office and would not return them, so he could not return to class.	1 day ISS
4/2/25	Student told peers in band there would be a lockdown.	Restorative conference
4/10/25	Student lost a race with a peer and called him inappropriate names. Was too elevated to go to band.	1.5 hours out of class
4/11/25	Student hugged a peer without permission	Restorative conference
5/20/25	On the last full day of school, Student said he wanted to kill a peer and a staff member with a gun.	.5 day suspension

Exhibit E-1, pp. 3-11; Exhibit E-2, pp. 1-14; Exhibit 2, pp. 2-4.

27. From November 2024 through April 2025, Student was formally written up twelve times, had eight additional write ups in the classroom behavior tab and was suspended for a total of 10 days. *Exhibit E-1, pp. 4-11; Exhibit 2, pp. 2-4.* Nine incidents were the result of inappropriate interactions with peers and eleven involved noncompliance with staff directions. *Id.* Of those eleven, six involved the inappropriate possession and/or retention of objects. *Id.*

F. Functional Behavioral Assessment

28. Initially, District thought Student's increase in behaviors were related to anxiety about the holiday breaks. *Interview with School Psychologist*. In February 2025, when the behaviors did not return to baseline, District provided a consent form to complete an FBA in response to Parents' request. *Id.*; *Exhibit C-1*, p. 1. Parents signed the consent form and District completed the FBA on April 10. *Id.*; *Exhibit B-1*, pp. 1-7; *Exhibit C-1*, p. 1.
29. The target behavior identified in the FBA was non-compliance with academic and non-academic requests. *Exhibit B-1*, p. 1. At times, Student could be redirected with fewer than three prompts, but other times he had to be removed from the learning environment to process the situation. *Id.* He sometimes threatened to harm himself or others. *Id.*
30. The target behaviors occurred in seven out of ten observations, and most often occurred when Student was asked to "hand over items that [were] distracting, not safe, or being used inappropriately," like scissors. *Id.* at pp. 1-6. Behaviors could last up to four hours. *Id.* at p. 2.
31. The FBA hypothesized that Student's behaviors were maintained by a "need to obtain or have control of tangible items" as well as attention and a desire to escape nonpreferred or uncomfortable tasks. *Id.* at p. 7.
32. The FBA did not consider or determine the function of verbal aggression or threats. *Exhibit B-1*, pp. 1-7; *Exhibit J*, p. 150. It also did not determine the function of peer conflicts/inappropriate interactions with peers. *Exhibit B-1*, pp. 1-7.

G. April MDR

33. On March 13, 2025, Student used his hands to make shooting motions, directing the motions towards classmates, and was suspended for two days. *Exhibit E-2*, pp. 11-12. In response, District convened an MDR meeting with Parents, Case Manager 1, Assistant Director, Fifth Grade Teacher, School Psychologist and Principal 1. *Exhibit C-2*, pp. 1-6. The MDR was held on April 16, with the FBA previously completed on April 10. *Id.* at p. 1.
34. During the MDR, Parents shared that Student had started new medication. *Id.* at p. 2 Parents noted that while Student was still having incidents at home, they were resolving more quickly. *Id.* The general education teacher was not seeing a difference in Student's behavior, but he seemed to struggle more in the afternoons, especially during specials classes and unstructured time. *Id.* at p. 3.
35. The MDR team considered Student's diagnoses, including anxiety and ability to participate in some successful restorative conversations. *Id.* Conducting bag checks in the office, and not in front of peers, was also helping. *Id.*
36. The MDR team considered whether several incidents that year were a manifestation of Student's disability. *Id.* at pp. 1-6. All members of the team agreed that the verbal threats and

refusal behaviors were directly related to Student's disability. *Id.* at pp. 3, 4. However, Principal 1 and Parents noted that Student bringing pepper spray to school was different than the other incidents and may have had a different function. *Id.* The MDR team determined that bringing pepper spray was not a manifestation of Student's disability. *Id.* It was Parents' understanding that they agreed not to consider that incident during the MDR, not that they agreed it was not a manifestation. *Interview with Parent.*

37. As the other behaviors were a manifestation of Student's disability, the MDR team agreed to review and, as necessary, revise Student's BIP. *Exhibit C-2, p. 4.*

H. 2025 BIP

38. Immediately after the MDR, the team reviewed the new FBA and adjusted Student's BIP. *Interviews with Parent, Assistant Director 1 and School Psychologist.* However, those changes were not finalized as the team planned to meet again. *Interview with School Psychologist.*

39. An IEP team meeting was scheduled for May 14 for that purpose. *Exhibit D-1, p. 4.* Case Manager 1, Assistant Director 1, Other Parent, Fifth Grade Teacher, Principal 1, and School Psychologist met to review the FBA and finish developing the 2025 BIP. *Exhibit A-2, pp. 3-4.*

40. Based on the FBA, the IEP team identified the target behaviors in the 2025 BIP to refusal of academic or non-academic tasks or any "response that does not match the delivered instruction within 3 requests." *Id.* at p. 5. They also updated the hypothesis statement to include: (1) a "need to obtain or have control of tangible items"; (2) attention; and (3) escape from nonpreferred tasks or uncomfortable environments. *Id.*

41. The IEP team added three setting event strategies: (1) Parent/school communication any time Student needed new supplies; (2) line of sight supervision at all times, except during bathroom breaks; (3) "provide specified calm zones throughout the school to help him with emotional regulation when needed." *Id.*

42. Three new antecedent strategies were added: (1) flexibility when completing tasks, focusing more on the end product than how Student gets there; (2) prompt Student to take a break or ask for space; and (3) minimize access to school supplies that are not needed for the task. *Id.*

43. A new behavior teaching strategy, reminding Student "that he must complete an adult request with 3 or fewer prompts" was added. *Id.* Five new reinforcement strategies were added: (1) earning special time with an adult or peer of his choosing; (2) classroom teacher would request support if Student did not follow an adult request with three or fewer prompts. If Student did not comply with the second adult, an administrator would remove him to a calm space or the office; (3) once regulated, Student would be given the missed work with accommodations. Student would "continue to work outside of the classroom until he [was] fully regulated and [had] completed the necessary work to return to the classroom"; (4) Parents would be notified anytime Student missed more than 30 minutes due to

dysregulation; and (5) Student would earn tokens for following adult requests with three or fewer prompts and for using coping skills appropriately. *Id.* at pp. 5, 22.

44. In addition to developing the 2025 BIP, to support Student's "ability to use coping strategies and follow directions for nonpreferred tasks" Student's 2024 IEP was amended to include additional support from a special education teacher and a mental health provider. *Id.* at p. 17. He would receive 240 MPM, from a special education teacher, compared to 220 MPM, and 315 MPM from a mental health provider, up from 180 MPM. *Id.* No other changes were made to the 2024 IEP. *Id.*
45. The IEP team noted that he was requiring "a lot of additional adult support," but it was hard to know yet if this was a long-term need. *Id.* at p. 3. In addition to the minutes added to the 2024 IEP, Student was supported by Case Manager 1 or School Psychologist at lunch and recess daily to "assist him with working through peer conflicts as well as providing modeling on how to initiate appropriate peer interactions." *Exhibit G*, p. 1-2. In addition, his general education Safety Plan, which has been in place since February 2025, required support from a mental health professional to work on boundaries, conflict resolution, connection building, decision making, and healthy relationships. *Interview with Parent; Exhibit 10*, p. 3. This support was not incorporated into the IEP goals or services. *Exhibit A-2*, p. 17.
46. The IEP team agreed to move up the reevaluation due the following year and provide Parents with consent in August. *Exhibit A-2*, p. 3. The IEP team also discussed the fact that Student's behaviors had increased all week because "he [was] trying to get suspended" because he was anxious about a project due that Friday. *Id.*
47. Parent's concern is that the May 2025 BIP called for Student to be removed from the classroom for noncompliance, reinforcing his goal of avoidance. *Interview with Parent*. In addition, Parent is concerned that the May 2025 BIP and 2024 IEP, as amended did not address verbal threats or peer conflicts. *Id.*; *Exhibit J*, p. 102.

I. Reevaluation

48. On August 18, 2025, District sought consent to complete Student's triennial reevaluation ("Reevaluation") in the areas of communicative status, academic performance, social and emotional status, health and motor abilities. *Exhibit C-3*, p. 1-2. Parents signed and returned the form that same day. *Id.*
49. Over the summer, Student applied to choice enroll in School 2. *Response*, p. 2. As there was no room in his grade, he started the 2025-2026 school year at School 1 on August 19, 2025. *Id.*; *Exhibit H*, p. 2. On August 28, Student was offered a spot at School 2, so School 1 "expedited" the pending reevaluation and coordinated with School 2 to schedule an IEP meeting. *Response*, pp. 2-3. The Reevaluation was completed September 4. *Exhibit B-1*, p. 1.

50. Student had average expressive and receptive language skills. *Id.* at pp. 1-2. Student also exhibited average pragmatic language and social communication skills. *Id.* at pp. 2-3. However, Fifth Grade Teacher reported poor social interaction skills including following routines, knowing when to talk, recognizing when he was arguing, taking responsibility and predicting consequences for behavior. *Id.* at pp. 3-4. She reported below average personal interaction skills and overall pragmatic language skills. *Id.*
51. Fifth Grade Teacher also completed a pragmatic language checklist and an autism social skills profile. *Id.* at pp. 4-5. On the first, she noted that Student rarely used several skills including: appropriate eye contact, giving effective direction to others, getting to the point in conversation, greeting/saying goodbye, using polite terms, and demonstrating affection. *Id.* However, on the latter, Fifth Grade Teacher noted that Student sometimes demonstrated most behaviors related to conversation, including asking/answering questions, maintaining eye contact and responding to/initiating greetings. *Id.* He would often end conversations abruptly, change the topic to fit self-interests and respond slowly. *Id.* Student would sometimes join peers but experienced “more negative than positive peer interactions” and would “often engage in socially inappropriate behaviors.” *Id.* Overall, Fifth Grade Teacher noted that Student would exhibit “age appropriate pragmatic language and social skills...when he was in a calm state and good mood.” *Id.*
52. In informal interactions with the speech and language pathologist (“SLP”), Student was in a calm state and exhibited “age appropriate conversational skills” and nonverbal communication. *Id.* The SLP concluded that students with ASD did not usually demonstrate age-appropriate skills to that degree when calm. *Id.*
53. During the 2024-2025 school year, Fifth Grade Teacher required additional support from the special education teacher nearly daily to support Student’s behavior. *Id.* at p. 5. Student also had daily backpack checks but was still easily distracted by items in his desk or from home, requiring three to six redirects to put them away. *Id.* It took Student anywhere from five to sixty minutes to return to work after a directive. *Id.*
54. Student exhibited average to above average skills on formal academic testing. *Id.* at p. 5-9. Student had grown in reading and spelling from his prior evaluation but continued to require support with “building automaticity with reading and math fluency” as those were areas of relative weakness. *Id.* at p. 9.
55. Fifth Grade Teacher and the gifted teacher noted that Student often refused to complete work. *Id.* Fifth Grade Teacher also noted that Student’s writing was hard to follow as it lacked transitions and details. *Id.* Math was a strength, but he had a hard time recognizing or accepting mistakes. *Id.* During class he would often blurt out or make inappropriate noises. *Id.* He also struggled with organization and long-term or multi-step projects. *Id.* Student ended the 2024-2025 school year with one B, three Cs, one D and one F. *Id.* at p. 12.

56. The Reevaluation also included a review of Student’s documented behavior incidents during the 2024-2025 school year. *Id.* at pp. 12-14. Student’s prior self-determination goal was to comply with nonpreferred adult requests with three or fewer prompts in 70% of opportunities. *Id.* at p. 14. With the 2025 BIP and increased direct instruction, Student had shown “some progress” and was able to follow directions with 3 or fewer prompts” 55% of the time, including 97% of the time in small group settings. *Id.* at pp. 14-15.
57. Across nine days, staff noted that Student required adult support for 710 minutes more than his IEP described. *Id.* at p. 15. In Student’s first six days of the year, behaviors including shouting out, stealing food and threatening peers had interrupted his learning and the learning of others. *Id.*
58. Student’s social emotional goal was to demonstrate coping skills to regulate his emotions in the classroom by earning a “3 out of 3” on a defined rubric. *Id.* Student continued to require adult prompting to use learned coping skills. *Id.* At the end of fifth grade he was using coping strategies three out of five times when prompted. *Id.*
59. Parent, Fifth Grade Teacher and an art teacher completed the Behavior Assessment for Children rating scales. *Id.* at pp. 15-18. All three reported clinically significant concerns with aggression, conduct problems and withdrawal. *Id.* All three also noted at-risk or clinically significant concerns with depression and adaptability. At least two raters noted concerns with attention, atypicality, social skills, study skills, and functional communication. *Id.*
60. Parent and Fifth Grade Teacher completed Social Responsiveness Scales to address Parent’s concern that Student might have an autism spectrum disorder. *Id.* at p. 19. Parent reported mostly severe concerns while Fifth Grade Teacher reported mild to moderate concerns. *Id.* Student’s Other Parent and a music teacher (“Music Teacher”) completed the Autism Spectrum Rating Scales. *Id.* at p. 22-23. Other Parent reported slightly elevated scores while Music Teacher reported overall average scores. *Id.* Both raters reported elevated concerns around peer socialization, social/emotional reciprocity, atypical language and behavioral rigidity. *Id.* The results suggest that Student “ha[d] a few behavioral characteristics that are similar to those exhibited by children” with an ASD. *Id.*
61. Student was also observed in the classroom and at recess. *Id.* at pp. 25-26. In class Student was off topic during a group project and disrupted his peers. *Id.* At recess, he engaged in a game with several peers and a back-and-forth conversation with a peer. *Id.*

J. Eligibility Determination

62. Before conducting an evaluation, District staff meet with parents to discuss concerns and potential areas of eligibility to ensure District gathers the body of evidence necessary for any categories that will be considered. *Interviews with Assistant Directors 1 and 2 and the social worker for School 2 (“Social Worker”).* Each potential category of eligibility requires a different body of evidence. *Interview with Assistant Director 1.*

63. For instance, for eligibility based on ASD, state regulations require a body of evidence matching a triad of eligibility criteria related to social communication, pragmatic language skills and restrictive/repetitive interests. *Interviews with Assistant Directors 1 and 2*. Determining eligibility under ASD requires both observations and multiple formal assessments. *Interview with Social Worker*.
64. On September 4, 2025, a multidisciplinary team (“MDT”) including Parent, SLP, School Psychologist, Case Manager 1, Assistant Directors 1 and 2, Social Worker, Principal 1, and a general education teacher met to review the Reevaluation. *Exhibit D-2*, p. 5.
65. The MDT went through the checklist to consider eligibility under ASD. *Interviews with Parent, Social Worker, School Psychologist and Assistant Directors 1 and 2*. The MDT discussed that while Student displayed some challenges with social communication and pragmatic language, formal testing indicated average abilities in those areas. *Interviews with Assistant Director 1 and Case Manager 1*.
66. Specifically, Student did not exhibit those challenges when emotionally regulated. *Interviews with Case Manager 1 and Parent*. There was a lot of discussion about anxiety holding back his social interactions, rather than ASD. *Interview with Case Manager 1*. The MDT agreed that Student exhibited significant rigidity in routines with marked distress over changes. *Interviews with Parent and Case Manager 1; Exhibit D-2*, p. 3.
67. Ultimately, the MDT determined that Student was eligible for special education as a student with an OHI and an SED. *Exhibit D-2*, pp. 1-2. The MDT determined that he was not a student with an ASD because he did not have significant difficulty interacting with or understanding people and events or with other aspects of social communication. *Id.* at p. 3. Parent’s concern is that Student was not found eligible under ASD despite observations indicating characteristics consistent with ASD. *Complaint*, pp. 6-7.
68. IEP services are individualized based on a student’s needs, not their eligibility category. *Interviews with Social Worker, School Psychologist and Assistant Director 2*. Thus, eligibility in a third area would not have changed Student’s IEP services. *Id.*

K. First 2025 IEP

69. On September 4, the same team also reviewed and revised an IEP for Student (“First 2025 IEP”). *Exhibit A-3*, p. 20.
70. When considering a placement change for a student who is choice enrolled in District, District partners with the student’s district of residence. *Interviews with Assistant Directors 1 and 2*. This generally involves inviting the district of residence to any IEP meeting where they will be considering a change of placement that might need to be implemented by the district of residence. *Id.*

71. Before the meeting on September 4, Assistant Director 1 called Parent to discuss a potential change of placement and prepare her for that possibility. *Interview with Assistant Director 1; Exhibit J*, pp. 3-9. During that call, they discussed the potential need for a center-based program and the fact that the family could apply for choice-enrollment at a school that had such a program, but that until then, student's district of residence ("District of Residence") might be responsible for implementing his IEP. *Interview with Assistant Director 1*.
72. Ordinarily, someone from District of Residence would have been invited to the September 4 IEP team meeting for Student to discuss the available placement options. *Interviews with Assistant Directors 1 and 2*. However, in this case, Assistant Director 1 thought Assistant Director 2 was inviting Student's District of Residence as she had a working relationship with them. *Interview with Assistant Director 1*. Assistant Director 2 thought Assistant Director 1 was doing so, as she was taking lead in the eligibility process. *Assistant Director 2*.
73. During the meeting on September 4, the IEP team discussed Student benefiting from smaller class sizes and more support. *Interviews with Parent, School Psychologist and Assistant Director 1*. Staff noted he was more successful in small group settings and believed he needed more mental health support. *Interviews with School Psychologist and Case Manager 1*.
74. With the understanding that District of Residence does not have affective needs classrooms, the IEP team ultimately determined that Student's LRE would be a separate school in District of Residence. *Response*, p. 3; *Interviews with Assistant Director 1 and Parent*. This surprised Parent, who wanted time to think about this and discuss it with Student's Other Parent. *Interviews with Parent and Assistant Director 2*. Parent had questions about the proposed school in District of Residence as well as the other options. *Id.* Assistant Director 2 offered to connect her to someone at District of Residence to answer those questions. *Id.*
75. Later that day, Assistant Director 2 sent an email to Parents and a service coordinator ("Coordinator") in District of Residence about his need for a separate school placement. *Exhibit J*, p. 54. This included a finalized copy of the First 2025 IEP. *Id.* at pp. 55-68.
76. The First 2025 IEP included placement in a separate school in District of Residence where Student would have increased direct support, structured classrooms, smaller classes, reduced sensory stimulation, more mental health support, flexible days to meet his affective needs and "additional opportunities for inclusion in general education as replacement behavior skills are demonstrated." *Id.* at pp. 66-67. The disadvantages would be no access to general education instruction or peers. *Id.*

L. Second 2025 IEP

77. Four days later, Coordinator contacted District with concerns about the proposed placement and the decisions that were made without the involvement of District of Residence. *Id.* at p. 107. She was concerned that Student did not meet their criteria for placement in a separate school and warned that District of Residence might reject the IEP. *Id.* Coordinator also told

Parent that if Student enrolled in District of Residence, he would start at a neighborhood school, not a separate school. *Interview with Parent*.

78. Parents, through Advocate, also raised concerns with the process and the significant change of placement. *Exhibit J*, pp. 101-103. Parents requested an immediate enrollment at School 2 with a return to general education with supports, including an updated BIP. *Id.* Parent's concern is that decisions about placement on September 4 were made without anyone from District of Residence and without reliance on data. *Complaint*, pp. 5-6.
79. In response, Assistant Director 2 offered to convene another IEP team meeting on September 11 to develop a new IEP at School 2 and Parents agreed. *Id.* at p. 100. On September 11, Parents, Assistant Director 2, a general education teacher ("Math Teacher"), a special education teacher ("Case Manager 2"), Social Worker, Advocate, a dean from School 2 ("Dean") and the principal of School 2 ("Principal 2"), met to develop a new IEP ("Second 2025 IEP") for Student. *Exhibit A-3*, p. 21. In the intervening week, Student was not attending any school. *Exhibit F-1*, p. 3; *Exhibit J*, pp. 8-9; *Interviews with Parent and Assistant Director 2*.
80. The Second 2025 IEP noted that Student was often calm and regulated in 1:1 settings and that with "support and regulation from preferred adults, [he was] able to reflect on his actions." *Id.* at p. 3. He was also a "good conversationalist who engage[d] well with peers, particularly younger children." *Id.*
81. However, when presented with nonpreferred tasks he might "become upset and need structured support." *Id.* In those moments, he benefited from space and "access to a trusted adult" to process his feelings. *Id.*
82. Student had made some progress on his prior self-determination goal of complying with requests with three or fewer prompts at the end of the prior year, but he also continued to have "several challenging behaviors" that interfered with learning and had only attended six days of school in the new year. *Id.* He similarly made some progress with using coping strategies when prompted at the end of the 2024-2025 school year and was still sometimes willing to take a break when prompted, however, he would not always return to work after. *Id.* at pp. 3-4.
83. Student was struggling in several areas, which impacted his learning. *Id.* at p. 4. He struggled with: (1) regulation during nonpreferred tasks, impacting work initiation and completion; (2) following adult directives; (3) handwriting/endurance for writing answers; and (4) organizing and completing academic tasks. *Id.* He also struggled with peer relationships, including: (1) demonstrating empathy when dysregulated; (2) maintaining personal space; (3) vocalizing needs without being loud or making threats; (4) maintaining safe behaviors; (5) relating to others; and (5) recognizing appropriate times to share comments. *Id.* He engaged in hoarding behaviors and might "mirror negative behaviors for attention." *Id.*

84. According to the student needs statement, Student required support to manage his emotional and behavioral responses as well as his executive functioning skills. *Id.* at p. 5. For Student, anxiety and dysregulation often manifested as a need for control, resulting in power struggles. *Id.* Anxiety could cause verbal outbursts or non-responsive shutdowns. *Id.* As a result, he required direct instruction and accommodations to develop coping strategies. *Id.* He also required direct instruction in initiation and work completion, especially for nonpreferred tasks. *Id.*
85. Student’s first self-determination goal was the same as the 2024 IEP, to comply with requests with three or fewer prompts in 80% of opportunities, although the baseline was changed from six prompts to 25% of the time. *Compare, Exhibit A-1, p. 8 and Exhibit A-3, p. 6.* The Social Emotional goal was also the same, to earn threes on a rubric for using coping strategies without support, although the baseline decreased from 1.5 to 1. *Compare, Exhibit A-1, pp. 8-9 and Exhibit A-3, p. 7.* There was a new self-determination goal to initiate written work within two minutes and write three sentences with no more than two prompts. *Exhibit A-3, p. 6.*
86. The Second 2025 IEP included additional explanations for how or why certain accommodations needed to be provided. *Compare, Exhibit A-1, p. 9 and Exhibit A-3, p. 8.* There were also several new accommodations to support behavior and regulation including: (1) shortened or modified assignments to reduce frustration when dysregulated; (2) flexibility in completing tasks, focusing “more on demonstration of proficiency” than the end product; (3) chunk longer assignments or provide timelines to “support his ability to complete the assignment and reduce his anxiety”; (4) advanced notice of schedule changes to reduce anxiety; (5) clear, consistent expectations and consequences; (6) access to trusted adults for check ins and breaks; (7) morning and afternoon check in with trusted adult; (8) designated break area in the classroom and option for movement; (9) option to take a supervised break outside the classroom; (10) ensure Student “understands the ‘why’ behind a situation, consequence, or request in order to get his buy-in”; (11) structured opportunities to work on developing and facilitating peer relationships with an adult; (12) “strategically select peers for [Student] to work with during group projects”; and (13) fidgets. *Id.*
87. The Second 2025 IEP included the following services:
- Direct instruction from a special education teacher to support his self-determination goals for (1) 120 minutes per week (“MPW”) inside of general education and (2) 100 MPW outside of general education.
 - 120 MPM of direct instruction from a mental health provider outside of general education to work on Student’s social emotional goal and 30 MPM of indirect support for his teachers.

Exhibit A-3, p. 11.

88. Social Worker thought the 315 MPM reflected all of Student's time with School Psychologist, not just the time they were spending on skill development. *Interview with Social Worker*. As such, she reduced the minutes to be in line with what would be standard for a general education placement. *Id.* However, the 315 MPM included in Student's IEP after the April MDR reflected the time Student was spending in small group or 1:1 instruction with School Psychologist. *Interview with School Psychologist*. It did not include time spent responding to escalations or supervising lunch and recess. *Id.*
89. The IEP team determined that Student's LRE was general education at least 80% of the time, where he would have more core instruction in general education and "a variety of social and educational experiences" but would have increased sensory stimulation and less access to direct instruction to address behavioral and emotional concerns. *Id.* at p. 12.
90. According to the embedded PWN, the IEP team agreed to conduct another FBA at Parents' request because of "the documented concerning behaviors that have resulted in a Safety Plan" but were "not currently included in the" BIP. *Id.* at p. 13. The IEP team was "drafting a 'hypothesized function' to [Student's] behavior of verbal threats/physical aggression and an intervention plan for supports." *Id.* That plan would be implemented on an interim basis until the FBA was completed. *Id.*
91. Because Student was new to staff from School 2, they relied heavily on the documents provided by School 1 during this meeting. *Interviews with Case Manager 2 and Social Worker*. Thus, they were reluctant to change the IEP to address Student's other behaviors until they got to know him and conducted a new FBA. *Id.*
92. Two reinforcement strategies were added to the 2025 BIP: (1) monitor interest in motivators and change as needed and (2) follow behaviors with restorative conversations to discuss the impact of the behavior and create a plan to repair any harm. *Compare, Exhibit A-2, pp. 22-23 and Exhibit A-3, pp. 16-17.* The 2025 BIP was otherwise unchanged. *Compare, Exhibit A-2, pp. 21-25 and Exhibit A-3, pp. 15-19.*

M. Interim Behavior Plan

93. On September 12, Parents followed up with District about revising the 2025 BIP to address the verbal threat behaviors that had already been found to be a manifestation of Student's disability at the April MDR. *Exhibit 5, p. 1.* They also suggested addressing additional behaviors including verbal aggression, peer conflict and property misuse. *Id.*
94. Assistant Director responded that a district board certified behavior analyst ("BCBA") would "do a deep dive into [Student's] evaluations, IEPs, behavior history, etc" to develop a hypothesized function for verbal threats and physical aggression. *Id.* Based on that function, he and Social Worker would create an interim intervention plan. *Id.*

95. Parents followed up about BIP revisions again on September 29. *Exhibit J*, p. 141. BCBA responded with hypotheses for noncompliance, verbal aggression and threatening based on his review of records and conversations with Parent and staff at School 1. *Id.* at p. 139. He concluded that noncompliance was primarily maintained by avoidance of task demands with a secondary function of accessing tangible items. *Id.*
96. BCBA concluded that verbal aggression was similarly primarily driven by escape/avoidance, with further reinforcement provided by attention. *Id.* at pp. 139-140. Threats appeared to have two separate functions, with the behavior sometimes driven by escape/avoidance and other times resulting from failed attempts to get peer attention. *Id.* at p. 140.
97. Based on this, he put together an interim behavior support guide (“Interim Plan”). *Id.* at pp. 140-148. The Interim Plan included specific response interventions for threats and verbal aggression and an increased reinforcement schedule. *Id.* It also included the same four behavior teaching strategies from the 2025 BIP. *Compare, Exhibit J*, p. 145 and *Exhibit A-3*, p. 16. The Interim Plan did not include any teaching strategies for peer relationships or positively seeking attention. *Exhibit J*, p. 145.
98. The Interim Plan was not added to Student’s BIP but was shared with Student’s teachers while BCBA worked on a new FBA to develop an updated BIP. *Interviews with BCBA, Social Worker and Math Teacher*. After the first week or two, School 2 started seeing the same behaviors and challenges School 1 had described. *Interview with Case Manager 2*.
99. Parents signed and returned the consent for the new FBA on September 30. *Exhibit J*, p. 133. BCBA conducted his first observation for the new FBA the week of October 13, 2025. *Id.* at p. 136. Overall, however, progress was slow because of Student’s removals from class and disciplinary removals. *Interview with BCBA*.

N. November MDR

100. On October 31, Student offered a multi-tool to a teacher who was struggling to unscrew something. *Exhibit C-4*, p.1; *Interview with Parent*. The multi-tool included a knife. *Id.* Student carried the knife in an inner pocket of his shorts where it was not discovered during the daily searches. *Exhibit E-2*, p. 31. He told staff he had brought it several days. *Id.* The prior day, a peer reported seeing Student threaten another classmate with the knife. *Id.* at p. 34.
101. As a result of this incident, Student was suspended for five days and Principal 2 recommended that he be expelled from District. *Exhibit E-2*, p. 30. On November 6, Parent, Advocate, Teacher 3, Assistant Director 2, Dean, Social Worker, BCBA, Principal 2, and Case Manager 2 met to determine whether Student’s behavior was a manifestation of his disability. *Exhibit C-4*, p. 6; *Exhibit D-1*, p. 6.

102. The MDR team noted that an FBA had been completed in April and another was underway. *Exhibit C-4*, p. 1. In addition to the BIP implemented in May 2025, Student also had the Interim Plan for support. *Id.*

103. For purposes of the MDR, the team was deciding if concealing the knife during searches, threatening bodily injury/death to others and possessing a knife over multiple days was a manifestation of Student’s disability. *Id.* He shared that he brought the multi-tool to “be prepared” in case “his parents forgot to pick him up after school.” *Id.*; *Exhibit E-2*, p. 33. He told Parents he brought the tool so he could forage or fish or build a shelter if he was not picked up after school. *Interview with Parent.*

104. Student had been suspended three prior times that year:

Date	Behavior	Days of Removal
8/26/25	He wrote another student’s name=dead, which was considered a threat.	Half day
10/6/25	Student threatened several students with a Nerf gun and made threatening statements.	3 days
10/24/25	Student threatened to bring a gun and shoot people or snap their necks.	2 days

Id. at pp. 1-2.

105. Parents shared that Student had a history of bringing objects to school “as comfort.” *Id.* at p. 2. He thought of the knife as a multi-tool. *Id.* He had lost trust in staff and felt there was no support for reported bullying. *Id.*; *Exhibit 7*. Math Teacher noted that Student did not appear anxious in class and was able to use coping strategies. *Exhibit C-4*, p. 2.

106. District staff did not believe this was a manifestation of Student’s ADHD because it was not done impulsively. *Interviews with Assistant Director 2, BCBA and Social Worker.* Instead, the behavior appeared thought through as he had to retrieve the item from his brother’s room and conceal it during the daily searches. *Id.* They also considered whether it was directly related to his SED, focusing on the fact that this was not something he did in a moment of dysregulation to determine that it was not. *Id.*

107. Parents brought up Student’s anxiety, including his history of bringing objects from home to manage his anxiety. *Interviews with Assistant Director 2, BCBA, Social Worker and Parent.* District staff thought this was distinguishable from other objects he brought because it was a knife, he was concealing it and he was not using it as a fidget. *Id.* Overall, the team, other than Parents, did not believe that “possession and concealment of a weapon over numerous days” was caused by his disability because it was not impulsive to conceal it for multiple days. *Exhibit C-4*, pp. 2-3.

108. Parents raised concerns that the BIP was not followed during a prior incident when Student was not allowed to return to class when calm after making verbal threats. *Exhibit C-4*, p. 3. District concluded that they had been implementing Student’s IEP and BIP and the Interim Plan. *Id.* Thus, the team determined that the behavior was not a manifestation and District could continue with disciplinary procedures. *Id.*
109. Parents disagreed with the decision and believed it was impulsive to offer the screwdriver to the teacher. *Id.* at p. 3. Parents also believed District had not developed an IEP to address all his needs, including addressing the habit of bringing items to school. *Id.*; *Interview with Parent.*
110. District moved forward with expulsion proceedings and Student received a deferred expulsion in December. *Interviews with Assistant Director 2 and Parent.* Student started at a fulltime alternative school in District on January 12, 2026. *Id.* Prior to that, Student was participating in District’s expulsion program for 10 hours per week. *Id.* District is currently scheduling a meeting to review and revise the Second 2025 IEP and is working to complete the second FBA that was started at School 2. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District did not develop, review and revise an IEP that addressed the behavior impeding Student’s learning from April 2025 to present, as required by 34 C.F.R. §§ 300.320(a)(2), (4), 300.324(a)(2)(i), (b). This resulted in a denial of FAPE.

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

A. 2024 IEP

i. Development of the 2024 IEP

The 2024 IEP was developed more than one year before the Complaint was filed. (FF # 9.) Thus, the CDE will not consider the propriety of the IEP development process. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ C(2)(c). However, the CDE still has authority to consider the propriety of the IEP itself. An IEP that does not comply with the requirements of the IDEA

remains noncompliant each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day that IEP is in effect. *Weld County Sch. Dist. 6*, 81 IDELR 239 (CO SEA April 24, 2022). Thus, the CDE turns directly to consider the second prong of whether the 2024 IEP was substantively adequate. *Rowley*, 458 U.S. at 207.

ii. *Substantive Adequacy of the 2024 IEP*

Under the IDEA, an IEP team must consider the use of positive behavioral interventions and supports whenever a student's behavior interferes with the student's ability to benefit from her educational programming. 34 C.F.R. § 300.324(a)(2)(i). This includes where the consequences of a child's behavior, including "violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures" impede the child's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Disciplinary Provisions*, 122 LRP 21461 (OSERS 07/19/22). School districts must also consider positive behavioral interventions in circumstances where a student's elopement interferes with the student's ability to benefit from her education or poses a safety risk. *See, e.g., In re Student with a Disability*, 123 LRP 34035 (SEA KY 10/03/23). A student's need for behavioral interventions and support must be decided on an individual basis by the student's IEP team. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540, 46691 (Aug. 14, 2006). The adequacy of an IEP depends on whether it was appropriate when drafted and not with consideration of subsequent information. *Roland M. v. Concord Sch. Comm.*, 16 IDELR 1129 (1st Cir. 1990), *reh'g en banc denied*, 110 LRP 65965 (1st Cir. 09/14/90), *cert. denied*, 110 LRP 66026, 499 U.S. 912 (1991); *See, also, Tyler V. by Desiree and Robert V. v. St. Vrain Valley Sch. Dist. No. RE-1J*, 56 IDELR 165 (U.S. Dist. Ct. CO 2011).

Here, the 2024 IEP was developed in consideration of Student's then-present levels, including teacher observations, grades and progress on prior goals. (FF #s 10-13.) The 2024 IEP included accommodations such as a daily backpack check, breaks for emotional regulation, and access to a safe place. (FF # 15.) It also included a goal around complying with adult directives and another around utilizing coping strategies. (FF # 14.) These goals would be supported with 180 MPM of direct instruction from a mental health provider and 220 MPM of direct instruction from a special education teacher. (FF # 16.) The 2024 IEP also included a BIP with a target behavior of noncompliance and a suspected function of avoiding nonpreferred work. (FF # 19.) The 2024 BIP included six setting event strategies and five antecedent strategies including morning backpack checks, increased supervision during unstructured times, warnings about changes, providing options, using first/then language and breaks. (FF #s 20, 21.) Five behavior strategies were included to help Student identify when he was becoming frustrated and utilizing coping strategies. (FF # 22.) Finally, the 2024 BIP included reinforcement strategies for the replacement strategies Student was being taught. (FF # 23.)

At the time, Student's behavior required intervention from Case Manager 1 or School Psychologist once or twice a week. (FF # 10.) Most of the time, he could be redirected in five to 45 minutes with two to four redirects. (*Id.*) Student's teachers documented 10 incidents in the

classroom behavior log over three months, six of which involved noncompliance with adult directives. (FF # 25.) However, none of his behaviors were significant enough to require formal disciplinary write ups. (FF # 24.) He had made progress on his prior goal to use coping strategies and met his prior goal of being safe and responsible by earning at least 75% of his daily points. (FF #s 11, 12.)

Given the frequency and intensity of Student’s behaviors at the time the 2024 IEP was written, the CDE finds and concludes that the 2024 IEP and BIP included the positive behavioral interventions and supports, and other strategies, to address behavior impeding Student’s learning, as required by 34 C.F.R. § 300.324(a)(2)(i). District complied with the law.

B. Review and Revision of the 2024 IEP

i. Legal Obligation to Review and Revise IEPs

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as appropriate, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

ii. Review and Revision of the 2024 IEP

In this case, Student’s behavior increased in both frequency and intensity almost immediately after the 2024 IEP was developed. (FF # 26.) Between November 2024 and April 2025, Student was formally written up 12 times and suspended for a total of 10 days and had an additional eight write ups in the classroom behavior tab. (FF #s 26-27.) Initially, District thought the behaviors were related to the disruptions caused by the holiday breaks. (FF # 28.) However, when the behaviors persisted, District initiated an FBA in February 2025. (*Id.*) The FBA was completed in early April, about the same time District convened an MDR to review Student’s pattern of removals. (FF #s 28, 33.) The MDR found that most of Student’s behaviors were a manifestation of his disability and District agreed to review his BIP. (FF #s 36, 37.) This review was combined with the consideration of the FBA. (FF #s 37, 38.)

After the MDR, the IEP team developed the 2025 BIP, adding the new target behavior and several strategies to the 2024 BIP. (FF #s 40-43.) The new strategies focused on (1) Student’s access to objects—parent/school communication regarding supplies, minimize access to unnecessary supplies; (2) compliance with adult directives—flexibility when completing tasks, complete adult requests with three or fewer prompts; and (3) emotional regulation—designated calm zones,

prompted breaks. (FF #s 41-43.) The 2024 IEP was also amended to include additional time with a special education teacher and mental health provider to work on Student’s use of coping strategies and his ability to follow directions. (FF # 44.) The CDE finds that it was appropriate to wait and see if the behavior change was persistent before revising the IEP and to conduct an FBA before making those changes. District then reviewed and revised the 2024 IEP after the FBA and April MDR. (FF # 38.)

However, when revising the 2024 IEP and BIP, District’s obligation was to consider the use of positive behavior interventions to address all of Student’s behaviors that were interfering with his learning. 34 C.F.R. § 300.324(a)(2)(i). Between November and April, Student was involved in 20 documented behavior incidents. Although nine of those incidents involved inappropriate peer interactions, the only target behavior identified in the FBA is noncompliance. (FF #s 27, 29.) In April 2025 Student was also requiring support from Case Manager 1 or School Psychologist at lunch and recess every day to “[work] through peer conflicts” and model “how to initiate appropriate peer interactions.” (FF # 45.) District had also developed a Safety Plan, outside of the IEP process, that required mental health support with conflict resolution and peer relationships. (*Id.*) Nothing was added to the IEP or BIP to address social skills, appropriate conflict resolution or Student’s need for support at lunch and recess. (FF #s 40-45.)

In addition, the FBA identified that Student’s noncompliance was driven, in part, by a desire for attention and to escape nonpreferred tasks or uncomfortable environments. (FF # 31.) However, the 2025 BIP required calling in an additional adult, and therefore giving him more attention, if Student did not comply within three directives, regardless of whether his behavior was disruptive. (FF # 43.) If Student did not comply after three more directives, he would be removed from the classroom. (*Id.*) While he would be expected to complete his work in the office, this still allowed him to escape the classroom, a potentially uncomfortable environment. (*Id.*)

Because District recognized the need to review Student’s IEP but did not include any revisions to address his social skills, which were repeatedly contributing to escalations and disrupting his learning, and included reinforcement strategies that also reinforced the target behavior, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.324(b) from April 16, 2025 to September 2025.

C. Second 2025 IEP

i. Development of the Second 2025 IEP

The First 2025 IEP was replaced in one week and never implemented, thus this analysis focuses on the Second 2025 IEP. (FF #s 69, 77-79.) In this case, Parent did not raise any concerns about the development process for the Second 2025 IEP. Thus, the CDE turns directly to considering whether the Second 2025 IEP was substantively adequate. Rowley, 458 U.S. at 207.

ii. Substantive Adequacy of the Second 2025 IEP

Again, for a student whose behavior impedes their learning, the IEP must, among other things, also “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.324(a)(2).

Here, the Second 2025 IEP noted that Student was struggling with peer relationships. (FF # 83.) Student had also been suspended twice more after threatening a peer. (FF #s 26, 104.) In response, the Second 2025 IEP included new, related accommodations, structured opportunities to work on peer relationships and strategically selected peers for group work. (FF # 86.) However, the Second 2025 IEP did not include any services to work on peer relationships. (FF # 87.) It also did not include any social skills goals. (FF # 85.) Instead, it carried forward both goals from the 2024 IEP and added a goal for work initiation. (*Id.*) The Second 2025 IEP included additional direct instruction from a special education teacher inside and outside of general education to work on his self-determination goals. (FF # 87.) Due to a misunderstanding about the services he had been receiving, it also included substantially fewer minutes from a mental health provider to work on his social emotional goal. (FF #s 87, 88.) Neither service included time to work on social skills. (*Id.*) The IEP team also acknowledged that documented concerning behaviors were not currently addressed by the BIP. (FF # 90.) However, instead of modifying the 2025 BIP, the IEP team planned to conduct another FBA and implement an interim behavior plan. (FF #s 90, 91, 93-98.)

While the CDE recognizes that the Second 2025 IEP was developed by a new school team, by that point, District had been aware of Student’s escalating behavior since November 2024. (FF # 26.) District had conducted an FBA, an MDR and a Reevaluation. (FF #s 28-37, 48-61.) The IEP team was aware Student was struggling with peer relationships. (FF # 83.) Based on a review of the existing records, BCBA was able to hypothesize functions for noncompliance, verbal aggression and threats, including threats towards peers. (FF #s 95, 96.) He also developed the Interim Plan to address those behaviors. (FF # 97.) All that information was available to District when the Second 2025 IEP was developed. Further, the Interim Plan still did not include behavior teaching strategies for his challenges with peer interactions. (FF # 97.) Because the Second 2025 IEP carried forward a BIP that did not address Student’s behaviors and did not include goals or services to address those behaviors, the CDE finds and concludes that District did not comply with 34 C.F.R. §§ 300.320(a)(2), (4), 300.324(a) from September 2025 to present.

D. Denial of FAPE

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child’s right to a FAPE, significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, Student's IEPs were not reasonably calculated to address his behaviors from April 16, 2025 to present. At the point the 2024 IEP was amended and the 2025 BIP was developed, Student's peer conflicts had led to repeated removals from the learning environment. (FF #s 26-27.) After the development of the 2025 BIP, Student continued to be removed from School for threatening peers. (FF #s 26, 104.) Further, in developing his Safety Plan, District recognized that Student required instruction in social skills. (FF # 45.) The Reevaluation also identified difficulties with social interactions and peer relationships. (FF #s 50, 51, 60, 61.) However, instead of providing social skills instruction, he had additional adult supervision at lunch and recess. (FF # 45.) Goals and services around social skills were not added to his IEP, so he was not receiving direct instruction to reduce that need. (FF # 44.) That extra supervision at lunch was not described in the 2024 IEP, so it was not carried over into the Second 2025 IEP. (FF #s 41-45, 87, 88.) In addition, at School 1, Student required near daily support from Case Manager 1 or School Psychologist in the classroom and took up to an hour to return to work after a directive. (FF # 53.) Over nine days, staff noted that he required adult support for 710 minutes more than his IEP described. (FF # 57.) He had similar behaviors at School 2, and his removals inhibited BCBA's efforts to conduct a new FBA. (FF #s 98, 99.)

For these reasons, including that Student was not receiving direct support with social skills which was contributing to removals from the classroom, the CDE finds that this impeded his right to FAPE and resulted in a deprivation of educational benefit. Thus, the CDE finds and concludes that this noncompliance resulted in a denial of FAPE. *Systema*, 538 F.3d 1306.

E. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for the 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 Ed.*, 118 LRP 43765 (SEA CO 6/22/18). 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 Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

In this case, despite documented needs, Student's IEPs did not adequately address the behaviors that were interfering with his learning from April 2025 to present. The IEPs specifically did not address his need for goals and services related to social skills, which contributed to repeated removals. (FF #s 26, 27, 45, 87, 88, 90, 104.) The Second 2025 IEP also reduced Student's mental health services based on a misunderstanding about the services Student was receiving at School 1. (FF # 88.) As a result, Student did not receive any direct instruction in social skills from April through November 2025. To put Student in the position he would have been in, the CDE finds that it is necessary to provide Student with four (4) hours of direct social skills instruction, to be provided by a mental health provider.

Conclusion to Allegation No. 2: After determining that Student’s behavior was a manifestation of his disability, District reviewed and revised his BIP, consistent with the requirements of 34 C.F.R. § 300.530(f)(1). District complied with the IDEA.

A. Review of Student’s BIP following the April MDR

Once an MDR Team determines that a student’s behavior was a manifestation of the student’s disability, the IDEA requires the IEP Team to either: (1) conduct an FBA (unless the district had previously completed an FBA) and implement a BIP, or (2) review the existing BIP and modify it as necessary. 34 C.F.R. § 300.530(f)(1).

Here, District conducted an FBA between February and April 2025. (FF # 28.) During that time, Student was suspended several times and District conducted an MDR. (FF #s 26, 27, 33.) The MDR determined that Student’s behaviors were a manifestation of his disability. (FF #s 34-36.) As District had already conducted an FBA, its only option in this case was to review and, as necessary, revise Student’s BIP. That is exactly what District did here. (FF # 37-43.) In consideration of the MDR and the recently completed FBA, the IEP team updated the target behavior, hypothesis statement and added new strategies to all sections of the BIP. (*Id.*) They also added additional service minutes to his IEP. (FF # 44.) District’s obligation with respect to 34 C.F.R. § 300.530(f)(1) was to review and revise, if necessary, Student’s BIP, which it did. Thus, the CDE finds and concludes that District complied with the requirements of 34 C.F.R. § 300.530(f)(1).

Conclusion to Allegation No. 3: District determined Student’s placement on September 4, 2025 without including people knowledgeable about the placement options, as required by 34 C.F.R. § 300.116(a). This noncompliance did not result in a denial of FAPE. District made a significant change of placement on September 4, 2025 in consideration of a reevaluation, as required by ECEA Rule 4.03(8)(b)(ii). District complied with the law.

A. People Making Student’s September 4 Placement Determination

Parent’s concern is that on September 4, decisions were made about Student’s placement without involvement of District of Residence. (FF # 78.)

i. Legal Requirements

The IDEA details how a student’s educational placement must be determined but does not define what constitutes an “educational placement.” 34 C.F.R. § 300.116. In Colorado, the terms “placement” or “educational placement” are “used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school.” ECEA Rule 4.03(8)(a). Court decisions also provide guidance on the scope of the phrase. Educational placement encompasses a student’s educational program, as well as the environment in which the student receives that program. *See, e.g., A.W. ex rel. Wilson v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir.2004) (finding “educational placement” means “the environment in which educational services are provided”); *White ex rel. White v. Ascension*

Parish Sch. Bd., 343 F.3d 373, 379 (5th Cir. 2003) (concluding that “educational placement” refers to a student’s “educational program—not the particular institution where the program is implemented”). It does not refer to a specific location, such as an identified classroom or building. *D.K. v. D.C.*, 983 F. Supp 2d 138 (D.D.C. 2013); *see also White*, 343 F. 3d at 682. A student’s placement must be determined by the IEP Team, including parents, and must be individualized. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Endrew F. v. Douglas Cty. Sch. Dist.*, 71 IDELR 68 (EDU 12/07/17).

A student’s placement must be determined by the IEP Team, including parents and a person knowledgeable about the placement options, and must be individualized. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Endrew F. v. Douglas Cty. Sch. Dist.*, 71 IDELR 68 (EDU 12/07/17).

ii. *People Making the Placement Determination*

In this case, the IEP team determined on September 4 that Student’s LRE was a separate school in District of Residence. (FF #s 74, 76.) Previously, pursuant to the 2024 IEP, his LRE was general education at least 80% of the time. (FF # 16.) The placement change was made by an IEP team including Parent, SLP, School Psychologist, Case Manager 1, Assistant Directors 1 and 2, Social Worker, Principal 1 and a general education teacher. (FF #s 64, 69.) However, no one from District of Residence was present. (FF # 72.) That meant that there was no one with knowledge of the placement options in District of Residence at the meeting. Instead of inviting someone with knowledge of the placement options in District of Residence, District changed Student’s placement based on what it determined District of Residence could offer. (FF # 74.) District of Residence was not comfortable with the IEP it received and the significant change of placement proposed. (FF # 77.) They did not intend to enroll Student in a separate school. (*Id.*)

Because no one from District of Residence was present on September 4, the CDE finds and concludes that District did not comply with 34 C.F.R. § 300.116(a).

B. Consideration of Reevaluation for Student’s September 4 Change of Placement

Parent’s concern is that the placement decision was not made based on data. (FF # 78.)

i. *Legal Requirements*

Colorado’s ECEA Rules distinguish between a nonsignificant change in program/services and a significant change in placement. ECEA Rule 4.03(8)(b). A nonsignificant change in program/services occurs “[w]hen a child’s educational program is altered, such as a change in the amount of a given service.” *Id.* at 4.03(8)(b)(i). Alternatively, a significant change in placement occurs when a district:

- Places or refers a student to a private school or approved facility school;
- Adds or terminates an instructional or related service; or

- Makes any change which would result in:
 - The student having different opportunities to participate in nonacademic and extracurricular activities;
 - The new placement causing a change in educational environment categories required for U.S. Department of Education reporting; or
 - Transfers a student from a brick-and-mortar school to an online school or vice versa.

Id. at 4.03(8)(b)(ii). The educational environment reporting categories include general education more than 80% of the day, general education 40-79% of the day, general education less than 40% of the day, separate school, residential facility and homebound. *IDEA Part B Child Count and Educational Environments for School Year 2021-2022*, OSEP (November 2022).

A significant change in placement must be made upon consideration of reevaluation. *Id.* at 4.03(b)(8)(b)(ii)(B). All placement decisions must be made by a student’s IEP Team and documented in PWN. *Id.* at 4.03(8)(b); 34 C.F.R. § 300.503(a). This rule applies to both nonsignificant and significant changes in placement. *Id.* The only exception exists where the parties mutually agree to the change after an annual IEP meeting within a school year. *Id.* at 4.03(8)(b)(i)(C); 4.03(8)(b)(ii)(B).

ii. Consideration of Reevaluation

In this case, Student’s LRE was changed from general education more than 80% of the time to a separate school on September 4. (FF #s 16, 76.) Since this was a change in required reporting categories, the CDE finds that this was a significant change of placement. District conducted a reevaluation in August 2025. (FF #s 48-61.) The same team that decided Student’s placement on September 4 also reviewed that Reevaluation and determined his eligibility that day. (FF #s 64, 69.) Thus, the CDE finds that the decision was made in consideration of a reevaluation, consistent with the requirements of ECEA Rule 4.03(8)(b)(ii)(B).

C. No Denial of FAPE

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child’s right to a FAPE, significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, District made a decision to change Student’s placement to a school in District of Residence without including someone with knowledge of the placement options. Because no one from

District of Residence was present on September 4, Parent could not ask questions about the proposed program in District of Residence or about other potential placements there. (FF # 74.) This could have significantly impeded her ability to participate in the decision-making process. However, upon recognizing the mistake, District convened another IEP team meeting a week later. (FF # 79.) The Second IEP resulted in a placement that could be implemented in a District school and thus included people knowledgeable about the placement options. (FF #s 79, 89.) Parent, along with Advocate, participated in that decision. (FF # 79.) For these reasons, the CDE finds and concludes that this noncompliance did not result in a denial of FAPE.

Conclusion to Allegation No. 4: District ensured that information from a variety of sources was documented and carefully considered when making the eligibility determination for Student, as required by 34 C.F.R. § 300.306(c)(1)(ii). District complied with the IDEA.

A. Legal Requirements: Eligibility Determinations

Eligibility for special education and related services under the IDEA requires that (1) a child have one of thirteen qualifying disabilities and, (2) “by reason thereof, need[] special education and related services.” 34 C.F.R. § 300.8(a)(1); ECEA Rule 2.08. Thus, even if a child has one of the thirteen qualifying disabilities, the child must also require “specially designed instruction . . . to meet [his or her] unique needs.” 34 C.F.R. § 300.39(a)(1).

The IDEA requires that a MDT determine “whether the child is a child with a disability.” 34 C.F.R. § 300.306(a)(1). An analysis of the appropriateness of an eligibility determination involves two steps. First, the CDE examines whether the school district followed relevant standards and procedures in making the determination. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013). Second, the CDE determines whether the eligibility decision was consistent with the data in the record. *Id.* As a matter of policy, the CDE cannot declare a student IDEA eligible through a state complaint decision. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18).

B. Adherence to IDEA Standards and Procedures

The CDE begins by examining whether District adhered to applicable IDEA standards and procedures regarding how school districts evaluate students and determine eligibility. *See* 34 C.F.R. §§ 300.304-306.

i. Documenting and Carefully Considering Information

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, an MDT must ensure that information drawn from a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior, is document and carefully considered. *Id.* § 300.306(c)(1)(ii).

Here, District's Reevaluation of Student included formal and informal assessments of Student's communicative status, behavior, academic performance, social-emotional status and observations, and observations in the classroom. (FF #s 50-61.) The Reevaluation incorporated feedback from Parents, general education teachers, and service providers. (*Id.*) All this information was detailed in the Reevaluation. (*Id.*) Given the allegation accepted for investigation, the CDE must determine whether District ensured this information was documented and carefully considered. 34 C.F.R. § 300.306(c)(1)(ii). In reaching this determination, the CDE must, in part, determine whether there was a discussion about the characteristics exhibited by Student that support or refute the identification of a disability, and if so, whether there is or continues to be an adverse impact on Student's education performance. *CDE's IEP Procedural Guidance*, p. 23.

Again, to qualify as a "child with a disability" under the IDEA, the child must have a qualifying disability and, because of that disability, need special education and related services. 34 C.F.R. § 300.8(a)(1). Thus, after completing a comprehensive evaluation, the MDT must first determine if a child has one of thirteen qualifying disabilities. *Id.* Then, if the child has one of these thirteen qualifying disabilities, the MDT must move on to determine whether the student needs special education and related services because of the disability. *Id.*

In this case, Student was found eligible as a Student with OHI and SED. (FF # 67) Parent's concern is that Student was not found eligible under ASD despite displaying characteristics consistent with ASD in the Reevaluation. (*Id.*)

The MDT considered whether Student was eligible under ASD. (FF # 65.) The Reevaluation noted and the MDT acknowledged that Student had some difficulties with social skills as noted by Fifth Grade Teacher, Parents and Music Teacher. (FF #s 50, 51, 60, 65.) However, formal assessments indicated that Student had average pragmatic language and social communication skills. (FF #s 50, 51.) Fifth Grade Teacher and SLP observed that Student displayed age-appropriate skills when he was calm and regulated. (FF #s 51, 52.) Thus, the MDT concluded that he had average capabilities in those areas and did not exhibit those challenges when emotionally regulated. (FF #s 66, 67.) The MDT suspected that Student's anxiety, and not ASD, was impacting his social interactions. (FF # 66.) Ultimately, the MDT determined that Student only displayed one of the three required characteristics for eligibility under ASD. (FF #s 66-67.)

The CDE finds that the MDT went through the eligibility requirements for ASD and considered the ways in which Student could meet the criteria as well as why it determined he did not. Accordingly, the CDE finds and concludes that District complied with 34 C.F.R. § 300.306(c)(1)(ii).

C. Consistent with Student-Specific Data

The CDE next considers whether the eligibility determination for ASD was consistent with Student-specific data in the Record. (FF # 51-62.)

According to the IDEA, ASD is “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance.” 34 C.F.R. §300.8(c)(1); *See, also*, ECEA Rule 2.09(1). “[E]ngagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences” are often associated with autism. *Id.* To be eligible for special education, the ASD must “preven[t] the child from receiving reasonable educational benefit from general education as evidenced by at least one characteristic in each of the following three areas”:

- (i) The child displays significant difficulties or differences or both in interacting with or understanding people and events. Examples of qualifying characteristics include, but are not limited to: significant difficulty establishing and maintaining social-emotional reciprocal relationships, including a lack of typical back and forth social conversation; and/or significant deficits in understanding and using nonverbal communication including eye contact, facial expression and gestures;
- (ii) The child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively. Examples of qualifying characteristics include, but are not limited to: an absence of verbal language or, if verbal language is present, typical integrated use of eye contact and body language is lacking; and/or significant difficulty sharing, engaging in imaginative play and developing and maintaining friendships; and
- (iii) The child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics.

ECEA Rule 2.09(1)(a)

Here, the Record reflects that the MDT considered the Reevaluation, including observations, formal assessments and feedback from Parents and Teachers in making its determination that Student was not eligible as a Student with ASD. (FF #s 50-67.) While Student displayed some difficulties with social communication and pragmatic language when escalated, he exhibited age-appropriate skills when regulated. (FF #s 50-52.) When completing rating scales for ASD, Parent indicated severe concerns, while teachers and Other Parent reported mild or slightly elevated concerns. (FF # 60.) Certainly, Student displays some characteristics that are consistent with ASD. (FF # 60.) However, the MDT also considered his areas of eligibility and the fact that those disabilities could also lead to the concerns observed. (FF #s 65-67.) For these reasons, the CDE finds and concludes that District made the eligibility determination consistent with the IDEA’s procedures and the Reevaluation and other data in Student’s records. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, 61 IDELR 232 (OSERS 2013).

Further, the CDE notes that since IEP services are based on need, not area of eligibility, an additional area of eligibility would not have changed Student's IEP services. (FF # 68.) *See, e.g. Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (Holding that the IDEA "concerns itself not with labels, but with whether a student is receiving a free and appropriate education.") and *Williamson County Schs.*, 123 LRP 36960 (SEA TN 11/21/23) (Holding that eligibility categories "act as a gate keeper for special education services, but they do not dictate what special education services are received.")

Conclusion to Allegation No. 5: District considered all the information in Student's file in determining whether his behavior was a manifestation of his disability in November 2025, as required by 34 C.F.R. § 300.530(e). District complied with the law.

A. Legal Requirements for MDRs

Discipline of a student with a disability may result in a change to the child's placement and entitle the student to procedural protections under the IDEA. *See* 34 C.F.R. §§ 300.530, 300.536. 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 if the conduct was a result of the district not implementing the IEP. 34 C.F.R. § 300.530(e). The manifestation determination must be made by the child's parent and relevant members of the child's IEP team reviewing "all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents." 34 C.F.R. §300.530(e); *See Fitzgerald v. Fairfax Cnty. Sch. Bd.*, 556 F. Supp. 2d 543, 559 (E.D. Va. 2008) (Before reaching a manifestation determination, the team must review the information pertinent to that decision . . .). The list of relevant information that may be reviewed at an MDR is not exhaustive. *71 Fed. Reg. 156, 467190* (August 14, 2006).

The conversation must focus directly on the relationship between the behavior and the student's disability, not whether the student knew right from wrong or a global or generalized discussion of the typical expression of student's disability. *See, St. Vrain Valley School District*, 82 IDELR 47 (SEA CO 2022) (finding that district erred when it focused on the student's knowledge of right from wrong when determining if the behavior was a manifestation of his disability); *See, also, Bristol Twp. Sch. Dist. v. Z.B.*, 67 IDELR 9 (E.D. Pa. 2016) (holding that an MDR team did not comply with the IDEA when it focused on the typical traits of individuals with ADHD). Further, in assessing whether a student's conduct was caused by or had a direct and substantial relationship to the student's disability, the focus must be on the relationship between the student's behavior and the student's disability. The MDR team must defer to the behavior officials determined the student engaged in. *See South Lyon Cmty. Schs.*, 50 IDELR 237 (SEA MI 2008) (voiding a determination where the MDR team identified the misconduct as attempting to sell drugs, but student's actual behavior as determined by the principal and superintendent was passing a note that said, "I have pillz," with no further intent found).

If the MDR Team determines the student’s conduct was a manifestation of his or her disability or of the district not implementing 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 MDR 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).

B. The November 2025 MDR Determination

In this case, on November 6, the MDR team determined that bringing the multi-tool was not a manifestation of Student’s disability. (FF # 108.) First, the MDR team considered whether the behavior had a direct and substantial relationship to his disability. (FF #s 105-107.) It considered his ADHD and determined that it was not impulsive because he concealed it and brought it on several days. (FF #s 106-107.) The MDR team also considered his anxiety, noting that this was not something done in a moment of dysregulation or brought for use as a fidget. (*Id.*)

Second, it considered whether the behavior was the result of District not implementing Student’s IEP. (FF # 108.) While Parents had concerns about whether Student’s IEP was followed during a prior incident and whether his IEP was appropriate, the question the MDR Team needed to answer was whether Student’s behavior that resulted in the disciplinary change of placement was a direct result of District not implementing his IEP. 34 C.F.R. § 300.530(e)(1); (FF #s 108, 109.) As District had been implementing Student’s IEP and BIP at the time, the MDR team determined that this behavior was not caused by a lack of implementation. (FF # 108.) Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.530(e)(1).

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature. 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).

In this case, District has procedures and practices consistent with IDEA with respect to the areas of noncompliance noted in this Decision. (FF #s 4-8, 70.) This noncompliance, based on the Record, is individualized to Student and limited to the specific circumstances of this investigation. (FF #s 72, 88, 91). For these reasons, the CDE finds and concludes that this noncompliance was not systemic and is not likely to impact the future provision of services.

REMEDIES

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

1. Developing an IEP to address the behavior impeding Student's learning, as required by 34 C.F.R. §§ 300.320(a)(2), (4), 300.324(a)(2)(i), (b).
2. Ensuring placement decisions were made by a group of persons including someone with knowledge of the placement options, as required by 34 C.F.R. § 300.116.

To demonstrate compliance, District is ORDERED to submit a corrective action plan ("CAP") by **March 4, 2026** that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

1. Final Decision Review

- a. Case Managers 1 and 2, Social Worker, School Psychologist, BCBA and District's directors and assistant directors of special education must read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.116, 300.320(a) and 300.324, by **Wednesday, March 11, 2026**. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed, and a signed assurance from District's Director of Special Education verifying that all required staff completed this review, must be provided to the CDE by **Friday, March 13, 2026**.

2. IEP Meeting

- a. District must convene Student's IEP team, at a mutually agreeable date and time, by **Wednesday, April 10, 2026**. In consideration of the concerns identified in this Decision, Student's IEP team must review, and as appropriate, revise Student's IEP and BIP consistent with 34 C.F.R. §§ 300.320 and 300.324.
- b. If Parents refuse to participate in the IEP meeting, District may convene a meeting without Parents, provided District diligently attempts to secure Parents' participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure Parents' participation rests solely with the CDE.
- c. By **Friday, April 17, 2026**, District must provide notice of the IEP meeting, proof the meeting was scheduled at a mutually agreeable date and time, proof of attendance of IEP Team members (such as a signature page), and a finalized IEP and BIP to the CDE. The IEP submitted for the CDE's review must address Student's needs as discussed in this Decision.

3. Compensatory Education Services

- a. Student shall receive **4 hours of direct specialized instruction** provided by an appropriately licensed special education teacher or mental health provider selected by the District.
- b. All compensatory services must be provided to Student no later than **November 1, 2026**. These services must be designed to address Student's identified needs in the areas of social skills and peer conflict resolution.
- c. By **February 20, 2026**, Parents shall provide written consent for the provision of compensatory services to the CDE and the District. If Parents do not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by the District, this written consent shall be provided by Parents to Student's current assistant director of special education. The District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- d. The District shall schedule compensatory services in collaboration with Parents. The District shall submit the schedule of compensatory services to the CDE by **March 20, 2026**. 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. The schedule shall include the full name(s) of the appropriately licensed provider(s) as well as the dates, times, and durations of planned sessions.
 - a. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - b. If the District and Parents cannot agree to a schedule by **March 20, 2026**, the District and Parents must meet either in-person or via video conference to resolve scheduling complications by **April 3, 2026** and submit the schedule by **April 10, 2026**.
 - c. If the District and Parents cannot agree to a schedule by **April 10, 2026**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parents, including but not limited to, copies of correspondence sent to the Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **April 10, 2026**.

- d. By **April 30, 2026**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services.
- e. The parties shall cooperate in determining how compensatory services will be provided. If Parents refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE. Parents may opt out of some or all compensatory services.
- f. Monthly consultation between the provider(s) delivering compensatory services and Student's current case manager 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 compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- g. To verify that Student has received the services required by this Decision, the District must submit records of service logs to the CDE **by the second Monday of each month** until all compensatory services have been furnished. 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.
- h. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. 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). 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 scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents and notify the CDE of the change in the appropriate service log.

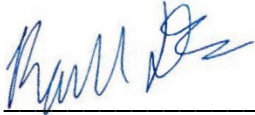
NOTE: CDE Special Education Monitoring and Technical Assistance Consultant will contact District with specific instructions for securely submitting the documentation detailed above. The CDE will approve or request revisions that support compliance with the CAP. After approval of the CAP,

the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance. If District does not meet the timelines set forth above, it may adversely affect District's annual determination under the IDEA and subject District to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; *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 State Complaints Officer.

Dated this 30th day of January, 2026.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-10

Response, pages 1-7

- Exhibit A-1 through A-3: IEPs
- Exhibit B-1 through B-2: Evaluations
- Exhibit C-1 through C-4: IEP Meeting Documentation
- Exhibit D-1 through D-2: IEP Meeting Documentation
- Exhibit E-1 through E-2: Behavior Records
- Exhibit F-1 through F-3: General Education Records
- Exhibit G-1 through G-2: Progress Reports
- Exhibit H: Calendars
- Exhibit I-1 through I-2: District Policies
- Exhibit J: Correspondence
- Exhibit K: None
- Exhibit L: Verification of Delivery
- Exhibit M: Enrollment History

Reply, pages 1-6

- Exhibit 1: Contact Log
- Exhibit 2: Classroom Behavior Log
- Exhibit 3: Behavior Report
- Exhibit 4: Correspondence
- Exhibit 5: Correspondence
- Exhibit 6: Correspondence
- Exhibit 7: Correspondence
- Exhibit 8: Correspondence
- Exhibit 9: Correspondence
- Exhibit 10: Safety Plan
- Exhibit 11: Correspondence
- Exhibit 12: BIP

Telephone Interviews

- Social Worker: January 7, 2026
- BCBA: January 7, 2026
- Math Teacher: January 7, 2026
- Case Manager 2: January 7, 2026
- Assistant Director 1: January 8, 2026
- School Psychologist: January 8, 2026

- Case Manager 1: January 8, 2026
- Fifth Grade Teacher: January 8, 2026
- Assistant Director 2: January 8, 2026
- Parent and Advocate: January 8, 2026