

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

State Complaint SC2026-509

Durango 9-R

DECISION

INTRODUCTION

On January 12, 2026, the parent (“Parent”) of a student (“Student”) not currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Durango 9-R (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three 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.

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 not more than one year prior to the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring on or after January 12, 2025. Information prior to January 12, 2025 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. District did not develop, review, and revise an Individualized Education Plan (“IEP”) on January 29, 2025 that:

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.

- a. Considered the concerns of Parent for enhancing the education of Student—specifically, concerns related to adult supervision and 1:1 adult support—as required by 34 C.F.R. § 300.324(a)(1)(ii);
 - b. Considered the academic, developmental, and functional needs of Student—specifically needs related to self-regulation and adult supervision—as required by 34 C.F.R. § 300.324(a)(1)(iv); and
 - c. Considered the use of positive behavioral interventions and supports, and other strategies—specifically a Behavior Intervention Plan (“BIP”)—to address behavior impeding Student’s learning or that of others, as required by 34 C.F.R. § 300.324(a)(2)(i).
2. District provided prior written notice (“PWN”) to Parent, dated January 6, 2025, of its proposed or refused actions regarding the provision of a free appropriate public education (“FAPE”) to Student—specifically, the decisions to remove or reduce Student’s 1:1 adult support, BIP, sensory and regulation support, occupational therapy services, and transportation services—that did not include this content required by 34 C.F.R. § 300.503(b)(1)-(3):
 - a. A description of the action proposed or refused by District;
 - b. An explanation of why District proposed or refused to take the action; and
 - c. A description of each evaluation procedure, assessment, record, or report District used as a basis for the proposed or refused action.
 3. District did not implement Student’s IEP between January 29, 2025 and April 30, 2025 because it:
 - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and
 - b. Did not provide the accommodations listed in the IEP—specifically, proactive toileting assistance, hygiene checks, hydration monitoring, and continuous adult supervision—as required by 34 C.F.R. § 300.323(c).

FINDINGS OF FACT

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

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

A. Background

1. Student is eight years old and attended a District elementary school (“School”) from September 2023 to December 2025. *Response*, p. 4; *Exhibit I*, p. 2. Student was enrolled in first grade at School and qualified for special education under the disability categories of Autism Spectrum Disorder (“ASD”) and Other Health Impairment (“OHI”) during the period relevant to this Complaint. *Exhibit A*, pp. 1, 25.⁴ Student has attended a different District elementary school since January 2026. *Response*, p. 4.
2. Student is gifted, polite, and desires to fit in with peers. *Interviews with Parent, School Psychologist, Student’s special education case manager (“Case Manager”), and Student’s first grade general education teacher (“First Grade Teacher”).*
3. This investigation involves the development and implementation of an IEP dated January 29, 2025 (“January 2025 IEP”). *Exhibit A*, pp. 25-45. Student had an IEP dated February 21, 2024 in effect prior to the development of the January 2025 IEP. *Id.* at pp. 1-24.

B. District Policies, Procedures, and Practices

4. District maintains a Special Education Procedural Manual (“Manual”) as a tool for District staff to understand and effectuate the legal requirements for IEP development and implementation. *Exhibit J*, pp. 1-7; *Interview with District Special Education Coordinator (“Coordinator”).* District updates this Manual regularly to ensure current guidance consistent with IDEA and ECEA. *Interview with Coordinator.*
5. The Manual details the substantive requirements for each element of an IEP and the steps different team members can take to prepare for IEP meetings. *Exhibit J*, pp. 38-56. Coordinator also conducts “spot checks” of IEPs to ensure they include all essential elements. *Interview with Coordinator.*
6. The Manual specifies that parents are integral members of their child’s IEP team and should have the opportunity for meaningful participation in IEP meetings. *Exhibit J*, pp. 36, 38. Parents should expect their input to be recorded in the IEP. *Id.* at p. 54. District understands that “in most instances, if not all instances, parents are the number one educator. We make sure we hold their thoughts on their child’s education in high regard.” *Interview with Coordinator.*
7. For consideration of special factors, the Manual states that IEP teams must consider special factors that may impede a student’s learning or ability to receive FAPE. *Exhibit J*, pp. 54-55. Specifically, IEP teams must consider positive behavioral interventions and support for a

⁴ As of an October 2025 reevaluation, Student no longer qualifies for special education. *Response*, p. 4; see *Exhibit G*, pp. 1-129.

student whose behavior impedes learning and health care plans for a student with documented health needs. *Id.* at p. 55.

8. The Manual defines accommodations as supports that “involve adapting instructional strategies.” *Id.* at p. 56. Accommodations “change [*how*] the student accesses the material” and can be implemented across educational settings. *Id.*
9. Finally, for students enrolled in specialized programs, such as an Affective Education Program (“AE Program”), the IEP should include “[d]etails about the student’s program, including program placement, services and supports provided” within the IEP’s service delivery statement. *Id.* at p. 62.
10. Regarding provision of PWN, the Manual outlines the requirements for PWNs consistent with IDEA. *Id.* at pp. 10-11. District must provide PWN whenever it proposes or refuses to initiate or change a student’s identification, evaluation, related services, or education placement, or the provision of FAPE. *Id.* at p. 11. The Manual also outlines the required elements of a PWN, including a description of the action, why the action was proposed or refused, the basis for the action, other options and factors considered, resources for parent, and procedural safeguards. *Id.*
11. Under District policy, if a PWN is completed as part of an IEP meeting, the PWN can be embedded within the PWN section of the IEP. *Id.* at p. 12. The PWN section should include “a discussion of actions taken at the IEP meeting,” “[d]ocument the other considerations that were made throughout the IEP meeting that were rejected by the IEP team and the basis for making those decisions, as well as other facts that were considered.” *Id.* at p. 64.
12. District special education staff have access to the Manual on District’s internal website, and District provides comprehensive training to all special education staff at the beginning of each school year to review special education procedures and practices. *Interviews with Coordinator and Case Manager.*
13. District also provides training specific to general education teachers to ensure they understand their responsibilities for IEP development and implementation. *Interviews with Coordinator and First Grade Teacher; see Exhibit Q, pp. 1-19.*
14. At the beginning of each school year, District allocates three hours during its professional development days for special education staff to provide copies of and review IEPs with general education teachers. *Interview with Coordinator.*
15. Regarding school health services and school nurse services, District employs three registered nurses at the District level to supervise such services provided in District schools, including overseeing operations of school-based health offices, developing individualized healthcare plans (“IHPs”), and delegating implementation of IHPs to school-based health staff. *Interview with District Nurse.*

16. District employs health providers—either health aides or registered nurses depending on the building—to work at school-based health offices. *Id.*
17. In general—and not necessarily in the context of special education—school health services can involve the implementation of two main types of IHPs: (1) IHPs that District receives directly from outside medical providers, and (2) “nursing IHPs” that District develops based on assessed need. *Id.* When a student requires specialty medical care—such as administration of medication or support with wound care, tube feeding, or seizure protocol—District typically receives IHPs developed by outside medical providers that District must follow as stated. *Id.* On the other hand, if District or a parent recognizes a health need, a District registered nurse can use nursing judgment to develop a nursing IHP without needing input or sign-off from an outside medical provider. *Id.*

C. Student’s Needs, Behavior, and Health: October 2023 to January 2025

Needs and Participation in AE Program

18. When Student was evaluated for special education in October 2023, he received support from School’s AE Program. *Response*, p. 5; *Exhibit A*, pp. 17-20.
19. School’s AE Program is “designed to support students with significant behavioral and/or emotional needs, wherein students receive specialized instruction and accommodations to support their progress on behavior goals . . . and to support regulation, such as by providing breaks, quiet spaces, sensory tools, and other calming approaches, as well as providing adult supervision and support . . .” *Response*, p. 5; *see Interview with Coordinator*.
20. Student qualified for support from the AE Program because, at this point, he demonstrated deficiencies in communication, independence, social-emotional skills, and executive functioning. *Id.* In particular, Student displayed defiance and dysregulation and struggled to maintain self-control. *Response*, p. 6; *Exhibit A*, pp. 11-12. He also struggled with aggressive behavior and elopement. *Exhibit A*, p. 17; *Interview with Case Manager*.
21. As part of his enrollment in the AE Program, Student received indirect behavior support, school-based mental health services, speech language services, direct and indirect occupational therapy services, transportation services, and dedicated “adult supervision and support” in the general education environment. *Response*, p. 6; *see Exhibit A*, pp. 12, 17-19.
22. Student received one-to-one adult supervision, either from a paraprofessional or special education teacher, “in all environments through[out] his entire day to maintain attention/focus, regulation, and safe/expected behaviors with self and peers.” *Exhibit A*, pp. 17-19; *see Exhibit 2*, p. 1.
23. By February 2024, when Student’s IEP team convened to review and revise Student’s IEP, Student was already showing significant improvement related to communication, independence, and social-emotional skills. *Id.* at pp. 5-12. However, he still participated in the

AE Program given his continued struggles with executive functioning skills, including controlling attention, behavior, and emotions. *Id.* at p. 12.

24. In September 2024, at the start of first grade, School reduced his one-to-one support by an hour per day—from 5.5 hours to 4.5 hours—given his continued growth, increasing independence, and tendency to not seek the supports he was provided. *Response*, p. 6; *Exhibit A*, p. 30; *Exhibit 2*, p. 4, *Interviews with Parent, Case Manager, Coordinator, and First Grade Teacher*.
25. Parent agreed to this reduction in adult supervision but expressed concern between September 2024 and January 2025 that Student was not taking advantage of AE Program supports because of his interoception and communication difficulties—he could not identify that he needed the supports, even if they were provided to him—and not because he did not need the supports. *Interview with Parent*; see, e.g., *Exhibit 2*, pp. 4-5, 7-9; *Reply*, pp. 4-5, 7-9.
26. Parent and District had different impressions of Student’s needs from September 2024 to January 2025. *Interviews with Parent, Case Manager, First Grade Teacher, School Psychologist, and Coordinator*. Parent advocated that Student had significant needs related to self-regulation, communication, and executive functioning. See, e.g., *Exhibit K*, p. 131. However, School observed Student’s “tremendous growth [and] success” in those areas. *Id.* First Grade Teacher wished that Parent could “see the thriving, kind, and emerging confident kid that [she got] to see every day at [S]chool.” *Id.*

Behavior and February 2024 BIP

27. When Student was evaluated for special education in October 2023, he exhibited behaviors requiring a BIP according to a functional behavior assessment (“FBA”). *Response*, pp. 4-5; *Exhibit B*, pp. 1-9; *Exhibit A*, pp. 8-12. *Interview with Case Manager*. Behaviors included physical aggression, property destruction, elopement, vocal disruptions, and refusal behavior. *Response*, p. 5; *Exhibit F*, pp. 2-12; *Interview with Case Manager*. Between August and October 2023, Student was involved in 20 reported behavior incidents. *Exhibit A*, p. 29; *Exhibit F*, pp. 2-12.
28. Student’s IEP team therefore developed a BIP dated February 22, 2024. *Exhibit B*, pp. 1-9. The BIP includes a detailed summary of Student’s FBA results and identifies physical aggression, property destruction, and elopement as the three most impacting behaviors. *Id.* at pp. 2-3. The BIP identifies vocal disruption and refusal behaviors as secondary impacting behaviors. *Id.* at p. 3.
29. After Student’s BIP was implemented in February 2024, Student’s behavior improved significantly. *Exhibit A*, pp. 4, 28; *Interviews with School Psychologist, Case Manager, and First Grade Teacher*. Compared to his 20 behavior incidents between August and October 2023, he only had two behavior incidents for the remainder of kindergarten. *Exhibit A*, p. 28.

30. His tremendous behavioral improvement continued into first grade: Student was not involved in a single documented behavior incident through December 2024. *Exhibit A*, p. 28; *Exhibit F*, pp. 1-16; *Interviews with School Psychologist, Case Manager, and First Grade Teacher*.
31. Parent and District had different impressions of Student's behavior during this time: Parent was concerned about Student's behavior based on his escalated behaviors at home and worried about the possibility of similar behaviors at School. *See Response*, p. 11; *Interviews with Parent, Case Manager, School Psychologist, and First Grade Teacher*. School did not observe these behaviors and instead continually noted Student's positive behavioral progress and performance in School. *Interviews with Case Manager, School Psychologist, First Grade Teacher, and Coordinator*; *see Exhibit K*, p. 4 ("There [are] no behaviors that would need a BIP"); *Id.* at pp. 48-49 ("[Parent's documentation references Student] not being academically or socially on par with his peers, and this is not true [or aligned with School data]").

Health and October 2024 IHP

32. Student has a medical diagnosis of chronic functional constipation. *Interviews with Parent and District Nurse*; *see Exhibit 5*, p. 10. Per Parent, Student's other diagnoses of ASD and Attention-deficit/hyperactivity disorder ("ADHD") exacerbate his chronic functional constipation. *Interview with Parent*. He might become hyper-focused and not realize he needs to use the restroom or drink water, or he might not recognize bodily needs due to interoception difficulties. *Id.*
33. District Nurse and Parent met on October 18, 2024 to develop a "nursing IHP" for Student. *Exhibit K*, pp. 1-3; *Interviews with District Nurse and Parent*. This nursing IHP was initiated and developed by District Nurse and Parent, rather than an outside medical provider, in response to Parent's concerns about Student's chronic functional constipation. *Interviews with District Nurse and Parent*.
34. From Parent's perspective, around this time, Student was having toileting accidents about twice per day at School to the point where she put him back into pull-up diapers. *Interview with Parent*; *Exhibit 2*, p 2. School staff was aware of Parent's reports and was therefore on the lookout for toileting accidents, but School staff never observed a toileting accident with Student. *Interviews with School Psychologist, Case Manager, and First Grade Teacher*.
35. The October 2024 IHP notes Student's health problems as ASD, ADHD, and encopresis, which is a symptom of chronic constipation and refers to involuntary soiling and the inability to feel when a stool is present. *Exhibit P*, p. 1; *Reply*, p. 4; *Interviews with District Nurse and Parent*.
36. The October 2024 IHP includes three outcomes: "(1) Student will receive adequate hydration; (2) Student will increase food choice and amount with school breakfast and lunch; and (3) Student will be provided three bathroom breaks in the health office." *Exhibit P*, p. 1.

37. This IHP includes three actions that School's health provider ("Health Aide") was responsible for implementing:

- "1) Student will have frequent opportunities to drink fluids and have access to his water bottle throughout the day;"
- "2) Student will go through the lunch line and be encouraged to try foods. Would be ideal to increase fiber intake with breakfast and lunch;"
- "3) Student will be given the opportunity, on a set schedule made by his teachers during a transition time, to go to the health office to use private bathroom. [Student] will have personal clothing and wipes located in the bathroom. He will be given time to have a bowel movement. He will also check his clothing to ensure he does not need a change of clothes. Student will be given time to clean himself and change clothes if needed. He will communicate with the [Health Aide]."

Id.; Interviews with District Nurse and Parent.

38. Parent considered Student's IHP responsive to medical recommendations and agreed to the plan without revision. *Interviews with Parent and District Nurse*; see *Exhibit K*, pp. 1-3.

D. Development of the January 2025 IEP

39. Parent is concerned that Student's January 2025 IEP does not consider her concerns related to Student's need for a one-on-one paraprofessional to assist with life and health skills, such as toileting and hydration, and self-regulation and behavior needs. *Interview with Parent*; *Reply*, pp. 21-24.

40. The January 2025 IEP was developed over the course of two IEP meetings on January 29, 2025 and February 12, 2025. *Exhibit A*, pp. 25-45; *Exhibit E*, pp. 1-8; *Response*, p. 9. Meeting participants included Parent, Parent's Advocate, Coordinator, Former Case Manager, Case Manager, District Board Certified Behavior Analyst ("District BCBA"), Private/District BCBA,⁵ Occupational Therapist, School Psychologist, School Social Worker, Principal, Speech Language Pathologist, and First Grade Teacher. *Exhibit A*, p. 26; *Exhibit C*, pp. 1-2.

41. Former Case Manager sent Parent a draft IEP for her review on January 22, 2025, in anticipation of the IEP team meeting. *Exhibit K*, pp. 41, 43; *Exhibit 6*; p. 1; see *Exhibit 11*. Later that day, Parent notified School that she formally rejected the draft IEP because it did not "address [Student's] needs, remove[d] critical accommodations, and demonstrate[d] a clear lack of commitment to supporting [Student] holistically." *Exhibit 4*, p. 2. Parent requested

⁵ This BCBA worked both as a District BCBA at Student's School and as Student's private BCBA outside of School. *Interview with Parent*; *Exhibit 13*. Accordingly, he is identified as "Private/District BCBA" to reflect his dual roles. See *id.*

that the IEP team restore any accommodations removed, add an executive functioning and life skills goal, include scheduled breaks, and provide additional data. *Id.*

42. After the first IEP team meeting on January 29, 2025, Former Case Manager sent an updated IEP draft to Parent on January 30, 2025. *Exhibit K*, p. 62; *Exhibit 6*, p. 3; *see Exhibit 12*.
43. The IEP team reconvened on February 12, 2025 for a continuation meeting to finish the IEP and “work towards a common ground with [Parent].” *Exhibit K*, p. 64. This meeting resulted in Student’s January 2025 IEP. *Response*, pp. 10-11; *Exhibit 6*, p. 5.

E. January 2025 IEP

44. The IEP documents Student’s strengths in socializing with friends, performing above grade level in reading and math, and using self-regulation skills, such as zones, to identify his feelings. *Id.* at p. 28.

Present Levels of Academic Achievement and Functional Performance

45. This section describes Student’s educational history, attendance, behavior incidents, health, assessment results, affective needs update, and performance as reported by Student’s teachers and providers, including First Grade Teacher, School Social Worker, District/School BCBA, Occupational Therapist, and Speech Language Pathologist. *Id.* at pp. 28-34.
46. This section details his “tremendous progress over the past year with his social, emotional, and behavioral skill development” and indicates that Student met all three of his previous IEP goals. *Id.* at pp. 28, 34. Academically, Student performed in the 81st percentile on his iReady Reading diagnostic and in the 58th percentile on his iReady Math diagnostic. *Id.* at p. 29.
47. This section includes narrative reports from Student’s teacher and service providers describing Student’s all-around success in School. *Id.* at p. 32. For instance, First Grade Teacher reported that in her 12 years of teaching, “this has been the first situation I have seen such tremendous progress of interventions ([medication], home support, consistency, and opportunities) build toward independence and success from [Student] to self-monitor and use strategies, tools, and skills that have been taught.” *Id.*
48. Regarding behavior, this section documents Student’s excellent progress. *Id.* at p. 28- 33. Student did not have any documented behavioral incidents for the 2024-2025 school year, compared to his 22 documented incidents for unsafe and disruptive behavior during the 2023-2024 school year. *Id.* at p. 28.
49. Because Student no longer displayed any of the target behaviors addressed by his BIP, the IEP team determined that he no longer required a BIP. *Id.* at p. 30-33; *Exhibit E*, p. 3; *Interviews with School Psychologist, Case Manager, First Grade Teacher, and Coordinator*.

50. District had recommended a reevaluation for Student, including a new FBA, to inform the development of his January 2025 IEP and the removal of his BIP. *See Exhibit K*, pp. 11, 18; *Interviews with Case Manager, School Psychologist, Coordinator, and Parent*. However, Parent refused to consent to the reevaluation and School therefore did not conduct a reevaluation or FBA prior to the developing the January 2025 IEP. *Id.*; *see Exhibit E*, p. 2.
51. At the IEP meetings in January and February 2025, Parent agreed that Student was no longer displaying the behaviors targeted by his February 2024 BIP, but she did not agree with the decision to remove Student’s BIP. *Exhibit E*, p. 1; *Interview with Parent*. Parent was concerned that School had not collected adequate data to inform this decision, and she expressed that Student might need a BIP focused on refusal behaviors related to life skills, such as toileting, using accommodations, and taking sensory breaks. *Exhibit E*, pp. 1-2, 5-6; *Interview with Parent*.
52. Given Parent’s request for additional data related to Student’s refusal behaviors, District emphasized to Parent that it would need her consent to conduct a reevaluation, including an updated FBA, to assess these behaviors. *Exhibit E*, pp. 2-3, 6. The IEP team agreed to wait for a period to see how Student performed with the newly developed January 2025 IEP before determining whether a reevaluation was necessary. *Id.* at p. 6. Parent indicated she would consent to a future reevaluation. *Id.* at p. 2.⁶
53. Regarding Student’s support in the AE Program, this section of the IEP details Student’s success with the fade-out plan to reduce the amount of paraprofessional support he received. *Id.* at p. 30; *Interviews Case Manager and First Grade Teacher*. Student excelled with this reduced support and demonstrated that “he is able to regulate and maintain regulation throughout his school day with limited to no support from the [AE Program].” *Exhibit A*, p. 30. Data, including detailed graphs and charts showing Student’s use of supports, corroborated that Student engaged in independent learning 96.7 percent of the time and did not need the supports available in the AE Program. *Id.* at pp. 30-32.
54. Given Student’s growing independence and data supporting that he did not require the level of support provided by the AE Program, the IEP team decided to transition Student from the AE Program to the Mild/Moderate needs program (“M/M Program”). *Id.* at p. 30.
55. Parent consented to transitioning Student from the AE Program to the M/M Program after asking questions and providing input during the IEP meetings. *Exhibit E*, p. 3; *Exhibit A*, p. 30. However, she expressed concern about the level of adult support Student would continue to receive given his difficulties with toileting, hydration, and eating. *Interviews with Parent and Coordinator; Exhibit A*, p. 30; *Exhibit E*, p. 3.
56. Parent also questioned whether Student was not accessing AE Program supports because of his growing independence and lack of need for such support, as School reported. *Interview*

⁶ District conducted a reevaluation, including an updated FBA, in October 2025 with Parent’s consent. *See Exhibit G*, pp. 1-129; *Response*, p. 14.

with Parent; Exhibit E, pp. 2-3. Instead, she contended that Student did not access his supports because School did not teach him how to use the supports, his interoception difficulties made it hard for him to recognize his needs, and he “masked” at School to fit in with peers. *Interview with Parent; see, e.g., Exhibit 2, pp. 1-5.*

57. Parent therefore requested that Student receive continued support from a one-on-one paraprofessional after his transition to the M/M Program to assist with life skills, such as checking on his toileting accidents and accompanying him to the bathroom and through the lunch line. *Interviews with Parent, Case Manager, and Coordinator.*

Student Needs and Impact of Disability

58. The IEP’s “Student Needs and Impact of Disability” section summarizes Student’s needs related to communication, academics, social-emotional skills, and sensory processing. *Exhibit A, p. 35.*

59. Academically, Student’s executive functioning skills “sometimes” impact his learning, and he could benefit from working on increased independence and accountability, “as well as skills supported through his [ICP].” *Id.*

60. Regarding social-emotional skills, Student has more significant difficulties related to his ASD and ADHD at home. *Id.* Within the school setting, he “has been successful with self-regulation” and “is able to communicate his needs and what support is desired to regulate.” *Id.*

Parent/Student Input

61. The IEP’s “Parent/Student Input” section includes an interview with Student in which he indicated he likes School, has friends, and feels supported in and outside of School. *Id.* at pp. 35-36. Parent reports that Student “is doing well in [S]chool and is advocating for himself in a lot of areas.” *Id.* at p. 36. However, Parent stated that Student needs more support in School and relayed medical concerns related to Student’s eating and drinking. *Id.*

Consideration of Special Factors

62. Under consideration of special factors, this IEP documents that Student requires a health care plan and notes that this plan is available in the School health office. *Id.* at p. 36. The IEP thereby includes Student’s October 2024 IHP. *Id.; see Exhibit P, p. 1.*

63. The IEP also includes a medical update from January 2025 emphasizing that Student has an IHP and “needs support through this plan to have scheduled bathroom breaks, frequent snack breaks, prompts to eat lunch and drink water.” *Exhibit A, pp. 28-29.* Per Student’s doctor, Student should be “closely monitored and supported during the day to eat, drink water, and go to the bathroom.” *Id.*

Goals

64. The IEP contains two annual goals:

- Executive Functioning: “Within one year, [Student] will become more independent and access less adult prompting for age[-]appropriate tasks such as turning in his work to the teacher, advocating for himself, following his schedule and navigating the school. [Student] will meet this goal by scoring a 4 on [a rubric] for 2 consecutive months.” *Id.* at pp. 26-27. Per the rubric, a “4” signifies “no [more] additional prompting than is developmentally appropriate.” *Id.* Objectives for this goal include self-monitoring water intake, food intake, and bathroom frequency. *Id.* at p. 37.
- Communication: “[Student] will use conversational speech that is understood by a variety of listeners at least 80% of the time by accomplishing [two objectives: prevocalic /r/ and vocalic /r/ at the word, phrase, and sentence levels].” *Id.*

65. For Student’s executive functioning goal, the IEP team decided to include an objective related to self-monitoring of water and food intake and bathroom frequency in response to Parent’s concerns about Student’s life skills and executive functioning needs. *Exhibit E*, p. 3; *Interviews with Case Manager, Coordinator, and First Grade Teacher*.

Accommodations

66. The IEP contains 19 accommodations grouped into social-emotional development and communication support. *Id.* at pp. 38-39. Relevant here, accommodations include:

- “Providing scheduled bathroom breaks throughout his school day;”
- “Reminders to drink water daily.”

Id.

67. The IEP team added behavior-related accommodations to address Parent’s concerns about the potential for behavioral issues in the absence of a BIP, including a positive behavioral token system and access to breaks. *Id.* at p. 37; *Exhibit E*, p. 3.

Service Delivery Statement

68. At the IEP meetings, Parent requested in-school Applied Behavior Analysis (“ABA”) support per a physician’s recommendation and given removal of Student’s BIP. *Id.* at p. 34; *see Exhibit 7*, p. 1; *Interview with Parent*.

69. The IEP team agreed that Private/District BCBA—who was employed as a District BCBA but also worked as Student’s private BCBA outside of School—could provide valuable behavioral support since he saw Student in home and school settings. *Exhibit A*, pp. 40-41, 43; *Exhibit E*,

p. 2; *Interview with Parent*. Parent felt better that Student was to receive support from Private/District BCBA. *Interview with Parent; Exhibit E*, p. 5.

70. The service delivery statement provides that Student was to receive special education services, through his M/M Program placement, for support in becoming more independent; mental health services to address regulation, coping skills, flexible thinking, and friendship skills; speech/language services; occupational therapy (“OT”) services to support sensory regulation and processing strategies; and, behavior services from Private/District BCBA to “support discontinuation of his previous [BIP] through positive behavior supports provided in accommodations. [Behavior] services will be provided through consultation with IEP team members including [Parent] . . . observations, and data tracking and analysis . . .” *Id.* at p. 40.
71. Regarding OT services, the IEP team agreed to change his OT service minutes from 60 minutes of direct support semesterly to 120 minutes of indirect support semesterly. *Id.* at pp. 18, 40.
72. Occupational Therapist discussed the rationale for the change in OT services with Parent at the IEP team meetings. *Exhibit A*, p. 34; *see Exhibit E*, p. 5; *Exhibit 6*, p. 5. Student was receiving minimal direct OT support to ensure his sensory needs were being met within the classroom. *Exhibit A*, p. 34. However, Student “reported not wanting separate regulation tools” and “has not needed [a sensory vest] so far [as of January 2025].” *Id.* Student’s Case Manager and First Grade teacher also reported “no indication” that Student required sensory pull-out breaks or use of a sensory slant board. *Id.* Because Student “has had a great year so far and continues to show maturity as a student and significant growth related to his sensory processing, OT will continue at this time on a consultative basis and provide any accommodations that are needed for [Student] to access his special education.” *Id.*
73. Student was therefore to receive the following specialized instruction and related services:
- Access Skills: 100 minutes of direct services weekly from a special education provider inside the general education classroom;
 - Social Emotional: 30 minutes of direct and 30 minutes of indirect services monthly from a school-based mental health provider outside of the general education classroom;
 - Speech/Language Therapy: 90 minutes of direct and 30 minutes of indirect services monthly from a Speech Language Pathologist outside of the general education classroom;
 - Occupational Therapist: 120 minutes of indirect services semesterly from an Occupational Therapist outside of the general education classroom; and
 - Behavior: 360 minutes of indirect services semesterly from a BCBA outside of the general education classroom.

Id. at p. 41.

74. Student was to participate in the general education environment at least 80 percent of the time. *Id.* at pp. 42-43. Student was already participating at least 80 percent of the time in the general education environment as of February 2024. *Id.* at pp. 19-20.

F. January 2025 PWNs

75. Parent is concerned that the PWNs provided by District on January 6, 2025 and January 29, 2025 did not address all actions proposed and refused by Student's IEP team, including: removing Student's BIP, reducing adult support, refusing to conduct an FBA, changing occupational therapy services, and making a transportation determination. *Reply*, pp. 26-28.

76. The January 6, 2025 PWN provides notice of District's refusal to initiate an evaluation of Student. *Exhibit D*, p. 6.

77. This PWN describes the basis for its refusal to conduct the evaluation: School "proposed the collection of additional information to update his current levels of functioning (i.e., areas of strength and need) in order to determine how to best continue meeting his needs within the educational environment, particularly whether his needs are best met through [the AE Program or M/M Program]. However, [Parent] refused consent for this reevaluation . . ." *Id.*

78. This PWN notes other options considered and the reasons for rejection: School considered "conducting a special education reevaluation in order to update [Student's] current special education needs (including an FBA) based on the tremendous progress he has made over the year" but could not because Parent refused to consent to the evaluation. *Id.*

79. This PWN also lists other factors considered by the team: the IEP team "will move forward with [Student's] annual review IEP meeting on 1/29/2025 to discuss changes needed to his programming and IEP without conducting a reevaluation. An updated [FBA] is not able to be completed outside of the reevaluation process." *Id.*

80. The January 29, 2025 PWN is embedded within Student's January 2025 IEP. *Exhibit A*, pp. 43-44. This PWN addresses the actions proposed and refused during the development of Student's January 2025 IEP. *See id.*; *Interview with Coordinator*.

81. The PWN is organized into two sections: "[o]ther options considered and the reasons each option was rejected" and "[o]ther factors considered." *Id.* at p. 43. The PWN also notes that the present levels of academic achievement and functional performance section of the IEP contains the "information about the data used as a basis for the decisions recorded in the IEP." *Id.* at p. 43.

82. In the "[o]ther options considered and the reasons each option was rejected" section, this PWN documents that the IEP team considered placement of between 40 and 79 percent of time in a general education class or continuing with AE Program services rather than transitioning Student to the M/M Program. *Id.*

83. This section describes that District rejected these options because Student “has been in his general education classroom for the majority of his school day for the past year and has shown a lot of growth and success in this environment. He has benefited from increased interaction with his peers and increased independence within his general education classroom. The team, including [Parent], reported agreement that the level of support [provided by the M/M Program] is appropriate and is the least restrictive environment for [Student] at this time.” *Id.*
84. In the “[o]ther factors considered” section, the PWN describes other actions proposed or refused during IEP development. *Id.* This section describes Parent’s request to initiate the “medical necessity process” to determine if Student would qualify for outside ABA services in the school setting. *Id.* The IEP team “considered the possibility of an external Behavior Analyst observing [Student] alongside [Private/District BCBA] to assess whether additional behavioral support within the school setting is medically necessary.” *Id.* However, after Parent indicated that Student’s “needs are being met” with existing support from Private/District BCBA, the team determined that an external observation was not necessary. *Id.*
85. This section also describes Parent’s request for an updated FBA to determine whether Student has refusal behaviors that need to be addressed through a different BIP. *Id.* The IEP team “discussed obtaining parental consent to reevaluate in order to conduct [the FBA],” but determined that an FBA was not presently warranted given that Student was accessing his education successfully and was not exhibiting any new or significant behaviors. *Id.* As a result, the IEP team decided to “continue implementing the current IEP as written and discontinuing the BIP,” noting that District could conduct an FBA if additional behavioral concerns arise. *Id.*
86. This section addresses that Student’s life skills needs, such as toileting, are covered by his IHP and that the IEP addresses his executive functioning needs. *Id.*
87. This section further details the IEP team decision to transition Student from the AE Program to the M/M Program: Parent “provided input, and reported agreement with this change.” *Id.*
88. Finally, this section describes Parent’s request for specialized transportation if Student had to attend a different District elementary school. *Id.* Student did not qualify for specialized transportation because he was no longer displaying the eloping, dysregulation, and aggressive behaviors for which he previously qualified. *Id.* However, the PWN notes that School will observe Student on the bus on an upcoming field trip and could add transportation services as an IEP amendment if needed in the future. *Id.*
89. The PWN includes a bold note indicating that Parent should contact Case Manager for a copy of procedural safeguards and any assistance understanding the PWN. *Id.* at p. 45.

G. Student's Needs, Behavior, and Health: February to April 2025

90. After the development of the January 2025 IEP, Parent continued to express concern about Student's executive functioning, communication, and self-regulation skills. *See, e.g., Exhibit K*, pp. 71-72. Parent was especially concerned about Student's inability to communicate in times of distress and his corresponding need for adult check-ins. *Id.*
91. In response to these concerns, School implemented additional check-ins with adults at the beginning and end of the day and instituted a new non-verbal checklist to give Student more opportunity to communicate his bodily and emotional needs. *Id.* at pp. 73-76, 84; *see, e.g., Exhibit 3*, pp. 4-9; *Exhibit H-2*, pp. 1-85.
92. Parent also continued to express concern about Student's health needs, including his hydration and School's reporting of his water intake. *See, e.g., Exhibit K*, pp. 87-88.
93. In response, School convened an IEP meeting on April 2, 2025 to discuss Parent's concerns. *See id.* at pp. 91-94; *Exhibit E*, pp. 9-11. At this meeting, the IEP team discussed Student's water and food intake, executive functioning goal, communication, and bathroom usage. *Exhibit E*, pp. 9-10. The IEP team, including Parent, agreed to amend Student's IHP but to leave the January 2025 IEP unchanged. *Id.*
94. Following the April 2 IEP meeting, District Nurse and Parent updated Student's IHP to specify that "adequate" hydration means at least 8 ounces of water, per a recommendation from Student's pediatrician. *Exhibit P*, p. 2. As such, in addition to receiving frequent opportunities to drink fluids and have access to his water bottle throughout the day, Student was also now "offered 4 [ounces of water] with two visits to the health office." *Id.* District also committed to providing more detailed documentation of Student's water intake, per Parent's request. *Exhibit K*, pp. 95-97; *see Exhibit P*, pp. 2-14.
95. District reported that Student continued to make excellent progress and show age-appropriate skills in executive functioning, communication, self-regulation, and behavior. *Interviews with Case Manager, First Grade Teacher, and Coordinator.*

H. Accessibility of Student's IEP to Teachers and Others

96. All of Student's teachers and service providers, including First Grade Teacher, Case Manager, and School Psychologist, accessed Student's January 2025 IEP directly through Enrich, an online platform. *Interviews with First Grade Teacher, Case Manager, and School Psychologist.*
97. Case Manager provided an IEP snapshot to First Grade Teacher, which included information on Student's accommodations, needs, service delivery, annual goals, and special factors. *Interviews with Case Manager and First Grade Teacher.*

98. Case Manager also printed a physical copy of Student's IEP snapshot for First Grade Teacher to reference in a classroom binder, per School's practice of maintaining one binder of IEPs in each classroom so that teachers and substitutes can easily reference IEP snapshots. *Id.*
99. Furthermore, Case Manager and First Grade Teacher routinely coordinated regarding implementation of Student's IEP. *Id.*
100. Student's IHP, which is a separate document from his IEP, is available to District staff in the School health office and on Enrich. *Exhibit A*, pp. 29, 36; *Interviews with District Nurse and First Grade Teacher*. Student's providers, including Health Aide and First Grade Teacher, were aware of their responsibilities for implementing this plan. *Interviews with District Nurse and First Grade Teacher*.

I. Implementation of Accommodations

101. Parent is concerned that School did not implement four accommodations required by Student's IEP between January 29, 2025 and April 30, 2025: (1) proactive toileting assistance; (2) hygiene checks; (3) hydration monitoring; and (4) continuous adult supervision. *Complaint*, pp. 2-3; *Reply*, pp. 9-10, 30-34.
102. As a threshold matter, Student's accommodations related to toileting, hygiene, and hydration appear in his January 2025 IEP and/or his IHP. *See Exhibit A*, pp. 37-38; *Exhibit P*, pp. 1-2. Because Student's IEP references that he requires an IHP, District was required to implement these health-related accommodations regardless of whether they appeared in the IEP, IHP, or both. *See Exhibit A*, pp. 37-38; *Exhibit P*, pp. 1-2.

Proactive Toileting Assistance

103. The IEP requires District to provide "scheduled bathroom breaks throughout his school day." *Exhibit A*, p. 37. His IHP requires that he will "be given the opportunity, on a set schedule made by his teachers during a transition time, to go to the health office to use private bathroom . . . He will be given time to have a bowel movement . . ." *Exhibit P*, pp. 1-2.
104. Parent expected implementation of this accommodation to involve not only providing scheduled bathroom breaks but also having Health Aide check and document whether Student had a bowel movement during these breaks. *Interview with Parent*. Parent understood that Student was receiving scheduled breaks, but she was concerned that he was refusing to use the toilet during these breaks given that he came home with soiled clothing almost every day. *Id.*
105. School understood this accommodation as requiring Student to have two-to-three scheduled bathroom breaks in the health office throughout the day. *Interviews with Case Manager, First Grade Teacher, and District Nurse*.

106. Based on the plain language of the accommodation, District was required to provide Student scheduled opportunities to use the private bathroom in the health office throughout the school day. *Exhibit P*, pp. 1-2; *Interviews with Case Manager, First Grade Teacher, and District Nurse*. This accommodation did not require that School oversee and document Student's toileting activity during these breaks. *Exhibit P*, pp. 1-2.
107. As Parent acknowledged, District provided Student at least two scheduled bathroom breaks throughout his school day: one after his first recess, around 9:30 or 10:00 AM, a second after lunch, and a third before attending specials. *Interviews with Parent, Case Manager, First Grade Teacher, and District Nurse*; see *Exhibit E*, p. 1; *Exhibit A*, p. 32; *Exhibit K*, pp. 33-34. Student was so accustomed to this routine that he would walk himself to the health office at these times for his bathroom break. *Interviews with Parent, First Grade Teacher, and Case Manager*.
108. In addition to his scheduled breaks in the health office, First Grade Teacher also provided all students with bathroom breaks, frequently asked Student whether he needed to use the bathroom, and allowed Student to use the bathroom at any time. *Interviews with First Grade Teacher and Case Manager*. Student asked her to use the bathroom about once per day, either through signing, raising his hand, or approaching her to ask. *Interview with First Grade Teacher*.

Hygiene Checks

109. Student's IEP does not address hygiene checks, but his IHP specifies that Student "will have personal clothing and wipes located in the bathroom [in the health office] . . . He will also check his clothing to ensure he does not need a change of clothes. Student will be given time to clean himself and change clothes if needed. He will communicate with the [Health Aide]." See *Exhibit A*, pp. 36-37; *Exhibit P*, pp. 1-2.
110. Parent wanted this accommodation to require District to conduct hygiene checks for Student, but she acknowledged that, as written, the accommodation provides that *Student* will check his clothing, clean himself, and change his clothes. *Interview with Parent*; *Exhibit P*, p. 2. Parent "did not pay attention" to this language when she and District Nurse developed the IHP and did not ask for this language to be adjusted. *Interviews with Parent and District Nurse*.
111. For this accommodation to require District staff to conduct hygiene checks, District would have needed additional permission to be one-on-one with Student and District Nurse would have developed a different plan. *Interview with District Nurse*. However, "this need did not come up at this point in time." *Id.*
112. District provided Student a personal drawer in the health office with clothing and wipes. *Id.*; see *Exhibit E*, p. 10; *Exhibit K*, pp. 33-34. If Student had a toileting accident, he had unlimited time in the health office to clean himself, change his clothes, and communicate

with the Health Aide. *Interview with District Nurse*. From District's observations, Student did not have toileting accidents requiring this hygiene support. *Interview with District Nurse, Case Manager, and First Grade Teacher*.

Hydration Monitoring

113. Student's IEP requires "[r]eminders to drink water daily." *Exhibit A*, p. 37. Before Student's IHP was updated on March 24, 2025, Student was required to have "frequent opportunities to drink fluids and have access to his water bottle throughout the day." *Exhibit P*, p. 1. After his IHP was updated, District was also required to offer Student four ounces of water during his scheduled visits to the health office. *Id.* at p. 2.
114. Parent acknowledged that School implemented this accommodation between January 29, 2025 and April 30, 2025. *Interview with Parent*. She was originally concerned that Student was not drinking enough at School and might refuse to drink four ounces of water in the health office after his IHP was updated, but these concerns did not manifest. *Id.*
115. Indeed, First Grade Teacher provided continual reminders for Student to drink water, and it was her idea for Student to use a water bottle that measured ounces to better track his water intake. *Interview with First Grade Teacher*. She made it a competition with Student to see who could drink their water, offered incentive prizes for hydration, and provided verbal reminders for Student to drink water every day. *Interviews with First Grade Teacher and Case Manager; see Exhibit K*, pp. 125, 129.
116. Health Aide also encouraged Student to drink water during scheduled breaks in the health office. *Exhibit K*, pp. 38, 33-34.
117. After updating Student's IHP in March 2025, Health Aide provided Student four ounces of water twice per day during his scheduled breaks in the health office. *Interviews with Parent, District Nurse, First Grade Teacher, and Case Manager; Exhibit P*, pp. 6-13; *Exhibit E*, p. 9; *Exhibit K*, p. 112.

Continuous Adult Supervision

118. Finally, Parent's contention that Student required "continuous adult supervision" reflects her concern that Student required a one-on-one paraprofessional and "constant eyes on him" after he transitioned from the AE to the M/M Program in January 2025. *Interview with Parent; see Reply*, pp. 5, 21, 23, 39.
119. This concern goes to development of the IEP rather than implementation of an accommodation required by the IEP: the IEP does not require "continuous adult supervision" as an accommodation. *See Exhibit A*, pp. 37-38. Accordingly, the CDE finds and concludes that District was under no obligation to provide "continuous adult supervision" as an accommodation in Student's IEP. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District developed an IEP between January 29, 2025 and February 12, 2025 that considered Parent’s concerns and Student’s needs and behavior, as required by 34 C.F.R. §§ 300.324(a)(1)-(2). District complied with the law.

Parent is concerned that Student’s January 29, 2025 IEP did not consider her requests for a one-on-one paraprofessional after Student’s transition from the AE Program to the M/M Program; Student’s needs related to life skills, such as toileting, hygiene, and hydration; and, Student’s need for a BIP to address potential refusal behaviors related to life skills. (FF # 39).

A. Legal Requirements: IEP Development

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.

Regarding the second prong, the substantive adequacy of an IEP depends on whether the IEP was appropriate when drafted and not with consideration of subsequent information. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (“An IEP is a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken.”); *see also, Tyler V., ex rel. Desiree V. v. St. Vrain Valley Sch. Dist. No RE-1J*, No. 07-CV-01094-PAB-KLM, 2011 WL 1045434, at *3-4 (D. Colo. Mar. 21, 2011). Moreover, the inquiry concerns “not whether the IEP was prescient enough to achieve perfect academic results, but whether it was ‘reasonably calculated’ to provide an ‘appropriate’ education.” *Roland M.*, 910 F.2d at 992.

B. January 2025 IEP

i. Development Process for the IEP

Regarding the first prong, Parent alleges that the IEP development process did not comply with IDEA’s procedures because the IEP team did not consider her concerns. (FF # 39).

Concerns of Parent

In developing a child's IEP, the IEP team must consider the "concerns of the parents for enhancing the education of their child." 34 C.F.R. § 300.324(a)(1)(iii). The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). To that end, IDEA requires that parental participation be meaningful, to include addressing information about the child provided to, or by, the parents in reviewing and, as appropriate, revising a student's IEP. 34 C.F.R. §§ 300.321(a), 300.322, 300.324(b)(1).

Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 03/22/18). However, parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parent's position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, Parent expressed concern that Student needed continued adult support from a one-on-paraprofessional to assist him with life skills, such as toileting, hygiene, and eating. (FF #s 25-26, 55-57). District discussed Parent's concerns with her on multiple occasions, before, during, and after Student's January 2025 IEP meetings. (FF #s 23-26). In September 2024, District proposed reducing Student's adult support by an hour per day, on a trial basis, to observe how he responded to less support. (FF # 24). District involved Parent in this decision, listened to her concerns, and answered her questions. (FF #s 24-25). Parent agreed to this trial. (FF # 25). In October 2024, District also collaborated with Parent to develop an IHP after Parent expressed concern that Student needed more direct adult support with toileting and hydration. (FF #s 32-38). After Parent rejected the draft IEP, sent on January 22, 2025, in part because it recommended adjusting Student's level of adult support, District responded promptly to Parent's concerns through emails, phone calls, and meetings with Parent and Parent's advocate. (FF #s 40-43). During the January 29, 2025 IEP meeting, District elicited and documented Parent's input for all elements of the IEP. (FF #s 40, 43, 50-52, 55-57, 61, 63, 65, 68-70). Parent had an advocate present at this meeting. (FF # 40). When the IEP team did not finish developing the January 2025 IEP after the first meeting, District set up a continuation meeting on February 12, 2025 for the express purpose of working toward "common ground" with Parent. (FF # 43). Parent also had an advocate at this meeting. (FF # 41-43). District then made changes to the IEP based on Parent's

input: it added in a more detailed medical note from Student's doctor to document his health concerns and developed an objective to Student's executive functioning goal to encourage self-monitoring for hydration, eating, and bathroom usage. (FF #s 42-43, 63-67).

For these reasons, the CDE finds and concludes that District considered Parent's concerns, consistent with the requirements of 34 C.F.R. § 300.324(a)(1)(ii).

ii. Substantive Adequacy of the IEP

Turning to the second prong, Parent alleges that the IEP is not substantively adequate in its consideration of Student's needs and behavior. (FF # 39).

Needs of Student

The IEP team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a).

Here, Parent is concerned that the January 2025 IEP did not adequately consider Student's needs related to self-regulation, including toileting and hydration, given his private diagnosis of chronic functional constipation coupled with his ASD and ADHD. (FF #s 32-34, 39, 51, 55-57, 61-63, 90-92). From Parent's perspective, Student's disability-related struggles with interoception and communication exacerbated his health condition: he was not aware of his toileting and hydration needs, could not recognize when he needed support, and therefore could not communicate his need for support to School staff. (FF #s 32-34, 55-57). As a result, Parent reported chronic toileting accidents and dehydration and contended that Student needed more active supervision. (FF # 34). From School's perspective, Student demonstrated age-appropriate self-advocacy skills and often notified School staff when he needed to use the restroom. (FF #s 34, 108). School did not observe any toileting accidents. (FF # 112).

The present levels of academic achievement and functional performance section of Student's IEP documents his tremendous progress related to building independence and self-monitoring skills. (FF #s 45-47, 53-54). This section also includes a medical update documenting Student's functional needs related to toileting, hydration, and eating from his physician. (FF # 63). The needs and impact of disability section summarizes Student's needs related to communication and social-emotional development. (FF #s 58-60). This section notes the differences in Student's self-regulation needs at home versus School: he has "been successful with self-regulation" and "is able to communicate his needs and what support is desired to regulate" in the School setting, whereas he has more significant difficulties at home. (FF # 60). The consideration of specials factors section indicates that Student has an IHP and references the IHP to address Student's health issues. (FF #s 62-63). Per the medical update, Student "needs support through this plan to have scheduled bathroom breaks, frequent snack breaks, prompts to eat lunch and drink water." (FF # 63). The IHP provides for adult-prompted bathroom and hydration breaks on a designated schedule. (FF #s 36-37). Moreover, Student's executive functioning goal is directed toward increasing Student's independence and self-advocacy, and it includes an objective developed

specifically to address Student's self-regulation needs: Student will work on "self-monitoring water intake, food intake, and bathroom frequency." (FF #s 64-65). Student has 19 accommodations, many of which are directed toward Student's self-regulation needs, such as School providing scheduled bathroom breaks and reminders to drink water daily. (FF # 66). Finally, the service delivery statement also accounts for Student's self-regulation needs. (FF #s 68-74). Relevant here, Student was to receive services from a special education teacher to develop access skills; a mental health provider to develop self-advocacy skills; and an OT to work on sensory awareness. (FF # 73).

For these reasons, the CDE finds and concludes that District considered Student's self-regulation and associated adult supervision needs, as required by 34 C.F.R. § 300.324(a).

Behavior Supports

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 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).

Here, Parent is concerned that the IEP team removed Student's February 2024 BIP and did not consider a BIP directed toward refusal behaviors associated with life skills. (FF #s 51-52). The IEP's present levels of educational performance summary details Student's tremendous behavioral improvement: compared to 22 behavioral incidents in kindergarten, Student did not have any documented behavior incidents in first grade. (FF #s 29-30, 46-50). This section includes Student's prior FBA results, which determined he qualified for a BIP to address physical aggression, property destruction, and elopement. (FF #s 27-29). The IEP includes a note from Student's Private/District BCBA indicating that Student had not engaged in any target impacting behaviors and met the criteria to be exited from the BIP. (FF #s 49-51). During first grade, Student's behavior had progressed significantly, was age-appropriate, and was not interfering with his ability to meet his goals. (FF #s 29-31, 48-50).

While the IEP team decided Student no longer required a BIP given that he was no longer displaying any of the target behaviors, it nonetheless incorporates behavioral interventions and supports for Student to assist with this transition. (FF #s 68-73). Student received 360 minutes semesterly of indirect behavior services from Private/District BCBA. (FF # 73). Parent

acknowledged that this support made her feel much more comfortable with elimination of the BIP. (FF # 69). Parent also acknowledged that this support was valuable because Private/District BCBA observed Student in both the home and School settings and could therefore address the differences in Student's behavior observed by Parent versus School. (FF #s 69-70). The IEP team also added accommodations targeted toward behavior, including providing a positive behavioral token system. (FF # 67). During the IEP team meetings, Parent and District considered whether Student would benefit from in-school ABA therapy. (FF #s 68-69). The IEP team agreed to wait and see how Student did with support from Private/District BCBA before initiating this process. (FF #s 68-70, 84-85). Parent and District also considered whether to conduct a new FBA directed toward refusal behaviors with life skills. (FF #s 51-52). District indicated that it would need Parent consent to move forward with that evaluation, and Parent eventually provided this consent. (FF # 52).

For these reasons, the CDE finds and concludes that District considered the use of positive behavioral interventions and supports, as required by 34 C.F.R. § 300.324(a).

Conclusion to Allegation No. 2: District provided prior written notice documenting its proposed or refused actions regarding the provision of FAPE to Student in January 2025 consistent with the requirements of 34 C.F.R. § 300.503. District complied with the law.

Parent is concerned that the PWNs provided by District on January 6, 2025 and January 29, 2025 do not address all actions proposed or refused by Student's IEP team in developing the January 2025 IEP. (FF # 75).

A. Legal Requirements: PWN

A district must provide PWN whenever it proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or when it refuses to take any of those actions. 34 C.F.R. § 300.503(a). A district may provide PWN by attaching the notice to the IEP, so long as the PWN is otherwise compliant with the requirements of 34 C.F.R. § 300.503(a); *See, e.g., El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 8/15/13); *Santa Fe Trail BOCES*, 125 LRP 21684 (SEA CO 6/20/25).

PWN must be issued a reasonable time before a district proposes or refuses to change "the educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district's

proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(7). The notice must be “written in language understandable to the general public.” *Id.* at § 300.503(c).

B. District’s January 2025 PWNs

Here, District sent Parent a PWN dated January 6, 2025 to document Parent’s refusal to consent to District’s proposed reevaluation of Student before his January 29, 2025 IEP meeting. (FF #s 76-79).

This PWN describes the action refused by District: it states that District will not conduct the reevaluation, including an FBA. (FF # 76). It also explains that an FBA is an element of a reevaluation and therefore cannot be conducted outside of the reevaluation process. (FF #s 78-79). This PWN explains why District refused to take the action: Parent refused consent for the reevaluation. (FF #s 77-78). This PWN also describes the basis for the refused action: District wanted to reevaluate Student to collect updated data on his current levels of functioning and to inform the decision to move Student from the AE Program to the M/M Program, but it nonetheless refused to conduct the evaluation based on Parent’s withheld consent. (FF # 77).

Parent asserts that this PWN did not describe certain actions proposed or refused by District—namely, removing Student’s BIP, reducing adult support, refusing to conduct an FBA, and changing OT service delivery and transportation determinations. *Reply*, p. 27. However, the PWN did address refusal to conduct an FBA in its description of the action refused. (FF #s 78-79). The other actions identified by Parent, however, are outside of the scope of this January 6, 2025 PWN. (FF # 75). These decisions were made over the course of Student’s January 29, 2025 and February 12, 2025 IEP meetings and therefore would not need to have been included in a PWN dated January 6, 2025. (FF # 80).

Turning to the January 29, 2025 PWN, this PWN describes each of the proposed or refused actions identified by Parent—except for the change to Student’s OT service delivery—and explains why each action was proposed or refused within the PWN’s “other options considered and the reasons each option was rejected” and “other factors considered” sections. (FF #s 80-88). Regarding the action of removing Student’s BIP and not proceeding with an FBA, the PWN explains why District took this action: Student was “successfully accessing his education and [was] not exhibiting any new or significant behavioral concerns. Therefore, the team decided to continue implementing the current IEP as written and discontinuing the BIP.” (FF #s 84-85). Regarding adult support, the PWN explains that District proposed M/M Program support and rejected AE Program support because of Student’s success and increased independence with faded support in the general education environment. (FF #s 82-83, 86). The PWN notes that the IEP team, “including the [P]arent, reported agreement with” M/M Program support and, as such, rejected AE Program support on this basis. (FF # 83). For specialized transportation, the PWN explains that District refused this action because Student no longer qualified for transportation because of his improved behaviors. (FF # 88). The PWN notes that the IEP team made this decision based on the criteria for qualification for specialized transportation. (FF #s 81, 88).

The change related to OT services does not appear on the face of the PWN. (FF #s 80-89). However, the PWN incorporates the IEP’s “present levels of academic performance section” and notes that this section includes information about the basis for IEP team decisions. (FF # 81). That section of the IEP includes a detailed OT update recommending that Student continue OT only on a consultative basis given his decreased need for sensory OT supports. (FF #s 70-73). This change was also discussed extensively in both the IEP service delivery statement and at the IEP team meetings. (FF # 72). Parent was on notice of the change in OT minutes, and she agreed with the change. (FF #s 71-72). As such, through reference to the IEP’s present levels of academic performance section, the PWN describes the action proposed by the District (offering OT only on a consultative basis), an explanation of why District proposed that action (Student did not demonstrate a need for OT sensory support), and the basis for the action (OT’s observations of Student). (FF #s 70-73, 81).

Though not disputed, the PWN also contains a statement of Parent’s procedural protections and directed Parent to contact Case Manager to obtain assistance. (FF # 89).

The January 29, 2025 PWN—though poorly organized into only two sections and relying on language from the IEP itself rather than the PWN—was nonetheless written in plain language and clearly articulated District’s proposed course of action. (FF #s 80-89). Parent responded to the issuance of the PWN by continuing to meaningfully participate in the IEP process, including raising concerns about District’s proposed actions and requesting an IEP team meeting to further discuss the actions described by the PWN. (FF #s 90-95).

For these reasons, the CDE finds and concludes that the PWNs provided by District to Parent dated January 6, 2025 and January 29, 2025 complied with 34 C.F.R. § 300.503.

Conclusion to Allegation No. 3: District ensured that staff had access to and an understanding of the responsibilities for implementing Student’s IEP, as required by 34 C.F.R. § 300.323(d). District also implemented the accommodations in Student’s IEP between January 29, 2025 and April 30, 2025, as required by 34 C.F.R. § 300.323(c). District complied with the law.

Parent alleges that District did not implement Student’s IEP between January 29, 2025 and April 30, 2025 because it did not provide four accommodations required by the IEP: proactive toileting assistance, hygiene checks, hydration monitoring, and continuous adult supervision. (FF # 101).

A. Legal Requirements: IEP Implementation

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.21. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F.*, 580 U.S. at 392 (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). As soon as possible after an IEP is developed, school districts must implement the IEP by ensuring that: (1) teachers and related

service providers responsible for implementation have access to and an understanding of their obligations under the IEP, and (2) special education and related services, including accommodations, are made available to the child in accordance with the IEP. 34 C.F.R. §§ 300.324(d), 300.324(c)(2).

B. IEP Accessibility to Teachers and Others

A school district must ensure that each regular education teacher, special education teacher, related services provider, and any other service provider responsible for implementing an IEP is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the “specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d).

Here, Student’s January 2025 IEP, including the incorporated IHP, was accessible to Student’s teachers and service providers, including First Grade Teacher, Case Manager, and School Psychologist, through Enrich. (FF # 96). Student’s providers all accessed the IEP on Enrich, and Case Manager also provided a physical copy of the IEP to First Grade Teacher per School’s practice of maintaining IEP binders in each general education classroom. (FF #s 98). Case Manager also provided an IEP snapshot to First Grade Teacher, which included information on Student’s accommodations at-issue here. (FF # 97). District staff, including Case Manager, First Grade Teacher, School Psychologist, and District Nurse, collaborated frequently to discuss implementation of Student’s IEP, including the IHP. (FF #s 99-100).

For these reasons, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

C. Provision of Accommodations

In implementing an IEP, a school district must provide special education and related services “in conformity with” the IEP. 34 C.F.R. §§ 300.17, 300.324(c)(2); *see Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 821 (9th Cir. 2007). Not providing special education and related services in conformity with an IEP can result in the denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.21(4). However, “there is no statutory requirement of perfect adherence to the IEP.” *Van Duyn*, 502 F.3d at 821. In other words, not every shortfall in services between those required by an IEP and those provided will result in a denial of FAPE. *Id.* To result in a denial of FAPE, there must be “more than a minor or technical gap between the [IEP] and reality; *de minimis* shortfalls [that do not themselves deprive a student of the education promise of the IDEA] are not enough.” *L.J. by N.N.J. v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1211 (11th Cir. 2019); *see, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP

28092 (SEA CO 5/4/18). Instead, “the [CDE] must also determine whether the failure was material.” *Id.*

Material failures to implement an IEP constitute a denial of FAPE and substantive noncompliance with the IDEA. *Van Duyn*, 502 F.3d 811 at 822. “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Id.* Courts will consider a case’s individual circumstances to determine if there is a “material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010). Material failures include shortfalls in implementing “substantial,” “significant,” or “necessary” IEP provisions. *Id.* at 818. The materiality standard has qualitative and quantitative components: the CDE should “determine *how much* [of a service] was withheld and *how important* the withheld services were in view of the IEP as a whole.” *L.J. v. N.J.J v. Sch. Bd. of Broward Cnty.*, 927 F.3d 1203, 1214 (11th Cir. 2019). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Van Duyn*, 502 F.3d 811 at 822.

Therefore, to assess implementation concerns, the CDE engages in a two-pronged inquiry: (1) was there a shortfall in the provision of services required by the IEP, and (2), if so, did the shortfall amount to a material failure to implement the IEP and thus a denial of FAPE?

1. *Prong 1: Was there a Shortfall in Accommodations?*

The CDE must first determine whether there was a shortfall between the accommodations required by the IEP versus those made available to Student. 34 C.F.R § 300.323(c)(2).

Parent is concerned that School did not implement four accommodations required either by Student’s IEP or IHP between January 29, 2025 and April 30, 2025: proactive toileting assistance, hygiene checks, hydration monitoring, and continuous adult supervision. (FF # 101).

There was no shortfall in the implementation of accommodations at-issue in this investigation. (FF #s 102-119). The Record clearly supports that First Grade Teacher, Case Manager, District Nurse, and Health Aide provided proactive toileting assistance, hygiene checks, and hydration monitoring as required by Student’s IEP and ICP between January 29, 2025 and April 30, 2025. (FF #s 103-119). Parent acknowledged that there was no shortfall in hydration monitoring. (FF # 114). Parent also stated that “continuous adult supervision” is not an accommodation in Student’s IEP but rather references her concern regarding Student’s need for one-on-one

support. (FF #s 118-119). As such, there was no shortfall in the implementation of accommodations required by Student's IEP.

2. Prong 2: Were the Shortfalls Material?

Because there was no shortfall in the provision of accommodations required by the IEP, the CDE does not need to address the second question of whether any shortfall was material.

For these reasons, the CDE finds and concludes that District complied with its implementation obligations under 34 C.F.R. § 300.323(c).

REMEDIES

The CDE concludes that District complied with the requirements of IDEA. Accordingly, no remedies are ordered.

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 ("SCO").

Dated this 13th day of March, 2026.



Elizabeth "EP" Stonehill
State Complaints Officer

APPENDIX

Complaint, pages 1-5

- Exhibit 1: Supporting Documentation

Response, pages 1-21

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Notices of Meetings
- Exhibit D: Prior Written Notices
- Exhibit E: IEP Meeting Documentation
- Exhibit E.1: Recording of Oct. 15, 2025 Evaluation Meeting
- Exhibit E.2: Recording of Oct. 29, 2025 Evaluation Meeting
- Exhibit E.3: Recording of Oct. 31, 2025 Health Care Plan Meeting
- Exhibit F: Disciplinary Records
- Exhibit G: Evaluations
- Exhibit H: Service Logs
- Exhibit H-1: Daily Trackers
- Exhibit H-2: Checklists
- Exhibit I: District Calendars
- Exhibit J: District Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L: Staff Information
- Exhibit M: Verification of Delivery
- Exhibit N: Due Process Documentation
- Exhibit O: District Complaint
- Exhibit P: Health Plans
- Exhibit Q: Training for General Education Teachers

Reply, pages 1-42

- Exhibit 2: Parent Correspondence to School
- Exhibit 3: Parent Correspondence to First Grade Teacher
- Exhibit 4: Parent Correspondence with Advocate
- Exhibit 5: Medical Correspondence
- Exhibit 6: Prior Written Notices
- Exhibit 7: Medical Necessity Documentation
- Exhibit 8: Behavior Documentation
- Exhibit 9: Audit Logs
- Exhibit 10: Service Logs and Daily Checklists
- Exhibit 11: Draft IEP

- Exhibit 12: Draft IEP
- Exhibit 13: Contact Information
- Exhibit 14: Supplemental healthcare plan
- Exhibit 15: April 9 evaluation

Telephone Interviews

- Parent: February 17, 2026
- School Psychologist: February 17, 2026
- Case Manager: February 17, 2026
- District Special Education Coordinator: February 17, 2026
- First Grade Teacher: February 18, 2026
- District Nurse: February 18, 2026