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

State Complaint SC2026-543
Greeley-Evans School District 6

DECISION

INTRODUCTION

On March 3, 2026, the Parent ("Parent") 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 Greeley-Evans School District 6 ("District"). The Colorado Department of Education ("CDE") determined that the Complaint identified four 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 May 1, 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 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 March 3, 2025. Information prior to March 3, 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] 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 implement Student's Individualized Education Program ("IEP") from August 20, 2025 to present 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 supports and accommodations related to behavioral escalations listed in the IEP—specifically following the crisis plan contained in Student's Behavior Intervention Plan ("BIP") and providing sensory regulation strategies and 1:1 adult support—as required by 34 C.F.R. § 300.323(c).

2. District did not hold a manifestation determination review ("MDR") for Student within 10 school days of the decision to change Student's placement on October 8, 2025, as required by 34 C.F.R. § 300.530(e).

3. District did not provide Student educational services—specifically counseling and mental-health services—following his disciplinary change of placement between October 8, 2025 and present, as required by 34 C.F.R. § 300.530(d)(1).

4. After determining that Student's conduct was a manifestation of his disability during an MDR held on October 23, 2025, District did not:

    a. Either conduct a functional behavioral assessment ("FBA") and implement Student's BIP or review Student's BIP and modify it as necessary to address Student's behavior, as required by 34 C.F.R § 300.530(f)(1); and

    b. Return Student to the placement from which he was removed, as required by 34 C.F.R. § 300.530(f)(2).

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, at the start of the 2025-2026 school year, was in fifth grade at a District school ("School"). *Exhibit A*, p. 15. Student is eligible as a child with a serious emotional disability and an other health impairment. *Id*.

2. Student is passionate and creative. *Id.* at p. 17. He likes sports including soccer, football, and fishing. *Id*.

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

3. Student receives applied behavior analysis ("ABA") services through a private clinic in the community. *Interview with Parent*. Student had a registered behavior technician ("Private RBT") from the clinic with him at School every day as a medically necessary service. *Interviews with Parent and Student's special education teacher and case manager ("Case Manager")*.

B. 2024 IEP

4. At the start of the 2025-2026 school year, Student's most recent IEP was from 2024 ("2024 IEP"). *Exhibit A* pp. 2-14. The 2024 IEP included a review of District's evaluation of Student, noting low average to average academic ability. *Id*. at pp. 4-5. However, Student struggled with focus and work completion. *Id*. He also struggled with emotional regulation and peer relationships. *Id*.

5. According to the Student Needs statement, Student struggled "with emotional regulation, depression/anxiety, and adapting to change" as well as "social problem solving skills." *Id*. at p. 6. This was disrupting both his learning and that of others. *Id*. As a result of attention deficit hyperactivity disorder and sensory processing challenges, Student struggled to "maintain focused attention." *Id*.

6. The 2024 IEP included a behavior intervention plan ("BIP"), three social emotional wellness goals and a self-determination goal. *Id*. at pp. 6-7. It also included 16 accommodations, including three relevant here: (1) use of erasable pens as "he dislikes the feel and sound of pencils on paper"; (2) "[o]pportunities for heavy work throughout the day"; and (3) "opportunities for motor strategies/movement breaks" including allowing him to move around the classroom. *Id*. at pp. 7-8.

7. The 2024 IEP also included 300 minutes per week ("MPW") of direct instruction from a special education teacher inside of general education and 40 MPW of direct psychological services to address his social-emotional goals outside of general education. *Id*. at pp. 11-12. His least restrictive environment ("LRE") was general education 96% of the time. *Id*. at p. 13.

C. BIP

8. At the start of the 2025-2026 school year, Student had a BIP dated August 8, 2025 to target physical aggression, verbal aggression, elopement and refusal behaviors. *Id*. at pp. 22, 31-38. All four behaviors occurred multiple times per week, with verbal aggression being the most frequent and occurring eight times per week. *Id*. at p. 32.

9. The BIP identified common triggers for Student's behavior as well as precursor behaviors like cracking his elbow, roaming, or crying. *Id*. Student's behavior was driven by escaping non-preferred tasks or demands as well as getting peer and adult attention. *Id*. The BIP included 22 strategies to reduce the problem behaviors including: (1) two "non-

contingent sensory/regulation breaks" per day, including one where he could invite a peer and (2) when possible, limit sensory stimuli such as classroom lighting and noise. *Id*. at p. 33.

10. The BIP required teaching Student three replacement behaviors including how to leave or ask for help, communicate his needs before becoming aggressive and wait for attention and preferred tasks. *Id*. at p. 34. To accomplish this, Student would be taught coping skills through small group instruction and have a visual of his coping skills he could access in his space and a break space inside the classroom or right outside. *Id*. The break space would include material for deescalation, including options for physical release like a "heavy work circuit." *Id*.

11. School would also implement a reinforcement system with a token economy. *Id*. The BIP included a specific protocol for teachers to prompt Student when he appeared to need a break. *Id*. Finally, the BIP contained a "Crisis Plan" or specific instructions for responding to the target behaviors when they occurred. *Id*. at p. 36; *Interviews with Parent and Case Manager*.

D. 2025 IEP

12. On August 6, 2025, an IEP team including Parent, a school psychologist, School's principal ("Principal"), Case Manager, District's director of special education ("Director") and all the fifth-grade teachers at School met to review Student's 2024 IEP and BIP and plan for the new school year. *Exhibit E*, pp. 53-54. Parent requested 1:1 adult support for Student as well as changes to his IEP and BIP that acknowledged his sensory, relational and executive functioning needs. *Exhibit N*, pp. 35, 69. However, no changes were made. *Id*.; *Exhibit E*, pp. 53-54.

13. On August 27, Parent, a general education teacher, Case Manager, Principal, one of School's assistant principals ("Assistant Principal"), Director, District's board certified behavior analyst ("District BCBA"), a different school psychologist ("School Psychologist"), and District's occupational therapist ("OT") reconvened to develop a new IEP for Student. *Response*, p. 1; *Exhibit E*, pp. 2, 51-52.

14. The IEP team reviewed Student's present levels and developed new goals before discussing Student's accommodations and BIP. *Exhibit E*, pp. 51-52. Parent expressed concern that the BIP was too punitive; she wanted it to focus on the antecedents to Student's behaviors. *Id*. The IEP team also reviewed Student's accommodations. *Id*. Finally, Parent repeated her request for Student to have 1:1 support. *Id*.

15. Parent and District continued to discuss changes to the draft IEP and BIP in writing. *Exhibit N*, pp. 117-122, 125-126, 129-146. On September 23, an IEP team including Parent, Case Manager, Assistant Principal, District BCBA, Principal, School Psychologist, a general education teacher and Director met again for a planned quarterly meeting with Parent

and Private BCBA. *Exhibit E*, p. 1; *Exhibit N*¸ p. 150. At that point, the IEP team finalized a revised IEP ("2025 IEP"). *Exhibit G.1*; *Exhibit A*, pp. 15-30.

16. According to the 2025 IEP, Student struggled with flexibility, emotional regulation and social problem solving. *Exhibit A*, p. 21. This impeded "his ability to engage in academics" and sometimes disrupted the learning of others. *Id*. He also had trouble maintaining focused attention, impacting his access to and engagement in learning. *Id*.

17. Parent requested that the BIP "reflect [Student's] antecedents" rather than focusing on "negative or punitive responses." *Id*. Parent also requested a plan for supporting Student when his Private RBT was unavailable. *Id*.

18. The 2025 IEP included two self-determination goals around work completion and focused attention and two social emotional goals around social problem solving and emotional regulation. *Id*. at pp. 22-23. It also included 32 accommodations, including: (1) "[o]pportunities for heavy work throughout the day"; (2) "opportunities for motor strategies/movement breaks"; (3) letting Student "move around the classroom when appropriate"; (4) noise-cancelling earbuds; and (4) access to sensory tools for tests and assessments. *Id*. at pp. 23-24.

19. The 2025 IEP included 200 MPW of direct special education instruction inside general education and 30 MPW of direct mental health services outside of general education. *Id*. at p. 27. Student's LRE was general education almost 100% of the time. *Id*. at p. 28. Student's BIP from August remained the same. *Exhibit B*, pp. 1-9.

20. According to the embedded prior written notice ("PWN"), the IEP team considered conducting an evaluation and developing a new BIP but instead decided to revise the existing BIP to reflect Student in a more positive, less punitive, way. *Id*. at p. 28. The IEP team also considered adding direct occupational therapy services to address sensory needs but decided to reconvene later after gathering additional information. *Id*.

E. Student's Behavior at School

21. Between the start of the school year on August 11 and September 28, 2025, District recorded 30 behavioral incidents for Student. *Exhibit F*, pp. 110-125. Most incidents involved leaving the classroom without permission, but a few included verbal aggression, peer conflicts and hitting, kicking or throwing objects. *Id*.

22. Case Manager or Assistant Principal responded to all of the incidents involving physical or verbal aggression towards property or people. *Id*. Student processed the incidents with them and then returned to class. *Id*. Consequences generally involved a restorative conversation or call home. *Id*. Student was never removed from his educational environment as a consequence. *Id*.

23. Both Student's behaviors and the consequences began increasing on September 29, 2025:

Date	Behavior	Consequence
9/29/25	There was a substitute in Student's classroom. A peer said unkind things to Student, who kicked the peer. Student left class and escalated when he realized the door had locked behind him. Student kicked the door and hit it with a chair from the hallway while yelling. He eventually broke a window in the door and Student tried to hurt himself with the glass.	Out of school suspension ("OSS") for .25 days.
9/30/25	1) Student returned to School and reported to Case Manager that he was "not in a good head space." When they went together to his class he threatened the teacher and refused to work on his test. He then left without permission. 2) Student threatened to slap peers as they entered the classroom. Student was offered a break but he refused to leave. 3) When Student returned to class an hour later, he again threated to slap peers and break another window. He refused to do any work.	1) OSS for .5 days. Student wanted to leave because "he [did not] trust himself around others." 2) Conversation with Parent. 3) Removed from class by Principal. Total days of removal: .75.
10/1/25	1) Student refused to complete a math test or listen quietly to music. He threatened to slap the teacher and said he did not like his peers. 2) Student left class without permission. Said he did not want to return to class and shut the door on Case Manager. 3) Student chased a peer around the classroom and left the room when prompted to stop. 4) Student asked for and took a break. He then kicked his break bin and tables in the break space. Student said there was nothing to do in his bin and started throwing and damaging the break items. He eventually cleaned up and agreed to print a picture.	1) Restorative conversation. 2) Restorative conversation. 3) Call with Parent. 4) Call with Parent.

10/2/25	1) Student left class and asked Case Manager for a snack. Case Manager prompted him to ask the teacher for permission before leaving. Student returned and got permission. 2) Student asked to listen to music while taking a test in Assistant Principal's office. While listening to "clean" songs, he sang the inappropriate words out loud and was prompted to stop. Student became frustrated with the test although Case Manager was helping him. Student began punching and kicking items while crying. He was offered a break but told he had to finish the test that day and that he had two more tests to do that day. Student took a break. 3) Student completed his math test and became frustrated while doing a science test. Student threw a pencil and paper at Case Manager and requested to watch videos. He was told he could take other breaks but could not watch videos. Student worked on the test with help but continued to cry and get frustrated. When he returned to class, he asked a peer to move their backpack out of his seat and the teacher reminded the class they would get a zero on the test for talking. Student left class to take a break. 4) Student chased peers and said unkind things. He then started knocking down items on their desks. Peers were removed from the room. Student pounded on the closed door and kicked chairs and said unkind things about peers. Student started slamming things into the door, trying to break it to scare peers.	1) Restorative Conversation 2) Conversation with Parent. 3) Restorative conversation 4) 4.25 days OSS. Total days of removal: 5.

Id. at pp. 100-110.

24. The disciplinary records indicate that Student was suspended for 3.25 days after the incidents on October 2. *Exhibit F*, p. 102. However, at the reentry meeting on October 8, Parent was told Student could not return to School. *Exhibit N*, pp. 250-253. Thus, the CDE finds that Student was suspended for 4.25 days.

25. Parent's advocate ("Advocate") reached out to District on the afternoon of October 8 for clarification about Student returning to School. *Exhibit N*, pp. 250-253. Parent was then notified that Student could return on October 9. *Id*. Director would be with Student all day to support the reentry. *Id*.

26. For the next three school days, Student was in the special education classroom with Director, Private RBT and a District paraprofessional, in a form of in school suspension ("ISS"). *Interview with Director*. Special education teachers came and went, but Student was not permitted to go to class. *Id*. This was not recorded in the discipline reports, and the ISS did not have a defined end date. *Interviews with Director and Parent*.; *Exhibit N*, p. 253; *Exhibit F*, p. 102.

27. On the third day, October 14, Student was allowed to help other special education students serve coffee and go to lunch with his peers. *Interview with Director*. Director and Student also made a plan at the start of the day that he would go to his favorite specials class with some peers from a different fifth grade class. *Id*.; *Exhibit F*, p. 100. After going to lunch, Student realized he was not going with his usual homeroom class and became upset. *Id*.

28. Student was told his homeroom teacher and classmates were not ready to hear his apology after the incident on October 2. *Id*. Student became upset, and Director and the paraprofessional were unable to stop him from running upstairs to the fifth-grade classrooms. *Id*. Student yelled at staff and peers and the classes were all on lockdown. *Id*. Once the school resource officer responded, Student left willingly. *Exhibit F*, p. 100.

29. Student was suspended for three days, through October 17. *Id*. On October 15, School completed a threat assessment screener and then a full threat assessment. *Id*. at pp. 1-99. The threat assessment team recommended that Student not return to School "due to [his] verbal and physical aggression towards staff and students." *Id*. at p. 99. It recommended that "the IEP team consider a smaller environment" with "additional behavioral and therapeutic supports." *Id*. The suspension was extended to five total days. *Response*, p. 2; *Exhibit N*, p. 306.

30. However, Student was never allowed to return to School. *Response*, p. 3; *Exhibit N*, p. 1; *Interviews with Parent and Director*. On October 22, an IEP team including Parent, Advocate, District BCBA, Case Manager, Director, District's executive director of special education ("Executive Director"), OT, Assistant Principal, School Psychologist and a general education teacher met to review Student's IEP. *Exhibit E*, pp. 45-47; *Exhibit E.1 and E.2*.

31. The IEP team went over Student's present levels, including data collected by both the school team and Private BCBA and Private RBTs. *Id*. District then shared the results of the threat assessment and the recommendation to consider more restrictive environments. *Id*. Parent objected to a change of placement and the meeting had to end as some

members were out of time. *Id*. The IEP team agreed that the next steps included a manifestation determination review ("MDR"), an interim plan for Student and ongoing conversations about the advantages and disadvantages of various placements. *Id*.

F. IEP and BIP: Accessibility to Teachers and Others

32. Case managers in District are responsible for ensuring that all teachers and other relevant staff are aware of their responsibilities under a student's IEP. *Interview with Director*. Generally, case managers meet with all teachers at the start of the year and after any IEP meetings to review the IEP and BIP and show them how to access the document in District's data management system. *Id*.

33. At School, Case Manager and other special education teachers meet with teachers from each grade to go over the IEPs and BIPs for any students in their classes. *Interview with Case Manager*. They also meet with all specials teachers to do the same. *Id*.

34. In this case, Case Manager and District BCBA met with all general education teachers, specials teachers, administrators, and lunchroom staff to provide copies and go over Student's 2024 IEP and BIP at the start of the year. *Interviews with Case Manager and District BCBA*. They also met with staff after the 2025 IEP was developed in September. *Id*. Staff also had access to Student's plans on District's data management system. *Id*.

35. This review and the documents included the plan for responding to any escalations. *Id*. Everyone knew to contact Case Manager and Assistant Principal when support was needed for Student. *Interview with Case Manager*.

G. IEP Implementation: Behavior Support

36. From August 11 through September 23, the 2024 IEP was in effect. *Exhibit G.1*; *Exhibit A*, pp. 2-14. From September 24 through October 14, the 2025 IEP was in effect. *Exhibit G.1*; *Exhibit A*, pp. 15-30. The BIP was in effect from August 11 through October 14. *Exhibit G.1*; *Exhibit B*.

Crisis Plan

37. In response to physical aggression, the BIP Crisis Plan required staff to (1) contact the front office and (2) follow Crisis Prevention Institute ("CPI") de-escalation strategies, including modeling calming strategies, rather than prompting them verbally. *Exhibit B*, p. 6.

38. Staff were to respond to verbal aggression with: (1) a flat affect; (2) minimal reactions/not acknowledging the threat; (3) redirecting to task and allowing two to three minutes for processing; (4) calling office for direct verbal threats; and (5) allowing Student to return to class after restorative conversations. *Id*.

39. When Student eloped, staff would: (1) follow to keep visual contact; (2) contact the front office; and (3) use de-escalation strategies to provide support but limit interactions. *Id*. After all three types of behavior, staff would provide Student with a choice of who to process the event with and give him time to share his own perspective first. *Id*.

40. Finally, for refusals, staff would: (1) provide choices within the subject; (2) allow processing time; (3) get support if Student was refusing to leave a space; and (4) allow him to engage in an alternative assignment if he requests it appropriately. *Id*.

41. Based on the information included in the incident reports, Parent's concern is that District was not consistently implementing the Crisis Plan during escalations. *Interviews with Parent and Advocate*; *Exhibit 1*, p. 122; *Exhibit E.2*. School used the incident reports to track all of Student's behaviors and look for patterns. *Interview with Principal*. Incident reports are used to record the behavior but do not record implementation of the IEP or BIP. *Exhibit E.2*.

42. District staff were all aware of the Crisis Plan and the importance of giving Student space and minimizing verbal communication when he was escalated. *Interviews with Director, District BCBA and Principal*. All building administrators and special education providers, including special education teachers, behavior specialists and paraprofessionals had CPI training. *Interviews with Principal and District BCBA*.

43. Case Manager or front office staff responded to all incidents involving physical or verbal aggression and were consistently notified when Student eloped. *Exhibit F*, pp. 100-125. In addition to following the Crisis Plan, District staff did their best to implement all the behavior strategies in Student's plans. *Interviews with Case Manager and Director*. However, it was challenging because strategies did not always work or sometimes Student escalated past the level where certain interventions would be useful. *Id*.

44. If Student ripped up the visuals staff provided, they could not make more in the moment. *Id*. Staff consistently gave processing time and used minimal verbal communication, but they were also always adjusting their responses based on prior incidents. *Id*.

45. Student's Private RBTs had their own crisis plan for Student from their center. *Interviews with Case Manager and Student's private BCBA ("Private BCBA")*; *Exhibit N*, p. 154. The Private RBTs could not use their crisis plan at School, where they were not permitted to intervene physically. *Interview with Private BCBA*. Although Private RBTs were aware of the 2024 IEP and BIP, they relied on staff to respond to larger behaviors. *Id*. School staff expected the Private RBTs to take a more hands on approach to responding to Student's behaviors. *Exhibit N*, pp. 161, 227.

46. Based on these findings, including the corroboration among witnesses who support Student, the CDE finds that District implemented Student's BIP—specifically its Crisis Plan—between August 11 and October 14, 2025.

Sensory Regulation Strategies

47. The BIP required two noncontingent sensory breaks per day. *Exhibit A*, p. 33. Both the 2024 and 2025 IEPs required opportunities for heavy work, movement breaks, and giving Student opportunities to move around the classroom. *Id.* at pp. 7-8, 23-24. The 2025 IEP required noise cancelling earbuds, but the 2024 IEP did not. *Id*.

48. Student had noncontingent breaks in his schedule, with designated chaperones. *Exhibit J*, pp. 18-22. A third break was added in late August. *Id*.; *Interview with Case Manager*. Student could choose from a list of activities during these breaks and often chose to play football outside. *Interviews with Case Manager and Social Worker*. A few times, Private RBT had to remind staff about Student's breaks, but this was rare and he always got them. *Interview with Private BCBA*.

49. The proprioceptive feedback from heavy work helped Student regulate. *Interview with Director*. He sometimes got that feedback by helping around School, like stacking chairs with the custodian or carrying things to the office. *Id*. This had the added benefit of helping him build relationships and feel included at School. *Id*. Student also had access to a punching bag or could throw a football during breaks. *Interviews with Case Manager and Social Worker*.

50. Parent concurs that Student received his non-contingent breaks and had opportunities for heavy work. *Interview with Parent*. Parent's concern is that Student would get in trouble for taking breaks or walking around the classroom. *Id*. She also did not think Student had noise-cancelling earbuds. *Id*.

51. Student could also ask for additional breaks as needed. *Id*. He could ask verbally or provide a break card. *Id*.; *Exhibit J*, pp. 25-27; *Exhibit F*, pp. 121, 122. If he took a break without asking first, staff documented it and talked with him about the importance of asking. *See*, *e.g.*, *Exhibit F*, pp. 118, 120, 121.

52. Student had a hard time sitting still, especially when overwhelmed, and liked to move around or pace. *Interview with Parent*. Student had flexible seating in the classrooms, to facilitate movement. *Interview with Case Manager*; *Exhibit E*, p. 21. He could move around the classroom, standing or pacing in the back, as long as he was not getting into peer's space or touching their belongings. *Interviews with Case Manager, Director and District BCBA*; *Exhibit E*, p. 21. Teachers would also give him jobs or prompt movement breaks for the whole class as needed. *Interview with Case Manager*.

53. Student had noise-cancelling headphones in his backpack or break bin. *Id*. There were also headphones available in the classrooms. *Id*. After the IEP team added noise-cancelling earbuds to his IEP on September 23, Case Manager ordered them for him as well as some other older students. *Id*.

54. Based on these findings, including the corroboration among witnesses who support Student, the CDE finds that District implemented Student's sensory supports consistent with the 2024 and 2025 IEPs and BIP between August 11 and October 14, 2025.

1:1 Adult Support

55. Parent alleges that District did not provide Student with 1:1 adult support during behavior escalations. *Complaint*, p. 5. 1:1 adult support for Student was not included in or required by the 2024 IEP, the 2025 IEP, or the BIP. *Exhibit A*, pp. 2-38.

56. Student had Private RBT with him as a medically necessary service, but this was not part of his IEP. *Interviews with Director and Case Manager*. Parent requested that 1:1 support be added to his IEP, but the IEP team never agreed that it was necessary. *Id*. Thus, the CDE finds that District was not required to implement 1:1 adult support.

H. Manifestation Determination Review

57. District's Discipline of Students with Disabilities policy includes instructions consistent with the requirements of 34 C.F.R. § 300.530. *Exhibit M*, pp. 102-104. Specifically, staff are instructed to conduct an MDR for any disciplinary change of placement, to provide services after the 10th day of removal and to return the student to his or her prior placement if the behavior was a manifestation of his or her disability. *Id*.

58. District staff are directed to conduct an MDR anytime a student will be removed for 10 or more days. *Interviews with Director, District BCBA and Executive Director*. If the behavior was a manifestation of the student's disability, the student is returned to his or her placement and the IEP team considers if the behavior plan needs to be adjusted. *Id*.

59. All removals are tracked in a data management system. *Interview with Executive Director*. Special education administrators and school psychologists can run a report to get a list of all removals to track when a student is approaching 10 days. *Id*.

60. On October 24, an MDR team including District BCBA, Case Manager, Director, Executive Director, OT, Parent, Advocate, Assistant Principal, School Psychologist and a general education teacher met. *Exhibit G*, pp. 1-13; *Exhibit G.1*. The team reviewed Student's IEP, BIP and functional behavioral assessment ("FBA") along with the behaviors that led to suspension. *Id*. This was seven school days after October 14, 2025. *Exhibit L*. p. 1. Up to that point, no interim services were provided. *Interviews with Parent and Director*.

61. Ultimately, after considering Student's IEP goals and the behavior, the MDR team determined that Student's behavior was a manifestation of his disability. *Exhibit G*, pp. 1-13; *Exhibit G.1*. Parent raised concerns that the IEP and BIP had not been followed, but the MDR team determined that District had followed Student's 2025 IEP and BIP. *Id*.

62. The MDR team agreed to conduct a new FBA, although one had been previously completed, and to review and modify Student's BIP as necessary. *Exhibit G*, p. 7, 11. An updated FBA was to be completed as part of the independent educational evaluation ("IEE") that was underway. *Id*. at p. 2.

63. The MDR team did not check the box to return Student to his placement. *Id*. at p. 11. Instead, it indicated that the IEP team was "discussing how to best support his needs." *Id*.

64. After completing the MDR, Executive Director shared that Student could not return to School based on the threat assessment. *Id*. at p. 3. Thus, the team turned to discussing the advantages and disadvantages of various placements. *Id*. However, the IEP team ran out of time, and no changes were made to Student's IEP. *Id*. at pp. 1-3; *Exhibit G.1*. The team did not discuss Student's BIP. *Id*.

65. That same day, District proposed an interim plan for Student where he would receive services at a behavioral health center ("Center") for 16 hours per week and access to an online curriculum for 14 hours per week with support from a virtual teacher and a paraprofessional. *Id*.; *Exhibit N*, pp. 1-2. Parent was offered the chance to tour Center and the IEP team agreed to reconvene to discuss placement. *Id*. District reached out a few times about touring Center, but Parent never agreed, as she was concerned about the disruption a short-term placement would cause. *Exhibit N*, pp. 463, 496, 499, 526.

I. Interim Services

66. On December 4, District agreed to provide interim services at the private ABA center where Student was already spending his days. *Exhibit N*, p. 3-6, 684. District offered in-person paraprofessional support for 15 hours per week to support Student's enrollment in an online program. *Id*. at p. 5. Student would also receive 200 MPW of direct, virtual, support from a special education teacher and 30 MPW of direct, in-person, support from a mental health provider. *Id*.

67. An RBT from District ("District RBT") began meeting with Student for two hours per day on December 12, 2025. *Id*. at p. 15. District RBT worked with Student for 26 hours between December 12 and January 23. *Id*. at pp. 15-17. She was also prepared to offer an additional six hours of support, but Student and/or ABA staff was absent. *Id*. Most of that time was spent on rapport building with Student. *Id*.

68. Several weeks into the services, District RBT told Private BCBA that she had not been provided with any academic work for Student. *Interview with Private BCBA*; *Exhibit 13*, p. 8. District RBT recorded spending 15 minutes on math with Student. *Exhibit N*, pp. 16-17. No instruction was provided by a special education teacher during that time. *Id*.

69. District RBT resigned from her position, and District was unable to find a replacement. *Id*. at p. 8. District BCBA, who is also a licensed special education teacher, began providing services for Student on January 29, 2026. *Id*. at pp. 8, 13, 17.

70. District BCBA met with Student for 25.75 hours between January 29 and February 27, 2026. *Id*. at pp. 17-21. She was also prepared to offer another eight hours, but either Student or clinic staff were unavailable. *Id*. During that time, Student worked on several academic activities provided by School staff. *Id*. at pp. 13-21.

71. During this time, he regressed on his first self-determination goal, with his ability to attend to academic tasks dropping from four minutes to 46 seconds. *Exhibit I*, p. 1; *Exhibit N*, p. 21. It is unclear if he made progress on the second goal as School was tracking his ability to complete assignments while District RBT tracked the time it took him to initiate tasks. *Id*.

72. Social Worker was not initially aware of the need to continue providing mental health services to Student after he was removed from School. *Interview with Social Worker*. However, on January 22 she started meeting with Student for one hour per week during his time with District BCBA. *Id*.; *Exhibit N*, pp. 17-21; *Exhibit J*, pp. 4-5. Social Worker met with Student for a total of four and a half hours. *Exhibit J*, p. 4-5.

73. While at School, Student made steady progress on his social emotional wellness goals, particularly around taking different perspectives. *Exhibit I*, p. 2; *Interview with Social Worker*. He stopped making progress after he was removed from school. *Interview with Social Worker*.

J. Ongoing IEP Development

74. On November 14, an IEP team including Parent, a general education teacher, Case Manager, Assistant Principal, District BCBA, Principal, School Psychologist, School's social worker ("Social Worker"), OT, Executive Director, Director and Advocate met to continue discussing next steps. *Exhibit E*, pp. 7, 37-40; *Exhibit E*.3; *Exhibit E.4*. The team spent a lot of time reviewing the behavior data and discussing Parent concerns with the threat assessment. *Id*.

75. District then tried to discuss Student's LRE and the advantages and disadvantages of different potential placements. *Id*. Parent had questions about what placements were available in light of the threat assessment, including whether Student would be permitted to attend other District schools. *Id*. District agreed to get more information. *Id*.

76. Parent was open to hearing District's thoughts on potential placements but indicated that they would not agree to a change of placement at that meeting. *Id*. The meeting ended without any changes to the 2025 IEP or any discussion of the BIP because Parent ended the meeting to wait for District to provide written proposals for her to consider. *Id*.

77. Throughout that time, District continued to propose IEP team meetings to develop a new IEP for Student. *Exhibit N*, pp. 5, 8, 14, 874, 873. Parent was asking for District to provide various documents and information, including where Student was permitted to attend, before she would agree to meet again. *Id*. at p. 747, 874. She also wanted to have the completed IEE before reconvening. *Id*. at p. 872-874.

78. An IEP team reconvened in March 2026 and agreed on a new IEP and BIP. *Exhibit E*, pp. 31-36; *Interviews with Parent, Director and Executive Director*. Student started full time at a new school on April 1, 2026. *Id*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District ensured that staff had access to and an understanding of their responsibilities for implementing Student's IEP from August through October 2025, as required by 34 C.F.R. § 300.323(d). District implemented the behavior supports in the 2024 and 2025 IEPs and the BIP from August through October 2025, as required by 34 C.F.R. § 300.323(c). District complied with the law.

A. IEP Implementation: Legal Requirements

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." *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 392, 399 (2017) (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. §§ 300.323(d), 300.323(c)(2).

B. Student's IEPs: 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, Case Manager and District BCBA reviewed Student's IEP and BIP with all relevant staff at the start of the school year and again after the 2025 IEP was developed in September. (FF # 34-

35.) Staff received paper copies of the 2024 and 2025 IEPs and the BIP and had access to them in District's data management system. (*Id*.) Thus, the CDE finds and concludes that District complied with the requirements of 34 C.F.R. § 300.323(d).

C. Student's IEPs: Implementation of Behavior Supports

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, 300.323(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 Services?*

The CDE must first determine whether there was a shortfall between the supports required by the 2024 and 2025 IEPs and the BIP versus those made available to Student. 34 C.F.R § 300.323(c)(2).

Here, Parent is concerned about the implementation of three types of support between August 11 and October 14, 2025: (1) the Crisis Plan; (2) sensory regulation strategies; and (3) 1:1 adult support. (FF #s 51, 58, 65.)

Crisis Plan

Student's BIP included a Crisis Plan for responding to target behaviors. (FF #s 11, 37-40.) Parent's concern is that the behavior reports do not document District following all the steps of the Crisis Plan. (FF # 41.) However, behavior reports are used to document behaviors and not responses. (*Id*.) Not listing a step in the behavior report does not mean it did not occur. (*Id*.)

District staff were all aware of their responsibilities under the Crisis Plan. (FF # 42.) Everyone who routinely responded to Student had the required CPI training and Case Manager or front office staff consistently responded to escalations. (FF #s 42, 43.) School's Crisis Plan was different than the crisis plan developed by Private BCBA. (FF # 45.) And there may have been some confusion about the role of Private RBT during escalations. (*Id*.) However, the Record supports that District implemented the Crisis Plan, consistent with his BIP between August 11 and October 14, 2025. (FF #s 37-46.) Accordingly, there was no shortfall in the implementation of this support.

Sensory Regulation Strategies

Parent's concern is that District did not consistently implement some of Student's sensory regulation strategies between August 11 and October 14, 2025—specifically (1) movement breaks; (2) opportunities to move around the classroom; and (3) noise cancelling earbuds. (FF # 50.)

In this case, Student's 2024 and 2025 IEPs both required movement breaks and opportunities to walk around the classroom, so both supports were required from August 11 through October 14. (FF # 47.) Only the 2025 IEP required noise cancelling earbuds, so those were only required from September 24 through October 14. (FF #s 36, 47.) Student was permitted to move around the classroom as long as he was not disrupting other students. (FF # 52.) He could also take breaks as long as he asked permission verbally or with his break cards. (FF # 51.) Student only got in trouble when he left without asking for a break. (*Id*.) He had access to noise cancelling headphones all year, and District purchased earbuds once that was added to the 2025 IEP. (FF #

53.) Accordingly, there were no shortfall in the implementation of these sensory regulation strategies between August 11 and October 14, 2025. (FF #s 47-54.)

1:1 Adult Support

Although Parent requested it, neither the 2024 IEP, the 2025 IEP nor the BIP required 1:1 adult support. (FF #s 55, 56.) District was thus under no obligation to provide this support as an accommodation or service between August 11 and October 14, 2025. (*Id*.)

Collectively, because there was no shortfall in the supports provided versus those required by the 2024 and 2025 IEP and the BIP, the CDE finds and concludes that District implemented Student's IEP as required by 34 C.F.R. § 300.323(c)(2).

Conclusion to Allegations No. 2: District conducted an MDR within 10 days of the disciplinary change of placement on October 14, 2025, as required by 34 C.F.R. § 300.530(e). District complied with the IDEA.

A. What Constitutes a Disciplinary Change in Placement

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. A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of short-term removals that total more than 10 school days and constitute a pattern. *Id.* § 300.536(a). A pattern exists where the removals involve "substantially similar" behavior and where other factors—such as the length of each removal, total amount of time removed, and the proximity of removals—support the existence of a pattern. *Id.* § 300.536(a)(2)(i)-(iii). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis, and such a determination is inherently subjective. *Id.* § 300.526(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

School districts must consider both formal removals (such as suspensions) and informal removals. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161, Question C-6 (OSERS 07/19/22) [hereinafter *Discipline Q&A*]. The U.S. Department of Education provides that an informal removal:

> means action taken by school personnel in response to a child's behavior that excludes the child for part or all of the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the child with a disability from class or school without invoking IDEA's disciplinary procedures. **Informal removals are subject to IDEA's requirements to the same extent as disciplinary removals by school personnel using the school's disciplinary procedures.** Informal removals include administratively shortened

> school days when a child's school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child's behavior.

Id. (emphasis added). The repeated use of informal removals to address behavior "could constitute a disciplinary removal from current placement." *Id.* The U.S. Department of Education has indicated that in-school suspension counts as a short-term removal unless the student can appropriately participate in the general education curriculum, receives the services required by their IEP, and "continues to participate with nondisabled children to the extent they would have in the child's current placement." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

B. A Disciplinary Change in Placement Occurred Here on October 14

Here, Student was suspended for five days prior to October 8. (FF #s 24, 25.) On October 9, Student was placed into ISS in the special education classroom, where he did not have access to general education peers for two days. (FF #s 25-27.) Because Student did not continue to participate with nondisabled children in ISS, the CDE finds that the ISS constituted a disciplinary removal and Student's sixth, seventh and eighth days of removal. (*Id*.)

On October 14, Student was suspended for three more days. (FF #s 29, 30.) The CDE finds that this suspension on October 15, 16 and 17 brought Student to his 9th, 10th, and 11th day of removal. All four suspensions involved Student threatening teachers and classmates and three involved Student banging on the classroom door. (FF #s 24-28.) All four behaviors occurred in a two-week period. (*Id*.) As a result of those behaviors, Student was ultimately suspended for a total of 13 days and then eventually notified that he could not return to school. (FF #s 24-30). Because the behaviors were similar, occurred close in time and resulted in similar consequences, the CDE finds that this constituted a pattern of removals resulting in a disciplinary change of placement. The decision that resulted in the change of placement occurred on October 14, 2025, the day District suspended Student for a period that included the 11th day of removal.

C. Timeliness of the MDR

A school district is required to conduct an MDR within ten school days of the decision to change a student's placement because of a violation of a code of student conduct. 34 C.F.R. § 300.530(e)(1). In this case, District needed to conduct an MDR within 10 days of the disciplinary change of placement that occurred on October 14, 2025. District conducted an MDR on October 24, seven school days after the disciplinary change of placement. (FF # 60.) Thus, the CDE finds and concludes that District timely conducted an MDR, consistent with the requirements of 34 C.F.R. § 300.530(e)(1).

Conclusion to Allegations No. 3: District did not provide Student with educational services from October 17 through October 24, following a disciplinary change of placement, as required by 34 C.F.R. § 300.530(d)(1). This resulted in a denial of FAPE.

A. Services During Removal

Once a student has been removed from his educational placement for ten school days, the IDEA requires a school district to provide the student educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). Such educational services must allow the student "to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goal set out in the child's IEP." *Id.* § 300.530(d)(1)(i). If the removals resulted in a disciplinary change of placement, the IEP Team must determine what services are necessary for the student to progress toward meeting his goals. *Id.* § 300.530(d)(5). These obligations continue to apply while a district goes through a threat or risk assessment process. *Discipline Q&A*, Question E-5.

Here, Student surpassed 10 days of removal on October 17, 2025, but interim services were not offered until October 24, 2025, five school days later. (FF #s 31, 65.) Further, the interim services offered on October 24 were proposed by District and not decided upon by the IEP team, although a disciplinary change of placement had occurred. (FF # 65.) Thus, the CDE finds that District did not provide educational services during Student's removal from October 17 through October 24, 2025, as required by 34 C.F.R. § 300.530(b)(2), (d)(5).

B. 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).

Even without the impact of missing school, IDEA-eligible students require specially designed instruction to make progress in the general education curriculum. 34 C.F.R. §§ 300.8, 300.39. Missing 10% of the school year—just 15 to 20 days—is "associated with a variety of negative outcomes" for all students, including lower academic achievement and worse interpersonal skills. *Attendance Guidebook*, CDE (July 2025) (available at https://www.cde.state.co.us/dropoutprevention/attendanceguidebook2024-25.) To help limit the impact of missed education, the IDEA requires that children with disabilities receive a FAPE tailored to their unique needs, including when they have been suspended or expelled. 34 C.F.R. § 300.101(a). To help ensure that outcome, the IDEA includes specific procedural protections for students facing disciplinary removals, including the requirement that they continue to receive services after 10 days of removal. *Id*. at § 300.530.

Here, District did not offer Student any educational services for fifteen days of removal, or almost 10% of the school year. (FF #s 31, 65.) District was only required to offer services starting on the 11th day of removal; however, IDEA requires those services in consideration of the cumulative impact of all the removals. 34 C.F.R. §§ 300.101, 300.530. Yet, for days 11-15, Student did not

receive any special education or general education instruction. (*Id*.) The CDE finds and concludes that this amount of missed instruction resulted in a deprivation of educational benefit for Student and thus resulted in a denial of FAPE.

Conclusion to Allegations No. 4: After determining that Student's behavior was a manifestation of his disability in October 2025, District reviewed Student's BIP and modified it as necessary but did not return Student to his placement, as required by 34 C.F.R. § 300.530(f). This noncompliance resulted in a denial of FAPE.

A. Review of Student's BIP following the 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, Student had an existing FBA when the MDR determined that Student's behavior was a manifestation of his disability. (FF #s 60, 61.) Thus, District's only option was to review and, as necessary, revise Student's BIP, which District agreed to do after the MDR on October 24. (FF # 62.) However, to avoid reaching a decision about Student's placement, Parent ended the meeting on November 14 and did not agree to meet again until March. (FF #s 76-78.) At the IEP meeting in March 2026, the IEP team reviewed and revised Student's BIP. (FF # 78.) Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.530(f)(1).

B. Return to Placement after the MDR

If the IEP Team determines the student's conduct was a manifestation of his or her disability or because the district did not implement the IEP, certain additional safeguards are required, including 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).

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

For instance, the IDEA expressly authorizes school officials to unilaterally remove a student to an interim alternative educational setting ("IAES")—without consideration of whether the misconduct was a manifestation of the child's disability—for up to 45 school days in three "special circumstances." *Id.* § 300.530(g). If these special circumstances exist, the IAES "shall be determined by the IEP Team." *Id.* §§ 300.530(g), 300.531. In situations where a special

circumstance does not exist, a school district that "believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others" may request an expedited hearing seeking a hearing officer's order to place the student in an IAES. *Id.* § 300.532(a). A school district may also seek injunctive relief from the courts if the district believes a student is substantially likely to injure himself or others if he or she remains in the current educational placement. *Honig*, 484 U.S. at 323-25, 328.

What districts cannot do is use a threat assessment to circumvent the IDEA's disciplinary procedures and unilaterally change a student's IEP placement. *See*, *Thompson School District R2-J*, 124 LRP 34293 (SEA CO 08/09/24) (finding that a district did not comply with the IDEA where it removed a student from his educational placement based on felony charges, without complying with the requirements of 34 C.F.R. §§ 300.530-536.); *Bd. of Educ. of Mamaroneck Union Free Sch. Dist.*, 124 LRP 11328 (S.D.N.Y. Mar. 31, 2024) ("[A] school district may not unilaterally remove a student with a disability from a placement if the district believes the student to be a safety risk." (citing *Honig v. Doe*, 484 U.S. 305, 321 (1988)).

In this case, the MDR team found that Student's behavior was a manifestation of his disability on October 24, 2025. (FF # 61.) At that point, District's obligation was to return Student to his existing placement unless Parent and District agreed to a change of placement. 34 C.F.R. § 300.530(f). Although the IEP team discussed Student's placement on October 24 and November 14, 2025, it never agreed on a change of placement with Parent. (FF #s 64, 74-76.) The IEP team did not agree on a new placement until March 2026. (FF # 78.) Student was not allowed to return to the placement described in his IEP for five months, from October 24, 2025 through March 31, 2026. (FF #s 64-78.) Thus, the CDE finds and concludes that District did not return Student to the placement in his 2025 IEP, as required by 34 C.F.R. § 300.530(f).

C. Denial of FAPE

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 was removed from his educational environment for five months, or 18 weeks, in a ten-month school year. (FF #s 64-78.) During that time, his 2025 IEP required 200 MPW of direct instruction for a special education teacher inside general education (60 hours) and 30 MPW of direct instruction from a mental health provider (nine hours). (FF # 19.) He would also have been in the general education classroom almost 100% of the time. (*Id*.) Instead, Student spent his days at the ABA center without access to the general education curriculum or peers. (FF # 66.) He received 26 hours of support from District RBT, but she did not have academic materials for weeks and they only completed 15 minutes of work. (FF #s 67-69.) The CDE recognizes the importance of building rapport with students before placing demands, but 15 minutes of academic work in four weeks did not allow for an educational benefit. District also provided 33.75 hours of direct instruction from a licensed special education teacher. (FF #s 69-70.) During that

time, he regressed on his attention goal, and it is unclear if he made progress on the other goal because the different providers tracked the goal differently. (FF # 71.) He did not make progress on his social emotional goals during this time. (FF # 73.) For all these reasons, the CDE finds and concludes that this noncompliance resulted in a denial of FAPE.

D. 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, District did not provide Student with services for five days after his 10th day of removal and did not return him to his placement for 18 weeks after determining that his behavior was a manifestation of his disability. During this time, his IEP required 200 MPW of direct instruction from a special education teacher and 30 MPW of direct mental health support. (FF # 19.) Thus, the CDE finds that District was required to provide direct instruction with a special education teacher for 63 hours and with a mental health provider for 9.5 hours. The CDE acknowledges that District offered Student 33.75 hours of special education instruction and 4.5 hours of mental health services during the period of removal. (FF #s 67-73.) However, during that time, Student regressed on one goal and did not make progress on two others. (FF #s 71-73.) The CDE also recognizes that District attempted to schedule IEP team meetings and develop an appropriate IEP for Student, but Parent was unwilling to meet. (FF #s 65, 74-78.) Nonetheless, districts are obligated to provide services after the 10th day of removal and return students to their placements if their behavior is found to be a manifestation of their disability. 34 C.F.R. § 300.530. Parents are not obligated to agree to a change of placement after a student's behavior is found to be a manifestation of their disability. *Id*. It was District's obligation to have an IEP in effect for Student and implement it. 34 C.F.R. § 300.323. Taking all these factors into account, the CDE finds and concludes that Student requires these compensatory services: (1) 17 hours of direct instruction from a special education teacher; and (2) two hours of direct instruction from a mental health provider.

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 the IDEA's requirements as they relate to the areas of noncompliance found in this investigation. (FF #s 57-59.) This noncompliance, based on the Record, is individualized to Student and limited to the specific circumstances of this investigation. (FF #s 24-30, 64-66, 75-79). 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. Providing Student with educational services after the 10th day of removal, as required by 34 C.F.R. § 300.530(d)(1).

2. Returning Student to his placement after determining his behavior was a manifestation of his disability, as required by 34 C.F.R. §300.530(f)(2).

To demonstrate compliance, District is ORDERED to submit a corrective action plan ("CAP") by **June 29, 2026** that adequately addresses how the cited noncompliance will be corrected through the completion of the following remedies:

1. Final Decision Review

a. Executive Director and Director must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.530 by **July 13, 2026**. If these individuals are no longer employed by District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **July 15, 2026**.

2. Compensatory Education Services

a. Student shall receive **17 hours of direct specialized instruction** provided by an appropriately licensed special education teacher selected by District. These services must be designed to advance Student toward his annual IEP goals using materials consistent with grade-level standards.

b. Student shall receive **two (2) hours of direct instruction** provided by an appropriately licensed mental health provider selected by the District. These services must be designed to advance Student toward his annual IEP goals.

c. All compensatory services must be provided to Student **no later than one year from the issue date of this Decision**.

d. By **July 13, 2026**, Parent shall provide written consent for the provision of compensatory services to the CDE and the District. If Parent does not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by District, this written consent shall be provided by Parent to District. The District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.

e. The District shall schedule compensatory services in collaboration with Parent. The District shall submit the schedule of compensatory services to the CDE by **August 3, 2026**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via email, 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 providers as well as the dates, times, and durations of planned sessions.

    i. Any delay in beginning the provision of compensatory services must be approved by the CDE.

    ii. If District and Parent cannot agree to a schedule by August 3, 2026, District and Parent must either meet in-person or via video conference to resolve scheduling complications by **August 14, 2026** and submit the schedule by **August 18, 2026**.

    iii. If District and Parent cannot agree to a schedule by **August 18, 2026**, District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parent, including but not limited to, copies of correspondence sent to the Parent and any responses received (such as emails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **August 25, 2026**.

    iv. By **September 9, 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.

f. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused

from providing compensatory services, rests solely with the CDE. Parent may opt out of some or all compensatory services.

g. Monthly consultation between the providers 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.

h. To verify that Student has received the services required by this Decision, 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.

i. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward his IEP goals and objectives. Given the nature of Student's goals, these compensatory services shall be provided during the school day, inside of general education, to support the generalization of Student's skills to that setting. If services cannot be provided in general education because of Student's current IEP and/or if Parent and District agree on an alternative format for compensatory services to best meet the needs of Student, the CDE will review any proposal and approve it so long as it appropriately addresses the needs identified in this decision. Approval of an alternative format shall be at the sole discretion of the CDE.

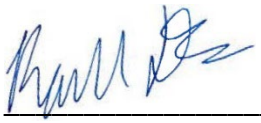
j. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent 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 29th day of May, 2026.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-11

- Exhibit 1: Cover Letter
- Exhibit 2: Evaluation
- Exhibit 3: Correspondence
- Exhibit 4: Other Records
- Exhibit 5: Correspondence
- Exhibit 6: IEP
- Exhibit 7: Correspondence
- Exhibit 8: Correspondence
- Exhibit 9: Transcript
- Exhibit 10: Correspondence
- Exhibit 11: Threat Assessment
- Exhibit 12: MDR
- Exhibit 13: Correspondence

Response, pages 1-8

- Exhibit A: IEP
- Exhibit B: BIP
- Exhibit C: NOMs
- Exhibit D: None
- Exhibit E, E.1-E.4: Meeting Documentation
- Exhibit F: Disciplinary Records
- Exhibit G, G.1: MDR
- Exhibit H: Schedule
- Exhibit I: Progress Monitoring
- Exhibit J: Service Logs
- Exhibit K: Evaluations and Assessments
- Exhibit L: District Calendar
- Exhibit M: Policies and Procedures
- Exhibit N: Correspondence
- Exhibit O: None
- Exhibit P: Verification of Delivery

Reply, pages 1-6

Telephone Interviews

- Director: April 15 and 17, 2026
- District BCBA: April 15, 2026

- Social Worker: April 15, 2026
- Parent: April 15, 2026
- Case Manager: April 16, 2026
- Executive Director: April 16, 2026
- Principal: April 16, 2026
- Private BCBA: April 20, 2026
- Advocate: April 20, 2026