

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

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**State-Level Complaint 2015:510**  
**Larimer County School District, Poudre**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on June 1, 2015, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATIONS**

Parent's Complaint raised four allegations, summarized as follows:

1. The District failed to conduct a manifestation determination in violation of IDEA's discipline procedures when Student had been suspended for seventeen days between October 22 and December 17 of 2014.
2. The placement offered in the IEP dated November 18, 2014, was predetermined.
3. The placement offered in the IEP dated November 18, 2014, violated IDEA's least restrictive environment (LRE) requirement.
4. On or around April 8, 2015, the District improperly denied Parent's request for an Independent Education Evaluation (IEE).

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

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

## FINDINGS OF FACT

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

### Background:

1. At all times relevant to the Complaint, Student was fifteen years old and a freshman attending High School. In their Complaint, Parents allege that Student was inappropriately disciplined and excluded from attending his general education classes for disability-related behavior. Essentially, Parents believe that the District failed to understand and proactively support Student's mental health needs before, during, and immediately after multiple suspensions from School during the fall of 2014. Although Student is now doing well, both academically and behaviorally, Parents filed this Complaint because they do not want what happened to Student to happen to other students with mental health needs who attend School within the District. Accordingly, they request that the SCO order comprehensive training for all relevant District staff should their allegations be founded. With the exception of an IEE, they are not seeking an individualized remedy for Student, i.e., compensatory education services.<sup>4</sup>

2. In April of 2014, Student was determined eligible for special education and related services as a child with a Serious Emotional Disability (SED).<sup>5</sup> The April 2014 IEP identified Student's needs as development of self-advocacy skills, improvement of organizational skills and ability to stay on task, development of appropriate social awareness, and improvement of his ability to express thoughts and feelings. To meet these needs, Student had annual IEP goals in the areas of self-advocacy, organization, and decision making and problem solving. To achieve these goals, Student was enrolled in a study skills class to focus on organization and time management, and was provided with fifteen minutes of direct instruction in social skills. The social skills instruction was described as a daily check-in or visit with his case manager to discuss social situations or problems. For additional support, Student had a behavioral intervention plan (BIP). The BIP, however, did not clearly identify the target behavior or setting events. Notably, Student's IEP did not provide direct mental health or social/emotional support through a mental health specialist, such as a school psychologist or clinical social worker, even though he had been identified as a child with a serious emotional disability and had been recently hospitalized out of concern that he was a threat to himself.<sup>6</sup>

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>4</sup> Interview with Parent.

<sup>5</sup> Exhibit B, p. 1. Previously, Student had been identified as a child with a Specific Learning Disability and received special education and related services in elementary school until he was determined no longer eligible in fifth grade. Exhibit A, p. 55. In February of 2014, Parents requested a special education evaluation after Student was hospitalized for six days in January of 2014 due to concerns about safety to self. Response; Exhibit E, p. 35.

<sup>6</sup> Exhibit B.

3. Student's educational setting was identified as being in the general education class at least 80% of the time.<sup>7</sup> With the exception of a single incident, resulting in suspension, Student did not present behavioral or disciplinary challenges at Middle School during the 2013-14 school year. Relevant to the concerns that would arise during the 2014-15 school year, a counselor at Middle School recalled that Student was fascinated with school shootings, including Columbine, and appeared to identify with the shooters.<sup>8</sup> In the spring of 2014, Parent informed Student's IEP team that she was concerned about the transition to High School because change is a significant trigger for Student's troubling behavior. According to Parent, nothing was done to help prepare Student for the transition to High School.

#### **2014-15 School Year:**

4. Student began High School in August of 2014 with the services identified in his April 2014 IEP, including a study skills class and daily check-ins with a case manager to discuss social expectations and problem solve encounters with peers.

5. At the beginning of the school year, Student's teachers reported that he was doing well in class and keeping up with assignments. In mid-October of 2014, however, Student began to exhibit behavior that caused teachers and building administration to become concerned for the safety of others. On October 13, 2014, Student refused to turn his music down during his advisory class after multiple requests from the teacher. Instead of turning the volume down, Student turned it up and started hitting his head against the wall. When other students and peers requested that he turn the volume down, he started "growling" at them. Because Student refused to comply with requests to turn his music down and leave the classroom, Student was escorted out of class and received a verbal warning from School administration.<sup>9</sup>

6. Immediately following this incident, Student's schedule was changed so that he would now be placed in an advisory class that was co-taught by a special education teacher with whom Student had an existing relationship. This change also meant that Student would now be attending a class with different peers and different teachers. Notably, Student has demonstrated difficulty adjusting to sudden changes. In fact, sudden change, particularly a change to Student's schedule, is the one known and consistently acknowledged antecedent or trigger to inappropriate behavior.<sup>10</sup>

7. On October 21, 2014, Student threatened Math Teacher when she requested that he complete an in-class assignment. During class, Math Teacher noticed that Student was not working on an assignment and reminded him that she would need to call Parents if he did not complete his work. In response, Student told Math Teacher "it'll be hard to call home when you're disappeared and dead." Math Teacher reported the incident to High School

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<sup>7</sup> Exhibit B, pp. 1-15.

<sup>8</sup> Response at page 7.

<sup>9</sup> Response at page 7; Exhibit E, p.p. 35-36; Exhibit H, p. 36.

<sup>10</sup> Interviews with School Psychologist, Special Education Coordinator, and Parent.

Administration on October 22, 2014, because she was shaken by the exchange and feared for her safety. Student was suspended for two days for making a verbal threat of bodily injury to a staff member, a violation of the District's code of conduct and C.R.S. § 22-33-106(1)(c).<sup>11</sup>

8. Because this was the second troubling behavior incident within a week, Assistant Principal contacted the High School's Threat Assessment Coordinator. To gather more information, the Threat Assessment Coordinator contacted Middle School and was at this time informed of Student's fascination with school shootings.

9. On October 27, 2014, the day Student was to return from suspension, the Threat Assessment Coordinator convened a Safety Plan meeting that included Student, Parents, School Psychologist, and School Resource Officer. At this meeting, a "Student Supervision and Safety Plan-Level 1 Threat Assessment" (Safety Plan) was developed that included the following conditions:

- Student will not have weapons or other objects that could be identified as dangerous at school or at any school related activities.
- Student will not communicate in a threatening manner through verbal, written, drawn gestures or third party communications that imply injury or harm to others during any school related activities.
- Student will not enact or participate in any physical activities that threaten or could cause harm to others during any school related activities.
- Student will not use a computer to access Internet sites that are violent in nature or to threaten and/or intimidate others at any time.

In addition, Student was required to check-in and check-out each day with School Assistant Principal, and was to be supervised during lunch and when passing between classes.<sup>12</sup>

10. On November 3, 2014, the District convened an IEP team to review Student's current IEP and "make certain it is aligned with any additional safety or behavior plan created."<sup>13</sup> Notably, the IEP team determined that no changes to the IEP were necessary and did not add any mental health supports or services. Changes were made, however, to the Safety Plan and Student's class schedule. Because Student had been complying with the conditions, the Safety Plan was revised so that Student no longer needed to be escorted to class. In addition, Student's schedule was adjusted so that he would attend math class in the "Mind Center," a computer lab classroom where he completed assignments online.<sup>14</sup>

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<sup>11</sup> Exhibit H, p.p. 9-11.

<sup>12</sup> Exhibit H, pp. 11-12. The conditions are summarized by the SCO.

<sup>13</sup> Exhibit A, p. 1.

<sup>14</sup> Response; Exhibit A, pp. 1 and 88.

11. On November 5, 2014, Student violated the Safety Plan by using his school-issued laptop to search for images of knives and blades. To address this violation, the School convened another Safety Plan meeting that included Student, Parents, School Psychologist, Threat Assessment Coordinator, and Assistant Principal. At this meeting, Student's schedule was changed yet again so that he was now enrolled in general education classes that were all co-taught by a special education teacher. Parents agreed to the increase in special education service hours resulting from the schedule change. To address safety concerns, the District also confiscated Student's school-issued laptop to conduct a history search and determined that Student's daily check-in and check-out would now include a search of his belongings.<sup>15</sup>

12. On November 10, 2014, the District convened an IEP meeting to review the Safety Plan and amend the IEP to reflect the increase in service hours agreed to at the Safety Plan meeting on November 5.<sup>16</sup> As a result of this meeting, Student's IEP was amended to provide 480 minutes of direct instruction in math and study skills class and 720 minutes of indirect support in general education classes. Notably, Student's IEP was not amended to provide direct mental health or social/emotional support and the BIP was not reviewed and revised. The District did, however, request consent to conduct a functional behavioral assessment (FBA) to "acquire more information regarding [Student's] social-emotional and behavioral functioning at school."<sup>17</sup> Parent provided written consent for the requested evaluation on November 10.<sup>18</sup>

13. On November 11, 2014, Student was suspended for five days for violating the Safety Plan and provisions of the District's Code of Student Conduct prohibiting disobedience and behavior that is detrimental to the welfare of others. On the morning of November 11, Student failed to check-in with Assistant Principal, as required in the Safety Plan. When School staff located Student to complete the check-in, they searched his belongings and discovered drawings of a violent nature in one of his notebooks. School staff characterized the drawings as violent because they depicted a stick figure shooting a gun, a figure being stabbed by a sword, and a figure holding a decapitated head and brandishing two fleeing and unarmed figures with a sword.<sup>19</sup> In addition, Student had violated his Safety Plan on at least three prior occasions by failing to check-in and by browsing the Internet for images of weapons.<sup>20</sup> With this suspension, Student had now been suspended for a total of seven days during the 2014-15 school year.

#### **IEP Meeting on November 18, 2014:**

14. On November 18, 2014, the day Student was scheduled to return to High School from suspension, the District convened a properly constituted IEP team. The identified purpose of

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<sup>15</sup> Exhibit H, p. 12; Exhibit A, p. 1; Exhibit C, p. 6.

<sup>16</sup> Exhibit A, p. 2.

<sup>17</sup> Exhibit C, p. 8.

<sup>18</sup> Exhibit C, p. 9.

<sup>19</sup> Exhibit H, pp. 18-23.

<sup>20</sup> Exhibit H, pp. 24-25 and 36-37.

the meeting was to discuss “recent escalation in behavior and [FBA] as well as LRE.”<sup>21</sup> Parents attended the meeting and actively participated by asking questions and offering input, as documented in the IEP itself, as well as the meetings notes of various participants.<sup>22</sup>

15. Although Parents were afforded the opportunity to participate in the meeting, the parameters of the LRE discussion were significantly limited by School Administration. School Administration/Threat Assessment Team determined that Student would not be allowed to attend School on his current or even a modified schedule. Instead, School Administration had determined that Student would receive “home bound” services for the remainder of first semester and the beginning of second semester, and further recommended that Student be provided with these services at home or at a location off-campus.<sup>23</sup>

16. Various sections of the November 2014 IEP are internally consistent, strongly supporting a finding that Student’s placement was predetermined by School Administration. First, the service delivery statement provides that “[Student] has been placed on Home Bound Instruction by School Administration due to “disciplinary incidents.” Consistent with the service delivery statement, the IEP section on LRE clearly indicates that the first two placement options, i.e., placement in the general education class for at least 80% of the time and for 40-79% of the time, had been ruled out “based on current safety concerns and building administrative decision.”<sup>24</sup> Consistent with the LRE and service delivery statement, the meeting notes, attached and incorporated in the IEP, indicated that Student’s placement was determined by School Administration, not the IEP team. For example, the notes state that “Building Administration expressed safety concerns” and “made Building Administrative placement on Homebound.” Most importantly, it was only after the placement determination had been made that the “team problem solved the provision of services,” within the parameters set by School Administration.<sup>25</sup>

17. Although both Special Education Coordinator and School Psychologist recalled that the placement discussion was more robust and included a discussion of less restrictive options, such as Student attending his scheduled classes, they also stated that the IEP accurately reflected the discussion and the placement determination. Moreover, the personal meeting notes from Case Manager and Special Education Coordinator reveal that the entire IEP meeting, including the placement discussion, centered on safety needs and on problem solving within the option of providing Student’s educational services through a home bound instructor.<sup>26</sup> Their notes do not provide evidence that less restrictive placement options were discussed.

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<sup>21</sup> Exhibit D, p. 5.

<sup>22</sup> Exhibit A, pp. 3-28.

<sup>23</sup> Exhibit A, pp. 14-15.

<sup>24</sup> Exhibit A, p. 11.

<sup>25</sup> Exhibit A, p. 17.

<sup>26</sup> Exhibit A, pp. 18-25.

18. Because the IEP is consistent with the personal notes taken during the meeting, the SCO finds it more likely that less restrictive options, such as keeping the status quo or providing a modified schedule, were not given thorough consideration or discussion because School Administration had already ruled them out. Consequently, the SCO finds that the IEP team did not meaningfully discuss other options along the continuum, such as a modified schedule, providing additional direct mental health and/or social skills instruction, separate class, separate school, or a therapeutic/day treatment program, even though these options were available within the District.<sup>27</sup> Because less restrictive options had been ruled out by District Administration, offering instruction through a home bound teacher was the only placement option available for discussion by the IEP team.

19. The IEP team did have a robust discussion about what these services would look like and where they would be provided. Parents' input and concerns significantly impacted this discussion and influenced the outcome. Parents stated that receiving instruction at home instead of at School would cause Student to "withdraw more and get worse." In response to Parents' concerns, the IEP team determined that Student would receive the following services at School:

- Two hours per day of direct instruction in core content classes from a home bound instructor at School per school day. Student would report to a designated location on campus for this instruction.
- Three hours of direct emotional support each week from a case manager or mental health professional. Student would report to a designated location on campus for this instruction.
- Participation in regular Physical Education class.<sup>28</sup>

By ruling out any other options along the continuum, however, the District predetermined placement even though it meaningfully responded to parental input by allowing instruction to be provided at School, rather than in the home, and by allowing Student to attend his regular physical education class. Although the District argued that Parents agreed to this placement and expressed gratitude that the District listened to their concerns, the SCO finds that Parents could not have agreed to an offer presented as a "take-it or leave-it" proposition. Consequently, the change of placement was predetermined and not agreed upon by Parents.<sup>29</sup>

20. In addition to being predetermined, placement was not based on Student's individual needs. First, there is no evidence that the IEP team discussed the benefits of Student

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<sup>27</sup> Interviews with Special Education Director, Special Education Coordinator, School Psychologist, and Parent.

<sup>28</sup> Exhibit A, pp. 14-15.

<sup>29</sup> In its Response, the District argued that a change in placement through the IEP process would restart the 10-day clock for purposes of disciplinary removals, contrary to OSEP's most recent guidance. Because this placement decision was not made in accordance with IDEA, the SCO does not need to address this matter.

remaining in his general education courses, with the exception of physical education, even though Student and Parents expressed that this is what Student wanted. Further, as stated in the IEP meeting notes, the IEP team did not discuss annual goals.<sup>30</sup> The personal meeting notes of Case Manager and Special Education Coordinator are consistent with the IEP meetings notes and do not document or provide evidence to support a finding that placement was based on Student's needs.

21. Although the IEP indicated that placement was based on "the result of an [FBA] dated November 12, 2014, and presented to the IEP team on November 18, 2014," the information provided in the FBA was minimal and did not adequately describe Student's behavioral needs.<sup>31</sup> The FBA, completed two days after Parents provided consent and during the time Student was serving a five-day suspension, was based on Student's disciplinary history and school records, interviews with parents and staff, and limited observation. The FBA did not include a norm-referenced or standardized behavioral assessment. Moreover, the observational data was limited to two occasions, including one observation taken during a Safety Plan meeting. Significantly, the FBA did not include any data or analysis of antecedents and consequences to Student's behavior. Acknowledging that Student's behavior was difficult to observe, ABC data and analysis could have been provided through teacher interviews. Instead of providing analysis and offering insight into why Student was engaging in this behavior, the FBA report chronicled Student's disciplinary record and compliance with his safety plan. Not surprisingly, members of the IEP team, including School Psychologist, admitted that the School needed to understand the function of the behavior, but did not have enough information at the time to do so. Consequently, the LRE determination was based solely on the safety concerns of the School Administration/Threat Assessment Team, rather than on the results of the FBA.

22. In its prior written notice, the District informed Parents that this placement was temporary and that the IEP team would reconvene on or before January 16, 2015, to review Student's current level of academic and social needs, and discuss a plan to reintegrate Student back to School. In fact, the Parties agreed at this meeting to reconvene the IEP team on December 18, 2014, to update Student's IEP and discuss Student's schedule for the second semester.<sup>32</sup>

23. The prior written notice also informed Parents that these temporary services would not start until December 1, 2014, because the District would need time to make arrangements with a home bound instructor. During this time, Case Manager would coordinate with Student's teachers and parent to pick-up assignments.<sup>33</sup> Although Student's five-day suspension ended on November 18, 2014, the District did not make educational services available until December 1. During this time, Student was not allowed to return to School. Consequently, Student did not receive any special education or related services from November 18, the day he returned from

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<sup>30</sup> Exhibit A, p. 17.

<sup>31</sup> Exhibit E, pp. 15, and 30-32.

<sup>32</sup> Exhibit D, pp. 1-3.

<sup>33</sup> Exhibit A, p. 15.

the previous suspension, until December 1, 2014, the day the temporary services outlined in the November IEP were made available.

24. Allowing for Thanksgiving break, this means that Student was excluded from School for an additional six days following the five-day suspension. The failure to make these temporary educational services immediately available while also excluding Student from attending School operated as an extension to the preceding suspension. Because the change in placement was not agreed upon and flowed directly from a disciplinary removal, i.e., previous suspension, the SCO finds that Student had been removed for violating the code of student conduct for thirteen days, not seven. The District's obligation to conduct a manifestation determination was therefore triggered on November 21, 2014, the eleventh day Student had been excluded from School for disciplinary reasons. Based on this finding, the District had until December 10, 2014, to conduct a timely manifestation determination meeting. It failed to do so.

**Educational services provided in accordance with the November 18 IEP:**

25. From December 1 through December 10, 2014, Student received the services outlined in the IEP dated November 18, 2014. On December 10, however, Student was suspended for bringing a notebook to School that contained drawings characterized as violent in nature. In fact, these were the same drawings for which he had been suspended in November, and it was Home Bound Instructor who requested that Student bring the notebook to school. When School Psychologist attempted to talk with Student about the incident, he refused. Because School Psychologist could not get Student to respond, she asked Case Manager to speak with him. Case Manager asked Student if the drawings were a "cry for help or a message." Student responded that they were a message. When Case Manager asked if the message was like an "f-you to staff," Student said "exactly."<sup>34</sup>

26. In a letter dated December 11, Parents were informed that Student was being suspended for ten days on the grounds of continued willful disobedience and behavior that is detrimental to the welfare, safety, and morals of others; violation of District policy; and threats of serious bodily injury. The grounds for suspension were based on the drawings found on December 10 as well as the previously described disciplinary incidents that occurred between October 13 and November 11, 2014.<sup>35</sup> The letter further informed Parents that the Assistant Principal would be recommending that Student be "*expelled from all District public schools*" pending the outcome of a manifestation determination meeting.<sup>36</sup> (Emphasis mine). Due to the intervening winter break, Student's suspension would be imposed from December 11, 2014, through January 8, 2015. Understandably, it was after receiving this letter that Parents decided to retain an attorney.

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<sup>34</sup> Response; Exhibit J (Email from Case Manager dated 12/10/14).

<sup>35</sup> Exhibit H, p. 36-39.

<sup>36</sup> Exhibit H, p. 36-39.

27. In this letter, the District also informed Parents that it would be scheduling a manifestation determination (MD) meeting during Student's suspension. By mutual agreement, the Parties agreed to use the meeting date already on everyone's calendar for Student's IEP meeting on December 18, 2014.<sup>37</sup>

28. On December 17, 2014, Parents requested that the MD meeting be moved until the New Year because Parents needed the extra time to obtain all of the advice they believed would be necessary, and to invite other participants, including Student's Private Therapist and Parents' Attorney.<sup>38</sup> For this reason, the District agreed to Parents' request to move the meeting to a time when all participants could attend. On December 22, 2014, the District and Parents agreed to hold the MD meeting on January 16, 2015.<sup>39</sup> Although the District would likely not have been liable for delaying an MD meeting at the request of Parents in this case, this argument fails because the District should have conducted the MD by December 10, 2014. Consequently, the SCO finds that the District failed to timely conduct the MD.

29. Although Student was suspended until January 8, 2015, the District began providing the educational services, as outlined in the November IEP, on December 18, 2014. On or around December 15, Parent informed Special Education Coordinator that Student had not received any home bound instruction (tutoring) since his suspension began on December 11. Upon learning that Student was not receiving educational services, Special Education Coordinator immediately contacted Assistant Principal, the individual who had discontinued the services, to inform him that these services must resume immediately because Student had been suspended now for more than 10 days during the 2014-15 school year.<sup>40</sup> On December 18, 2014, the District resumed providing Student with the educational services, in accordance with the November 18 IEP, and continued to provide these services through January 19, 2015.<sup>41</sup>

30. Based on the number of days Student had been suspended during the school year, the SCO finds that Student should have received educational services for any subsequent suspensions on and after November 21, 2014, the eleventh day he had been suspended. This means that Student should have received educational services on November 21, 24 and 25, and on all the days he was suspended in December, i.e., December 11 through 17. Consequently, the SCO finds that Student missed eight days of educational services to which he was entitled. The District remedied the missing days of educational services by providing compensatory education during the summer, as described more fully below.

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<sup>37</sup> Exhibit D, p. 9.

<sup>38</sup> Exhibit J (Email from Parent dated 12/17/14).

<sup>39</sup> Exhibit J (Email from Parent dated 12/22/14).

<sup>40</sup> Interview with Special Education Coordinator; Exhibit J (email correspondence dated 12/15 through 12/18).

<sup>41</sup> From December 18 to 19, Student received these services at the public library rather than School. Consequently, he did not attend his physical education class or lunch with peers but did receive the other services identified in the IEP, including one-on-one instruction and behavioral support. From January 6 through January 20, Student received these services at School in accordance with the November 2014 IEP. Interviews with Special Education Director, Special Education Coordinator, and School Psychologist.

31. On January 16, 2015, the District held a manifestation determination meeting and determined that Student's behavior was a manifestation of his disability.<sup>42</sup> Notably, the MD team also recognized that Home Instruction Teacher had asked Student to bring the notebook containing the drawings to School and that these drawings, for which Student was suspended, were not new.<sup>43</sup>

32. Following the MD meeting, the District held an IEP meeting to review and revise Student's IEP. As a result of this meeting, Student's education setting was changed from being in the general education class less than 40% of the time to being the general education class at least 80% of the time. In describing its rationale, the District noted that the IEP team decided against continuing with the alternative education placement, i.e., the temporary placement described on the November 2014 IEP, because Student's behavior is a manifestation of his disability and being in a more restrictive environment would take away from his ability to participate in general education content. Moreover, the IEP team noted that Student is capable of completing work at a level commensurate with his peers and will continue to receive support in social skills and problem solving so that he can be successful.<sup>44</sup> At this IEP meeting, the team appropriately focused on Student's needs and the benefits of participating in the general education classroom, as well as safety concerns, in determining Student's placement. Most importantly, it was the IEP team, not School Administration, who determined placement. Accordingly, the SCO finds that violations regarding the November 18 2014 IEP meeting were remedied at this meeting.

33. At this meeting, the IEP team also determined that Student should be reevaluated due to changes in his social/emotional status and the current concerns expressed by all members of the IEP team during the meeting.<sup>45</sup> The IEP team further agreed that Student would receive the services described on the January 2015 IEP until the reevaluation was completed and the IEP team could reconvene to discuss the results.<sup>46</sup>

34. Beginning January 20, 2015, Student resumed a full-time schedule at School where he attended general education classes and a study-skills class taught by special education staff to support organization and task completion needs. In addition, Student received 60 minutes each week of social skills instruction, 60 minutes each week of direct emotional support, and 60 minutes each week of indirect emotional support. Notably, Student had daily check-in/out with Case Manager and School Psychologist. The procedure for Student's check-in/check-out (CICO) is an evidence-based behavior education program.<sup>47</sup> Everyone interviewed, including Parent, agreed that Student's most significant disability-related need is to develop an accurate social

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<sup>42</sup> Exhibit A, p. 45.

<sup>43</sup> Response, p. 16.

<sup>44</sup> Exhibit A, pp. 44-45.

<sup>45</sup> Exhibit A, p. 46.

<sup>46</sup> Exhibit A, pp. 46-48.

<sup>47</sup> Exhibit A, pp. 28-46; Interviews with Special Education Director, Special Education Coordinator, and School Psychologist.

awareness for how others perceive his behavior. For example, Student often thinks his behavior is funny, i.e., dark humor, when others, including teachers and peers, perceive the same behavior as scary or concerning. School Psychologist stated that her work with Student is largely focused on helping Student develop accurate social awareness. This direct emotional support and social skills instruction has been credited by all as the most likely reason Student's behavior has significantly improved. Had this support been added in October or early November, perhaps Student would never have been suspended or inappropriately placed in an alternative setting.<sup>48</sup>

35. In March of 2015, the District completed a "Full and Individual Psycho-Educational Report," including another FBA. In addition to a record review and interviews with Student and teachers, the District administered the following assessments: Achenbach System of Empirically Based Assessment (ASEBA) battery, including the Child Behavior Checklist (CBCL), Youth Self Report (YSR), and Teacher Report Form (TRF); Minnesota Multiphasic Personality Inventory, Adolescent (MMPI-A); Weschler Individual Achievement Test, Third Edition (WIAT-III); and the Behavior Rating Inventory of Executive Function (BRIEF).<sup>49</sup> Despite, the additional assessments and observations, this FBA, like the one conducted in November of 2014, failed to put forward a hypothesis about why Student engages in the concerning behavior, i.e., this FBA also failed to identify the function of the behavior. Consequently, the FBA did not provide any insight into why Student has engaged in concerning behavior.

36. On March 30, 2015, the District convened an IEP meeting to discuss the evaluation results, and if appropriate, review and revise the IEP.<sup>50</sup> At this meeting, the IEP team reviewed the evaluation report and determined that Student remained eligible as a Student with SED. The March IEP identified the same needs, annual goals, specialized instruction and related services, and educational setting as the January IEP.<sup>51</sup> Parents and Parents' Attorney questioned the specificity of the FBA but did not voice any other concerns with the evaluation results. The IEP team agreed to schedule another IEP meeting to review the FBA and update Student's BIP. Although Parents have not disputed the appropriateness of the January or March IEP, they have alleged that the District improperly denied their request for an IEE. The request for an IEE will be discussed below.

37. Despite the missed educational services, Student has performed well academically and has not demonstrated the kind of behavior that previously caused significant concern. For the fall semester Student received passing grades in all of his courses. Specifically, Student received C's in English, Biology, World History, Algebra, and Physical Education. For the spring semester, Student also received passing grades in all courses. Specifically, Student received a B in Biology,

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<sup>48</sup> Interviews with Special Education Coordinator, School Psychologist, and Parent.

<sup>49</sup> Exhibit E, pp. 33-73.

<sup>50</sup> Exhibit D, p. 15; Exhibit A, p. 55.

<sup>51</sup> Compare Exhibit A, pp. 28-48 with pp. 52-72. The IEP team agreed to add an annual goal to support organizational skills and reduced indirect emotional support from 60 to 30 minutes each week. Otherwise, the IEP identified the same supports and services as the IEP developed in January.

World History and Algebra, a C in English, and a D in Design Foundations of Art and Freshman Foundations.<sup>52</sup> Further, Student did not receive any disciplinary consequences or warnings for the rest of the school year. Again, this supports a finding that Student may have never been suspended had the District provided the direct emotional support and social skills instruction offered in the January 2015 IEP.

38. Although Student successfully completed the fall and spring semesters, the District offered compensatory services to address Parents' continuing concerns over the amount of school Student had missed as a result of discipline. On April 15, 2015, the District offered Student compensatory education services over the summer. Although the District maintained that it did not violate IDEA and had provided Student with a FAPE, it agreed to allow Student to attend its summer school program, at no-cost, to resolve Parents concerns about the services Student had missed. Moreover, the District agreed to provide the services and accommodations identified in Student's IEP, including social skills instruction and one hour each week with former home bound instructor to work on organization, task management, and task completion. Accordingly, Student has been provided with four hours of educational services per school day from June 4 through July 1, 2015, for a total of 80 hours.<sup>53</sup>

**IEE Request:**

39. Parents have alleged that the District failed to properly respond to their request for an IEE. In response, the District asserted that it did not grant an IEE because Parents never identified the assessment with which they disagreed. Based on the findings below, the SCO finds that Parents requested an IEE in January and April of 2014 because they disagreed with the FBAs conducted in November and March. The District improperly responded to their request.

40. On December 24, 2014, Parents' Attorney emailed Assistant Principal to advise the School that he was representing Parents and would be participating in the MD meeting. In that email, he also requested an IEE.<sup>54</sup> In response, the District informed Parents that they "may be entitled to an IEE at the District's expense if they disagree with the results of a District assessment or evaluation." The District's Legal and Policy Counsel pointed out, however, that Parents' request had not identified the District assessment or evaluation with which they disagreed. In addition, the District requested that Parents specify the reason for their disagreement.

41. The District argued that neither Parents nor Parents' Attorney responded further to the District's request for additional information regarding the IEE. The SCO does not agree. On January 14, Parents' Attorney informed the District's Legal and Policy Council that the FBA completed in November made "absolutely no effort at all to identify *why* [Student] was acting

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<sup>52</sup> Exhibit I, pp. 1-2.

<sup>53</sup> Response, p. 18. SCO estimates 80 hours of educational services based on four hours each day for 20 days.

<sup>54</sup> Exhibit J(1), p. 6.

out.”<sup>55</sup> In addition, Parents’ Attorney noted that the resulting BIP did not include a single intervention. At the end of the email, Parents’ Attorney clearly requested a “proper FBA” that is focused on understanding why Student was engaging in the problem behavior. In response, the District stated that it would review and revise Student’s FBA following the outcome of the MD meeting on January 16, 2015. At this point it should have been clear to the District that Parents were requesting an IEE because they did not agree with the FBA conducted in November of 2014. Parents’ Attorney did not respond further to this email because he reasonably concluded, as does the SCO, that the District had denied their request.

42. On April 9, 2015, Parents again requested an IEE during the April IEP meeting. In discussing the BIP, Parents expressed disagreement with the specificity of the FBA, and through their attorney, requested an IEE. In response to Parents’ concerns, the District rejected the option of completing another FBA because “it was determined that the current specificity in the [FBA] was adequate to create a [BIP].”<sup>56</sup> Regarding the request for an IEE, Parents “were advised that the request would need to be made in writing and specifically identify which assessment the parent disagrees with and reasons for the disagreement.”<sup>57</sup>

43. On April 10, 2015, Parents’ Attorney sent District’s Legal and Policy Council a letter to express Parents’ displeasure over the way Student’s disciplinary matter had been handled, the District’s decision to exclude Student from School, and the amount of School Student had missed. To remedy Parents’ concerns, Parents’ Attorney requested compensatory services and “the provision of an IEE in case one is necessary pending the final drafts of the FBA and BIP that were submitted to the family on April 8, 2015.”<sup>58</sup> In response, District’s Legal and Policy Council advised Parents’ Attorney that the District did not agree to the conditions specified in the letter, one of which was the request for an IEE. Once again, Parents and Parents’ Attorney reasonably interpreted this response as a refusal to grant an IEE, further concluding that the only way they would be able to obtain an IEE was by filing a complaint. The SCO agrees with Parents and finds that the District effectively denied Parents request for an IEE in both December and April.

### **CONCLUSIONS OF LAW**

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

**Allegation One:** The District failed to timely conduct a manifestation determination in violation of IDEA’s discipline procedures.

1. Parents allege that the District failed to timely conduct a manifestation determination when Student had been suspended for over seventeen days during the fall semester of the

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<sup>55</sup> Exhibit J(1), pp. 26-27.

<sup>56</sup> Exhibit A, p. 74.

<sup>57</sup> Exhibit A, p. 74.

<sup>58</sup> Exhibit 3.

2014-15 school year. In response, the District argues that Parents cannot complain that the District failed to conduct a timely manifestation determination when Parents caused the alleged violation by asking the District to postpone the date of the meeting to accommodate participants invited by Parents. Had the District's obligation to conduct the manifestation determination actually been triggered on December 11, 2014, the SCO would agree with the District. The SCO, however, concludes that the District's obligation to conduct a manifestation determination was triggered on November 21, 2014, the eleventh day Student had been removed from his educational placement for disciplinary reasons. Because the District did not attempt to schedule a manifestation determination until December 11, 2014, it failed to timely conduct a manifestation determination.

2. A disciplinary change of placement triggers the District's obligation to conduct a manifestation determination in accordance with 34 CFR § 300.530. A disciplinary change of placement occurs when a student with a disability is removed from his current educational placement and the removal is for more than ten consecutive school days or the student has been subjected to a series of removals that constitutes a pattern. 34 CFR § 300.356. A series of removals constitutes a pattern when: 1) the series totals more than ten school days in a school year, 2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals, and 3) additional factors exist such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 CFR § 300.356(a)(2). In other words, a disciplinary change of placement occurs when a student is suspended for more than 10 school days during the same school year.

3. In this case, a disciplinary change of placement occurred on November 21, 2014, the eleventh day Student had been suspended, i.e., removed from his current placement for disciplinary reasons. By November 17, Student had been suspended for two days in October and five days in November for conduct that was substantially similar. In each suspension, the conduct was described as making others feel unsafe, i.e., refusing to follow directives, making threats to a teacher, drawing images of a violent nature, and viewing images of weapons on his computer. These two suspensions totaled seven days of removal, and occurred within eleven school days of each other.

4. On November 18, 2014, the day Student was to return from his second suspension, the District convened an IEP meeting to discuss Student's placement. As a result of this IEP meeting, Student was placed in a temporary alternative educational setting where he would receive academic instruction from a Home Bound Instructor and direct mental health services in the School library instead of attending his general education classes. The District was not able to make these services available until December 1, 2014, and would not allow Student to return to School, constructively extending what had been a five day suspension to an eleven day suspension.

5. The District argues that it appropriately changed Student's placement through the IEP process on November 18, 2014, and that Parents agreed to the change in placement. Acknowledging that its position is contrary to guidance issued by OSEP in *Letter to Bieker*, 33 IDELR 125 (OSEP 2000), the District urges the SCO to conclude that Student was never suspended for more than ten days from his current placement because the change of placement accomplished through the IEP process on November 18, 2014, effectively reset the ten day clock. The District's argument fails, not only because it is contrary to current OSEP guidance on the matter, but because this change of placement was not made in accordance with IDEA nor was it agreed to by Parents. As discussed below, the change of placement made at the IEP meeting on November 18, 2014, was predetermined and violated the LRE requirements. Notably, the change of placement was based exclusively on disciplinary incidents and not on consideration of Student's individualized needs.

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

7. Had the District changed Student's placement in accordance with the IDEA on November 18, 2014, the change of placement would have served IDEA's preference for using the IEP team, and not school discipline, to change a student's educational placement. In this case, however, the District failed to follow IDEA when changing placement through the IEP process. Consequently, it is critical to evaluate whether the events described here constituted a disciplinary change of placement in a way that gives force to the additional procedural protections that follow, i.e., the right to a timely manifestation determination. For this reason, the SCO characterizes the second suspension as effectively lasting eleven days, not five, to trigger the additional procedural safeguards and protections that operate in the disciplinary context to prevent students with disabilities from being punished for their disability. As determined on January 16, 2015, Student's conduct was a manifestation of his disability. A timely manifestation determination or a compliant IEP would have ensured that Student was not punished for his disability and may have prevented subsequent suspensions.

**Allegations Two:** On November 18, 2014, the District predetermined Student's placement by allowing School Administration to set the parameters of available options based solely on safety concerns.

8. Parents allege that the District predetermined placement at the November 18, 2014, IEP meeting. For the reasons explained below, the SCO agrees.

9. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10<sup>th</sup> Cir. 2008). Although the emphasis on parental involvement does not mean that a parent has veto power over an IEP team decision, meaningful parent participation is prevented when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. *See Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003) ("A district may not enter an IEP meeting with a 'take it or leave it' position."); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9<sup>th</sup> Cir. 2003). When parents are prevented from meaningful participation because an aspect of their child's IEP, such as educational methodology or placement, has been predetermined, the resulting procedural violation denies the student a free appropriate public education. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

10. In this case, School Administration determined that Student would not be allowed to return to his scheduled classes following the conclusion of a five-day suspension on November 18, 2014. Instead, School Administration decided that Student would receive educational services through a Home Bound Instructor at a location separate from his peers and preferably off-campus. The IEP itself, as well as meeting notes taken at the time, consistently demonstrate that the conversation about Student's educational placement was limited to the option identified and approved by School Administration. For example, the IEP's description of the LRE determination state that placement in the general education classroom at least 80% of the time and between 40 and 79% of the time were both ruled out by School Administration based on safety concerns. Consequently, it was not Student's IEP team who determined placement.

11. It is the IEP team, not School Administration, who is responsible for determining placement for an IDEA eligible student. *See Marshall Joint Sch. Dist. No. 2 v. C.D.*, 54 IDELR 307 (7<sup>th</sup> Cir. 2010)(It is the IEP team, not student's physician, who determines eligibility for special education.). By preventing Student's IEP team from exploring other placement options, School Administration predetermined placement based exclusively on safety concerns. Although Parents did actively participate in this IEP meeting, within the parameters set by School Administration, placement was ultimately predetermined.

12. Predetermination is one of the rare procedural violations that amount to a per se denial of FAPE. In this case, however, Parents do not seek compensatory services for a denial of FAPE.

Moreover, the compensatory education services voluntarily provided by the District over the summer adequately address the denial of FAPE.

**Allegation Three:** The placement offered in the November 18, 2014 IEP violated IDEA's LRE requirement.

13. The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 CFR §§ 300.114 and 300.116. Moreover, students should only be placed in separate classes, separate schools, or otherwise removed from the general education setting "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 CFR §§ 300.114 (a)(2)(ii).

14. In determining whether the LRE requirement has been met, the Tenth Circuit applies a two-part test to determine: 1) whether education in a regular classroom with the use of supplementary aids and services can be achieved satisfactorily, and if not, 2) whether the school district has mainstreamed the student to the maximum extent appropriate. *Nebo Sch. Dist.*, 379 F.3d at 980.

15. Consistent with *Nebo*, the SCO considers the following factors to determine whether the first prong has been met: 1) the steps taken to accommodate the student in the regular classroom, including consideration of a continuum of placement and support services; 2) the academic benefits the student will receive in the regular classroom compared with those he will receive in the special education classroom; 3) the student's overall educational experience in the regular classroom, including non-academic benefits; and 4) the effect the student's presence has in the regular classroom. *Id.* These factors, as applied to the findings in this case, weigh in favor of a conclusion that the District failed to consider whether education in the regular education environment could be satisfactorily achieved.

16. First, the District has not provided Student with intensive and increasing support and supervision in the regular education classroom. Although it repeatedly changed Student's class schedule, a change that likely contributed to Student's behavioral problems, the District did not increase direct mental health intervention or revise Student's BIP to address the behavioral concerns at any time prior to the November 18, 2014 IEP meeting.

17. Second, there is no evidence that the IEP team even discussed the academic benefits Student was receiving in the general education classroom. As previously discussed, placement was predetermined by School Administration, not by Student's IEP team. Although Student and Parents both expressed that Student preferred to return to his general education classes, they were informed that this option had been ruled out based on safety concerns and was not open to discussion at this time. Clearly, Student has always done well in the general education classroom and would have likely benefited from returning.

18. Similarly, there is no evidence that the IEP team considered or determined whether Student’s overall experience in the classroom was or was not beneficial. While Student had exhibited behavior that caused some teachers and peers concern, there is no evidence that Student was not benefitting from being in the general education classroom. Student clearly wanted to attend some classes, i.e., physical education, and have lunch on campus so that he could spend time with friends. In determining the least restrictive environment, however, the District failed to consider Student’s performance in the general education classroom.

19. The District argues that the LRE mandate has less force in the context of school discipline and safety concerns. Quoting the Special Education Connection’s SmartStart on the application of LRE to Discipline, the District argues that “[w]here a student’s behavior poses a clear threat to classroom safety, these safety interests frequently outweigh LRE” and that “[m]aintaining a less restrictive environment at the expense of educational benefit or safety is neither appropriate nor required.” Response at page 22. Not only is a SmartStart not binding authority, but the case cited in support of this proposition is quite distinguishable from the facts presented here. See *Hartmann v. Loudon County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), *cert. denied*, 111 LRP 18076, 522 U.S. 1046 (1998). In *Hartmann*, the disruptive behavior included *daily* episodes of loud screeching, hitting, pinching, kicking, biting, and removal of clothing. *Id.* In addition, the student in *Hartmann* was not making any educational progress in the regular education setting. *Id.*

20. Placement in the regular education classroom may not be appropriate when the student is engaging in dangerous or disruptive behavior that threatens the safety of others or interferes with the education of peers. See *Clyde K. v. Puyallup Sch. Dist.*, 21 IDELR 664 (9th Cir. 1994)(placement in regular education not required for student engaging in dangerous conduct requiring intensive counseling and support); *Burbank Unified Sch. Dist.*, 114 LRP 34255 (SEA CA 2014)(placement in regular education classroom not required for student who threatened safety of self and others). In this case, Student certainly demonstrated behavior that warranted concerns for the safety of others, particularly in light of the history of school shootings. In the fall of 2014, Student exhibited behavior that disrupted at least one class and that raised significant concerns about the safety of others by failing to comply with a teacher’s request to turn down his music, by threatening to harm a math teacher, and by drawing and viewing images that were violent in nature, despite requests not to do so. The behavior, though concerning was not disruptive and did not present a clear threat to classroom safety. In fact, the safety concerns were based more on what School Administration thought Student may do and less based on what he had actually done.

21. Acknowledging that this case requires a difficult balance between school safety and LRE, a child’s right to FAPE in the LRE does not cease because he has demonstrated behavior that raises safety concerns. In contrast to *Hartmann*, the placement determination made at the November 18, 2014, IEP meeting was not based on any inquiry or discussion of Student’s individual needs. Most significantly, the IEP team could not rely on the FBA to provide insight into Student’s behavioral needs because it was essentially meaningless. In determining LRE, the

IEP team did not discuss whether Student was receiving educational benefit from participating in general education classes and what impact, if any, he had on his class. Moreover, the IEP team did not discuss less restrictive options, such as providing additional mental health and behavioral supports in the general education setting. Consequently, the SCO concludes that the District failed to properly determine whether education in a regular classroom with the use of supplementary aids and services could be achieved satisfactorily before placing Student in a more restrictive setting.

22. The SCO is not persuaded that the safety concerns presented in this case should have trumped a consideration of less restrictive alternatives. The conclusion reached in this case should not be interpreted to discourage or prevent school districts from removing a student to a more restrictive setting because the student presents a clear safety threat to others or disrupts the educational environment. Certainly, school districts must consider safety and the impact a student's behavior has on the classroom when determining the least restrictive environment. This decision reminds districts that it is the IEP team, not building administration, who determines the least restrictive environment after a full and careful consideration of the relevant factors, including the student's individualized education needs, the ability to participate and benefit from the general educational classroom with the use of supplementary aids and services, and a full continuum of placement options.

**Allegation Four:** The District improperly denied Parents' request for an IEE in January of 2014 and April of 2015.

23. Parents allege that the District improperly denied their request for an Independent Educational Evaluation (IEE). The SCO agrees. Parents have the right to request an IEE at public expense if they disagree with an evaluation conducted by the district. In response to a parent's request for an IEE, the District has two options: 1) provide the IEE at public expense, or 2) request a due process hearing to demonstrate that its evaluation of the student was appropriate. 34 CFR § 300.502. While the regulations do not set a specific time by which school district must respond to the request, the school district must respond without unnecessary delay. Further, the District may ask the parent why they object to the evaluation but it cannot require that the parent provide an explanation. *Id.*

24. In this case, Parents initially requested an IEE on January 14, 2015, because they disagreed with the FBA conducted in November of 2014. Parents first made this request through their attorney on December 24, 2014. In response to their request, the District asked Parents to clarify what evaluation they did not agree with. On January 14, 2015, Parents' Attorney indicated that Parents did not agree with the FBA conducted in November of 2014 because it failed to hypothesize why Student was engaging in the behavior that had resulted in multiple suspensions. At this point, the District had two choices: provide the IEE or request a due process hearing. It did neither. Moreover, Parents renewed their request for an IEE following the meeting in April because they questioned the specificity of the FBA conducted in March of 2015. The District argued that it did not know which assessment Parents disagreed

with, and therefore, asked Parent to provide this information in writing. Although it is advisable for parties to put requests in writing, the regulation governing the provision of an IEE does not require that requests be put in writing. Based on the conversation at the April IEP meeting, the District should have recognized that Parents were requesting an IEE because they did not agree with the FBA. Consequently, the SCO concludes that the District violated IDEA's procedural safeguards regarding the provision of an IEE at 34 CFR § 300.502.

### **REMEDIES**

The SCO concludes that the District has violated the following IDEA requirements:

- a) Failure to timely conduct a manifestation determination, in violation of 34 CFR § 300.530(e);
- b) Failure to provide meaningful parent participation, in violation of 34 CFR § 300.322.
- c) Failure to properly consider the least restrictive environment, in violation of 34 CFR § 300.114; and
- d) Failure to properly respond to request for an independent educational evaluation at 34 CFR § 300.502.

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

- 1) **By August 28, 2015**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
  - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than **September 18, 2015**.
  - b) Effective training must be conducted for all High School building administration, staff serving on the threat assessment team, and anyone who may facilitate or participate in IEP meetings as the District's special education designee concerning the policies and procedures, to be provided no later than **October 30, 2015**.
  - c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than **November 6, 2015**.
  - d) By **December 18, 2015**, the District must provide training from an outside consultant to secondary general education administrators, secondary special education designees, and special education teachers on responding appropriately and effectively to students with mental health needs in the context of school discipline, including PBIS and alternatives to suspension.

The selected trainer must have demonstrated expertise and experience in the following areas:

- i) Counseling/instruction/interventions for students with serious emotional disabilities or mental health needs in affective needs, behavior, and mental health;
- ii) Systems practices of PBIS, including expertise in assessing the function of behavior and developing aligned interventions;
- iii) School discipline, including alternatives to suspension, i.e. restorative justice, and culturally sensitive practices; and
- iv) Special education.

In addition to meeting the content expertise above, the consultant selected should have one of the following professional credentials: School psychologist with an Ed.S., Psy.D., or Ph.D and a NCSP, CDE and/or DORA license; school social worker with a MSW or higher degree; professional psychologist or counselor; intervention specialist with a higher degree in special education. The District must provide a resume of this trainer to CDE for approval before the training occurs.

- 2) Within 10 days, the District must provide Parents with the opportunity to obtain an IEE at public expense, in accordance with 34 CFR § 300.502. By August 28, 2015, the District must provide written documentation to the Department that it has complied.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance. At the request of the District, CDE is willing and able to provide the training specified above. Should the District choose to request training from CDE, it must coordinate any such training with Joyce Thiessen-Barrett.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Joyce Thiessen-Barrett  
1560 Broadway, Suite 1175  
Denver, CO 80202-5149

**NOTE:** Failure by the District to meet any of the timelines set forth above will adversely affect the BOCES's annual determination under the IDEA and subject the District to enforcement action by the Department.

## CONCLUSION

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

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

Dated this 14<sup>th</sup> day of July, 2015.

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### Complaint, pages 1-5.

Exhibit 1: Attendance profile.

Exhibit 2: IEP dated November 2014.

Exhibit 3: Correspondence from Parents' Legal Counsel to District's Legal Counsel.

### Response, pages 1-25.

Exhibit A: IEPs in effect for the 2014-15 school year.

Exhibit B: IEPs in effect for the 2013-14 school year.

Exhibit C: Prior written notices issued during 2014-15 school year.

Exhibit D: Notices of meeting issued during 2014-15 school year

Exhibit E: Evaluation reports/assessments, including FBAs, conducted during the 2014-15 school year.

Exhibit F: Description of educational services provided from November 2014 to January 2015.

Exhibit G: Attendance records.

Exhibit H: Disciplinary history.

Exhibit I: Grade Reports

Exhibit J: Correspondence between the parties concerning the Complaint allegations.

Exhibit K: Contact information of relevant witnesses.

Exhibit L: Service logs, visual aid, and miscellaneous.

**Reply:** Parents did not submit a written Reply.

### Interviews with:

- Parent
- Special Education Director
- Special Education Coordinator
- School Psychologist