

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 2020:506  
Adams-Arapahoe School District 28-J**

**DECISION**

**BACKGROUND**

On January 28, 2020, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Adams-Arapahoe School District 28-J (“District”). The Complaint alleges the District failed to consider positive behavioral interventions in Student’s IEP and changed Student’s placement without considering less restrictive options, resulting in a denial of a free appropriate public education (“FAPE”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.152. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

The Colorado Department of Education (“CDE”) has authority to investigate alleged violations of the IDEA that occurred within one year of the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, in determining whether a violation of the IDEA occurred, this investigation considers only events occurring on or after January 28, 2019. Any consideration of events prior to this date shall be for context only and not for determining whether a violation occurred. Findings of noncompliance, if any, shall be limited to one year prior to the date of the Complaint.

**ACCEPTED ALLEGATIONS**

Whether the District denied Student a free appropriate public education (“FAPE”) because the District:

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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 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

1. Failed to consider the use of positive behavioral interventions and supports or other strategies to address Student’s behavior in the development of Student’s January 28, 2019 IEP, consistent with 34 C.F.R. § 300.324(a)(2)(i);
2. Changed Student’s educational placement to a more restrictive setting without considering less restrictive options in the development of Student’s January 28, 2019 IEP, consistent with 34 C.F.R. §§ 300.114 and 300.116.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>2</sup> the SCO makes the following FINDINGS OF FACT (“FF”):

#### **A. Background**

1. Student attends fourth grade at a District elementary school (“Current School”) with an affective needs program. During his third grade year—and as explained in more detail below—Student attended two District elementary schools: his neighborhood elementary school (“School”) and an elementary school with an affective needs program (“Affective Needs Program”).
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and Specific Learning Disability (“SLD”). Student received special education and related services under the same disability categories throughout the relevant time period.
3. Parent and School staff members describe Student as an expressive, creative child who enjoys dinosaurs, Legos, and imaginative play. *Interviews with Parent, School Psychologist, and Special Education Teacher.* Student has difficulty regulating his emotions at school and struggles academically with reading and math calculation. *Interview with Special Education Teacher.*

#### **B. Student’s Second Grade Year**

4. Student attended first grade at School. *Interview with Parent.* Near the end of his first grade year, Student’s IEP Team determined upon consideration of reevaluation that Student would benefit from the structure of an affective needs program and placed Student in the general education classroom less than 40% of the time. *Exhibit A, p. 83; see also ECEA Rule 4.03(8)(b)(ii)(B).*

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire record.

5. School can support students with disabilities placed in the general education classroom at least 40% of the time, but it does not have the capability to support those students placed in the general education classroom less than 40% of the time. *Interview with Director of Student Services.*

6. As a result, Student began second grade at Affective Needs Program during the 2017-2018 academic year. *Interview with Parent.* Affective Needs Program has general education classrooms and an affective needs program. *Interview with Director of Student Services.* The affective needs program spans two classrooms, each with a maximum of 12 students and a minimum of one teacher and two paraprofessionals. *Id.*

7. Student made consistent progress over the course of his second grade year, gradually spending more and more time in a general education classroom. *Interview with Parent.* Halfway through second grade, upon consideration of reevaluation, Student's IEP team changed his placement to increase his time in the general education classroom from 40% to 70% of the time. *Exhibit A, p. 69; see also ECEA Rule 4.03(8)(b)(ii)(B).*

8. Near the end of the school year, upon consideration of reevaluation, Student's IEP Team decided to place Student in the general education classroom at least 80% of the time. *Id., p. 57; see also ECEA Rule 4.03(8)(b)(ii)(B).* The IEP Team found that this option "allow[ed] for support for [Student's] academic and behavioral needs but also provide[d] the least restrictive environment and access to grade level curriculum and same aged peers." *Exhibit A, p. 57.*

9. This change in placement necessitated Student returning to School for third grade. *Interview with Parent.* Staff from Affective Needs Program and School met prior to the 2018-2019 school year to review Student's Behavior Intervention Plan ("BIP"). *Interview with Special Education Teacher.* Based on the information about Student that staff from Affective Needs Program provided during the meeting, School staff considered Student's BIP appropriate and made no modifications to the BIP. *Id.*

### **C. Student's Transition to School**

10. Student began third grade at School in August 2018. *Interview with Parent.* Initially, Student adjusted well to School and had little to no behavioral issues. *Id.; Interviews with School Psychologist and Special Education Teacher.*

11. Student's IEP—developed at Affective Needs Program for implementation at School—included the following special education and related services:

- 600 minutes per month of instruction with a special education teacher;
- 120 minutes per month of mental health services; and
- 15 minutes per month of indirect occupational therapy services.

*Exhibit A*, p. 45. The IEP had two goals: one related to reading fluency and one related to social/emotional wellness. *Id.* at p. 30.

12. Student received 30 minutes of daily specialized reading instruction in a small group setting with special education teacher. *Interview with Special Education Teacher*. Similarly, School Psychologist met with Student in a small group setting for 15 minutes a day to provide mental health services. *Interview with School Psychologist*.

13. School also implemented the BIP developed by Affective Needs Program. *Id.*; *Exhibit C*, p. 30. The BIP targeted Student's noncompliance, verbal aggression, elopement, and tantrums and identified asking Student to complete a non-preferred task as the antecedent to this behavior. *Exhibit B*, p. 5. The BIP suggested managing Student's behaviors with scheduled breaks, preferential seating, structured routines, firm expectations, and consistent consequences. *Id.*

14. Student's non-preferred tasks included academic tasks at his grade level and transitions from activities Student liked—such as technology or recess—to activities Student disliked—such as reading. *Interview with Special Education Teacher*.

15. After the first month of school, Student began to demonstrate disruptive and unsafe behavior. *Response*, p. 3; *Interviews with School Psychologist and Special Education Teacher*. Some of these behaviors included:

- Eloping from the classroom and wandering around the building or attempting to leave the School;
- Throwing furniture and classroom materials;
- Hitting other students; and
- Refusing to follow instructions.

*Interviews with School Psychologist and Special Education Teacher; Exhibit C*, p. 17.

16. As a result of his behavior, School suspended Student for a total of 7.5 days between August 21, 2018 and September 25, 2018. *Exhibit C*, p. 30.

#### **D. School's Response to Student's Behavior**

17. School employed a variety of strategies to reduce Student's disruptive behavior. *Interviews with School Psychologist and Special Education Teacher*. School began with the strategies identified in Student's BIP and, once those strategies were not successful, began to try other strategies. *Id.* School provided Student "calm down spaces" on each floor of the

building and gave Student three passes daily to access these spaces. *Interview with Parent; Exhibit C, p. 30.*

18. School implemented a daily point sheet system—using red, yellow, and green levels for behavior—similar to what Student used at Affective Needs Program School. *Interview with Special Education Teacher; Exhibit C, p. 30.* School also used a classroom management system to facilitate communication between home and school, so Student and Parent could talk about his behavior. *Interview with Special Education Teacher; Exhibit C, p. 30.*

19. As Student’s elopement increased, his transitions were supervised by adults to reduce disruptive behavior during transitions. *Interview with Special Education Teacher.* School Psychologist also provided Student additional mental health services (i.e. beyond that required in his IEP). *Id.*

20. Special Education Teacher contacted Student’s Former General Education Teacher and his Former Special Education Teacher at Affective Needs Program to see if they had any insight into Student’s behaviors or suggestions for meeting Student’s needs. *Id.* Special Education Teacher also sought input and advice from the District’s Exceptional Student Services Consultant for Affective Needs Program and a District Consultant assigned to the School. *Id.*

21. School also gave Student a visual schedule and permitted him to take breaks on a stationary bike. *Exhibit C, p. 30.*

22. To explore whether academic frustration led to Student’s disruptive behavior, School started providing Student special education instruction in math. *Interview with Special Education Teacher.*

23. Beginning in late-September 2018, Student spent his school day—including recess and lunch—in the Dean of Student’s office, the School Psychologist’s office, or the special education classroom with one-on-one adult supervision from a staff member trained in nonviolent crisis intervention. *Id.; Interview with School Psychologist; Exhibit C, p. 30.* School provided these additional behavior supports in response to Student’s increased physical aggression. *Exhibit C, p. 30.* School staff gradually re-integrated Student into the general education classroom in 30 minute increments with continued one-on-one adult support. *Id.*

24. Student began to demonstrate a preference for the Dean of Students, so staff transitioned his work space to the conference room and provided access to the Dean of Students during regularly scheduled breaks and as a reward. *Id.*

25. By the end of October, Student was spending 3 hours and 45 minutes in the general education classroom, 40 minutes of schedule break time with a preferred adult, lunch with his peers, and 1 hour and 45 minutes in the special education classroom each day. *Id.* At the time, Student’s IEP required only 30 minutes per day of special education instruction, meaning

Student was receiving more than three times the required amount of special education. *Exhibit A*, p. 45.

26. Even with one-on-one adult support, Student still struggled with noncompliance, elopement, and throwing items. *Id.*

27. Student's disruptive behavior negatively impacted his learning. *Interviews with School Psychologist and Special Education Teacher*. Student missed significant amounts of academic instruction as a result of his behavior—either due to his suspensions or his preference for other spaces—like the offices of Dean of Students and School Psychologist. *Id.* And, when Student was in the classroom, little learning occurred due to his inability to comply with instructions or his destructive behavior in the classroom. *Id.*

28. Student's disruptive behavior also impacted the learning, physical environment, and safety of his classmates in the general education classroom. *Id.* At times, Student flipped over furniture in the classroom and hung from light fixtures. *Interview with Special Education Teacher*. Such unsafe behavior caused Student's classmates to be evacuated in the middle of academic instruction. *Id.* Some of Student's classmates feared that Student would act aggressively towards them to the extent that School staff had "restorative conversations" with his classmates to ensure they would continue to welcome him and work with him. *Id.*

#### **E. Student's Reevaluation**

29. "[A]n increase in the frequency and intensity of his behaviors" prompted School to propose a comprehensive re-evaluation of Student. *Exhibit F*, p. 1. On September 25, 2018, Parent provided consent for the re-evaluation. *Id.*

30. The School performed the reevaluation in October and November 2018. *Response*, p. 4. For the reevaluation, School collected academic data, observed Student in the classroom, and interviewed staff members. *Interview with Special Education Teacher*.

31. School Psychologist performed a functional behavioral assessment ("FBA") based on interviews with Student and staff members, administration of the Emotional Disturbance Decision Tree ("EDDT"), and observation of Student over a one-month period. *Exhibit C*, pp. 25-32. The FBA identified Student's target behavior, the antecedents and consequences of such behavior, and the strategies implemented to resolve such behavior. *Id.* Ultimately, School Psychologist hypothesized that, due to Student's difficulty maintaining attention and regulating his emotions, Student demonstrated the target behavior—such as elopement—to avoid completing undesired tasks. *Id.* at pp. 31-32. The target behavior resulted in Student receiving redirection from his teacher, access to a more preferred activity, or one-on-one adult time, allowing Student to escape the undesired task. *Id.*

32. On November 12, Student's IEP Team met to review the evaluation report ("Evaluation Report"). *Response*, p. 5. The IEP Team concluded that Student maintained his eligibility for

special education and related services under the disability categories of OHI and SLD. *Id.*; *Exhibit C*, pp. 1-4; *Interview with Special Education Teacher*.

33. At that point, Student had not been clinically diagnosed with ADHD or ADD. However, Student was eligible under OHI due to limited alertness and inattention. *Exhibit C*, p. 1; *Interview with Special Education Teacher*.

34. Prior to the re-evaluation, Student met the SLD criteria for basic reading skills and reading fluency. *Interview with Special Education Teacher*. The re-evaluation found that Student also met the SLD criteria for mathematical calculation. *Exhibit C*, p. 2.

35. School staff considered whether Student qualified under Serious Emotional Disability (“SED”). *Id.*; *Interview with Special Education Teacher*. SED requires indicators of social/emotional dysfunction to be observed in two different settings. *Exhibit C*, p. 3. Though School staff observed social/emotional dysfunction at School, Parent indicated she did not see any aggressive or non-compliant behaviors at home. *Interview with Special Education Teacher*. As a result, staff were unable to find Student eligible under SED. *Id.*

#### **F. Revision of Student’s BIP and Development of Student’s 2019 IEP**

36. On January 9, 2019, Student’s IEP Team met to review his IEP. *Response*, p. 6. During that meeting, the IEP Team discussed Student’s present levels of performance, set annual goals, updated his accommodations, and revised his BIP in accordance with the FBA (“Revised BIP”). *Id.*

37. Like Student’s prior BIP, the Revised BIP identified asking Student to complete undesired tasks as the antecedent. *Exhibit B*, pp. 1, 5. The target behaviors included running out of the classroom, noncompliance, and physical aggression. *Id.* at p. 1. The Revised BIP suggested staff prevent the target behaviors by:

- Praising Student;
- Having Student check-in with an adult during transitions from unstructured environments to structured classwork;
- Not chasing Student when he elopes from class and, instead, blocking exits from the building;
- Providing short, simple commands; and
- Ignoring behaviors (unless prohibited for safety reasons).

*Id.*

38. The IEP Team started to discuss whether Student would be better served by an affective needs program; however, the IEP Team ran out of time to finish the discussion. *Response*, p. 6.

39. Student's IEP Team reconvened on January 28, 2019. *Id.* At that time, staff members on the IEP Team proposed:

- Adding 700 minutes per week of direct special education instruction in an affective needs setting;
- Adding 200 minutes per week of direct special education instruction in mathematics;
- Increasing direct special education instruction in literacy from 150 minutes per week to 300 minutes per week;
- Adding 90 minutes per week of direct literacy instruction in the general education classroom;
- Maintaining 120 minutes per week of direct mental health services; and
- Maintaining 150 minutes per year of indirect occupational therapy to monitor and support sensory processing needs.

*Exhibit A*, p. 15.

40. If adopted, this would change Student's placement from greater than 80% of the time in a general education class to less than 40% of the time in a general education class. *Id.* at p. 17; *Response*, p. 6.

41. This proposal was driven by the data obtained during Student's reevaluation. *Interview with School Psychologist.* Even though Student was receiving one-on-one adult support throughout his day, Student still struggled to regulate his emotions and use coping strategies. *Id.* Staff members felt Student would benefit from the embedded emotional support and consistency offered by an affective needs program. *Id.* Being in the general education classroom provided Student an opportunity to model the behavior of students without disabilities; however, according to School staff, Student did not appear to be positively influenced by his classmates. *Interview with Special Education Teacher.*

42. Student's IEP required that he receive 600 minutes *per month*—or approximately 30 minutes per day—of direct special education instruction. *Exhibit A*, p. 33. However, at the time of the January 28 meeting, Student was receiving 105 minutes of special education instruction *per day*, for a total of 525 minutes *per week*. *Exhibit C*, p. 31. Even though Student was receiving more than three times the special education called for in his IEP, he still struggled to complete academic work or make progress on his IEP goals (including his social/emotional wellness goal). *Interviews with School Psychologist and Special Education Teacher.* As a result,

the School did not recommend placing Student in the general education classroom for 40-79% of the time, because School had already informally tried that option without success.

43. Student's disruptive behaviors caused him to miss significant amounts of academic instruction in the general education classroom. *Id.* And the pace of the general education classroom made it difficult for Student to make up the missed instruction time. *Interview with Special Education Teacher.* Staff felt that placing Student in an affective needs program would give him a greater opportunity to receive re-teaching when his behavior caused him to miss a lesson. *Id.* Moreover, the smaller student-to-teacher ratio would allow Student to receive immediate attention when he became frustrated or did not understand something. *Id.*

44. By the January 28 meeting, School staff had been modifying Student's behavioral supports for five months, trying to find a combination that allowed Student to learn in the general education classroom. *Id.* At that point, School staff were unable to identify any additional behavior interventions to try. *Id.* School staff envisioned the affective needs program serving as Student's "home base", allowing Student more or less access to a general education classroom depending on his daily needs. *Id.*

45. During the January 28 meeting, Parent expressed her disagreement with the change in Student's placement. *Interviews with Parent and Special Education Teacher.* Specifically, Parent expressed concerns about bullying Student faced when he previously attended Affective Needs Program and Student's transportation to Affective Needs Program. *Interview with Parent.*

46. Despite Parent's disagreement, the IEP Team concluded that Student's placement should be changed to less than 40% of the time in the general education classroom and finalized Student's IEP ("2019 IEP"). *Interview with Parent and Special Education Teacher; Exhibit A, p. 17.*

47. The IEP Team placed Student at Affective Needs Program, consistent with the 2019 IEP, where Student finished third grade.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District did not deny Student a FAPE because Student's IEP Team considered the use of positive behavioral interventions and supports in the development of Student's January 28, 2019 IEP.**

In her Complaint, Parent contends the District failed to consider the use of positive behavioral interventions and supports or other strategies to address Student's behavior in developing his IEP and, as a result, denied Student a FAPE.

Where a student's behavior impedes his learning or the learning of others, the IEP Team must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324(a)(2)(i). The regulations do not require an IEP Team to use a particular tool or assessment when considering positive behavioral support; however, "conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46683 (Aug. 14, 2006). Development of a BIP is an "acceptable way of considering a child's behavioral needs", though not required. *Coleman v. Wake Cnty. Bd. of Educ.*, 120 LRP 4253, at \*9 (E.D. N.C. 2020).

Student's behavior undoubtedly impeded his learning and the learning of his classmates. (FF #s 27, 28.) As a result, Student's IEP Team was required to consider positive behavioral interventions and supports in the development of his IEP. His IEP Team satisfied this requirement by conducting a FBA, revising his BIP, and addressing his behavior in the IEP.

In September 2018, shortly after Student began to demonstrate disruptive behaviors, the School sought consent from Parent to perform a comprehensive re-evaluation. (FF #s 29, 30.) As part of the re-evaluation, School Psychologist performed a FBA in October and November 2018. (FF # 31.) That FBA identified Student's target behavior, the antecedents and consequences of such behavior, and the strategies implemented to resolve such behavior. (*Id.*)

During the January 9, 2019 meeting, Student's IEP Team revised his BIP in accordance with the FBA. (FF # 36.) The Revised BIP identified Student's disruptive behavior and suggested positive behavioral interventions and supports to address this behavior. (FF # 37.)

At this point, no further consideration of behavioral interventions was required, as Student's IEP Team considered his behavioral needs through the FBA and the Revised BIP. However, the IEP Team also considered behavioral interventions during the January 28 meeting that led to Student's 2019 IEP. By the January 28 meeting, the staff members on Student's IEP Team had been working to mitigate Student's disruptive behavior for five months and undoubtedly considered the variety of interventions attempted by School staff over this period. (*See* FF # 44.) At that point, staff could not identify any other behavioral interventions available in the general education setting. (*Id.*) As a result, staff members proposed providing Student special education in an affective needs setting. (FF #s 39, 44.) This proposal alone demonstrates the IEP Team's consideration of positive behavioral interventions and supports. Indeed, an affective needs program was suggested because of the consistent emotional and behavioral support that it would provide Student. (FF # 41.)

For these reasons, the SCO concludes that Student's IEP Team considered positive behavioral interventions and supports in the development of his January 28 IEP, consistent with 34 C.F.R. § 300.324(a)(2)(i).

**Conclusion to Allegation No. 2: The District did not deny Student a FAPE because the IEP Team did not change Student’s educational placement to a more restrictive setting without first considering less restrictive options in the development of Student’s January 28, 2019 IEP.**

In her Complaint, Parent alleges the District failed to provide Student a FAPE by changing his educational setting to a more restrictive setting—from 80% of the time in the general education classroom to less than 40%—without considering less restrictive alternatives.

The IDEA’s least restrictive environment (“LRE”) mandate requires that, to the maximum extent possible, students with disabilities be educated with students who are not disabled. 34 C.F.R. § 300.114(a)(2)(i). “[R]emoval of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* § 300.114(a)(2)(ii).

A two-part test is used to determine whether a District has complied with the LRE mandate. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004) (adopting test from *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989)). The test determines: (1) whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, whether the school district has mainstreamed the child to the maximum extent appropriate. *Id.*

The first prong requires consideration of the following, non-exhaustive factors:

- the steps the school district has taken to accommodate the student in the regular classroom, including the consideration of a continuum of placement and support services;
- a comparison of the academic benefits the student will receive in the regular classroom with those the student will receive in the special education classroom;
- the student’s overall educational experience in regular education, including non-academic benefits; and
- the effect of the student’s presence on the regular classroom.

*Id.* Here, an analysis of these factors indicates that—as of January 2019—Student could not be educated in a general education classroom.

Regarding the first factor, from September 2018 to January 2019, School took steps to accommodate Student in the general education classroom. As detailed in FF #s 17-28, School attempted a variety of behavioral interventions and supports—including providing Student with one-on-one adult support, access to breaks, a visual schedule, and increased special education instruction. Despite these interventions, Student struggled to complete any academic tasks in the general education classroom or make progress on his IEP goals. (FF #s 41, 42.)

Under the second factor, a special education classroom allowed Student to receive more consistent academic instruction. Student missed significant amounts of academic instruction in the general education classroom due to his disruptive behavior or refusal to participate. (FF #s 27, 43.) The pace of the general education classroom made it difficult for Student to make up this instruction. (FF # 43.) The special education classroom—and specifically, the affective needs program—provided Student an opportunity to make up lessons missed due to behavior. (*Id.*) The smaller student-to-teacher ratio would allow Student to receive immediate attention when he became frustrated with an academic task or did not understand something. (*Id.*)

As to the third factor, Student’s overall experience in regular education did not support his continued placement in a regular education classroom. While at School, Student struggled academically and emotionally, making little, if any, progress on his IEP goals. (FF # 42.) Being in the general education classroom gave Student an opportunity to interact with and model the behavior of students without disabilities. (FF # 41.) However, Student did not appear to be positively influenced by his peers while he was in the general education class. (*Id.*)

Finally, with regard to the fourth factor, Student’s disruptive behavior impacted the learning, physical environment, and safety of his classmates in the general education classroom. At times, Student flipped over furniture in the classroom and hung from light fixtures. (FF #28.) Such unsafe behavior caused Student’s classmates to be evacuated in the middle of academic instruction. (*Id.*) Some of Student’s classmates feared that Student would act aggressively towards them to the extent that School staff had “restorative conversations” with his classmates to ensure they would continue to welcome him and work with him. (*Id.*)

Each of these factors indicate that—as of January 2019—Student was unable to be educated in the general education classroom. As a result, the SCO must consider the second prong of the LRE test.

The second prong asks whether the school district has mainstreamed the child to the maximum extent appropriate. *Nebo Sch. Dist.*, 379 F.3d at 976. At the time of Student’s change in placement, School had been providing Student special education and related services in excess of the amount required by his IEP. (FF #s 25, 42.) Specifically, Student was receiving 105 minutes of direct special education instruction *daily*, totaling 525 minutes *per week*. (*Id.*) Student’s IEP called for only 600 minutes of special education instruction *per month*. (FF # 42.) Despite the extra specialized instruction that School provided, Student still struggled to regulate his emotions and complete academic work and made little to no progress on his IEP goals, including a social/emotional wellness goal. (FF #s 41, 42.) As a result, the School did not recommend placing Student in the general education classroom for 40-79% of the time; School had already informally tried that option without success. (FF # 42.) Staff members on Student’s IEP Team hoped that placing Student in the affective needs program would allow him to receive embedded behavioral supports, while giving him fluidity to participate in the general education

classroom as he was able. (FF #s 41, 44.) The SCO concludes that the District mainstreamed Student to the maximum extent possible.

Both prongs of the two-part test support finding that the District complied with the LRE mandate when it placed Student in the general education classroom less than 40% of the time. As a result, the SCO finds that the District complied with the IDEA.

Additionally, the District complied with ECEA Rule 4.03(8)(b)(ii)(B) when it changed Student's LRE by placing him at Affective Needs Program from School. A "significant change in placement" requires "consideration of reevaluation." ECEA Rule 4.03(8)(b)(ii)(B). Here, the District conducted a comprehensive reevaluation of Student during and considered the results when developing Student's 2019 IEP. (FF #s 29-35, 41.)

### **REMEDIES**

The SCO concludes that the District did not violate the requirements of the IDEA, as alleged in the Complaint. Accordingly, no remedies are ordered.

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, the aggrieved party may 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 26th day of March, 2020.



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Ashley E. Schubert  
State Complaints Officer

## Appendix

### **Complaint, pages 1-16**

- Exhibit 1: January 28, 2019 IEP
- Exhibit 2: Prior written notices and notices of meetings
- Exhibit 3: Email correspondence
- Exhibit 4: BIPs
- Exhibit 5: Daily progress reports

### **Response, pages 1-11**

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluation Report and FBA
- Exhibit D: Behavior monitoring logs
- Exhibit E: Prior written notices
- Exhibit F: Requests for parental consent
- Exhibit G: Notices of meetings
- Exhibit H: Email correspondence
- Exhibit I: Blank
- Exhibit J: Blank
- Exhibit K: Verification of delivery to Parent
- Exhibit L: Student's enrollment history

### **Telephonic Interviews:**

- Director of Student Services: March 6, 2019
- School Psychologist: March 6, 2019
- Special Education Teacher: March 6, 2019
- Parent: March 12, 2019