

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

**State-Level Complaint 2022:567
Moffat County School District RE-1**

DECISION

INTRODUCTION

On December 14, 2022, the parent (“Parent”) of a student (“Student”) who was identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Moffat County School District RE-1 (“District”) on behalf of Student and other similarly situated students in the District. The State Complaints Officer (“SCO”) determined that the Complaint identified fourteen 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 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint. Twelve of the allegations accepted for investigation related solely to Student, and two of the allegations were systemic in nature.

Due to the breadth of the allegations, the number of identified students, and the voluminous documentation required to resolve the Complaint’s allegations, the SCO extended the 60-day investigation timeline twice due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1). Initially, the SCO extended the timeline by 30 days on February 9, 2023, making the final Decision due on March 14, 2023. Then, on March 13, 2023, the SCO extended the timeline by an additional 21 days, making the final Decision due on April 4, 2023.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from December 14, 2021 to present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District denied Student a Free Appropriate Public Education (“FAPE”) because the District:

1. Failed to properly implement Student’s IEP from December 14, 2021 to present, in violation of 34 C.F.R. § 300.323, specifically by:

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

- a. Failing to provide Student the special education and related services required by his IEP; and
 - b. Failing to educate Student consistent with the educational placement required by his IEP.
2. Failed to develop, review, and revise an IEP that was tailored to Student's individualized needs from December 14, 2021 to present, specifically by:
 - a. Failing to include behavioral strategies and supports that adequately addressed Student's behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i);
 - b. Failing to include measurable annual goals designed to meet Student's needs to enable to him to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2); and
 - c. Failing to address any lack of expected progress toward annual goals and in the general education curriculum, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).
3. Failed to educate Student in the Least Restrictive Environment ("LRE") from December 14, 2021 to present, specifically by:
 - a. Failing to ensure Student was educated to the maximum extent possible with students who are nondisabled, including failing to consider whether supplementary aids and services would make it possible to educate Student in regular classes, in violation of 34 C.F.R. § 300.114; and
 - b. Failing to determine Student's placement based upon his IEP, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a).
4. Failed to monitor Student's progress on annual IEP goals from December 14, 2021 to present to present, in violation of 34 C.F.R. § 300.320(a)(3).
5. Determined Student's educational placement between December 14, 2021 to present outside of a properly convened IEP Team meeting and without including Parent, in violation of 34 C.F.R. §§ 300.116(a)(1), 300.321(a)(1), 300.327 and 300.501(c)(1).
6. Failed to provide Parent with prior written notice regarding the change of Student's educational placement between December 14, 2021 and present, in violation of 34 C.F.R. § 300.503(a).
7. Made a significant change to Student's educational placement without consideration of reevaluation between December 14, 2021 to present, in violation of ECEA Rule 4.03(8)(b)(ii)(B).
8. Failed to conduct a manifestation determination within ten school days of the District's decisions to change Student's placement in May 2022 and August 2022, in violation of 34 C.F.R. § 300.530(e).

9. Failed to provide Student educational services to enable Student to participate in the general education curriculum and progress towards his annual IEP goals and failed to conduct a functional behavioral assessment or provide behavioral intervention services following his disciplinary change of placement in August 2022, in violation of 34 C.F.R. § 300.530(d).
10. Improperly determined that Student's behavior was not a result of his disability during the manifestation determination review held on October 5, 2022, in violation of 34 C.F.R. § 300.530(e)(1).
11. Failed to notify Parent of Student's disciplinary change of placement and provide Parent a copy of the procedural safeguards notice following his disciplinary change of placement between December 14, 2021 and present, in violation of 34 C.F.R. § 300.530(h).
12. Failed to permit Parent to inspect and review Student's education records in or around October 2022, in violation of 34 C.F.R. § 300.613.

Whether the District systemically denied similarly situated students at School a FAPE because the District:

13. Failed to properly implement similarly situated students' IEPs between December 14, 2021 and present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide the special education and related services required by their IEPs; and
 - b. Failing to educate students consistent with the educational placement required by their IEPs.
14. Failed to educate similarly situated students in the LRE from December 14, 2021 to present, specifically by:
 - a. Failing to ensure students were educated to the maximum extent possible with students who are nondisabled, including failing to consider whether supplementary aids and services would make it possible to educate students in regular classes, in violation of 34 C.F.R. § 300.114; and
 - b. Failing to determine students' placements based upon their IEPs, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student attends eighth grade at a District middle school ("School"). *Interview with Parent.*

² The appendix, attached and incorporated by reference, details the entire Record.

2. When the Complaint was filed, Student was eligible for special education and related services under the disability category of Specific Learning Disability (“SLD”) in reading. *Id.*
3. Student is a charismatic young man who cares deeply for his family. *Interviews with Case Manager, Counselor, and Parent.* He struggles with reading and spelling. *Interview with Case Manager.* In his free time, Student likes to play on the computer, go bowling, or play in the snow. *Interview with Parent.*

B. Student’s Transfer to the District

4. On August 17, 2021, Student transferred to the District from another state. *Id.* At the time of his transfer, Student was eligible for special education and related services under SLD in the area of reading. *Exhibit 3*, p. 1.
5. The District adopted Student’s out-of-state IEP in late August 2021 (“Transfer IEP”). *Exhibit 2*, pp. 1-9. Under the Transfer IEP, Student remained eligible under SLD in the area of reading. *Id.*
6. The Transfer IEP noted that Student’s disability impacted “his ability to make progress on grade-level standards” without support and accommodations in the classroom. *Id.* at p. 5. Specifically, he struggled with reading fluency and comprehension skills. *Id.* Student tended to “want to be right a lot of the time” causing him to argue and talk back to teachers to prove his point. *Id.* Per the Transfer IEP, staff should encourage Student to use his accommodations to minimize disruptions. *Id.*
7. The Transfer IEP contained two annual goals targeting reading and social/emotional wellness:
 - Goal 1: “Given a grade-level text, [Student] will be able to summarize the key ideas of the text and identify supporting details with 80% success in 4 out of 5 attempts.”
 - Goal 2: “[Student] will follow school and classroom rules with no more than 2 verbal redirections, 100% of the time.”*Id.* at p. 6.
8. Under the Transfer IEP, Student received the following special education and related services:
 - Specialized Instruction: 20 minutes per day of direct specialized instruction provided by a special education teacher inside the general education classroom; and
 - Behavior Support Services: 30 minutes per week of direct behavior support services provided by a behavior specialist inside the general education classroom.*Id.* at p. 9.
9. Per the Transfer IEP, Student spent at least 80% of the time in the general education classroom. *Id.*

10. The Transfer IEP remained in effect until the District convened Student's IEP Team in mid-December 2021. *Interview with Case Manager.*

C. The District's Discipline Process

11. When a behavioral incident occurs at School, staff first ensure the safety of the students involved. *Interview with Principal.* Next, staff investigate the incident by gathering evidence and statements from those involved. *Id.* Where possible, School staff use restorative practices. *Id.* Where suspensions are necessary, School staff rely on discipline guidance from the District. *Id.*
12. If a student makes a threat to self, others, or a District building, the District initiates its threat assessment process. *Interview with District Psychologist.* District staff members complete a screening to evaluate whether the threat should be elevated to the Violence Review Team ("VRT"). *Id.* Depending on the outcome of the screening tool, the District convenes the VRT to determine whether the student poses an imminent threat or a future threat of harm. *Id.* The VRT develops a plan to manage the threat and support the student. *Id.*; *Exhibit E*, p. 31. The District does not allow students or parents to attend the VRT meeting. *Interview with District Psychologist.*
13. According to the District, the VRT makes recommendations to building administrators but does not make decisions. *Interviews with Special Education Director ("Director") and School Psychologist.* The building administrator then decides whether to accept the VRT's recommendations. *Id.*
14. After any suspension, School holds a re-entry meeting with students and families to consider whether the student needs a safety plan or whether there have been any changes to the student's academic or social/emotional needs. *Interview with Principal.*

D. Fall 2021 Behavioral Issues

15. The 2021-2022 school year began on August 23, 2021. *Response*, p. 2. During the 2021-2022 school year, the District held classes five days per week from 8:05 a.m. until 3:40 p.m. *Id.*
16. At the beginning of the 2021-2022 school year, Case Manager provided printed IEP snapshots to the relevant teachers for each student on her caseload. *Interview with Case Manager.* Teachers had access to students' full IEPs through Enrich. *Id.* Additionally, School's child support team—which included School administration, special education teachers, mental health providers, and related service providers—met to discuss students' IEPs and needs. *Id.*
17. By early October 2021, Student had been suspended for defiant behavior and using profanity. *Id.* at pp. 2-3. Student's suspensions totaled two days. *Id.* During an in-school suspension, Student referenced [threatening language]. *Exhibit 6*, p. 10. This comment prompted the District to convene the VRT to determine whether Student posed a threat to himself or to others. *Response*, pp. 2-3.

18. The VRT recommended that Student be moved to an alternative classroom and placed on a shortened school day. *Id.* The District unilaterally adopted those recommendations without holding an IEP Team meeting or otherwise involving Parent in the decision-making process. *Id.* at p. 3.
19. Beginning in October 2021, the District permitted Student to attend School from 8:05 to 11:00 a.m., less than one-half of the regular school day, in an alternative classroom (“Alternative Classroom”). *Id.* During the 2021-2022 school year, an extra classroom was used as the Alternative Classroom “for multiple students who were struggling to be successful in the classroom setting.” *Id.* The District intended to provide those students a space to “progress academically and behaviorally in a setting more suited to their needs” before transitioning back to a typical classroom. *Id.*

E. Alternative Classroom

20. Students in the Alternative Classroom used individual computers to access general education classes remotely. *Interview with Case Manager.* Some students used Zoom to connect to their live classes, while other students used Canvas. *Id.*; *Interview with Principal.* Through Canvas, students could access recorded lectures and assignments. *Interviews with Case Manager and Principal.* School staff frequently used flipped learning where students watched recorded lessons on their own and completed work together as a group. *Interview with Principal.* As a result, lessons were often recorded. *Id.*
21. Adults supervised students in the Alternative Classroom. *Id.* However, District staff were unable to identify which staff members provided that supervision. *Id.* At times, other students were in the Alternative Classroom with Student; other times, Student was the only student in the classroom. *Interview with Case Manager.*
22. During his shortened school day, Student accessed his language arts class via Zoom. *Id.*; *Exhibit J*, p. 3. He listened to the lesson and then disconnected from the virtual meeting to work independently. *Interview with Case Manager.* Case Manager was providing co-taught instruction in the language arts class, so she could not assist Student during the allocated independent work time. *Id.* Instead, Case Manager indicated she came to the Alternative Classroom later in the morning to provide Student his specialized reading instruction. *Id.* After language arts, Student worked on science, social studies, and math on Canvas. *Id.*; *Exhibit J*, p. 3.
23. The shortened school day frustrated Student. *Interview with Parent.* He wanted to be back in class with his peers and felt that he was not getting the help he needed with his classwork. *Id.*
24. The District viewed the Alternative Classroom as a general education classroom:

When he was in the alternative educational setting during the 2021-2022 school year, he was accessing his classes remotely through an online platform, as any child would do on homebound or during the pandemic, where all his classmates were present. This was a general-education setting.

Response, p. 13.

F. December 2021 IEP Team Meeting

25. On December 15, 2021, a properly constituted IEP Team met to review the Transfer IEP and develop a new IEP for Student ("2021 IEP"). *Exhibit A*, pp. 1-11. Parent attended the IEP Team meeting. *Interview with Parent*. Case Manager and Counselor attended on behalf of the District, amongst others. *Exhibit A*, pp. 1-11.
26. At the time of the IEP Team meeting, Student remained on a shortened school day due to behavioral challenges. *Interview with Case Manager*. To date, Student had been suspended for twelve days during the school year. *Exhibit 6*, pp. 7-11. The IEP Team reviewed Student's BIP but did not consider conducting a new FBA or evaluating Student's eligibility for any other disability categories. *Id.*

G. Student's 2021 IEP and BIP

27. The 2021 IEP discussed Student's present levels of educational performance, indicating that Student was failing math and social studies. *Exhibit A*, p. 3. On Fall 2021 assessments, Student scored in the 18th percentile for math, the 12th percentile for reading, the 2nd percentile for language usage, and the 27th percentile for science. *Id.* at p. 4.
28. The 2021 IEP repeated the student needs and impact of disability statement contained in the Transfer IEP. *Id.* at p. 5. Specifically, the 2021 IEP noted that Student's SLD in reading "hinder[ed] his ability to make progress on grade-level standards without support in the classroom" and caused him to struggle with reading fluency and comprehension. *Id.* Student "tend[ed] to want to be right a lot of the time" and would "argue, backtalk, etc. to try to prove this to others." *Id.* Improving his comprehension skills would give Student greater access to the general education curriculum and help minimize his disruptions. *Id.*
29. The 2021 IEP included input from Parent and Student. *Id.* Specifically, Parent stated that Student "need[ed] to recognize he has anger issues." *Id.* Student expressed that "he want[ed] to return to the classroom more" and "would like his teachers to come down and talk to him." *Id.*
30. The 2021 IEP contained three annual goals in reading and social/emotional wellness:
 - Goal 1: "By December of 2022, [Student] will determine 3 details that support a claim or locate[] 3 details about characters or events in a literary text 3 out of 4 times as shown by student work or teacher data."
 - Goal 2: "By December 2022, [Student] will identify words that indicate sequence or order in a literary text 3 out of 4 times as shown by student work or teacher data."
 - Goal 3: "[Student] will follow all directions and school rules with no more than two verbal redirects daily 100% of the time."

Id. at p. 6. Goal 3 was repeated from Student's Transfer IEP. *Exhibit 3*, p. 5. Student had not yet met the goal. *Interview with Case Manager*.

31. The 2021 IEP contained nine accommodations to help Student access the general education curriculum, including limiting verbalization when Student was angry and providing access to a calming area. *Exhibit A*, p. 7.
32. Under the 2021 IEP, Student received the following special education and related services:
- Specialized Instruction: 20 minutes per day of direct specialized reading instruction provided by a special education teacher outside the general education classroom.
 - Counseling: 60 minutes per week of direct counseling services provided by a counselor outside the general education classroom.
- Id.* at p. 9. The Transfer IEP provided Student 20 minutes per day of specialized reading instruction and only 30 minutes per week of counseling services. *Exhibit 3*, p. 9. The 2021 IEP doubled Student's weekly counseling services. *Id.*; *Exhibit A*, p. 9.
33. Per the 2021 IEP, Student spent at least 80% of the time in the general education classroom. *Exhibit A*, p. 10. At the time, Student was on a shortened school day in the Alternative Classroom; yet, the body of the 2021 IEP did not specifically indicate that Student was attending a shortened school day or using the Alternative Classroom. *Interview with Case Manager; Exhibit A*, pp. 1-11. However, an embedded prior written notice ("PWN") noted that the IEP Team considered increasing Student's schedule to a full day but rejected that option due to Student's behavior. *Exhibit A*, p. 11.
34. Additionally, in the section discussing advantages and disadvantages of Student's placement, the 2021 IEP stated: "Increase in student day based on student success – [Student] will follow school and classroom rules with no more than 2 verbal redirections, 100% of the time." *Id.* at p. 10. This language repeated Student's social/emotional wellness goal in the IEP, suggesting that if Student met his annual IEP goal, his school day would be lengthened. *See id.* at p. 6.
35. The IEP Team planned to review Student's behavior and lengthen his school day at set intervals during Spring 2022 (January 10, April 2, and May 3), eventually transitioning Student to a full school day on May 3, 2022. *Id.* at pp. 10 and 69; *Interview with Director*.
36. Student also had a behavior intervention plan dated December 16, 2021 ("2021 BIP"). *Exhibit A*, pp. 12-15. The 2021 BIP was based on a 2020 FBA from Student's prior school district and Student's IEP. *Id.* at p. 12.
37. The 2021 BIP targeted Student's verbal disruptions and physical aggression:
- When [Student] thinks he is right or wants to let a peer or teacher know he is right, he will become verbally disruptive, not comply with expectations or what he is told to do, and possibly become physically aggressive towards peers to get his way or try to let people know what he thinks is the truth or what happened.

Id. at p. 12.

38. The 2021 BIP outlined setting event strategies designed to reduce the impact of setting events, such as planned ignoring, verbal redirection, and allowing Student to go to a separate space to calm down. *Id.* at pp. 12-14. A shortened school day (8:00-11:00) was also one of the identified setting event strategies. *Id.*
39. Listed antecedent strategies to decrease the likelihood of the targeted behavior included redirection, not engaging Student verbally when escalated, giving Student 15 minutes to calm down, and allowing Student to get instruction in the general education setting before completing working in the “SPED room.” *Id.*
40. The 2021 BIP identified behavior teaching strategies, such as independent practice of emotional control and individual direct instruction in calming techniques and debate. *Id.* at p. 12.
41. As a reinforcement strategy, the 2021 BIP parroted Student’s 2021 IEP behavioral goal: “When [Student] follows all school and classroom rules with no more than 2 verbal redirections 90% of the time, he will have mastered his IEP behavioral goal.” *Id.*
42. The 2021 BIP included a crisis intervention plan. *Id.* at p. 13. If Student became escalated, used profanity, did not respect the space of others, left the designated area, refused to follow directions, or refused to turn in his phone, his crisis intervention plan would be activated, and School counselors or administration would be called. *Id.*
43. Student would be given 15 minutes to calm down. *Id.* If he calmed down within 15 minutes, he could return to class. *Id.* If he did not calm down within 15 minutes, Parent would be called to pick Student up and Student would be suspended for the remainder of the day. *Id.* District Psychologist indicated that 15 minutes was the “District standard” for calming down. *Interview with District Psychologist.*
44. If Parent could not be reached or could not be at School within 45 minutes, School would call a school resource officer or law enforcement. *Exhibit A*, p. 13.
45. Other than the addition of two setting event strategies (shortened school day and allowing Student to go to a calming space) and the crisis plan, the 2021 BIP was identical to Student’s BIP from his prior district. *Id.* at pp. 15-17.

H. Student’s School Day During Spring 2022

46. Student remained on a shortened school day during Spring 2022. *Interview with Case Manager.* On January 10, 2022—the first day of the second semester—Student’s schedule was:

8:15-8:30	Check in with Counselor or School administration
8:30-9:05	Language arts via Zoom, and Case Manager provides specialized instruction in Alternative Classroom
9:05-10:05	Science and social studies via Canvas
10:10-10:50	Math via Zoom
10:50-11:00	Lunch

11:00-11:10	Check out with Counselor or School administration
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Exhibit H, p. 36. The first period language arts class was from 8:00-9:00 a.m. *Id.* at p. 106. By the time Student joined at 8:30, he had missed half of the class. *Id.*

47. Beginning on February 2, 2022, the District lengthened Student’s day by allowing him to attend until 1:25 p.m. *Id.* at p. 52.

8:00-9:00	Language arts Via Zoom on Monday and Friday In class Tuesday, Wednesday, and Thursday
9:05-10:05	Social studies via Canvas
10:05-10:25	Counseling/study hall/advisory
10:25-11:30	Math via Zoom
11:35-12:00 12:45-1:25	Science via Zoom

Id. Under this schedule, Student had access to one class in person, three days per week. The remainder of his day was spent in the Alternative Classroom. *Id.*

48. On April 4, 2022, the District again lengthened Student’s school day and provided him more access to nondisabled peers. *Id.* at p. 87.

8:00-9:00	Language arts in class
9:05-10:05	Outdoor education in class
10:05-10:25	Recess
10:25-11:30	Math via Zoom
11:35-12:00	Science in class
12:45-1:25	Science via Canvas (finishing work)
1:30-2:30	Social studies

Id. Other than math, Student attended all of his classes in person with support from a paraprofessional. *Id.*

49. The District did not convene Student’s IEP Team or amend his IEP any of the times Student’s schedule was changed. *Interview with Case Manager.*
50. On May 3, 2022, Student returned to a full day of school. *Id.* The District did not convene Student’s IEP Team before making this change. *Id.* At the same time, Student’s BIP was amended to remove the references to a shortened school day and use of the “SPED room.” *Exhibit A*, p. 31. No changes were made to the 2021 IEP. *Interview with Case Manager.*
51. At all times during the 2021-2022 school year, Student’s IEPs indicated that he was in the general education classroom at least 80% of the school day. *Id.*

I. Implementation of the 2021 IEP During Spring 2022

52. The 2021 IEP required the District to provide Student with 20 minutes per day of specialized reading instruction outside the general education classroom. *Exhibit A*, p. 9. From December 14 through February 1, Student attended language arts via Zoom from the Alternative Classroom. *Exhibit H*, pp. 29-51. Case Manager indicated she met with Student in the Alternative Classroom after language arts class each day. *Interview with Case Manager*. However, Case Manager did not track any of the services she provided to Student. *Id.* Student recalled Case Manager coming into the Alternative Classroom only occasionally. *Interview with Parent*.
53. Nothing in the record evidences Case Manager meeting with Student in the Alternative Classroom for 20 minutes each school day. For example, Student's daily behavior sheets do not have time allocated for Case Manager, and none of the notes in the sheets appear to be from Case Manager. *Exhibit H*, pp. 29-51. Additionally, Case Manager does not have any data showing that Student made progress on his reading goals during this time period. *Id.* at p. 137.
54. Though the IDEA does not require service logs, the SCO finds the lack of any supporting documentation concerning. Between December 14 and February 1, Student attended School on 21 days and, therefore, should have received 420 minutes of specialized instruction. *Exhibit X*, p. 1; *Exhibit Y*, pp. 1-2. Accordingly, the SCO finds that the District failed to provide Student with 420 minutes of specialized reading instruction in the Alternative Classroom before February 1.
55. Between February 2 and April 3, Student attended language arts via Zoom on Monday and Friday and in person on Tuesday, Wednesday, and Thursday. *Exhibit H*, pp. 52-84. Case Manager provided Student small group reading instruction inside the co-taught language arts class on Tuesday, Wednesday, and Thursday. *Interview with Case Manager*. On Monday and Friday, Case Manager says she provided Student's instruction in the Alternative Classroom after language arts class. *Id.*
56. The 2021 IEP required Student's specialized instruction to be provided outside the general education classroom. *Exhibit A*, p. 9. As a result, the instruction Student received inside the general education classroom was inconsistent with the requirements of his IEP. *Id.*
57. Between February 2 and April 3, Student attended language arts in person on 18 days and should have received 360 minutes of specialized instruction during that time period. *Exhibit X*, p. 1; *Exhibit Y*, pp. 1-2. Because the services were provided in the wrong environment, the SCO credits the District for 10 minutes of specialized instruction on each of those days, for a total of 180 minutes. The SCO thus finds the District failed to provide Student with an additional 180 minutes of instruction on the days he attended language arts in person.
58. However, for the reasons articulated above, the SCO finds that the District failed to provide Student with any specialized instruction in the Alternative Classroom between February 2 and April 3. During this time period, Student attended language arts via Zoom on 10 school days. *Exhibit X*, p. 1; *Exhibit Y*, pp. 1-2. Student should have received 200 minutes of specialized instruction. Cumulatively, the SCO finds the District failed to provide Student with 380 minutes of specialized reading instruction between February 2 and April 3.

59. Beginning April 4, Student went to language arts in person with Case Manager five days per week. *Exhibit H*, p. 85. He attended School 25 days between April 4 and May 26, the last day of School. *Exhibit X*, p. 1; *Exhibit Y*, pp. 1-2. As explained above, the SCO credits the District for 10 minutes of specialized instruction on each of those days, for a total of 250 minutes. Student should have received 500 minutes of instruction during that time period, so the SCO finds that the District failed to provide Student with 250 minutes of specialized instruction between April 4 and May 26.
60. In total, the SCO finds that the District failed to provide Student with 1,050 minutes of specialized reading instruction during Spring 2022.
61. During Spring 2022, Counselor met with Student in the counseling office. *Interview with Counselor*. The 2021 IEP required Student to receive 60 minutes per week of direct counseling services. *Exhibit A*, p. 9. According to Counselor, she met with Student mid-morning each day. *Interview with Counselor*.
62. At the time, Counselor used Infinite Campus to track the services she provided. *Id.* Typically, Counselor used a single entry to track one week's services. *Exhibit H*, pp. 2-4. For the most part, Counselor's entries took one of two forms: "Counselor met with student, afternoon check in/out" or "Counselor met with student for 15 min each day this week to discuss social/emotional goals." *Id.*
63. For the months of February, March, and April, Counselor's entries seem automatic and fail to account for Student's absences or even the District's spring break. For example, the District's spring break was March 14-18, 2022, yet Counselor's records said she met with Student for 15 minutes each day that week. *Id.*; *Exhibit X*, p. 1. Student was absent on several dates (February 17, February 25, March 3, April 1, and April 11), but Counselor's log indicated she provided services on those dates. *Exhibit Y*, p. 2; *Exhibit H*, p. 3.
64. Additionally, Student's daily behavior logs reflected notes from Counselor only once. See *Exhibit H*, pp. 36-109. Student's behavior log had a designated space for "Counseling/Study Hall/Advisory." *Id.* On February 2, Counselor wrote "Good job!" in the space allocated to counseling with her initials. *Exhibit H*, p. 52. No other entries from Counselor (either using her initials or with content relevant to her services) appeared in Student's behavior logs. *Id.* at pp. 36-109.
65. Between December 14 and May 26, there were 20 weeks of school. Student should have received 60 minutes of counseling per week, for a total of 1,200 minutes of counseling. The SCO finds the inconsistencies in Counselor's log and the remaining documents concerning. For this reason, the SCO has only credited the District for one-half of Student's counseling services. The SCO finds that the District failed to provide Student with 600 minutes of counseling.

J. Spring 2022 Behavioral Incidents

66. During the 2021-2022 school year, case managers were responsible for tracking students' suspensions to determine when the District needed to conduct a manifestation determination review ("MDR"). *Interviews with Case Manager and Director*. Case Manager indicated this was difficult because School staff did not always inform her when students were suspended. *Interview with Case Manager*.

67. On May 19, 2022, Student “was sent to the office for a milk spilling incident” and for ripping a worksheet. *Exhibit 6*, p. 5. Once in the office, staff asked Student to sit down. *Id.* Student responded by saying, “You sit down” and telling a staff member that her breath stunk. *Id.* Student received 1.38 days of out of school suspension (“OSS”) for this incident. *Id.*
68. The following week, on May 23, 2022, Student received three days of OSS for throwing an orange at another student in the hallway. *Id.*
69. Before the May 19 incident, Student had been suspended more than 12 days during the 2021-2022 school year. *Id.* at pp. 5-12. The District conducted an MDR in November 2021 after Student had been suspended for 6.85 days but did not conduct any other MDRs for Student during the 2021-2022 school year. *Exhibit 5*, pp. 1-5; *Response*, p. 5. The District indicated its failure to conduct the MDRs was “an oversight.” *Response*, p. 20.

K. The Recovery Room

70. Prior to the start of the 2022-2023 school year, School staff explored alternatives to OSS. *Interview with Principal*. According to Principal, an OSS often rewarded a student’s behavior (i.e., the student would rather be suspended than be at school). *Id.* School wanted to provide a space to “meet kids where they are at in their academic and social emotional development.” *Id.* This led to the creation of the Recovery Room. *Id.*
71. The Alternative Classroom became the Recovery Room. *Response*, p. 3. According to Principal, a variety of students used the Recovery Room for different purposes. *Interview with Principal*. For example, a student with behavioral challenges might be in the Recovery Room full-time, while another student might be in the Recovery Room temporarily in lieu of a suspension. *Id.* A student who has sensory difficulties might come to the Recovery Room for a short break, or a student might leave the general education class after the lesson to work independently in the Recovery Room. *Id.*
72. A general education teacher and a paraprofessional staff the Recovery Room. *Interview with Principal*. The Recovery Room has a set schedule that applies to all students, so all students—regardless of grade—work on the same subject at the same time. *Id.* Students access their coursework through Canvas, with the teacher and paraprofessional available for assistance. *Id.* Students with IEPs continue to receive their special education and related services while in the Recovery Room. *Id.*
73. The District considers the Recovery Room to be a modified general education classroom. *Interviews with Director and Principal*.
74. If a student goes to the Recovery Room in lieu of a suspension, the District marks their attendance as “RR” for Recovery Room. *Interview with Principal*. The day in the Recovery Room would not be counted as a removal for purposes of determining whether an MDR needs to be held for students with IEPs. *Id.*

L. Beginning of 2022-2023 School Year

75. The 2022-2023 school year began on August 22, 2022. *Interview with Parent*. The District moved to a four-day schedule, holding classes Monday through Thursday. *Response*, p. 6.

School started at 8:05 a.m. and ended at 4:00 p.m. *Id.* Case Manager, again, provided IEP snapshots to the relevant teachers and service providers of the students on her caseload. *Interview with Case Manager.*

76. Student started the year by attending a full day of school in the general education classroom. *Id.*
77. On August 25, Student enticed peers on the bus to fight. *Exhibit 6*, p. 3. That day, when Student arrived at School, he referred to Principal, saying “She doesn’t want to see me on the streets.” *Id.* A teacher who overheard Student’s statement viewed it as a threat to Principal. *Id.*
78. Student received 2.64 days of OSS and a 30-day bus suspension for his involvement in the incident on the bus. *Id.* at pp. 3-4. School suspended Student an additional two days for his comment about Principal and initiated the threat assessment process. *Id.*
79. The District convened the VRT on August 29 to evaluate the statement made about Principal. *Exhibit E*, pp. 1-18. Superintendent spearheaded the VRT process since Principal was the target of Student’s purported threat. *Interview with Principal.*
80. The VRT determined that Student “appear[ed] to pose a clear and immediate threat of serious violence toward others that requires containment and action to protect [the] identified target.” *Exhibit E*, p. 10. The VRT recommended extending Student’s suspension “to finish gathering information and construct” the Response, Management and Support Plan (“RMS Plan”). *Id.* at p. 13.
81. The Superintendent adopted the VRT’s recommendation and extended Student’s suspension by five days. *Interview with Principal; Exhibit 6*, p. 2. Student completed this suspension on September 13 but was not permitted to return to School until September 19. *Response*, p. 6.
82. At this point, Student had been suspended for 11.64 days during the 2022-2023 school year. *Exhibit 6*, pp. 2-4. Student’s tenth day of removal occurred on September 13. *Id.*; *Exhibit 13*, p. 1. The District conceded that it did not conduct an MDR and did not provide Student with access to any educational services. *Response*, pp. 6, 20. The District also did not notify Parent of the disciplinary change of placement that occurred in September 2022, though Parent had received copies of the procedural safeguards earlier in the school year. *Id.* at p. 23.
83. When Student was suspended, he could access his courses through Canvas. *Interview with Principal.* School sometimes sent Student’s iPad home—either through a sibling or Parent—for Student to access his work from home, but District staff were not sure if Student had his iPad during the suspensions in September 2022. *Interviews with Case Manager and Principal.*
84. On September 21, P.E. Teacher saw Student holding a classmate (“Classmate”) in a headlock in the locker room. *Exhibit 6*, p. 1. Student received 2.76 days of OSS for this incident. *Id.*

85. Meanwhile, the VRT reconvened on September 26 to finalize the RMS Plan. *Exhibit E*, p. 17. The RMS Plan proposed that Student be placed on a shortened school day. *Id.* Student would attend School from 8:30-11:00 a.m. in the library and receive instruction through APEX, a virtual school. *Id.*; *Interview with Principal*. Student's IEP Team would consider the RMS Plan's recommendations at his "upcoming annual review," which the plan noted was due December 15, 2022 (nearly three and one-half months away). *Id.* at p. 16.
86. Superintendent unilaterally adopted the VRT's recommendations. *Interviews with Director and Principal*. Neither Student's IEP Team nor Parent were involved in the decision-making process. *Id.* Student's IEP was not amended to reflect Superintendent's decision. *Interview with Case Manager*.
87. On September 27, the District held Student's re-entry meeting and shared Student's RMS plan with Parent. *Exhibit C*, pp. 3-11. A recording of the re-entry meeting was produced during this investigation. *Exhibit 24, Audio Recording of Re-Entry Meeting*. The key components of Student's RMS plan, as presented by Superintendent, were:
- Student would attend a shortened school day in the library. This was based on Student's "past success" with a change in his placement.
 - He would complete online courses through APEX.
 - He would work primarily with a paraprofessional under the guidance of Case Manager. Case Manager would be "in and out."
 - Upon arrival, Student would report to the Recovery Room and place his belongings in a locker. District staff would ask him to empty his pockets. Then he would go get breakfast before heading to the library to begin work.
 - If other students came into the library, Student would exit and have his counseling outside the library.
 - If Student became angry or frustrated, School staff would follow his crisis plan. He would be given 15 minutes to calm down and staff would not engage with him. If he did not calm down within 15 minutes, he would need to be picked up.
 - Student could not be on school grounds outside of his school day.
 - The District would re-visit Student's plan after eight weeks: "If his days are good, then we can start integrating him back in."

Id.

88. When Parent questioned the plan, Superintendent replied, "This is just what it is going to be." *Id.* Because School started at 8:05 a.m., the restriction prohibiting Student from being on District property before or after his shortened school day effectively precluded Student from riding the bus and forced him to walk to School most days. *Interview with Parent*.
89. Student began his shortened day in the library on September 27. *Exhibit 7*, p. 5. He remained in this placement until his annual IEP review in December 2022. *Interview with Case Manager*.
90. The District acknowledges that "it made the decision to educate [Student] in the school library outside of an IEP Team meeting" and without including Parent. *Response*, p. 18. Parent was not provided prior written notice of the decision to change Student's placement. *Id.* Before making the decision, the District did not take any steps to better understand

Student's behavior, such as conducting a new functional behavior assessment. *Interview with Case Manager.*

M. Manifestation Determination Review

91. During the 2022-2023 school year, the District adopted a new practice of tracking students' suspensions to identify when an MDR needs to be held. *Id.* At weekly child support team meetings, staff at each school discuss students who were suspended the prior week and keep a tally sheet of the students' suspensions. *Id.*
92. On October 5, the District conducted an MDR regarding the September 21 incident in the locker room. *Exhibit F*, pp. 4-7. Parent's Counsel repeatedly requested that the District provide all records related to the incident prior to the MDR. *Exhibit 17*, pp. 1-9. However, the District provided only a draft MDR and the behavior report for the incident. *Id.*
93. The District provided a videorecording of the MDR during this investigation. *Exhibit F, Videorecording of the MDR.* Director led the MDR. *Id.* Case Manager, Counselor, Dean of Students, District's Counsel, District Psychologist, General Education Teacher, Parent, Parent's Counsel, P.E. Teacher, and Superintendent attended the MDR. *Id.*
94. Director first read P.E. Teacher's description of the incident, where P.E. Teacher described Student as "holding [Classmate] in a headlock" during a fight in the locker room. *Id.* After the incident, Student asserted he and Classmate were "just playing around." *Exhibit F*, at p. 4.
95. Parent's Counsel questioned whether the District investigated the antecedent or had a hypothesis as to why the incident occurred. *Exhibit F, Videorecording of MDR.* Dean of Students indicated she had a statement from a witness ("Witness") but did not bring it to the meeting. *Id.* Ultimately, Dean of Students went to get Witness's statement, and it was read to the MDR Team:

Dressing out for PE. There was a group by the showers. [Classmate] and [Student] broke out into a fight. [Student] had his head slammed into a locker by [Classmate]. Went back further into the showers. [P.E. Teacher] came in and split them.

Exhibit F, p. 4. Parent and Parent's Counsel heard the statement for the first time at the MDR. *Interview with Parent.*

96. Additionally, Classmate was interviewed following the incident. *Exhibit F, Videorecording of MDR.* However, Dean of Students did not have Classmate's statement at the MDR, so it was not considered by the MDR Team. *Id.*
97. The MDR Team reviewed information from Student's file, including his eligibility under SLD, his current IEP, and his BIP. *Id.* Parent's Counsel discussed Student's recent provisional diagnosis of Oppositional Defiant Disorder ("ODD"). *Id.* That letter indicated that:

[Student] may experience or present with losing his temper, being easily annoyed, or being angry/resentful. He may also often argue with authority figures, other students, and/or adults. He may

struggle to comply with rules or requests from authority figures, or blame others for his mistakes or misbehavior.

Exhibit 18, p. 1. Instead of discussing the letter, Director asked, “Do you just want that letter mentioned here?” *Exhibit F, Videorecording of MDR*. The MDR Team did not discuss what that diagnosis might mean for the team’s determination. *Id.*

98. Parent’s Counsel mentioned that physical aggression towards peers was one of the target behaviors under the 2021 BIP. *Id.* Director acknowledged that Student’s BIP mentioned that behavior but then reminded the team to keep Student’s eligibility category in mind: “To notate for the team—I’ll state it to be explicit—[Student’s] current eligibility is under the category SLD. He currently receives literacy support and services.” *Id.*
99. Director then polled District members of the team regarding whether they thought Student’s behavior was a manifestation of his disability. *Id.* All District members agreed with Director that Student’s behavior was *not* a manifestation of his disability. *Id.*
100. Parent’s Counsel asked a member of the team to explain the basis for its decision. *Id.* Case Manager asserted that Student’s “disability was a reading learning disability.” *Id.* Per Director, District staff had seen “growth and progress” in Student’s behavior, causing the District to not view Student’s behavior “as an ongoing area of need.” *Id.*
101. When Parent’s Counsel asked follow-up questions, District’s Counsel ended the discussion: “The school has given its position and I do not think we need to argue about the answer to that question any further.” *Id.*
102. Other than Director, the District members of the MDR Team were almost completely silent during the meeting. *Id.* Hardly any back-and-forth discussion occurred. *Id.* When Parent or Parent’s Counsel shared their concerns, Director typically thanked them and moved on to her next topic. *Id.*

N. Implementation of Student’s IEP During Fall 2022

103. During Fall 2022, Student’s IEP required him to receive: (1) 20 minutes per day of specialized reading instruction from a special education teacher outside the general education setting, and (2) 60 minutes per week of counseling services from a counselor outside the general education setting. *Exhibit A*, p. 9.
104. Additionally, Student’s IEP required him to spend at least 80% of his time in the general education classroom. *Id.* at p. 10. The District conceded that, during his placement in the library, Student was not in a general education classroom. *Response*, p. 13. District staff could not explain why Student was placed in the library instead of the Recovery Room. *Interviews with Case Manager and Principal*.
105. At the beginning of the school year, Case Manager provided Student’s specialized instruction inside a co-taught general education language arts class. *Interview with Case Manager*. Case Manager worked with students in a small group in the class. *Id.* However, Student attended, at most, four days of that class before he was suspended and his school day was shortened. *Id.* And Student’s IEP required his services to be provided *outside* the general education setting. *Exhibit A*, p. 9.

106. Once Student was on a shortened day in the library, Case Manager scheduled time to work with Student from 8:30-9:00 a.m. during her planning period. *Id.* Case Manager asserted that Student was frequently tardy and, as a result, missed his specialized instruction. *Id.* As discussed above, Student’s tardies were often the result of him walking to School since he was not permitted to be on District property before 8:30 a.m. and, therefore, could not take the bus. *Interview with Parent.*
107. However, the reentry meeting and Student’s daily tracking logs contradict Case Manager’s scheduled time with Student. During the reentry meeting (and in the RMS Plan), District staff indicated Student’s school day began at 8:30 a.m. *Exhibit 24, Audio-Recording of Re-Entry Meeting; Exhibit H, p. 112.* Upon his arrival, Student would go to the Recovery Room to drop off his belongings and have his pockets searched before going to the library to start work. *Exhibit 24, Audio-Recording of Re-Entry Meeting.* Student’s daily tracking sheets for this time period show his schedule as:

8:30-8:45	Morning check in
8:45-10:10	APEX in library
10:10-10:30	Counseling time
10:30-11:00	APEX in library

Exhibit H, p. 113. Under his schedule, Student would not have been available in the library until 8:45 a.m. *Id.* Even during the reentry meeting, District staff stated that Student would “work primarily with a paraprofessional in the library under guidance” of Case Manager. *Exhibit 24, Audio-Recording of Re-Entry Meeting.*

108. After the Complaint was filed, Case Manager created a spreadsheet detailing the services she provided to Student during Fall 2022. *Exhibit H, pp. 8-9.* She created this spreadsheet by looking at Student’s attendance records, not her own notes. *Interview with Case Manager.* Case Manager’s log showed that she provided services to him on every day that he was present. *Exhibit H, pp. 8-9.* Per her log, Student only missed services when he was suspended, absent, tardy, or refused services. *Id.* Student’s daily tracking sheets made no mention of him refusing services on the identified dates. *Id.* at pp. 116, 135. Indeed, on October 4, the paraprofessional’s notes showed that he “got to work and worked well, took a break and chatted for a bit.” *Id.* at p. 116. Case Manager’s log even suggested she provided Student services on November 23 and November 24 when the District was on Thanksgiving break. *Id.* at p. 8.
109. For these reasons, the SCO finds Case Manager’s log and her assertions regarding the services she provided to Student unreliable. Other than the services logged on Thanksgiving Break, Case Manager indicated she provided services to Student on 13 school days between August 22 and December 15. The SCO finds and concludes that the District failed to provide Student with 260 minutes of specialized reading instruction during this time period.
110. Per the reentry meeting, Counselor intended to provide Student’s counseling services on Tuesday, Wednesday, and Thursday each week. *Exhibit 24, Audio-Recording of Re-Entry Meeting.* Counselor contemporaneously tracked her services in Infinite Campus. *Interview with Counselor; Exhibit H, pp. 4-6.* The log contained descriptions of the services provided such as “Discussed s/e goals” or “Counseling time – We went for a walk and [Student] talked

about his life goals and dreams.” *Id.* Based on the information provided, the SCO has no reason to question the reliability of Counselor’s service log.

111. Counselor’s log, however, indicated that the District failed to provide Student with 120 minutes of counseling services. *Id.* Specifically, Student did not receive any counseling services the weeks of August 22 or November 28. *Id.* Student was partially absent both weeks but received no services on the days he was present. *Id.* The SCO finds and concludes that the District failed to provide Student with 120 minutes of counseling services.

O. Compensatory Services

112. On November 30, the District sent Parent’s Counsel a PWN offering Student compensatory services. *Exhibit 26*, p. 1; *Exhibit K*, p. 1. The District’s offer covered the period in which Student was suspended for the locker room incident: “This action is proposed because of [Student’s] suspensions from 9/21/22-9/26/22 which exceeded 10 days. Compensatory services are being offered based on his need to receive IEP literacy and counseling services.” *Exhibit K*, p. 1. The District offered Student 60 minutes of specialized literacy instruction and 40 minutes of counseling. *Id.*
113. The District created the PWN without input from Parent. *Reply*, p. 7. The transmitting email did not make clear whether or not the District sought a response from Parent. *Exhibit 26*, p.1. To date, the District has not provided these compensatory services. *Reply*, p. 7.

P. Progress Monitoring, Assessments, and Grades

114. Case Manager tracked Student’s progress on his two reading goals between December 2021 and December 2022. *Interview with Case Manager*. Case Manager did not use any formal progress monitoring but, instead, used Student’s classwork to track his progress. *Id.*
115. Goal 1 of the 2021 IEP stated: “By December of 2022, [Student] will determine 3 details that support a claim, or locates [sic] 3 details about character or events in a literary text 3 out of 4 times as shown by student work or teacher data.” *Exhibit H*, p. 137. Case Manager’s progress monitoring for this goal states:

12/15/2021	“He gives one detail.”
03/04/2022	“[Student] continues to give only one detail.”
05/06/2022	“[Student] is able to give 2 details to support a claim.”
12/06/2022	“[Student] refused to complete the 2nd part of his reading comprehension.”

Id. These descriptions do not indicate whether Student’s progress is based on a single measurement or whether, for example, he was able to identify one detail three out of four times. *Id.* The progress report also lacks data for the entirety of Fall 2022. *Id.*

116. Goal 2 of the 2021 IEP stated: “By December 2022, [Student] will identify words that indicate sequence or order in a literary text 3 out of 4 times as shown by student work or teacher data.” *Exhibit H*, p. 137. Case Manager’s progress monitoring for this goal reads as follows:

12/15/2021	“[Student] isn’t consistent in identifying sequence words.”
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- 03/04/2022 “[Student] is getting more consistent in identifying sequence words.”
- 05/06/2022 “[Student] is getting more consistent in identifying sequence words.”
- 12/06/2022 “[Student] is more consistent identifying sequence words.”

Id. Case Manager’s descriptions of Student’s progress on Goal 2 contain no data. *Id.*

117. Counselor tracked Student’s progress on his social/emotional wellness goal. *Interview with Counselor*. Goal 3 of the 2021 IEP stated: “[Student] will follow all directions and school rules with no more than two verbal redirects daily 100% of the time.” *Id.* Even though the 2021 IEP was finalized in December 2021, no progress monitoring appears until October 2022. *Id.*
118. During this investigation, Counselor acknowledged that she did not enter her progress monitoring data into Enrich during Spring 2022, though she did have the data from Student’s daily tracking sheets. *Id.* This was Counselor’s first time working as a school counselor, and she did not know she needed to enter the data. *Id.* When she started at the District, she did not receive any training on IDEA requirements. *Id.*
119. On Fall 2022 District assessments, Student scored in the 17th percentile for math and the 10th percentile for reading. *Exhibit A*, p. 47. For comparison, during Fall 2021, Student scored in the 18th percentile for math, the 12th percentile for reading, the 2nd percentile for language usage, and the 27th percentile for science. *Id.* at p. 4.
120. Student finished the 2021-2022 school year with the following grades:
- Language Arts: B
 - Math: C
 - Science: C
 - Social Studies: F
 - Outdoor Education: C

Exhibit 11, p. 1.

121. During Fall 2022, Student worked on online language arts and math classes. *Interview with Case Manager*. As of December 6, Student had passed the first language arts unit but had not worked on the second unit for 19 days. *Exhibit A*, pp. 58. Student’s grade on the first math unit was 47%. *Id.* He had completed only 14% of the second unit and had an in-progress grade of 71%. *Id.*

Q. Pending Reevaluation and IEP

122. In December 2022, Student’s IEP Team met for his annual review. *Id.* at pp. 44-55. Student’s IEP was not finalized at the time the state complaint investigation file was complete. *Id.*; *Reply*, p. 7.
123. A reevaluation was also pending at the time of this investigation. *Exhibit A*, pp. 9-10.

R. Records Request

124. On September 16, Parent, through Counsel, requested, in writing, a complete set of Student's educational records pursuant to 20 U.S.C. § 1232(g). *Exhibit 30*, p. 1. In the days leading up to Student's scheduled MDR, Counsel re-urged her request and insisted that she receive all documents related to the September 21 incident prior to the MDR. *Exhibit 17*, p. 2. Nonetheless, the District did not provide Parent with copies of statements from Classmate or Witness prior to the MDR. *Response*, p. 24.
125. The District produced records in response to Counsel's request; however, Parent's Counsel claimed that the District failed to provide copies of statements from the September 21 incident, as well as service logs. *Complaint*, p. 18.
126. In its Response, the District conceded that the statements of Classmate and Witness were not provided to Parent. *Response*, 24. The service log Parent sought to obtain did not exist and, thus, was not provided. *Id.*; *Interview with Case Manager*. The District argued that—even if the statements had been produced before the MDR—it would not have impacted the outcome of the MDR. *Response*, p. 24.

S. Students' Use of the Alternative Classroom

127. During this investigation, the District identified six students (including Student) who were placed in the Alternative Classroom during the 2021-2022 school year. *Exhibit R*, p. 6. All six students had IEPs, and three of the students were on a shortened school day. *Id.* Two of the students were white, two were Hispanic, and two were Black. *See Exhibit S*, pp. 1-952.
128. Student A spent two days in the Alternative Classroom in lieu of a suspension. *Id.*
129. Student B moved into the District in Spring 2022 and was "placed in the [Alternative Classroom] near the end of the 2021-2022 school year." *Id.* Student B's IEP dated May 16, 2022 indicated that Student B's primary educational environment—both prior to his annual review and after—was the general education classroom for at least 80% of Student B's day. *Exhibit S*, p. 353. Per his IEP, Student B received specialized literacy and math instruction inside the general education classroom, as well as study skills support. *Id.* at p. 364. Student B's IEP does not reflect his placement in the Alternative Classroom. *See id.* at pp. 353-66. Student B's services appear to have started just before the school year ended. *See Exhibit T*, p. 76.
130. Student C enrolled in the District in Fall 2021. *Exhibit S*, p. 551. During Spring 2022, Student C was on a shortened school day, primarily in the Alternative Classroom. *Interview with Parent; Exhibit S Second Supplemental*, pp. 5-26. Student C received instruction for his core classes in the Alternative Classroom with support from a paraprofessional. *Exhibit S Second Supplemental*, p. 22. Student C had access to general education peers at lunch, recess, and during an elective. *Id.*
131. In January 2022, Student C's IEP indicated he would spend less than 40% of his time in the general education environment. *Id.* at p. 24. The LRE section of Student C's IEP described how his day would be lengthened during Spring 2022 if his IEP Team determined it was appropriate. *Id.* The IEP does not, however, describe how that determination would be made or what Student C would need to do to earn that additional time at School. *Id.*

132. It is unclear when Student D's placement in the Alternative Classroom began. Student D's November 2021 IEP indicated that he was in the general education classroom at least 80% of the time *Id.* at p. 747. An accommodation allowed Student D the "[o]ption to work in an alternate setting (hallway, resource room) after whole group instruction). *Id.* at p. 755. The IEP did not otherwise indicate that Student D was in the Alternative Classroom or on a shortened day. *Id.* at pp. 747-760.
133. Student D's IEP team met in March 2022 to consider new information, which resulted in his eligibility category changing to Serious Emotional Disturbance. *Id.* at p. 763. The March 2022 IEP indicated that Student D spent at least 80% of his time in the general education classroom. *Id.* at p. 776.
134. From January to March 2022, his IEP required him to receive specialized math and literacy instruction inside the general education classroom and counseling services outside of general education. *Id.* at p. 758. Beginning in March 2022, Student D's IEP required him to receive his math instruction inside the general education classroom and his literacy, counseling, and academic access services outside the general education classroom. *Id.*
135. In early May 2022, the District convened the VRT to review an incident involving Student D. *Id.* at pp. 905-15, 919. A re-entry plan dated May 6, 2022 stated that "the team" had determined Student D would be placed in a "separate setting" in the School and on a shortened school day. *Id.* at p. 902. Student D's IEP was amended on May 27, 2022 to show his placement as a "separate class." *Id.* at 791-92. A listed advantage of the separate class was that Student D would have access to the general education curriculum and typically developing peers. *Id.*
136. Student E became eligible for special education in Spring 2022. His initial IEP, dated April 28, 2022, indicated he was in the general education class 80% of the time. *Id.* at p. 182. His accommodations provided that he should receive small group instruction when possible and the option to complete independent work in an alternate setting. *Id.* at p. 178. His IEP required math and literacy instruction to be provided inside the general education environment. *Id.*
137. The documentation provided by the District does not demonstrate that Student B, Student C, Student D, and Student E received all their special education and related services while they were in the Alternative Classroom. *See Exhibit T*, pp. 1-156. Other than producing the special education teachers' schedules, the District has not provided any narrative or records indicating when these students received their specialized instruction. *Id.* In its Response, the District merely indicated that the "District has provided the special education and related services required by the IEPs of the Listed Students." *Response*, p. 26.
138. Though the District has produced logs from the School counselors, those logs often do not indicate the length of service and contain entries which do not appear to be related to the provision of services (such as escorting a student to the office after a behavioral incident). For these reasons, the SCO finds that the District failed to provide Student B, Student C, Student D, and Student E with the special education and related services required by their IEPs during Spring 2022.

139. The IEPs for Student B, Student C, Student D, and Student E do not consider whether supplementary aids and services would make it possible for the students to be successful in the general education environment. See *Exhibit S*, pp. 1-952; *Exhibit S Second Supplemental*, pp. 1-52. A PWN embedded in Student D’s IEP indicated that the IEP Team considered providing Student D with a 1:1 paraprofessional but rejected that option because Student D was able to “independently access instruction in an alternate setting under the indirect supervision of a paraprofessional.” *Exhibit S*, p. 776.

T. Students’ Use of the Recovery Room

140. As of December 2022, School had 460 students. *Interview with Director*. The student population included 66 students with IEPs. *Id.* Of those students with IEPs, 40 were white, while 22 were Hispanic/Latino. *Id.* Only two students were Black. *Id.* One student was American Indian/Alaskan Native, and one identified as two or more races. *Id.*
141. During this investigation, the District identified 15 students (including Student) with IEPs who have used the Recovery Room during the 2022-2023 school year. *Exhibit R*, p. 1. The District did not identify those students without IEPs that have used the Recovery Room. See *id.*
142. The District provided rosters identifying the students assigned to the Recovery Room for each period. *Exhibit R*, pp. 32-51. The SCO has aggregated the information for first and second quarter of the 2022-2023 school year below:

Quarter 1

- **Period 1**: Nine students in the classroom, eight male and one female. Eight of the students had IEPs. Four students were white, two students were black, and 3 students were Hispanic/Latino.
- **Period 2**: Two students in the classroom, both male. All students had IEPs. All students were white.
- **Period 3**: Four students in the classroom, all male. Three of the students had IEPs. Three students were white and one student was Hispanic/Latino.
- **Period 4**: Two students in the classroom, both male. All students had IEPs. All students were white.
- **Period 5**: Two students in the classroom, both male. All students had IEPs. All students were white.
- **Period 6**: Two students in the classroom, both male. All students had IEPs. All students were white.
- **Period 7**: Two students in the classroom, both male. One Student had an IEP. One student was white and one student was Hispanic/Latino.
- **Period 8**: Two students in the classroom, both male. One Student had an IEP. One student was white and one student was Hispanic/Latino.

Quarter 2

- **Period 1**: Eight students in the classroom, seven males and one female. Seven of the students had IEPs. Four students were Hispanic/Latino, two students were black, and two students were white.
- **Period 2**: Three students in the classroom, two males and one female. Two of the students had IEPs. All students were white.
- **Period 3**: Four students in the classroom, three males and one female. All four students had IEPs. Two students were white, one student was Hispanic/Latino, and one student was black.
- **Period 4**: Five students in the classroom, four males and one female. Four of the students had IEPs. Two students were white, two students were Hispanic/Latino, and one student was black.
- **Period 5**: Five students in the classroom, four males and one female. Four of the students had IEPs. Two students were white, two students were Hispanic/Latino, and one student was black.
- **Period 6**: Three students in the classroom, two males and one female. All students had IEPs. Two students were white and one student was Hispanic/Latino.
- **Period 8**: Five students in the classroom, all male. Three of the students had IEPs. Four students were white, and one student was Hispanic/Latino.
- **Period 9**: Eleven students in the classroom, nine males and two females. Seven of the students had IEPs. Five students were white, four students Hispanic/Latino, and 2 students were black.

Exhibit R, pp. 6-51; *Interview with Director*.

143. Six of the fifteen students *only* used the Recovery Room as an alternative to an out-of-school suspensions. *Id.* at pp. 1-4. These students spent anywhere from one to nine days in the Recovery Room in lieu of a suspension. *Id.* Afterwards, some of the students' parents requested that their children spend more time in the Recovery Room. *Response*, p. 26.
144. Five of the students (including Student) only went to the Recovery Room for non-core classes, such as morning meeting, advisory, wellness, and study hall. *Exhibit R*, pp. 1-4. Student began his days with morning meeting in the Recovery Room, until he was placed on a shortened day in the library on September 27. *Id.* at p. 1.
145. Student B, Student C, Student D, and Student F were in the Recovery Room for core classes during Fall 2021. *Id.* at pp. 1-3. As noted above, Student B, Student C, and Student D all spent time in the Alternative Classroom during the 2021-2022 school year. *Id.* at p. 6.
146. Student B was in the Recovery Room for morning meeting, language arts, social studies, science, wellness, and an elective. *Id.* His IEP dated May 16, 2022, remained in effect during Fall 2022. *Exhibit S*, pp. 353-66. That IEP indicated that Student B spend at least 80% of his time in the general education environment. *Id.* at p. 365. His IEP required him to receive specialized math and literacy instruction, as well as study skills services, inside the general education classroom and occupational therapy services outside the general education classroom. *Id.* at p. 364.
147. Student C was in the Recovery Room for morning meeting, social studies, science, wellness, and advisory. *Exhibit R*, p. 1. When School resumed in Fall 2022, Student C's IEP

required that he spend 40-79% of his day in the general education class. *Exhibit S*, p. 560. And, as of November 2022, Student C’s IEP specified that he spend 80% or more of his day in the general education class. *Id.* at p. 574. His IEP included an accommodation indicating that Student “will be placed in a modified classroom with 1:1 para and small group.” *Id.* at p. 569.

148. Student D was in the Recovery Room for morning meeting, language arts, social studies, math, wellness, and an elective. *Exhibit R*, p. 1. His IEP required that he spend at least 80% of his day in the general education classroom. *Exhibit S*, p. 776. Per his IEP, Student D received specialized math instruction inside the general education classroom, while his literacy, counseling, and academic access services were delivered outside the general education classroom. *Id.* at p. 775.
149. Student F transferred to the District in late September. *Interview with Director*. The District adopted his IEP from the prior district (“prior IEP”) and began his reevaluation, which was due in late October 2022. *Id.* Under his prior IEP, Student F spent 40-79% of his day in the general education classroom. *Exhibit S Supplement*, p. 57. He received 180 minutes per week combined of social work or behavior services, as well as a significant amount of reading, writing, and math instruction. *Id.*
150. Student F was placed in the Recovery Room on September 27. *Exhibit R*, p. 4. He was in the Recovery Room for morning meeting, social studies, science, wellness, and an elective. *Id.* Student F had behavioral challenges, and, in October, the District convened the VRT to review several incidents with Student F. *Exhibit S*, p. 113.
151. Student F’s re-entry plan—dated November 7—placed Student on a shortened school day for core content only. *Id.* at p. 123. He would use APEX to access his science and social studies courses to “progress forward as quickly as possible.” *Id.* The re-entry plan noted that Student F would “need online structured alternative setting for high school.” *Id.* The District made all of these determinations within 6 weeks of Student F transferring to the District. See *Exhibit R*, p. 4; *Exhibit S*, p. 123. The day of the re-entry meeting, Student F’s parents revoked their consent for special education. *Id.* at p. 106.
152. The service logs produced by the District indicate that two School counselors met with Student F after he transferred into the District. *Exhibit T*, pp. 31-32. However, the logs appear to indicate that the services were primarily provided during morning meeting in the Recovery Room. *Id.* Those services, therefore, would not have been specifically tailored to Student F’s needs.
153. The documentation provided by the District does not demonstrate that Student B, Student C, Student D, and Student F received all their special education and related services while they were in the Recovery Room. See *Exhibit T*, pp. 1-156. Other than producing the special education teachers’ schedules, the District has not provided any narrative or records indicating when these students received their specialized instruction or academic access services. *Id.* In its Response, the District merely indicated that the “District has provided the special education and related services required by the IEPs of the Listed Students.” *Response*, p. 26. Though the District produced logs from the School counselors, those logs often did not indicate the length of service and contain entries which did not appear to be related to the provision of services (such as escorting a student to the office after a behavioral incident). For these reasons, the SCO finds that the District failed to provide

Student B, Student C, Student D, and Student F with the special education and related services required by their IEPs during Fall 2022.

154. The IEPs for Student B, Student C, Student D, and Student F do not consider whether supplementary aids and services would make it possible for the students to be successful in the general education environment. See *Exhibit S*, pp. 1-952; *Exhibit S Supplemental*, pp. 1-57, *Exhibit S Second Supplemental*, pp. 1-52.

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 failed to fully implement Student’s IEP, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

Parent’s concern is that the District failed to implement Student’s IEP by: (1) not providing Student the required special education and related services; and (2) not educating Student in the educational placement specified in his IEP.

A. Legal Requirements for IEP Implementation

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

B. Accessibility of Student’s IEP to Teachers

The SCO must first determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the Findings of Fact demonstrate that Case Manager and Counselor were aware of the responsibilities under Student’s 2021 IEP. (FF # 16.) Indeed, both staff members

participated in Student's IEP Team meeting on December 15, 2021. (FF # 25.) Case Manager and Counselor reviewed Student's IEP during School's child support team meeting in August 2022, and both had access to the 2021 IEP in Enrich. (FF #s 16, 75.) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

C. Special Education and Related Services

The 2021 IEP required the District to provide Student with 20 minutes per day of specialized reading instruction and 60 minutes per week of counseling services. (FF # 32.) Both were to be provided outside the general education classroom. (*Id.*)

Specialized Reading Instruction

Student remained on a shortened schedule for most of Spring 2022, though his schedule changed several times. (FF #s 46-50.) During the semester, Student attended language arts class either via Zoom or in person with Case Manager. (*Id.*) When Student participated via Zoom, Case Manager indicated she provided Student's specialized instruction after class ended in the Alternative Classroom. (FF # 52.) On the days Student physically went to class, Case Manager worked with Student in a small group inside the co-taught language arts class. (FF # 55.)

The Findings of Fact raise questions about the instruction provided in the Alternative Classroom. The documents in the record do not corroborate Case Manager's position. Though the IDEA does not require service logs, District staff need to be able to show that a student's services were provided. Here, even though Case Manager was supposed to work with Student daily, her services were not reflected in his schedule. (FF #s 46-48.) Additionally, Student's daily behavior logs do not appear to contain any notes from Case Manager. (FF # 53.) Finally, Student recalled Case Manager coming to the Alternative Classroom only occasionally. (FF # 52.) As detailed in the Findings of Fact, the Record does not support finding that Case Manager instructed Student inside the Alternative Classroom.

Moreover, the services provided inside the general education classroom, though perhaps beneficial, were not consistent with the 2021 IEP. Nonetheless, the SCO gave the District credit for 10 minutes of services for each day Student received instruction inside the general education classroom. For these reasons, the SCO finds and concludes that the District failed to provide Student with 1,130 minutes of specialized reading instruction during Spring 2022.

In Fall 2022, Student began the school year with back-to-back suspensions before he was placed on a shortened school day in the library. (FF #s 78, 81, 82, 87, 89.) Case Manager did not track the services she provided, though she indicated she worked with Student from 8:30-9:00 a.m. each school day. (FF # 106.) Under his schedule, Student was not in the library until 8:45 a.m. Again, none of the documents in the Record validate Case Manager's position. (FF #s 107-08.) For these reasons, the SCO finds and concludes that the District failed to provide Student with 260 minutes of specialized reading instruction during Fall 2022.

Counseling Services

During Spring 2022, Counselor indicated she pulled Student from the Alternative Classroom for counseling services. (FF # 61.) Though Counselor tracked the services she provided to Student, that log indicated she provided services to Student on days he was absent or the District was

closed. (FF #s 62-63.) These inconsistencies—and the lack of other corroborating documentation—raise questions about the reliability of Counselor’s service log. (FF #s 62-64.) For that reason, the SCO gives the District credit for only one-half of Student’s counseling services during Spring 2022 and finds and concludes that the District failed to provide Student with 600 minutes of counseling. (FF # 65.)

Student received most of his counseling services during Fall 2022. (FF # 110.) However, there were two weeks in which he did not receive his counseling services. (FF # 111.) As a result, the SCO finds that the District failed to provide him with 120 minutes of counseling during Fall 2022.

Therefore, the SCO finds and concludes that the District failed to fully implement Student’s IEP, in violation of 34 C.F.R. § 300.323. As a result of that violation, Student did not receive 1,390 minutes of specialized instruction and 720 minutes of counseling required by his IEP.

D. Educational Placement

The IDEA requires an IEP to provide the student’s placement in the LRE, which is the amount of time the student will spend in the general education environment. 34 C.F.R. § 300.320(a)(5). School district must educate students consistent with the placement specified by their IEPs. *Id.* §§ 300.320(a)(5), 300.323(c)(2).

Here, at all times during the relevant time period, the 2021 IEP required Student to spend at least 80% of his time in the general education classroom. (FF # 33.) While the 2021 IEP was in effect, Student was placed in the general education classroom, in the Alternative Classroom, and in the library. (FF #s 46-48, 50, 76, 89.) The District conceded that the library did not constitute a general education setting and, thus, was inconsistent with Student’s IEP. (FF # 104.) However, the District argued the Alternative Classroom was a general education classroom. (FF # 23.) This argument was based on Student’s ability to connect to his general education courses remotely: “[H]e was accessing his classes remotely through an online platform, as any child would do on homebound or during the pandemic.” (*Id.*) During the COVID-19 pandemic, school districts grappled with educating all students remotely when it was not safe or permissible for students to attend school in person. The District now argues that what was passable during the pandemic for all students is acceptable for Student. That argument is not convincing.

The District conflates a general education *classroom* with the general education *curriculum*. Student had at least some access to the general education curriculum while he was in the Alternative Classroom. (FF # 20.) However, Student had no access to a general education classroom. He was, in large part, completely isolated from his peers. (FF # 21.) At times, Student was the only student in the Alternative Classroom. (*Id.*) When he was joined by others, those students also had disabilities. (FF # 127.) Even though the IDEA does not define what constitutes a general education environment, it is clear that Alternative Classroom was not a general education classroom.

For these reasons, the SCO finds and concludes that the District failed to educate Student consistent with the educational placement in the 2021 IEP, in violation of 34 C.F.R. § 300.323.

E. Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE.

34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of FAPE. Only the failure to implement a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. See, e.g., *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822.

Here, there was more than a minor discrepancy between the services required and the services provided. Indeed, the District failed to implement the primary components of Student's IEP. Instead of educating Student in the general education classroom, the District removed him to the Alternative Classroom and the library. (FF #s 32, 46-48, 89.) The District also neglected to provide Student his literacy and counseling services—the only services required by his IEP. (FF # 32.) Also, the violations spanned twelve months over two separate school years. (FF #s 52-65, 103-111.)

The violations by the District undoubtedly impacted Student's ability to access his education and improve his reading skills. For these reasons, the SCO finds and concludes that the District's failure to implement Student's 2021 IEP was a material failure that amounted to a denial of FAPE. This denial of FAPE entitles Student to an award of compensatory services. See *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

F. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an "hour-for-hour calculation." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the District failed to provide Student with a significant number of services. In total, Student missed 1,310 minutes (over 21 hours) of specialized instruction and 720 minutes (12 hours) of counseling. (FF #s 60, 65, 109, 111.) These were the primary component of Student's IEP and crucial to Student's success in middle school. (FF #s 32.) Accordingly, the SCO awards Student 18 hours of specialized instruction and 12 hours of counseling.

Conclusion to Allegation No. 2: The District failed to develop, review, and revise an IEP that was tailored to Student's individualized needs, in violation of 34 C.F.R. § 300.324. This violation resulted in a denial of FAPE.

Parent's concern is two-fold. First, Parent is concerned that the 2021 IEP was not tailored to Student's individualized needs because it did not provide adequate behavioral supports or annual

goals. Second, Parent is concerned that the District failed to review and revise the 2021 IEP to address Student's lack of expected progress.

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

A. The 2021 IEP Development Process

An IEP is "the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a). The IDEA specifies the required components of an IEP, including a statement of measurable annual goals. *Id.* § 300.320(a)(2)(i). For a student whose behavior impedes his learning or that of others, an IEP must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." *Id.* § 300.324(a)(2)(i).

Under the first prong of *Rowley*, nothing in the record indicates that 2021 IEP did not comply with the IDEA's procedural requirements. Indeed, the 2021 IEP was developed at a properly convened IEP Team meeting on December 15, 2021 and contained all of the required content. (FF #s 25-42.) Parent has not alleged that the 2021 IEP was procedurally deficient but, instead, contends it was not tailored to Student's individual needs. Therefore, the SCO finds and concludes that the 2021 IEP satisfies the first prong of the *Rowley* test.

B. Substantive Adequacy of the 2021 IEP

The second prong of *Rowley* considers whether the 2021 IEP was substantively appropriate by asking whether the IEP was reasonably calculated to enable the child to receive an educational benefit. Here, the SCO examines each of the concerns raised by Parent to determine the adequacy of the 2021 IEP.

Behavioral Strategies and Supports

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 supports; 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) (hereinafter *Assistance*). 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 (E.D.N.C. 02/03/20).

The U.S. Department of Education recently emphasized the importance of reviewing a student’s behavioral supports, noting that:

If the child's IEP already includes behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the child's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of children with disabilities and ensure FAPE are appropriately implemented so as to avoid an overreliance on, or misuse of, exclusionary discipline in response to a child's behavior.

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, 122 LRP 24161, Question A-6 (OSEP 2022) (hereinafter, *Discipline Q&A*).

Under the second prong of *Rowley*, the SCO finds and concludes that the 2021 IEP was not substantively appropriate, because it was not tailored to Student’s unique behavioral needs. Student’s IEP Team reviewed his BIP in December 2021, as part of his annual review. (FF # 36.) The BIP, however, was nearly identical to Student’s BIP from the Transfer IEP. (FF # 45.) The IEP Team added two setting event strategies (shortened school day and space to calm down) and a crisis plan; otherwise, Student’s BIP remained unchanged. (*Id.*) A crisis plan does not provide behavioral supports to help Student access his education; instead, a crisis plan serves to resolve a situation in which Student’s behavior has escalated to an unsafe place. The IEP Team continued Student’s existing social/emotional wellness goal, which had originally been created in Fall 2020 in Student’s prior district. (FF #s 8, 30.)

The SCO recognizes that a BIP need not always change from year-to-year. However, at the time of Student’s annual review, he had been suspended for twelve days and had spent several months on a shortened school day in the Alternative Classroom. (FF # 26.) By moving Student to a shortened day in the Alternative Classroom, the District indicated that Student’s behavior was so challenging that he could no longer be in the general education environment. Despite this, the District took no steps to review Student’s existing behavioral supports, evaluate Student’s behavior, or provide new behavioral supports. The District was content to leave Student in the Alternative Classroom.

For these reasons, the SCO finds and concludes that, by not including proper supports and strategies to address Student’s behavior, the District failed to develop an IEP that was tailored to Student’s individualized needs, in violation of 34 C.F.R. § 300.324(a)(2)(i). This resulted in a substantive violation of the IDEA. See *D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements).

Annual Goals

An IEP must include measurable annual goals designed to: (1) meet the needs that result from the student’s disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student’s other education needs that result from

the student's disability. 34 C.F.R. § 300.320(a)(2). To allow for the evaluation of a student's progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff'd*, 38 IDELR 63 (6th Cir. 2003). Appropriate goals should be clear enough that a stranger, or person unfamiliar with the IEP, would be able to implement the goal, monitor student's progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

Parent's concern about annual goals relates to the social/emotional wellness goal in the 2021 IEP. Student's 2021 IEP had three annual goals, two for reading and one for social/emotional wellness. (FF # 30.) The IEP Team repeated Student's social/emotional wellness goal from the Transfer IEP. (*Id.*) The goal—which required Student to follow school and classroom rules with no more than two verbal redirections—had been in place since December 2020 in Student's prior district. (FF # 7.) And Student had been working on the goal in the District since his transfer in August 2021. (FF #s 8, 30.) Student had not yet met the goal. (FF # 30.)

Though the District could have written a stronger annual goal, the SCO finds that the social/emotional goal itself complies with the IDEA. Repeating an annual goal *can* be an indication of lack of expected progress or an inappropriate goal; however, that is not always the case. See *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *K.D. v. Downingtown Area Sch. Dist.*, 904 F.3d 248 (3d Cir. 2018). Here, Student was still relatively new to the District. The SCO finds that the District's failure to provide Student adequate behavioral supports to be the overarching issue. With proper behavioral supports, perhaps Student could have made appropriate progress on the annual goal. For these reasons, the SCO finds and concludes that the annual goals in Student's 2021 IEP were appropriately tailored to his individualized needs, consistent with 34 C.F.R. § 300.324(a)(1). No violation of the IDEA occurred.

C. Review and Revision of Student's 2021 IEP

Parent's concern is that District failed to address any lack of expected progress towards annual goals and in the general education curriculum, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).

Though the IDEA does not promise a particular educational or functional outcome for a student with a disability, it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Andrew*, 137 S. Ct. at 999. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *Id.*; *Andrew*, 137 S. Ct. at 994.

The U.S. Department of Education confirmed a school district's obligation to monitor progress and convene the IEP Team if progress does not occur:

The IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it. For example, if a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress. Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. If a child is not making progress at the level the IEP Team expected, despite

receiving all of the services and supports identified in the IEP, the IEP Team must meet to review and revise the IEP if necessary, to ensure the child is receiving appropriate interventions, special education and related services and supplementary aids and services, and to ensure the IEP's goals are individualized and ambitious.

Questions and Answers (Q&A) on U. S. Supreme Court Case Decision *Endrew F. v. Douglas County School District Re-1* (2017).

In this case, Student began having behavioral challenges when he returned to a full day in the general education classroom near the end of the 2021-2022 school year. (FF #s 67-69.) And those behavioral challenges continued at the beginning of the 2022-2023 school year. (FF #s 77-78.) Within the first month of School, Student had already been suspended for 14 days. (FF #s 82, 84.) By the end of September, the District had placed Student on a shortened school day in the library, where Student worked independently on online courses. (FF #s 87, 89.) At that point, the District should have convened Student's IEP Team to address Student's lack of progress on his social/emotional wellness goal.

Instead, the District took no steps to better understand Student's behaviors or provide him with any additional supports at School. (FF # 90.) The District did not conduct any assessments or even convene Student's IEP Team. (*Id.*) The District left Student in the library and waited for his annual review. (FF # 89.) As a result, Student spent the majority of his first year in the District in either the Alternative Classroom or library, away from the general education classroom and peers. This action by the District directly contradicts guidance from the Department of Education cautioning districts from relying on exclusionary discipline to address behavior. *Discipline Q&A*, Question A-6. For these reasons, the SCO finds and concludes that the District failed to review and revise Student's IEP to address Student's lack of progress on his social/emotional wellness goal, in violation of 34 C.F.R. § 300.324(b)(1). This resulted in a procedural violation of IDEA.

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Here, the District's violation deprived Student of an educational benefit. The inclusion of appropriate positive behavioral interventions and supports in Student's IEP—either at the time of its development or through revision—could have given Student greater access to the general education curriculum and eliminated the need for him to be on a shortened school day away from his peers. For this reason, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

Conclusion to Allegation No. 3: The District failed to educate Student in the LRE, in violation of 34 C.F.R. §§ 300.114 and 300.116. This violation resulted in a denial of FAPE.

In her Complaint, Parent expressed concern that the District's placement of Student in the Alternative Classroom and the library violated the IDEA because both placements were more restrictive than necessary.

The IDEA mandates that students with disabilities receive their education in the general education environment with typical peers to the maximum extent possible. 34 C.F.R. § 300.114. "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). Students with disabilities should only be removed from the regular educational environment "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 C.F.R. § 300.114(a)(2)(ii). If a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

A child need not fail in the general education environment before moving to a more restrictive program; however, more restrictive settings should only be considered after the IEP Team contemplates placement in general education, including the supplemental aids and services required to make that setting successful. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). IEPs must include evidence to support LRE placement decisions. *See, H.L. v. Downingtown Area Sch. Dist.*, 65 IDELR 223 (3d Cir. 2015) (unpublished) (finding that a district had not considered the full range of supplemental aids and services where the IEP and placement notice relied on general statements of need to support 90 minutes a day of pull-out services); *Yonkers (NY) Pub. Schs.*, 69 IDELR 18 (OCR 2016) (using boilerplate language in the LRE section evidences failure to make individualized determination of student's ability to participate in general education).

Here, the District unilaterally removed Student from the general education classroom and placed him in more restrictive settings during both the 2021-2022 and 2022-2023 school years. (FF # 18.) Both decisions were made solely by District staff without involving Student's IEP Team or Parent. (FF #s 86, 87, 90.) Nothing in the Record indicates that the District considered whether any supplemental aids and services might make it possible for Student to remain in the general education environment. (*Id.*) The District did not conduct any additional evaluations or take any steps to understand what might be causing Student's behavior. (*Id.*)

Additionally, the 2021 IEP did not contain any evidence supporting the District's placement decisions. The District moved Student to the Alternative Classroom in October 2021 and his IEP Team met in December 2021 for his annual review. (FF #s 17-19, 77-90.) During that meeting, the IEP Team continued Student's placement in the Alternative Classroom (FF #s 18-19, 25.) Yet the LRE section of his IEP contained no discussion of the advantages and disadvantages of this placement. (FF # 34.) Instead, the section merely repeated Student's existing social/emotional wellness goal: "Increase in school day based on student success – [Student] will follow school and classroom rules with no more than 2 verbal redirections." (*Id.*) This language suggested Student would have to meet his annual goal to earn any additional time in the general education setting. (*Id.*) Despite his placement in the Alternative Classroom, the 2021 IEP still indicated Student would spend at least 80% of his time in the general education environment. (FF # 33.)

For these reasons, the SCO finds and concludes that the District failed to ensure Student was educated to the maximum extent possible with nondisabled peers and failed to determine Student's placement based on his IEP, in violation of 34 C.F.R. §§ 300.114 and 300.116.

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District's decisions to unilaterally change Student's placement significantly impeded Parent's opportunity to participate in the decision-making process. Indeed, Parent was given no opportunity to participate in the process whatsoever. But, more importantly, the District's violation deprived Student of an educational benefit, by severely eliminating his access to his general education classes and his peers. For these reasons, the SCO finds and concludes that this violation resulted in a denial of FAPE.

Conclusion to Allegation No. 4: The District failed to adequately monitor Student's progress on his annual IEP goals and provide Parent with reports on Student's progress, in violation of 34 C.F.R. § 300.320(a)(3). This violation resulted in a denial of FAPE.

Parent's concern is that the District did not adequately monitor Student's progress on his annual goals under the 2021 IEP.

Under the IDEA, an IEP must contain a description of how a student's progress toward meeting annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the annual goals. 34 C.F.R. § 300.320(a)(3).

In this case, as the Findings of Fact demonstrate, the District failed to properly monitor Student's progress on his annual goals under the 2021 IEP. (FF #s 114-118.) Counselor did not enter Student's progress on his social/emotional wellness goal for the first ten months. (*Id.*) Additionally, the measurements of Student's progress on his reading goals were inadequate. (FF # 114-116.) Case Manager indicated Student's growth using phrases like "getting more consistent" and "more consistent." (*Id.*) Without any quantifiable information or data, these phrases are too vague to allow either District staff or Parent to determine whether Student was making appropriate progress on his reading goal.

For these reasons, the SCO finds and concludes that the District failed to adequately monitor Student's progress and failed to provide Parent with adequate reports on Student's progress, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District's failure to properly monitor Student's progress prevented Parent from knowing how Student was doing on his annual goals. Parent did not have any other meetings with District staff during Spring 2022 or Fall 2022 where Student's progress (or lack thereof) was discussed.

Moreover, the District's violation impeded Student's right to a FAPE. Without appropriate progress monitoring, staff could not determine whether Student was making expected progress or whether the District needed to convene his IEP Team to address his lack of expected progress.

Conclusion to Allegation No. 5: The District determined Student's educational placement in September 2022 without including Parent, in violation of 34 C.F.R. §§ 300.116(a)(1), 300.327, and 300.501(c)(1). This violation resulted in a denial of FAPE.

In her Complaint, Parent raised a concern that the District changed Student's placement without including her in the decision-making process.

Placement decisions must be made by a group of persons, including the parents. 34 C.F.R. §§ 300.116(a)(1), 300.327, 300.501(c)(1). The District conceded that "it made the decision to educate [Student] in the school library outside of an IEP Team meeting" and without including Parent. (FF # 90.) As a result, the SCO finds and concludes that the District violated 34 C.F.R. §§ 300.116(a)(1), 300.327, and 300.501(c)(1) by unilaterally changing Student's placement. This resulted in a procedural violation of the IDEA.

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District's decision to unilaterally change Student's placement eliminated Parent's opportunity to participate in the decision-making process. For this reason, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

Conclusion to Allegation No. 6: The District failed to provide Parent with PWN regarding the change to Student's educational placement, in violation of 34 C.F.R. § 300.503(a). This violation resulted in a denial of FAPE.

Parent's concern is that the District did not provide her with PWN of the change to Student's educational placement.

The IDEA requires PWN to be provided to the parents of a child with a disability within a reasonable time before the school district:

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. § 300.503(a). Failure to provide prior written notice within a reasonable time before changing a student's placement constitutes a procedural violation that may result in a denial of FAPE. See *El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13). The notice must be provided so that parents have enough time to fully consider and respond to the action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those options were rejected; and a description of any other factors relevant to the district's proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(3) and (6)-(7). It must also include a statement that the parents of a child with a disability have protections under the procedural safeguards and the means of obtaining a copy if the notice is not for an initial evaluation, and sources for parents to contact to obtain assistance in understanding the procedural safeguards. *Id.* § 300.503(b)(4)-(5).

The IDEA and federal guidance provide a means of determining whether a move constitutes a "change in placement." A school district must consider three factors to determine whether an action constitutes a "change of placement": (1) "whether the educational program set out in the child's IEP has been revised"; (2) "whether the child will be able to be educated with nondisabled children to the same extent"; and (3) "whether the child will have the same opportunities to participate in nonacademic and extracurricular services." *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

Here, the District unilaterally changed Student's placement in September 2022 when it moved Student to the library. (FF #s 85-90.) This action by the District impacted Student's educational program, as he moved from School's general education courses to online courses through APEX. (FF # 87.) Additionally, Student was no longer educated with *any* other child and had no access to nonacademic or extracurricular activities. (*Id.*) Under the guidance in *Letter to Fisher*, Student's move to the library qualified as a change of placement.

Therefore, the District was required to issue a PWN regarding Student's change of placement. Instead, Parent was informed of the District's decision during the reentry meeting—the same day Student would begin his placement in the library. (*Id.*) The District never provided Parent with PWN regarding the change to Student's placement. (FF # 90.) Accordingly, the SCO finds and concludes that the District failed to provide Parent with the required PWN, in violation of 34 C.F.R. § 300.503. This resulted in a procedural violation of the IDEA.

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District unilaterally changed Student's placement. The District not only excluded Parent from the decision-making process but also failed to notify her of the decision so that she would have an opportunity to respond to the District's action. The numerous violations surrounding the changes to Student's placement significantly impeded Parent's opportunity to participate in the decision-making process for Student. For this reason, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

Conclusion to Allegation No. 7: The District made a significant change to Student's educational placement without involving Student's IEP Team and without considering a reevaluation, in violation of ECEA Rule 4.03(8)(b)(ii)(B).

Parent's concern is that the District made a significant change to Student's educational placement in Fall 2021 and Fall 2022 without considering a reevaluation of Student, as required by ECEA Rule 4.03(8)(b)(ii)(B).

The ECEA Rules require a significant change of educational placement to be made by the IEP Team and upon consideration of reevaluation. ECEA Rule 4.03(8)(b)(ii)(B); see *Weld RE-5J School District*, 77 IDELR 148 (SEA CO 7/14/2020) (holding that a move to a placement where student was completely removed from the general education environment and taught one-on-one by a special education teacher constituted a significant change in placement). A significant change of educational placement occurs where a school district:

- Adds or terminates instructional or related services;
- Makes any change that results in the student having different opportunities to participate in nonacademic and extracurricular activities; and
- Transfers a student from a brick-and-mortar school to an online school or vice versa.

ECEA Rule 4.03(8)(b)(ii)(B). On the contrary, a nonsignificant change of placement includes "a change in the amount of a given service." *Id.* 4.03(8)(b)(i).

Here, the District made a significant change of placement in Fall 2022 when it moved Student from the general education classroom to the library. As a result of this change of placement, Student was no longer participating in general education classes with his peers (either in person or online) but was working independently on online courses. (FF # 87.) The change of placement completely removed Student from his peers and eliminated his opportunity to participate in nonacademic activities (such as lunch and recess) and any extracurricular activities (due to the no trespass restriction). The District unilaterally changed Student's placement and did not reevaluate Student (or even consider a reevaluation) prior to the change of placement. (*Id.*) As such, the SCO finds and concludes that the District violated ECEA Rule 4.03(8)(b)(ii)(B).

Conclusion to Allegation No. 8: The District failed to conduct MDRs within ten school days of the District's decisions to change Student's placement, in violation of 34 C.F.R. § 300.530(e). This violation resulted in a denial of FAPE.

Parent's concern is that the District failed to conduct an MDR following Student's disciplinary removals in Spring 2022 and Fall 2022.

A. Legal Requirements for an MDR

Discipline of a student with a disability may result in a change to the child's placement and entitle the student to procedural protections under the IDEA. See 34 C.F.R. §§ 300.530, 300.536. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of conduct, a school district must perform an MDR to determine whether the behavior at issue was a manifestation of the student's disability. *Id.* § 300.530(e)(1).

B. Disciplinary Change of Placement

Before analyzing whether the District was obligated to conduct an MDR, the SCO must determine whether a disciplinary change of placement occurred and, if so, the date the change of placement happened. A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has

been subjected to a series of short-term removals that total more than 10 school days and constitute a pattern. *Id.* § 300.536(a). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis; this determination is inherently subjective. *Id.* § 300.536(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46715 (Aug. 14, 2006).

The IDEA's disciplinary procedures apply to a removal unless all three of the following factors are met: (1) The child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent the student would have in the student's current placement. *Assistance*, 71 Fed. Reg. 46715. OSERS has also restated the first of these requirements as affording the student "the opportunity to continue to be involved in and make progress in the general education curriculum." *Dear Colleague Letter*, 68 IDELR 76 (OSERS 2016).

School districts must consider both formal removals (such as suspensions) and informal removals. *Discipline Q&A*, Question C6. Informal removals include "action[s] taken by school personnel in response to a child's behavior that excludes the child for part or all of the school day, or even an indefinite period of time." *Id.* at p. 54. Administratively shortened school days—when school districts unilaterally reduce a student's school day—constitute informal removals. *Id.* The Department of Education cautioned that the use of administratively shortened school days to address problematic behavior "if implemented repeatedly, could constitute a disciplinary removal from the current placement." *Letter to Mason*, 118 LRP 32230 (OSEP 07/27/18).

C. Spring 2022

In her Complaint, Parent raised a concern that the cumulative effect of Student's suspensions obligated the District to conduct an MDR during Spring 2022. By November 2021, Student had already been suspended from School for nearly twelve days. (FF # 26.) If the incidents on May 19 and May 23 constituted a pattern with Student's prior removals, the District was obligated to conduct MDRs to determine whether Student's behavior was a manifestation of his disability. The District conceded that it failed to conduct MDRs, as required by 34 C.F.R. § 300.530(e), following the incidents on May 19 and May 23. (FF # 69.) The District attributes this failure to "an oversight." (*Id.*) For these reasons, the SCO finds and concludes that that District failed to conduct MDRs in May 2022, in violation of 34 C.F.R. § 300.530(e).

Separately, the SCO finds that a disciplinary change of placement occurred in Fall 2021 when the District administratively shortened Student's school day and placed him in the Alternative Classroom. (FF #s 18-19.) However, Student's IEP Team ratified that change of placement at the December 2021 IEP Team meeting, essentially ending the "disciplinary" nature of the placement. (FF #s 27-35.) See *Jefferson Cty. Sch. Dist. RE-1*, 120 LRP 19818 (SEA CO 04/28/20) (finding that action by the IEP Team "stopped clock" on disciplinary removal).

D. Fall 2022

At the beginning of the 2022-2023 school year, Student was involved in two disciplinary incidents on the fourth day of School. (FF #s 77.) Both incidents involved threatening language. (*Id.*) Student was suspended for 11.64 days total for the two incidents. (FF #s 78, 81.) His tenth day of removal occurred on September 13. (FF # 82.) Yet, the District did not conduct an MDR until October 5, following a separate disciplinary incident on September 21. (FF # 92.) The District

concedes that it failed to conduct an MDR following Student's disciplinary change of placement in September 2022. (*Id.*) The SCO finds and concludes that the District violated 34 C.F.R. § 300.530(e) when it failed to conduct an MDR within 10 school days of a disciplinary change of placement. This violation continued throughout Fall 2022. The District changed Student's placement when it administratively shortened his school day and placed him in the library. (FF #s 86-89.) Each day that Student was placed in the library constituted an additional informal removal that should have triggered an MDR.

E. Denial of FAPE

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District ignored the disciplinary protections provided by the IDEA for students with disabilities. Those protections seek to ensure that students with disabilities continue to have access to a FAPE, in spite of any behavioral challenges and regardless of whether the student's behavior is a manifestation of his disability. If the District had timely conducted an MDR, Student would have benefited from the IDEA's procedures irrespective of the outcome of the MDR. For example, if an MDR team found Student's behavior was not a manifestation of his disability, it would have triggered the District to provide Student the educational and behavioral services to which he was entitled under § 300.530(d). Student could have benefitted from those on the other days he was suspended in Spring 2022 or Fall 2022. Alternatively, if the MDR team determined that Student's behavior was a manifestation of his disability he would have been returned to his placement, and the IDEA would have triggered review of his BIP or a new FBA. 34 C.F.R. § 300.530(e)(3). The District's repeated failures to conduct timely MDRs denied Student of these disciplinary protections and impacted his ability to access his FAPE. For this reason, the SCO finds that the District's violation resulted in a denial of FAPE.

Conclusion to Allegation No. 9: The District failed to provide Student educational services after his tenth day of the removal, in violation of 34 C.F.R. § 300.530(b)-(d). This violation resulted in a denial of FAPE.

Parent's concern is that the District failed to provide Student with educational services after his tenth day of removal during the 2022-2023 school year.

Once a student has been removed from his or her educational placement for ten days, the IDEA requires a school district to provide educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). Such educational services must allow the student "to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." *Id.* § 300.530(d)(1)(i). If the removals result in a change of student's placement—as they did here—the IEP Team must determine what services are necessary for the student to progress toward meeting his or her IEP goals. *Id.* § 300.530(d)(5). After the tenth day of removal, the student must also "[r]eceive, as appropriate, a functional behavior assessment, and behavior intervention services and modifications designed to address the violation so that it does not recur." *Id.* § 300.530(d)(1).

In this case, Student was removed from his educational placement on September 13, 2022 (his eleventh day of removal). (FF # 82.) At that point, the District was required to provide educational services to Student on each subsequent day of removal. Between his disciplinary change of placement on September 13 and his placement in the library on September 27, Student experienced an additional five days of removal. (FF #s 81, 84.) However, Student’s placement in the library did not end his disciplinary removal but, instead, extended it. Student remained in the library—and in a disciplinary change of placement—until his IEP Team meeting in December 2022.

Evidence in the Record suggests that Student could access his courses online during the additional five days of removal in September. (FF # 83.) Though the District sent Student’s iPad home at times when he was suspended, it is not clear when he had access to his iPad and when he did not. (*Id.*) Even assuming Student was able to access his general education courses, he did not receive any other services. (FF # 82.) Once Student was placed in the library, he had access to general education courses through APEX. (FF # 87.)

Student’s IEP Team did not meet—either in September or after his placement in the library—to determine what services were necessary to aid Student’s progress towards his annual goals. (FF # 82.) Moreover, the District took no action to provide Student with behavioral services to prevent recurrence of the behavioral issue and did not conduct an FBA. (*Id.*) For these reasons, the SCO finds and concludes that the District failed to provide Student with educational services after his tenth day of removal, in violation of 34 C.F.R. § 300.530(b)-(d). This was a substantive violation of the IDEA.

The failure to provide services can result in a denial of FAPE. However, as discussed in part (E) to Allegation No. 1, only a “material” failure gives rise to a denial of FAPE. See *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard does not require that a child “suffer demonstrable harm.” *Holman v. Dist. of Columbia*, 67 IDELR 39 (D.D.C. 2016). Instead, “the crucial measure” is the “proportion of services mandated to those provided.” *Id.*

Here, the District failed to provide Student with educational services on five days during Spring 2022 and on five days during Fall 2022. (FF #s 67, 68, 81, 82.) In theory, Student had access to his courses online, but it is unclear whether he had access to his iPad or a computer. (FF # 83.) Nonetheless, the District did not provide Student with any services designed to help him progress towards his annual goals or any behavior services. The difference between what should have been provided and what was provided is material. Consequently, this failure resulted in a denial of FAPE to Student. Given the degree to which a FAPE was denied, “Student is entitled to compensatory services.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

A. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now

explains a compensatory education package designed to help place Student in the same position he would have been had he been provided educational services during his removal.

Here, the District provided Student with little to no access to his education during the five additional days of removal. (FF # 82.) Even assuming Student could access his general education classes, he did not receive any specialized instruction or behavioral support. (*Id.*) Though unacceptable, the District's mistake is relatively minor in the context of an entire school year and unlikely to have a significant impact on Student's ability to make progress on his annual goals. Thus, the SCO finds an award of 9 hours of tutoring to be appropriate.

Conclusion to Allegation No. 10: The District improperly determined whether Student's behavior was a manifestation of his disability during MDR held on October 5, 2022, in violation of 34 C.F.R. § 300.530(e)(1). This violation resulted in a denial of FAPE.

Parent's concern is that the District failed to consider all information in Student's file when it determined that Student's behavior was not a manifestation of his disability.

Within ten school days of any decision to change the placement of a child with a disability due to a violation of a code of conduct, an MDR must be held to determine whether the behavior at issue was a manifestation of the student's disability. *Id.* § 300.530(e)(1). The student's behavior must be determined to be a manifestation of the student's disability if: (1) the behavior in question was "caused by, or had a direct and substantial relationship to" the student's disability, or (2) the behavior in question was a direct result of the school district's failure to implement the student's IEP. *Id.* In making this determination, the team must "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents." *Id.*

Here, the SCO finds that the District failed to consider all of the information in Student's file when it determined that Student's behavior was not a manifestation of his disability at the October 5 MDR. As an initial matter, the District lacked adequate information regarding the underlying incident. Following the incident, Dean of Students interviewed Classmate and Witness. (FF #s 95-96.) Dean of Students apparently did not obtain Student's statement. (*Id.*) P.E. Teacher reported that Student said that he and Classmate were play fighting on the way to the office; no other information was offered regarding Student's perspective of the incident. (FF # 94.) Additionally, Dean of Students arrived at the MDR without the statements from Classmate or Witness. (FF #s 92-102.) Though she eventually obtained Witness's statement and presented it to the team, Classmate's statement was not presented during the MDR (though later added to the documentation of the meeting). (FF #s 95, 96.)

More importantly, however, is the team's focus on Student's eligibility category. During the MDR, Director repeatedly reminded the team that Student's eligibility category was SLD in the area of reading. (FF #s 92-102.) Even though Parent's Counsel urged consideration of the behavioral challenges noted in Student's IEP and BIP, District staff emphasized that Student's current programming was primarily literacy services. (*Id.*) Parent offered information regarding a provisional diagnosis of oppositional defiant disorder, but Director quickly refocused the team on Student's SLD eligibility. (FF # 97.)

The MDR team's focus on Student's eligibility category was misplaced. The U.S. Department of Education has taken the position that "nothing in the statute or the regulations implementing Part B of the IDEA [] limits a manifestation determination review to only the disability that served as

the basis for the eligibility determination.” *Letter to Yudien*, 39 IDELR 242 (OSEP 08/01/03). Indeed, 34 C.F.R. § 300.530(e)(1) requires the team to determine whether the conduct was caused by, or had a direct and substantial relationship to, the student’s disability, not the student’s eligibility category. See 34 C.F.R. § 300.530(e)(1)(i); *Santa Paula Unified Sch. Dist.*, 77 IDELR 85 (SEA CA 06/09/20) (finding an MDR team’s “limitation of consideration to an eligibility category to be a dereliction of duty to consider the full range of student’s disability”). Under 34 C.F.R. § 300.534, the IDEA’s disciplinary protections may extend to a student who has not yet been found eligible for special education where the district has knowledge of the disability before the behavior occurred:

Because such a student has not been found eligible under any category, the school district needs to consider all suspected disabilities for which it has a basis of knowledge. It is illogical that the IDEA would provide greater protection to a student who is not eligible for special education, but for whom the school district has a basis of knowledge that the student is a child with a disability, than it would to a child already eligible by limiting the manifestation determination review to that student’s eligibility category.

Id. The SCO finds this guidance relevant to this situation.

For these reasons, the SCO finds and concludes that the MDR team failed to consider all information in Student’s file, resulting in a procedural violation of 34 C.F.R. § 300.530(e)(1).

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District’s failure to properly conduct the MDR could have impacted the outcome of the MDR and, thus, denied Student the disciplinary protections in the IDEA. If an MDR team determines that a student’s behavior was a manifestation of the student’s disability, the IDEA requires the school district to conduct an FBA, review a student’s BIP, or return the student to his/her placement, depending on the circumstances. 34 C.F.R. § 300.530(f). On this basis, the SCO finds and concludes that the District’s violation impeded Student’s right to a FAPE and, thus, resulted in a denial of FAPE.

Conclusion to Allegation No. 11: The District failed to notify Parent of Student’s disciplinary change of placement, in violation of 34 C.F.R. § 300.530(h). This violation did not result in a denial of FAPE.

Parent is concerned that she was not notified of a disciplinary change of placement in September 2022.

On the date a removal becomes a disciplinary change of placement, the school district must notify parents of the decision and provide parents a copy of the procedural safeguards notice. 34 C.F.R. § 300.530(h). The District acknowledged that it did not notify Parent of Student’s disciplinary change of placement that occurred in September 2022. (FF # 82.) Thus, the SCO finds and concludes that this failure resulted in a procedural violation of 34 C.F.R. § 300.530(h).

Failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the SCO finds and concludes that the procedural violation did not result in a denial of FAPE. The failure to provide notice of the disciplinary change of placement had no impact on Student's right to a FAPE and did not significantly impede Parent's opportunity to participate in any decision-making process. Indeed, the transition between a removal and a disciplinary change of placement is an automatic one that requires no parent input. Finally, though other actions by the District deprived Student of an educational benefit, the failure to comply with 34 C.F.R. § 300.530(h) did not.

Conclusion to Allegation No. 12: The District failed to permit Parent to inspect and review Student's education records following a September 2022 request, in violation of 34 C.F.R. § 300.613. This violation resulted in a denial of FAPE.

Parent's concern is that she was not provided with Student's education record. In mid-September, Parent requested a complete copy of Student's educational record. (FF # 124.) Parent indicated that the District failed to provide copies of witness statements from the September 21 locker room incident and service logs. (FF # 125.)

The IDEA requires school district to permit parents to "inspect and review any education records relating to their children that are collected, maintained, or used" by the school district. 34 C.F.R. § 300.613(a). A school district must comply with a request to inspect and review records "without unnecessary delay" and before any MDR meeting. *Id.*

"Education records" includes records that are: (1) directly related to the student, and (2) maintained by an educational agency or by a party acting on the agency's behalf. 34 C.F.R. § 99.3. Certain education records—such as witness statements used for discipline—may contain information directly related to two students. *See Letter to Wachter*, 118 LRP 16522 (DOE 12/7/17) (noting that a record may directly relate to the perpetrator, victim, and witness). The U.S. Department of Education provided guidance specifically related to witness statements:

When an education record contains information on more than one student, the parent may request and review or 'be informed' of only the specific information about his or her own child, unless the information about the other student or students cannot be segregated and redacted without destroying its meaning.

Id. (citing 34 C.F.R. § 99.12(a)). On the contrary, if the information loses its meaning with redaction, the school district must allow the parent access to the entire record. *Id.*

Here, the service logs sought by Parent do not exist, which is why they were not produced in response to Parent's records request. (FF # 126.) However, the Findings of Fact demonstrate that the District did not provide Parent with the statements from Classmate or Witness prior to the MDR on October 5. (FF # 124.) The District acknowledged during this investigation that the statements should have been produced. (FF # 125.) As *Letter to Wachter* makes clear, the statements from Witness and Classmate are part of Student's education record and, therefore,

must be made available to Parent. As a result, the SCO finds and concludes that the District procedurally violated 34 C.F.R. § 300.613(a).

A procedural violation only results in a denial of FAPE where the violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Here, the District's violation significantly impeded Parent's opportunity to participate in the MDR meeting. Neither Parent nor Parent's Counsel were able to review the statements and discuss them in preparation for the MDR. (FF # 95.) Instead, they heard Witness's statement for the first time during the MDR and Classmate's statement *after* the MDR. (FF # 96.) The District urges that the violation did not result in a denial of FAPE, noting that the outcome of the MDR would have been unchanged even if Parent had earlier access to the statements. (FF # 126.) However, the standard does not require such a finding. The standard simply asks whether the District's violation significantly limited the Parent's opportunity to participate, and the SCO finds and concludes that, indeed, it did. This results in a denial of FAPE.

Conclusion to Allegation No. 13: The District failed to implement the IEPs of similarly situated Students in the Alternative Classroom and the Recovery Room, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

Parent's concern is that the District failed to implement the IEPs of similarly situated Students by: (1) not providing Students the required special education and related services required by their IEPs; and (2) not educating Students in the educational placement specified in their IEPs.

As more fully discussed in response to Allegation No. 1, an IEP must be fully implemented. 34 C.F.R. § 300.323(c)(2). Here, the SCO will analyze each of Parent's concerns about Students in the Alternative Classroom and the Recovery Room. Unless specifically noted, this analysis does not include Student; the SCO has already addressed the implementation of Student's IEP in Allegation No. 1.

A. Accessibility of Students' IEPs to Teachers

The SCO must first determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d) to ensure Students' teachers and related service providers had access to their IEPs. Here, the Findings of Fact demonstrate that Case Manager provided IEP snapshots to the teachers and service providers for the students on her caseload. (FF #s 16, 75.) School staff reviewed Students' IEPs during School's child support team meeting. (*Id.*) Additionally, relevant

School staff members had access to Students' IEPs in Enrich. (*Id.*) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

B. Special Education and Related Services

Alternative Classroom

During Spring 2022, the IEPs for Students in the Alternative Classroom required them to receive specialized literacy and math instruction inside the general education classroom. (FF #s 126-136.) Beginning in late March, Student D's IEP moved his literacy instruction to outside the general education classroom. (FF # 134.) Depending on the student, some of their IEPs specified that they receive study skills services inside the general education classroom or counseling services outside the general education classroom. (FF #s 126-136.)

Other than providing a copy of the schedules for special education teachers, the District has not provided any information indicating that Students in the Alternative Classroom continued to receive the special education and related services required by their IEPs. The IDEA does not require staff to maintain service logs, but the District must be able to demonstrate that the services were provided somehow. During the investigation, the SCO asked who supervised the Alternative Classroom during Spring 2022; however, staff were unable to answer that question. (FF # 21.) Regardless, the Alternative Classroom was not always staffed by a teacher. (*Id.*) This fact alone undermines the District's view of the Alternative Classroom as a general education classroom. The lack of documentation coupled with the District's failure to implement Student's IEP leads the SCO to find and conclude that the District failed to properly implement the IEPs of Student B, Student C, Student D, and Student E in the Alternative Classroom during Spring 2022, resulting in a systemic violation of 34 C.F.R. § 300.323.

Recovery Room

For purposes of this analysis, the SCO has considered whether the District implemented the IEPs of Student B, Student C, Student D, and Student F—the four Students who were in the Recovery Room for at least one core class during Fall 2022. (FF # 145.) Each of these Students' IEPs required them to receive specialized math and literacy instruction. (FF #s 146-150.) Some of Students were to receive their specialized instruction inside the general education classroom, and some were to receive their specialized instruction outside the general education classroom. (*Id.*) Depending on Students' needs, some of their IEPs also required counseling services, behavioral services, academic access services, and writing instruction. (*Id.*)

As with the Alternative Classroom, the District has failed to produce any documentation demonstrating that Student B, Student C, Student D, and Student F received all the special education and related services required by their IEPs while they were in the Recovery Room. In its Response, the District merely indicated that the "District has provided the special education and related services required by the IEPs of the Listed Students." (FF # 154.) The District's unsupported assertion is simply not enough, especially given the violations related to Student. For this reason, the SCO finds and concludes that the District failed to properly implement the

IEPs of Student B, Student C, Student D, and Student F in the Recovery Room during Fall 2022, resulting in a systemic violation of 34 C.F.R. § 300.323.

C. Educational Placement

The IDEA requires an IEP to provide the student's placement in the LRE, which is the amount of time the student will spend in the general education environment. 34 C.F.R. § 300.320(a)(5). School districts must educate students consistent with the placement specified by their IEPs. *Id.* §§ 300.320(a)(5), 300.323(c)(2).

Alternative Classroom

During the 2021-2022 school year, six students, including Student, used the Alternative Classroom. (FF # 127.) One of the students only spent two days in the Alternative Classroom in lieu of a suspension and has not been included in this analysis. (FF # 128.) The other five Students all had IEPs, and three of those Students were on a shortened school day. (FF # 127, 129-136.) All five Students' IEPs required Students to spend at least 80% of their time in the general education classroom (until May 2022 when Student D's IEP was amended to a "separate class"). (*Id.*)

The IDEA does not specify what constitutes a general education classroom, but, regardless, it is clear the Alternative Classroom was not a general education classroom. Students in the Alternative Classroom used computers to access general education classes remotely. (FF # 20.) This hindered Students' ability to interact with both their teachers and their peers in those classes. An adult supervised students in the Alternative Classroom, though that adult was not always a teacher. (FF # 21.) Every Student in the Alternative Classroom had a disability, so the students had limited, if any, opportunities to interact with peers without disabilities. (FF # 21, 127.) These characteristics distinguish the Alternative Classroom from a general education classroom. As a result, the District failed to educate Student B, Student C, Student D, and Student E in the educational placement specified by their IEPs, resulting in a systemic violation of 34 C.F.R. § 300.323.

Recovery Room

During Fall 2022, the students' use of the Recovery Room was varied. While some students joined the Recovery Room only for morning meeting, other students spent their entire day in the Recovery Room. (FF #s 141-45.) Other students only used the Recovery Room as an alternative to a suspension. (FF # 143.) For purposes of this analysis, the SCO has considered only those four Students that were in the Recovery Room for a core class. (FF # 145.) Three of the Students' IEPs required that they spend at least 80% of their day in the general education classroom. (FF # 146-48.) The IEP of the fourth student, Student E, specified that he spend 40-79% of his day in the general education classroom. (FF # 150.)

The District asserts that the Recovery Room is a "modified general education classroom" and, as a result, students in the Recovery Room were educated in a general education classroom, consistent with the requirement of their IEPs. (FF # 73.) However, the Findings of Fact make clear that the Recovery Room is not a general education classroom. Students in the Recovery Room access School's general education courses through Canvas. (FF # 72.) On Canvas, students can listen to recorded lectures and then complete independent work assignments. (*Id.*) All students in the Recovery Room work on the same subject at once. (*Id.*) A certified teacher and a

paraprofessional staff the Recovery Room and are available to assist students with questions but do not provide instruction. (*Id.*)

The composition of the Recovery Room indicates it is more of a special education classroom than a general education classroom. Depending upon the period, the percentage of students with IEPs in the Recovery Room ranged from 50% to 100%. (FF #s 141-42.) In 10 of the 16 periods, 80% or more of the students had IEPs. (FF # 142.) By contrast, only 16% of School's student population has an IEP. (FF # 140.) However, the District is not staffing the Recovery Room like a special education classroom and is placing students in the Recovery Room whose IEPs require that they be in a general education environment. For these reasons, the SCO finds and concludes that the District failed to educate Student B, Student C, Student D, and Student F consistent with the educational placements in their IEPs. This resulted in a systemic violation of 34 C.F.R. § 300.323.

D. Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of FAPE. Only the failure to implement a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. See, e.g., *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822.

Here, there was more than a minor discrepancy between the services required and the services provided to Student B, Student C, Student D, and Student F. The District failed to educate each of the students in the placement required by their IEPs and, instead, relegated the students to the Alternative Classroom or the Recovery Room. (FF #s 127-54.) The Findings of Fact also suggest that the District failed to provide these students with the specialized instruction required by their IEPs. (FF #s 138, 153.) The District's violations impacted the students' access to their education and to their peers (whether disabled or nondisabled). For these reasons, the SCO finds and concludes that the District's failure to implement Students' IEPs was a material failure that amounted to a denial of FAPE. The SCO has crafted a remedy, outlined below, designed to remedy this systemic violation.

Conclusion to Allegation No. 14: The District failed to educate similarly situated Students in the LRE, in violation of 34 C.F.R. §§ 300.114 and 300.116. This resulted in a denial of FAPE.

Parent's concern is that the District's placement of students in the Alternative Classroom and the Recovery Room violated the IDEA because the placements were more restrictive than necessary. Additionally, Parent expressed concern that the students' placements were not determined based on students' IEPs.

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). 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 C.F.R. §§ 300.114 and 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “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.” *Id.* § 300.114(a)(2)(ii).

Although a child need not fail in the general education environment before moving to a more restrictive program, more restrictive settings should only be considered after the IEP Team contemplates placement in general education, including the supplemental aids and services required to make that setting successful. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). IEPs must include evidence to support LRE placement decisions. *See, H.L. v. Downingtown Area Sch. Dist.*, 65 IDELR 223 (3d Cir. 2015) (unpublished) (finding that a district had not considered the full range of supplemental aids and services where the IEP and placement notice relied on general statements of need to support 90 minutes a day of pull-out services). Use of boilerplate language in the LRE section of IEPs indicates a failure to make individualized determinations about students’ ability to participate in the general education setting. *Yonkers (NY) Pub. Schs.*, 69 IDELR 18 (OCR 2016).

Here, the SCO reviewed four students’ IEPs for purposes of this analysis: Student B, Student C, Student D, and Student E. The SCO did not consider Student F’s IEP, because it was created by another district and merely adopted upon his transfer. (FF # 145) None of the students’ IEPs considered the use of supplementary aids and services that would make a general education placement successful. (FF #s 146-150.) On the contrary, a PWN embedded in Student D’s IEP indicated that the IEP Team considered providing Student D with a 1:1 paraprofessional but rejected that option because Student D was able to “independently access instruction in an alternate setting under the indirect supervision of a paraprofessional.” (FF # 139.) The “instruction” Student D accessed was all through a computer. (FF # 20.) This example demonstrates the District’s indifference towards transitioning students from the Alternative Classroom and Recovery Room to a typical general education classroom.

After using the Recovery Room as an alternative to suspension, some students’ parents were so happy with the Recovery Room, they requested their child spend more time in the Recovery Room. (FF # 156.) While the SCO appreciates that the District heard and responded to parents’ concerns, the fact that a parent requested a specific placement for a student does not make that placement the least restrictive placement for that child.

Additionally, the students’ IEPs did not contain any evidence supporting the District’s placement decisions. The SCO acknowledges that this failure is due, in large part, to the District’s view of the Alternative Classroom and the Recovery Room as general education classrooms. Indicating that students were being placed in “modified” general education classrooms, the District felt no need to advocate for a different placement. However, Student’s D IEP described his placement as a “separate class” even though Student B, Student C, and Student E’s identify their placements as being in the general education classroom. (FF #s 129-136.) The SCO cannot reconcile the differing descriptions of the same placement. With the exception of Student D, none of the students’ IEPs contained any evidence of the District’s placement decisions. (FF #s 127-153.) That is, if a stranger read the student’s IEPs, he or she would not know that the students had

been placed in the Alternative Classroom or the Recovery Room. Thus, the SCO finds and concludes that this resulted in a systemic violation of 34 C.F.R. §§ 300.114 and 300.116.

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District's failure to educate students in LRE deprived students of educational benefits by limiting their access to general education classes and peers. For this reason, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

In her Complaint, Parent expressed concern that the District placed students of color in the Alternative Classroom and Recovery Room with greater frequency than white students. The SCO cannot definitively determine whether the District has a practice of placing students of color in more restrictive placements than their white counterparts; however, this investigation partially substantiated Parent's concern. During the 2021-2022 school year, all of the black students with IEPs were placed in the Alternative Classroom, while only 10% of Hispanic/Latino and 5% of white students with IEPs were placed in the Alternative Classroom. (FF #s 127, 140.) Of the students who were in the Recovery Room for core classes, two of the students were white, one was black, one was Hispanic/Latino, and one was American Indian/Alaskan Native. (FF #145.) During the same time period, Student—the other black student with an IEP—was placed in the library. (FF # 89.) Therefore, both black students with IEPs were removed from their placement in the LRE.

As a point of caution, the SCO notes that this data does not consider where these students fall in terms of students with IEPs. That is, it is possible that the District placed students with the greatest behavioral challenges in the Alternative Classroom and the Recovery Room, irrespective of their ethnicity. It is also possible that this is an indication of a disproportionality in the placements for white students and students of color or, at least, a discipline disparity between white students and students of color.

Systemic IDEA Violations: This investigation identified violations that are systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.

Pursuant to its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are “critical” to the State Educational Agency’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance*, 71 Fed. Reg. 46601.

The analysis below does not address the District's violations related to IEP implementation or LRE, as the systemic nature of those violations is addressed in Allegation Nos. 13 and 14.

IEP Development

The District failed to properly develop an IEP for Student that adequately addressed his behavioral needs. Even though Student's behavioral challenges persisted, the District missed opportunities

to address those challenges both at Student's annual review and in the review and revision of Student's IEP throughout the school year. (FF #s 36, 45, 90.) These violations occurred over two school years. The Findings of Fact in this case raise concerns about the District's overreliance on exclusionary discipline in lieu of positive behavioral supports and interventions, at least School-wide and perhaps District-wide. For example, during the 2022-2023 school year, the District placed Student F directly into the Recovery Room upon his transfer into the District. (FF # 149-50.) Within six weeks, the District placed Student F on a shortened school day using APEX. (FF # 151.) For these reasons, the SCO finds and concludes that the District's violation of 34 C.F.R. § 300.324 was systemic in nature.

Progress Monitoring

The District's failure to adequately monitor Student's progress was the result of two factors. First, Counselor did not know that she needed to enter Student's progress monitoring data into Enrich, though she was monitoring Student's progress. (FF # 118.) Second, Case Manager tracked Student's progress using such vague descriptions that one could not tell whether Student was making expected progress or not. (FF # 115-16.) It is unclear whether Case Manager's poor descriptions were a result of her failure to provide Student services (and, thus, a lack of data), a lack of effort, or a lack of understanding. Regardless, nothing in the Record suggests these violations exist School-wide or District-wide. For this reason, the SCO finds and concludes that the District's violation of 34 C.F.R. § 300.320(a)(3) is not systemic.

Change of Placement

The District committed multiple violations of the IDEA in its change to Student's placement. These violations were repeated over two school years. (FF #s 18, 86, 87, 90.) During both the 2021-2022 and 2022-2023 school years, the District unilaterally changed Student's placement without convening Student's IEP Team or involving Parent. (FF #s 86, 87, 89.) Superintendent made the decision during the 2022-2023 school year. (FF # 86.) Improper action by someone in a position of authority suggests this problem is systemic in the District. Additionally, the District took similar action regarding at least two other students identified during this investigation. (FF #s 135, 151-52.) Though the District indicated the VRT only makes recommendations, the Findings of Fact demonstrate that the District allows the VRT (with ratification by District staff) to alter the placement of students with disabilities outside of the process set forth in the IDEA. For these reasons, the SCO finds and concludes that the District's violations related to change of placement—specifically, the violations of 34 C.F.R. §§ 300.116(a)(1), 300.327, 300.501(c)(1), and 300.503(a) and ECEA Rule 4.03(8)(b)(ii)(B)—to be systemic.

MDR

The District's actions in this case demonstrate a flawed understanding of the IDEA's provisions regarding MDRs. The flawed understanding resulted in the District violating nearly all of the IDEA's disciplinary provisions. At the outset, the District had an inadequate system for tracking students' removals to determine when an MDR needed to be held. (FF # 66, 91.) The inadequacy of this system resulted in several missed MDRs for Student and, perhaps, other students as well. The Findings of Fact in this case also evidence the District's failure to adhere to the procedural protections in the IDEA that are triggered when a disciplinary change of placement has occurred. (FF #s 82, 83.) Specifically, the District did not notify Parent of the disciplinary change of placement or, in any way, implement the provisions of 34 C.F.R. § 300.530(d) regarding the services students are entitled to after a disciplinary change of placement. (FF #s 82, 83, 90.) The

District's conduct during Student's October MDR—which was attended by Superintendent and led by Director—raised broader concerns about how MDRs in the District are conducted for all students. (FF #s 92-102.) As a result, the SCO finds and concludes that the evidence supports finding a systemic violation regarding the violations of 34 C.F.R. § 300.530.

Education Records

The District's failure to provide the statements of Classmate and Witness appears to be an one-off error, rather than a systemic problem. Parent's Counsel repeatedly asked for the statements in advance of the MDR, but the District's violation seemed to be the result of disorganization rather than a misunderstanding of the IDEA's requirements. (FF # 124-26) For this reason, the SCO finds and concludes that the violation of 34 C.F.R. § 300.613 is not systemic in nature.

The SCO has crafted remedies, below, designed to address the systemic violations.

REMEDIES

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

- a. Failing to properly implement Student's IEP, in violation of 34 C.F.R. § 300.323;
- b. Failing to develop, review, and revise an IEP that was tailored to Student's individualized needs, in violation of 34 C.F.R. § 300.324;
- c. Failing to educate Student in the LRE, in violation of 34 C.F.R. §§ 114, 300.116, and ECEA Rule 4.03(8)(a);
- d. Failing to monitor Student's progress on his annual IEP goals, in violation of 34 C.F.R. § 300.320(a)(3);
- e. Determining Student's educational placement without including Parent, in violation of 34 C.F.R. §§ 300.116(a)(1), 300.327, and 300.501(c)(1);
- f. Failing to provide Parent with PWN regarding the change to Student's educational placement, in violation of 34 C.F.R. § 300.503(a);
- g. Making a significant change to Student's educational placement without involving Student's IEP Team and consideration of reevaluation, in violation of ECEA Rule 4.03(8)(b)(ii)(B);
- h. Failing to conduct an MDR within ten school days of the decision to change Student's placement, in violation of 34 C.F.R. § 300.530(e);
- i. Failing to provide Student educational services after his tenth day of the removal, in violation of 34 C.F.R. § 300.530(b)-(d);
- j. Improperly determining whether Student's behavior was a manifestation of his disability during an MDR, in violation of 34 C.F.R. § 300.530(e)(1);

- k. Failing to notify Parent of Student's disciplinary change of placements, in violation of 34 C.F.R. § 300.530(h); and
- l. Failing to permit Parent to inspect and review Student's education records following a September 2022 request, in violation of 34 C.F.R. § 300.613.

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

1. Corrective Action Plan

- a. By **Tuesday, May 2, 2023**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations 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 District is responsible. The CAP must, at a minimum, provide for the following:
 - i. Superintendent, Director of Special Education, Principal, Dean of Students, District Psychologist, Case Manager, and Counselor must review this Decision. This review must occur no later than **Tuesday, May 23, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Tuesday, May 30, 2023**.
- b. Attendance and completion of training provided by CDE on LRE and placement determinations, as well as documenting IEP team discussions within the IEP. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114, 300.116 and ECEA Rule 4.03(8) and the related concerns noted in this Decision. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Superintendent, Director, Coordinator, District Psychologist, and all District staff who serve as case managers. Such training shall be completed no later than **Friday, September 1, 2023**.
 - i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, September 8, 2023**.
- c. Attendance and completion of training provided by CDE on developing, reviewing, and revising IEPs. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.320 and 300.324 and the related concerns noted in this Decision. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director, Coordinator, District Psychologist, and all District staff who serve as case managers. Such training shall be completed no later than **Friday, September 1, 2023**.

- i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, September 8, 2023.**
- d. Attendance and completion of training provided by CDE on the IDEA's discipline procedures. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.530 and the related concerns noted in this Decision. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director, Coordinator, District Psychologist, and all District staff who serve as case managers. Such training shall be completed no later than **Friday, September 1, 2023.**
 - i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to the CDE no later than **Friday, September 8, 2023.**
 - ii. The CDE understands that certain District staff recently completed a training on 34 C.F.R. § 300.530 provided by CDE. To the extent the District considers that training compliant with 1(d), the District shall provide verifying information to the CDE. A determination regarding whether the prior training satisfies the requirements of this remedy rests solely with the CDE.
- e. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Compensatory Education Services for Student for Denial of a FAPE

- a. Student shall receive **18 hours of specialized reading instruction** provided by a District special education teacher or through a contract between the District and a suitable provider at the District's expense. All 18 hours must be completed by **Friday, December 1, 2023.**
- b. Student shall receive **12 hours of mental health services** provided by Student's existing mental health provider, if any, or through a contract between the District and a suitable provider at the District's expense. All 12 hours must be completed by **Friday, December 1, 2023.**
- c. Student shall receive **9 hours of tutoring services** provided by a District teacher or through a contract between the District and a suitable provider at the District's expense. All 8 hours must be completed by **Friday, December 1, 2023.**

- d. By **Tuesday, May 16, 2023**, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Friday, May 19, 2023**. If the District and Parent cannot agree to a schedule by May 16, 2023, the CDE will determine the schedule for compensatory services by **Friday, June 9, 2023**.
- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parent may opt out of some or all of the compensatory services if she wishes.
- e. Monthly consultation between the provider(s) delivering compensatory services and Director or Coordinator shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred by **the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. To verify that Student has received the services required by this Decision, the District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- g. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance him toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.
- h. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school

breaks) to ensure Student is not deprived of the instruction Student is entitled to receive during the school day (including time in general education).

3. Technical Assistance

- a. Coordinator and District Psychologist shall participate in ongoing technical assistance (“TA”) with CDE School Psychologist and Special Education Evaluation Specialist. This TA shall, at a minimum, provide the District assistance with developing and increasing the use of positive behavioral interventions and strategies.
 - i. Coordinator and District Psychologist must engage in at least 30 minutes per month of TA during the school year.
 - ii. District Psychologist will keep a log of these sessions, including date, length, and subject of session, as well as any agreed upon action items.
 - iii. TA sessions will continue at **least monthly through April 4, 2024.**

4. Compensatory Education Services for Students to Address Systemic IDEA Violations

- a. By **Tuesday, April 11, 2023**, the District shall submit to the CDE for review, a draft letter to be sent to Student B, Student C, Student D, Student E, and Student F (“Affected Students”). This letter shall notify parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student who might require compensatory services as a result of the District’s failure to implement their student’s IEP. The letter must inform parents that the District will be scheduling an IEP Team meeting to determine the student’s need for compensatory services. The letter must be sent by the District to parents no later than **Tuesday, April 25, 2023**.
- b. The District must convene the Affected Students’ IEP Teams, at a mutually agreeable date and time, by **Thursday, May 25, 2023**. Each IEP Team should make an individualized determination of each student’s need for compensatory services as a result of the District’s failure to implement their IEPs during the 2021-2022 and 2022-2023 school years.
 - i. The determinations must be consistent with guidance from OSEP and the CDE for determining compensatory services. *See Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act*, 79 IDELR 232 (OSERS 2021), Questions D4-6.; *Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory.

- ii. While the above guidance was written to address the impact of the COVID-19 pandemic, it provides instructive guidance to IEP Teams considering a need for compensatory education and/or how to structure such an award.
- c. The District must document the IEP Team's determination regarding each Affected Student's compensatory services in a PWN. The PWN should provide significant detail regarding the discussion at the IEP Team and the basis for the IEP Team's decision as required by 34 C.F.R. § 300.503. The District must provide a copy of the PWN for each Student's determination, along with the Notice of Meeting for the IEP Team meeting, to CDE no later than **Thursday, June 8, 2023**.
- d. The District shall submit a schedule of all Students' compensatory services to CDE Special Education Monitoring and Technical Assistance Consultant no later than **Thursday, June 22, 2023**. The District shall schedule compensatory services in collaboration with Affected Students' Parent(s)/Guardian(s). A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Affected Students currently receive, or will receive, that are designed to advance Affected Students toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If the Parent(s)/Guardian(s) refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent(s)/Guardian(s) and documents such efforts. A determination that District diligently attempted to meet with Affected Student's Parent(s)/Guardian(s), and should thus be excused from providing compensatory services, rests solely with the CDE.
- e. Monthly consultation between the provider(s) delivering compensatory services and Director or Coordinator must occur to evaluate Affected Students' progress in general education and towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress in general education and on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name of the student, the name and title of the provider(s), and the date, the duration, and a brief description of the consultation.
- f. To verify that Affected Students have received the services required by this Decision, the District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been completed. The name of the student, the name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. All compensatory services must be completed by **Friday, December 1, 2023**.
- g. If for any reason, including illness, Affected Students are not available for any scheduled compensatory services, the District will be excused from providing the

service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Student's Parent(s)/Guardian(s) and notify the CDE of the change in the appropriate service log.

- h. These compensatory services must be provided to Affected Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure students are not deprived of the instruction Student is entitled to receive during the school day (including time in general education).

5. LRE Review for Students to Address Systemic IDEA Violations

- a. The District must convene the Affected Students' IEP Teams, at a mutually agreeable date and time, by **Thursday, May 25, 2023**. This IEP Team meeting can be the same meeting as ordered in Part 4(b) above. Each IEP Team shall review the Affected Student's IEP to ensure the student is being educated to the maximum extent possible with students who are nondisabled, consistent with 34 C.F.R. §§ 300.114 and 300.116.
 - i. The IEP Team must ensure the Affected Student's LRE is accurately reflected in the IEP and that the IEP documents the IEP Team's basis for that decision. Additionally, the IEP must reflect the IEP Team's discussion about supplementary aids and services that could allow the student to be successful in the general education environment.
 - ii. The IEP Team must ensure any significant change of placement is made based on consideration of reevaluation, consistent with ECEA Rule 4.03(8)(b)(ii)(B). If needed, the District shall conduct a reevaluation to comply with ECEA Rule 4.03(8)(b)(ii)(B). If a reevaluation is required, the District shall notify the CDE to obtain an extension on the timelines in part 5.
 - iii. The District must provide a copy of the Notice of Meeting for the IEP Team meeting and a copy of each Affected Student's final IEP to CDE no later than **Thursday, June 8, 2023**.

6. Other Remedies

- a. Based on the outcomes of the other remedies, CDE may require additional training, technical assistance, or revision of policy, procedure or practice to address identified areas of concern. CDE may also request additional records to ensure identified concerns have been addressed.
- b. Any additional findings of noncompliance identified through these remedies must be corrected consistent with 34 C.F.R. § 300.600(e).

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

Colorado Department of Education

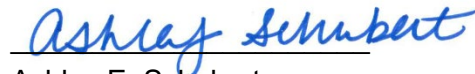
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; see also 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 4th day of April, 2023.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-21

- Exhibit 1: Documents received with records request
- Exhibit 2: Transfer paperwork
- Exhibit 3: Out-of-state IEP
- Exhibit 4: Transfer IEP
- Exhibit 5: MDR documentation
- Exhibit 6: Behavior detail reports
- Exhibit 7: Attendance records
- Exhibit 8: December 2021 IEP
- Exhibit 9: Progress report
- Exhibit 10: May 2022 IEP amendment
- Exhibit 11: Report card
- Exhibit 12: Progress report
- Exhibit 13: District calendar
- Exhibit 14: Email correspondence
- Exhibit 15: Re-entry plan
- Exhibit 16: Correspondence
- Exhibit 17: Email correspondence
- Exhibit 18: Letter from Student's therapist
- Exhibit 19: MDR documentation
- Exhibit 20: Consent for re-evaluation
- Exhibit 21: Draft December 2022 IEP

Response, pages 1-31

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Behavior documentation
- Exhibit D: Discipline documentation
- Exhibit E: Threat assessments
- Exhibit F: MDR documentation and videorecording
- Exhibit G: Services during removals
- Exhibit H: Service logs and behavior sheets
- Exhibit I: Evaluations and assessments
- Exhibit J: Documents regarding shortened school day and recovery room
- Exhibit K: PWNs
- Exhibit L: Notices of meeting
- Exhibit M: Procedural safeguards
- Exhibit N: Policies and procedures
- Exhibit O: Email correspondence and voice message
- Exhibit P: Blank
- Exhibit Q: Blank
- Exhibit R: List of other students and rosters
- Exhibit S: IEPs and related documents for other students
- Exhibit S Supplement: Additional IEPs for other students
- Exhibit S Second Supplement: Additional IEPs for other students
- Exhibit T: Service logs for other students

- Exhibit U: Blank
- Exhibit V: Blank
- Exhibit W: Email correspondence
- Exhibit X: District calendar
- Exhibit Y: Attendance reports
- Exhibit Z: December 2022 IEP Team meeting recording

Reply, pages 1-23

- Exhibit 22: Email correspondence
- Exhibit 23: Email correspondence
- Exhibit 24: Recording of re-entry meeting
- Exhibit 25: Recording of MDR meeting
- Exhibit 26: Email correspondence
- Exhibit 27: Draft IEP
- Exhibit 28: Recording of interrogation
- Exhibit 29: January 2022 MDR recording
- Exhibit 30: Records request

Telephone Interviews

- Case Manager: March 7, 2023
- Counselor: March 7, 2023
- District Psychologist: March 6, 2023
- Director of Special Education: March 7 and 20, 2023
- Parent: March 3, 2023
- Principal: March 6, 2023