

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

**State-Level Complaint 2023:525
Denver Public Schools**

DECISION

INTRODUCTION

On March 13, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified twelve 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.

On March 23, 2023, upon agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. Mediation was scheduled on May 8, 2023; however, on April 24, 2023, Parents notified the SCO that they were no longer interested in mediation. The SCO resumed the investigation on April 25, 2023, with the final decision due on June 14, 2023.

Due to the breadth of the allegations and the voluminous documentation in the investigation file, the SCO extended the 60-day investigation timeline three times due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1). The last extension made the final decision due on August 27, 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 March 13, 2022 to the 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.

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.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to take reasonable steps to promptly obtain Student’s records from his prior district from May 5, 2022 to present, in violation of 34 C.F.R. § 300.323(g).
2. Failed to have Student’s IEP in effect beginning July 18, 2022, in violation of 34 C.F.R. § 300.323.
3. Failed to implement Student’s IEP from July 18, 2022 to present, in violation of § 300.323, specifically by:
 - a. Failing to ensure Student’s IEP was accessible to teachers and others from July 18, 2022 to present;
 - b. Failing to provide Student with the accommodations required by his IEP;
 - c. Failing to provide Student with the related services required by his IEP; and
 - d. Failing to educate Student consistent with the educational placement required by his IEP.
4. Failed to provide Parents with proper notice of IEP Team meetings from August 17, 2022 to present, in violation of 34 C.F.R. § 300.322(a), specifically by:
 - a. Failing to schedule the meetings at a mutually agreeable time and place or failing to provide Parents with early enough notice to ensure they have an opportunity to attend; and
 - b. Failing to inform Parents of the purpose of the meeting and who will be in attendance.
5. Failed to provide Parents a copy of Student’s final IEP from August 22, 2022 to present, in violation of 34 C.F.R. § 300.322(f).
6. Failed to timely conduct Student’s reevaluation after receiving consent for evaluation from August 30, 2022 to present, consistent with 34 C.F.R. § 300.303.
7. Failed to develop an IEP that was tailored to Student’s individualized needs from August 22, 2022 to present, specifically by:

- a. Failing to consider the concerns of Parents, in violation of 34 C.F.R. § 300.324(a)(1)(ii); and
 - b. Failing to consider the results of the most recent evaluation of Student, in violation of 34 C.F.R. § 300.324(a)(1)(iii).
8. Failed to review and, as appropriate, revise Student’s IEP from August 22 to present to address the effect of bullying on Student’s needs, in violation of 34 C.F.R. § 300.324(b).
9. Failed to educate Student in the Least Restrictive Environment (“LRE”) from August 22, 2022 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).
10. Amended Student’s IEP around January 2023 without agreement from Parents and outside of an IEP meeting, in violation of 34 C.F.R. § 300.324(a)(6).
11. Failed to conduct a manifestation determination within ten school days of the District’s decisions to change Student’s placement in March 2023, in violation of 34 C.F.R. § 300.530(e).
12. Failed to notify Parents of Student’s disciplinary change of placement following his disciplinary change of placement in March 2023, in violation of 34 C.F.R. § 300.530(h).

FINDINGS OF FACT

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

A. Background

1. Student is a tenth grader at a District high school (“School”). *Interview with Parents*. This investigation concerns the 2022-2023 school year, when Student was in ninth grade at School. *Id.*
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and Specific Learning Disability (“SLD”). *Exhibit B*, p. 27.

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

Student's OHI eligibility stems from his diagnoses of attention-deficit/hyperactivity disorder ("ADHD") and disruptive mood dysregulation disorder ("DMDD") and a complex chromosomal anomaly. *Id.* at p. 68. Student also has moderate hearing loss, as well as a hand deformity which impacts his writing ability. *Interview with Parents.*

3. Student is an explorer who wants to be out in the world and enjoys outdoor activities, like camping, fishing, and playing football. *Id.* In class, he is a curious student who participates in discussions and answers questions. *Interviews with A/V Teacher, Case Manager #2, Science Teacher, and Social Studies Teacher.* At times, Student struggles to stay focused and often played games on his cell phone. *Id.* He frequently fidgets in class and unpacks and reorganizes his backpack to calm himself. *Id.* When stressed, he can become angry and make inappropriate comments to teachers or classmates. *Id.*

B. Student's Transfer to the District and the 2021 IEP

4. In early 2022, Parents enrolled Student in School for the 2022-2023 school year. *Complaint*, p. 1. At the time of his enrollment in the District, Student was in eighth grade at an online school offered by a BOCES and had not attended school in-person since March 2020. *Interview with Parents.* Student attended a middle school in another school district before the COVID-19 pandemic. *Interview with Parents.* However, after the pandemic shuttered schools, Student enrolled in an online private school that promoted unschooling and allowed parents to choose the curriculum. *Exhibit E*, p. 36; *CDE Exhibit 1*, p. 1.
5. At the time of his transfer, Student's IEP dated September 23, 2021 was in effect ("2021 IEP"). *Exhibit B*, pp. 1-24. The BOCES developed this IEP when Student enrolled at the beginning of his eighth-grade year. *Id.* at p. 1. The 2021 IEP indicated that Student's next eligibility meeting was due on or before October 19, 2022. *Id.*
6. The 2021 IEP reviewed Student's present levels of performance, noting that Student scored in the 47th percentile for reading and the 14th percentile for math on iReady assessments in August 2021. *Id.* at pp. 8-9. His teachers indicated he was already falling behind in his work and encouraged Student to set up 1:1 meeting times with them to stay on track. *Id.* at pp. 12-13. No other recent data was included because Student was new to the online school, and the BOCES did not have data from the private school. *Id.* at pp. 8-13.
7. As noted in the 2021 IEP, Student's disabilities impacted his ability to access the general education curriculum and progress through grade-level curriculum at the same rate as his peers. *Id.* In particular, his disabilities negatively affected his working memory, his processing speed, and his ability to show his understanding in writing. *Id.* As a result, he needed extended time to process information and complete assignments, as well as alternative ways to demonstrate his understanding in writing. *Id.* His disabilities also impacted his ability to regulate his emotions and stay focused. *Id.* In particular, he needed reminders to identify his feelings and strategies to use and breaks for refocusing. *Id.*

8. The 2021 IEP contained five annual goals in the areas of writing, reading, mathematics, communication, and social/emotional wellness. *Id.* at pp. 15-17.
9. The 2021 IEP identified a dozen accommodations, including, in part, shortened and reduced assignments, alternative assignments (such as showing understanding verbally instead of in writing), extra time, and breaks as needed. *Id.* at p. 17. One accommodation indicated staff should help him identify strategies to use when he was upset or agitated. *Id.*
10. Under the 2021 IEP, Student received the following special education and related services:
 - Specialized Instruction:
 - Reading:
 - 30 minutes per week of direct reading instruction provided by a special education teacher outside the general education classroom; and
 - 7 minutes per month of indirect reading instruction provided by a special education teacher inside the general education classroom.
 - Mathematics:
 - 30 minutes per week of direct mathematics instruction provided by a special education teacher outside the general education classroom; and
 - 7 minutes per month of indirect mathematics instruction provided by a special education teacher inside the general education classroom.
 - Writing:
 - 30 minutes per week of direct writing instruction provided by a special education teacher outside the general education classroom; and
 - 7 minutes per month of indirect writing instruction provided by a special education teacher inside the general education classroom.
 - Social/Emotional Wellness:
 - 30 minutes per week of direct social/emotional instruction provided by a special education teacher inside the general education classroom; and
 - 7 minutes per month of indirect social/emotional instruction provided by a special education teacher outside the general education classroom.

○ Speech/Language Services:

- 15 minutes per month of indirect speech/language services provided by a speech language pathologist inside the general education classroom to work on Student's speech intelligibility and improve recall of verbal information.

Id. at pp. 20-21. The 2021 IEP specifically noted that it was designed for a virtual setting and would "need to be rewritten immediately" if he enrolled in another school. *Id.* at p. 20.

11. Per the 2021 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at p. 22. Specifically, he was in the general education environment for 93% of the school day. *Id.*
12. Student did not have an existing behavior intervention plan. *Id.* at p. 15.

C. Implementation of the 2021 IEP during Summer 2022

13. During Summer 2022, Student participated in School's Ready for 2026 and Ninth Grade Academy programs. *Interviews with Assistant Principal and Parents.* Ready for 2026 was a three-week experience that allowed incoming freshmen to "refine their skills in math and English while building relationships and learning more about what it means to be a [student at School]." *CDE Exhibit 2*, p. 1. While Ready for 2026 was optional, all incoming freshmen were required to attend the Ninth Grade Academy. *Id.* The Ninth Grade Academy offered students a chance to "meet teachers and staff and explore the career and coursework" offered at School. *Id.* Participants earned a small number of credits for each of the programs. *Interview with Assistant Principal.* These programs served mainly as an orientation and were not extended school year services under the IDEA. *Id.*
14. Student also joined School's football team, participating in team workouts and practices as early as June 2022. *Interview with Parents.*
15. Social Worker emailed parents of incoming ninth grade students on June 12 to schedule "virtual visits" with families to answer questions and build relationships. *Exhibit M*, pp. 157-58. Parents expressed interest in a virtual visit and asked whether the visit was "IEP related." *Id.* at pp. 156-57. Social Worker indicated that the virtual visits were for all students but that, for students with IEPs, she would "ensure someone from the special education department [was] available." *Id.* at p. 155. In response, Parents stated:

We are very worried about his IEP as it's up for renewal and his diagnosis has changed and he's coming from online school for the last three years We desperately would love to meet about the IEP because we want to be proactive and avoid any potential first negative encounters by those who are unprepared for what it looks like.

Id. at p. 155. Based on Parents’ email, Social Worker sent a message to Assistant Principal, Case Manager #1, and other School staff informing them that he had an IEP. *Id.* at p. 2295. Because Student transferred from outside the District, his IEP was not automatically in the District’s database. *Interviews with Case Manager #2 and Special Education Instructional Specialist (“SEIS”).* The IEP of a student who completed eighth grade at the District would have been accessible to District staff. *Id.*

16. On June 30, Special Education Teacher emailed Principal to let her know Student and another peer were the only students with IEPs in Ready for 2026. *Id.* at p. 163. Special Education Teacher stated that Case Manager #1 “printed [the IEP] from BOCES at transition night, so I know the gist, but she didn’t upload it digitally, so I can’t see it.” *Id.* Special Education Teacher indicated she was “trying to connect with [Parents] to get the IEP.” *Id.*
17. Case Manager #1 emailed a copy of the 2021 IEP and an IEP snapshot to the staff for Ready for 2026 and Ninth Grade Academy on July 19, 2022. *Id.* at p. 2143. This was the second day of School’s summer programming. *Complaint*, p. 5.
18. Before football practices began, Parents met with Football Coach to discuss the 2021 IEP and how Student’s disabilities might impact him at football. *Id.* at p. 3. The District acknowledges, however, that the 2021 IEP was not provided to the football coaching staff during Summer 2022. *Response*, p. 5.
19. Parents questioned whether School staff properly implemented the 2021 IEP during summer programming and football. *Complaint*, p. 4. For example, Parents received a phone call on July 18—the first day of School’s summer programming—indicating that Student had become agitated in class and cursed at a staff member after being redirected. *Id.* Parents asserted that “bad language was a sign of stress and that a break was needed long before that moment.” *Id.*
20. According to Student, he did not receive breaks during Ready for 2026 or Ninth Grade Academy. *Id.* However, Parents’ email correspondence with Restorative Practices Coordinator—who received a copy of Student’s IEP—indicates otherwise. *See Exhibit M*, p. 1732. On July 19, Restorative Practices Coordinator emailed Parents, letting them know that Student was “given breaks when asked for appropriately” and that he could mention Restorative Practices Coordinator’s name to his teachers when he needed a break. *Id.* Additionally, Restorative Practices Coordinator indicated he was checking in with Student before class each day to make sure Student was “getting the support he needs to be successful here.” *Id.* In response, Parents indicated Student “said today he knows how to ask for a break and where to go with you.” *Id.* at p. 1731.

D. Beginning of 2022-2023 School Year

21. The 2022-2023 school year began on August 22, 2022. *Response*, p. 4. At that time, the 2021 IEP had not been entered into the District’s system (even though the District had a copy), no IEP Team had been convened, and Student’s teachers had not been provided a copy of the 2021 IEP. *Interviews with A/V Teacher and Case Manager #2*.³
22. Case Manager #1 enrolled Student in School’s Career-Ready Math and Career-Ready English courses. *Interviews with Case Manager #2 and Parents*. These courses were selected based on information in the 2021 IEP indicating that Student performed significantly below grade level in math and language arts. *Interview with Case Manager #2*. The Career-Ready courses are mild/moderate special education classes taught by a special education teacher using grade-level curriculum but in a smaller environment. *Id.*
23. In their Complaint, Parents expressed concern about Student’s enrollment in these courses, given that he had previously been in all general education classes with success. *Interview with Parents; Complaint*, p. 55.

E. Scheduling of August Meeting & Eligibility Determination

24. Case Manager #1 contacted Parents on Wednesday, August 17 to let them know she would be acting as Student’s case manager and to request an IEP Team meeting, writing: “Since his IEP is not part of our district system yet, I wondered if we could gather the team for a meeting this Friday and set up a transition plan for the IEP.” *Exhibit M*, p. 2046-48. Given the behaviors Student demonstrated during summer programming and at football, Case Manager #1 proposed conducting a functional behavior assessment and, if necessary, developing a behavior intervention plan. *Id.*
25. Parents replied the same day, stating: “This is inappropriate. I’ll reach out to [District]. This is not how a formal IEP should be handled.” *Id.* at p. 2046. Case Manager #1 apologized and said she wanted to give Parents time to think about the functional behavior assessment instead of springing it on them at an IEP Team meeting. *Id.* She asked if she could call Parents to discuss their concerns. *Id.* However, Parents rejected Case Manager #1’s suggestion for a call or a meeting on Friday and said they would reach out to District leadership. *Id.* at p. 2045.
26. On August 18, 2022, Parents emailed Assistant Principal requesting an eligibility determination and an IEP Team meeting to review Student’s existing IEP. *Id.* at p. 1580. In that email, Parents expressly stated that:

No we do not consent to additional evaluations.

³ Though the SCO repeatedly requested to interview Case Manager #1—who was Student’s case manager until early September—the District did not make her available for an interview.

No we do not consent to an FBA.
No we do not consent to a BIP.
We find the requests unnecessary.

Id. Additionally, Parents indicated that the notice of meeting should be sent “via mail not email.” *Id.* at p. 1581 (emphasis in original).

[C]onsider this notice we do not accept email/electronic delivery of official IEP related documents (for legal purposes only). While I’m happy to engage via email for scheduling of meetings and some information exchange, the delivery of privacy and procedural documents and any IEP related notices bear specific time delivery requirements and courts generally prefer postmarks compared to email time stamps should there be a dispute.

Id. Finally, Parents expressed their frustration with Case Manager #1’s performance and requested Student be assigned a new case manager. *Id.* Assistant Principal replied the same day, asking Parents when would be a good time to meet the following week. *Id.* at p. 1580.

27. On the first day of school, Assistant Principal emailed Parents to schedule an IEP Team meeting to transfer Student’s IEP into the District. *Id.* at p. 2210. Parents responded, asserting that no transfer IEP was required and firmly requesting an eligibility meeting instead. *Id.* at pp. 1405-06. Parents looped SEIS into the conversation. *Id.*
28. After SEIS pushed back on transferring Student’s IEP, Parents demanded an eligibility meeting and threatened to file a state complaint with the CDE if the meeting was not scheduled within five days. *Id.* at pp. 1403-05. Parents were irritated they were still having these conversations even though Student’s IEP had been provided to the District in June. *Id.* They also indicated that their attorney “confirmed that if we have provided current/recent evaluations (especially independent ones) then we have no obligation to agree to new ones. The purpose of evaluations is to provide data [if] data is from three or more years ago.” *Id.* at p. 1403. Parents asserted that the evaluations they had provided were “within the year” and, thus, no evaluation was necessary. *Id.*
29. On Friday, August 26, SEIS contacted Parents via email to schedule Student’s eligibility determination. *Id.* at pp. 893-94. That email stated: “We understand that you wish to convene this meeting right away, and we are willing to do so.” *Id.* at p. 894. SEIS proposed meeting times on August 29, August 30, and August 31. *Id.* Once Parents chose a time, SEIS said he would send a notice of meeting via email and mail. *Id.*
30. In response, Parents clarified that they only asked that the scheduling happen within five days, not that the meeting occur within five days. *Id.* at p. 893. Parents ultimately agreed to meet on August 30. *Id.* They reiterated their unwillingness to consent to a comprehensive evaluation: “It’s taken many years to get to ‘appropriate’ assessments. This is why we no

longer tolerate behavioral assessments by people who lack a solid neuro/medical background anymore. We have no issue with academic assessments.” *Id.*

31. On August 29, SEIS sent a notice of meeting to Parents via email and mail indicating that a multidisciplinary team would convene on August 30 to discuss Student’s reevaluation. *Id.* at p. 150; *Exhibit I*, pp. 4-5. Additionally, the notice stated that: “[T]he team [would] use information provided by [Student’s] mother, as well as information contained in the previous IEP to determine eligibility and to develop an IEP if [Student] qualifies.” *Id.* at p. 4. The notice identified the attendees by their role (such as “Administrator, General Education Teacher, Guidance Counselor”) and not by their name. *Id.*
32. As scheduled, a multidisciplinary team convened on August 30 to discuss Student’s eligibility for special education and related services. *Interview with Case Manager #2*. During the meeting, the team determined that Student was eligible for special education and related services under the disability categories of OHI and SLD. *Exhibit T*, pp. 1-3. Student’s SLD eligibility was in the area of written expression. *Id.* The District determined Student’s eligibility using his existing IEP and existing evaluation data. *Interview with SEIS*. Following this meeting, the District transferred the 2021 IEP into system. *Interview with Case Manager #2*. Parents were frustrated that staff seemed to have not previously reviewed the evaluation data provided by Parents before this meeting. *Interview with Parents*.

F. Student’s Existing Evaluation Data and Reevaluation

33. During the eligibility determination meeting, the District sought Parents’ consent to conduct evaluations in the areas of: general intelligence, communicative status, academic performance, social and emotional status, health, and motor abilities. *Exhibit E*, p. 21; *Interview with Case Manager #2*.
34. Parents declined consent for all evaluation areas *except* academic performance. *Exhibit E*, p. 21-23. The records from Student’s prior school districts indicate that Parents have denied consent for all social/emotional evaluations since at least 2019 and, perhaps, since 2016. *Exhibit A*, p. 36.
35. Prior to the meeting, Parents provided the District with a private psychoeducational assessment (“Private Evaluation”), the results from a prior administration of the Vineland Adaptive Behavior Scales-Third Edition (“Vineland”), and a copy of a letter indicating Student met the criteria for a developmental disability. *Interview with Parents; Exhibit E*, pp. 24, 33-57.
36. The Private Evaluation was completed by a former school psychologist in April 2020, when Student was transitioning to the private online school. *Interview with Parents*. Parents obtained the Private Evaluation to “find[] out more about [Student’s] cognitive development and learning style” and understand why he was not meeting his IEP goals.

Exhibit E, p. 35. The Private Evaluation noted that Student had attended six different schools through seventh grade. *Id.* at p. 36.

37. The evaluator administered the Weschler Intelligence Scale for Children-Fifth Edition (“WISC-V”) and the Woodcock Johnson Test of Academic Achievement-Fourth Edition (“WJ-IV”). *Id.* Additionally, the evaluator observed Student’s behavior during the evaluation process, reviewed records and a writing sample, and interviewed Parents. *Id.* No other assessments were administered by the evaluator, and the evaluator did not speak with any of Student’s teachers. *Id.*
38. On the WISC-V, Student received average scores on the verbal comprehension, visual spatial, and fluid reasoning indices. *Id.* at p. 40. He scored in the low range on working memory and in the very low range for processing speed. *Id.*
39. The WJ-IV indicated that Student was reading at the 16th percentile (or grade equivalent of 4.4) and was writing at the 14th percentile (or grade equivalent of 2.2). *Id.* at p. 42. At the time, Student was in the second half of sixth grade. *Id.* at p. 35. Finally, Student scored in the 5th percentile on math (or grade equivalent of 3.8). *Id.*
40. A local hospital completed the Vineland in March 2022 at Parents’ request. *Id.* at p. 33; *Interview with Parents*. One of Student’s parents completed the rating scales. *Id.* Student’s scores in all domains were less than the first percentile. *Id.* In the communication domain, the age equivalent of Student’s receptive language score was one year, 10 months, while the age equivalent of Student’s expressive language was four years, 2 months. *Id.* Similarly, on the daily living skills domain, Student’s age equivalent was two years, three months for personal daily living skills and less than three years for domestic living skills. *Id.*
41. On the maladaptive behavior scales, he scored 22 for internalizing behaviors and 24 for externalizing behaviors. *Id.* at p. 34. Both scores fell in the clinically significant range. *Id.*
42. During a consultation with the SCO, CDE Content Specialist raised concerns about the validity of the Vineland results. *Interview with CDE Content Specialist*. The results of the Vineland contradict other assessments, including those in the Private Evaluation and those from prior districts. *Id.* For example, in 2019, a prior school district administered the Expressive Vocabulary Test to measure Student’s expressive vocabulary. *Exhibit A*, p. 66. At the time of the assessment, Student was 11 years old. *Id.* Student scored in the 32nd percentile compared to same age peers, placing his expressive vocabulary in the average range. *Id.* Yet, the Vineland, which was administered three years later, showed Student’s expressive language to be that of a four-year-old. *Exhibit E*, p. 33.
43. That same school district also administered the Clinical Evaluation of Language Fundamentals-Fifth Edition in 2019. *Exhibit A*, p. 66-67. On the receptive language index, Student scored in the 18th percentile, showing “average receptive language functioning

compared to his same age peers.” *Id.* at p. 67. In contrast, the Vineland score placed Student’s receptive language at the level of a one-year-old.

44. CDE Content Specialist opined that a person who scored less than the first percentile in all domains could not function in a school environment like Student does. *Id.*

G. Student’s Reevaluation

45. After Parents refused to provide consent to evaluate (except for academic performance), the District completed a review of records as a reevaluation. *Exhibit E*, pp. 4-17. The evaluation report dated August 30, 2022 (“Evaluation Report”) summarized information the District received from Parents, as well as information contained in the 2021 IEP. *Id.* The District did not complete the academic performance evaluation or pursue the evaluation through the consent override process. *Interviews with Case Manager #2 and SEIS.*
46. The summarized assessments included: the WISC-V, WJ-IV, Vineland, Goldman-Fristoe Test of Articulation, and Weschler’s Individual Achievement Test (“WIAT”). *Id.* Only the Vineland was administered in 2022. *Id.* at p. 33. Both the WISC-V and WJ-IV were from the 2020 Private Evaluation. *Id.* at p. 35. Meanwhile, the Goldman-Fristoe and the WIAT were completed by one of Student’s prior school districts in early 2019. *Exhibit A*, pp. 64-84.

H. September IEP Team Meeting

47. On September 7, Case Manager #2 told Parents via email that she was scheduling the IEP Team meeting for September 21 to allow School staff time to “obtain, review, and incorporate” all of Student’s IEP records. *Exhibit M*, p. 879. If that day did not work for Parents, Case Manager #2 asked Parents to propose a better date. *Id.*
48. In response, Parents stated that September 21 did not work and suggested September 23 or September 29 instead. *Id.* at pp. 881-82. On September 8, Case Manager #2 rescheduled the meeting for September 23 and agreed to provide an updated notice of meeting. *Id.*
49. Meanwhile, on September 12, Case Manager #2 contacted BOCES to request Student’s IEP records, including any prior evaluations and eligibility determinations. *Id.* at p. 867. Case Manager #2 already had a copy of the 2021 IEP that had been provided by Parents but wanted to ensure nothing was missing. *Interview with Case Manager #2.* BOCES provided those documents the same day. *Exhibit M*, p. 867.
50. Also on September 12, Case Manager #2 sent a notice of meeting to Parents via email along with a copy of the procedural safeguards. *Id.* at p. 832. Case Manager #2’s email did not indicate whether she was also sending a copy of the notice of meeting via mail. *Id.* Parents asked Case Manager #2 to add the purpose of the meeting, prompting Case Manager #2 to send a revised notice of meeting via email. *Id.* The notice of meeting indicated that the

meeting was an IEP review: “The purpose of this meeting is to review and update [Student’s] present levels of academic achievement and functional performance, needs, and goals, and to develop a plan to provide special education and related services.” *Exhibit I*, p. 8. The notice of meeting listed the participants by their roles (such as “Special Education Teacher”) rather than their names. *Id.*

51. On September 19, Case Manager #2 emailed a calendar invite to Parents for the IEP Team meeting scheduled for September 23. *Id.* at p. 767. That day, Parents replied indicating they had not yet received a notice of meeting in the mail. *Id.* Case Manager #2 responded that she emailed the notice on September 12 and planned to send a copy in the mail along with the draft IEP and procedural safeguards. *Id.* Alternatively, Case Manager #2 asked if she could drop it off at Student’s house or hand it to Parents when they picked him up. *Id.* Parents indicated that Case Manager #2 should just mail the notice of meeting “as we’ve all agreed.” *Id.*

I. Development of the 2022 IEP

52. The District convened Student’s IEP Team on September 23. *Interview with Case Manager #2.* Parents and Student attended and participated in the meeting. *Interview with Parents.*
53. The September IEP Team Meeting resulted in an IEP dated September 23, 2022 (“2022 IEP”). *Exhibit B*, pp. 27-55.
54. The 2022 IEP summarized Student’s recent reevaluation and included notes from his current teachers regarding his strengths and areas for growth. *Id.* at pp. 30-36. The IEP indicated that Student scored in the 67th percentile for basic reading on an EasyCBM assessment. *Id.* at p. 34.
55. As detailed in the 2022 IEP, Student’s disabilities impacted:
- His processing speed;
 - His ability to read at grade level for understanding;
 - His ability to show his knowledge and understanding in writing;
 - His ability to learn and apply math calculation skills;
 - His ability to regulate emotions and maintain focused attention.

Id. at p. 39. The 2022 IEP described supports and actions to mitigate each of the identified impacts. *Id.*

56. The 2022 IEP contained a post-secondary transition plan. *Id.* at pp. 41-43.

57. Under the 2022 IEP, Student had four annual goals in the areas of writing, reading, mathematics, and social/emotional wellness. *Id.* at pp. 44-49. Unlike the 2021 IEP, Student did not have a social/emotional wellness goal. *Id.*
58. The 2022 IEP grouped the accommodations into three categories to support Student’s areas of need: accommodations to support memory and processing speed, accommodations to support writing, and accommodations to support social/emotional needs. *Id.* at p. 48. The accommodations related to Student’s memory and processing speed asked teachers, in part, to provide “[e]xtended time to complete assessments and assignments” and “[s]hortened assignments to retain content and reduce reading, writing, and math demands (rule of thumb 50% unless the assignment is very short).” *Id.* To support social/emotional needs, staff were to allow breaks for movement or refocusing upon request and encourage Student to take a break when he was agitated, amongst other accommodations. *Id.*
59. Under the 2022 IEP, Student received the following special education and related services:
- Specialized Instruction:
 - Literacy:
 - 200 minutes per week of direct reading instruction provided by a special education teacher outside the general education classroom.
 - Mathematics:
 - 200 minutes per week of direct mathematics instruction provided by a special education teacher outside the general education classroom.
 - Other:
 - 60 minutes per month of indirect specialized instruction provided by a special education teacher outside the general education classroom “to ensure [Student’s] IEP is carried out with fidelity, and that accommodations are understood and being offered consistently” through meetings with Student’s teachers.
 - Psychological Services:
 - 60 minutes per month of direct psychological services provided by a school psychologist outside the general education classroom; and

- 15 minutes per month of indirect psychological services provided by a school psychologist outside the general education classroom to support Student's teachers with accommodations around Student's social-emotional needs.

Id. at pp. 51-52.

60. Per the 2022 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at pp. 52-53. Specifically, Student spent 81% of his day in the general education environment. *Id.* The IEP discussed the advantages and disadvantages of the different LRE options. As advantages, the IEP Team noted that Student was "being provided specialized instruction in a class that is paced well for [Student's] needs in a sheltered math and literacy class." *Id.* The advantages reflected that Student would otherwise have access to general education classes, where he could develop socially and emotionally and have access to grade-level standards. *Id.*
61. The IEP Team did not develop a behavior intervention plan for Student. *Id.* at p. 41.
62. The 2022 IEP contained brief input from Parents and Student in the designated section but did not include the letter of concern Parents provided to Case Manager #2 before the IEP Team meeting. *Id.* at p. 69; *Interview with Parents*. During this investigation, Parents produced a draft version of Student's IEP that contained their handwritten edits. *Exhibit 11*, pp. 93-117. A comparison of Parents' marked up draft to the final 2022 IEP shows that the IEP Team included input from Parents. *Id.*; *Exhibit B*, pp. 27-55.
63. On October 4, Case Manager #2 emailed a copy of the 2022 IEP to Parents and said she also sent a copy via mail. *Exhibit M*, p. 349. The District produced five mailing receipts during this investigation. *Exhibit D*, pp. 1-7. Two of those receipts do not contain a date, and the other three receipts were for parcels mailed in 2023. *Id.* As such, no documentation shows that the IEP was sent. *Id.*

J. November IEP Team Meeting

64. Four days after the September IEP Team meeting, Parents sent a six-page email to Case Manager #2 requesting another IEP Team meeting and outlining their concerns. *Exhibit 3*, p. 25-30. Parents expressed concern that Student's IEP was not being implemented and that staff did not adequately understand the impact of Student's disabilities. *Id.*
65. Parents sent this email the day after Student was involved in a behavioral incident detailed below. *Id.* at pp. 1-2. Regarding discipline, Parents said they wanted those handling discipline to "actually understand what his disability is and what he can and cannot control and/or comprehend." *Id.* at p. 27. Parents directed the IEP Team to the Private Evaluation and Vineland as evidence that Student "cannot understand/process complex concepts like race, gender, religion, etc." *Id.* at p. 28. Parents continued:

People are seeing the kid in front of them talk like a 9th grade [sic] and not realizing that he does not have the processing ability of a 9th grader. Or 1st grader. Literally 1% [on the Vineland]. He can use words that he doesn't understand and parrot people. That doesn't mean he understands. . . . He compensates quite a bit by copying peers (including their views, perspectives, bad behavior, etc.).

Id. They compared Student's suspension for use of racial slurs to the school suspending a student with Tourette's for screaming profanities. *Id.* at p. 29.

66. On October 21, Case Manager #2 emailed Parents a notice of meeting for the IEP Team meeting scheduled on November 11. *Exhibit M*, p. 1998. The notice indicated the purpose of the meeting was to amend Student's IEP and identified the attendees by their roles. *Id.* Case Manager #2 offered to provide the notice of meeting via mail if Parents preferred. *Id.*
67. The day before the meeting, Parents sent an email to staff indicating that the meeting was scheduled at Parents' request and setting out their plans for the November 11 meeting. *Id.* at p. 4. Specifically, Parents wanted to discuss Student's accommodations, review the Vineland, and address problems regarding implementation of the IEP. *Id.* at pp. 4-5.
68. The District convened Student's IEP Team on November 11 and agreed to amend the 2022 IEP. *Interview with Case Manager #2*. Parents attended this meeting. *Interview with Parents*. The IEP Team added a summary of Student's Vineland results and his adaptive skills needs to the section regarding impact of disability. *Exhibit B*, p. 86. The team added accommodations, such as requiring Case Manager #2 to confer with the discipline team when incidents occur and providing Student a "chain of trusted adults" that was six deep. *Id.* at p. 87. Existing accommodations were explained further to provide clarity to School staff. *Id.* As amended, the 2022 IEP contained specific guidance regarding Student's need for breaks and ways staff could recognize when Student needed a break. *Id.*
69. Following the November 11 IEP Team meeting, Case Manager #2 sent a draft amendment to Parents, SEIS, School Psychologist, and Assistant Principal. *Exhibit M*, p. 7. Case Manager #2 explained which sections would be amended, provided the proposed text of the amendment, and asked the recipients to review it for accuracy: "[O]nce we feel I reflected what our conversation was during the meeting, I will finalize it, reflect our changes in a Prior Written Notice, and then send the final by mail. I would like to complete this by the end of the week." *Id.* The Record contains a responsive email from School Psychologist agreeing with Case Manager #2's draft but not one from Parents—either in the District's documentation or in Parents' documentation.
70. The District finalized the amendment on November 18 ("Amended IEP"). *Exhibit B*, pp. 56, 89. That same day, Case Manager #2 sent an email to Parents and School staff attaching a

copy of the Amended IEP. *Exhibit 11*, p. 212. *Id.* No response from Parents appears in the investigation file—either in the District’s documentation or in Parents’ documentation.

71. In the email, Case Manager #2 said she mailed a copy of the IEP to Parents. *Id.* However, none of the mailing receipts produced by the District corresponded to the date the Amended IEP was mailed to Parents. *Exhibit D*, pp. 1-7. Parents said they did not receive the Amended IEP. *Interview with Parents.*
72. In January, Case Manager #2 met with Student to discuss issues Student was having with breaks in a specific class. *Exhibit M*, p. 35. Case Manager #2 emailed a summary of this conversation to Parents and pasted the accommodations from the Amended IEP to facilitate discussion of how the accommodations could be better used in that class. *Id.* at p. 103. *Id.*
73. Parents responded, alleging that the accommodations pasted by Case Manager #2 were not from Student’s IEP but were, instead, ones proposed by the District and rejected by the IEP Team during the November meeting. *Id.* at p. 99. Parents expressed that “it was clearly stated at the beginning of every meeting each version was a draft and not final and clearly stated at the end that the changes would come to us to approve to be final.” *Id.* at p. 101. Following the November IEP Team meeting, Parents did not “ever approve[] any version in writing because we’ve never received a written version containing promised edits to approve.” *Id.* Parents proposed the District send them Student’s IEP in an editable format so they could make the edits themselves. *Id.* at pp. 102-03.
74. On February 8, Case Manager #2 proposed scheduling another IEP Team meeting to address Parents’ concerns. *Id.* at p. 23. In that email, Case Manager #2 said “I believe we shared the IEP with you, but to ensure that you received [Student’s IEP] I mailed another copy of his IEP, the Amendment PWN, and his progress report to your home on February 3.” *Id.*
75. SEIS reached out to Parents on February 16 to address some of their concerns. *Id.* at p. 287. In that email, SEIS provided Parents the dates Student’s 2022 IEP and Amended IEP were finalized, as well as the dates Case Manager #2 said she mailed copies to Parents. *Id.* at p. 287-88. He clarified that once documents are finalized in the District’s system, they are no longer considered drafts and would not be sent home for feedback. *Id.* If Parents had lingering concerns about the substance of Student’s IEP, SEIS invited them to participate in an IEP Team meeting so those issues could be remedied. *Id.*
76. On March 8, Parents emailed SEIS, asking about the status of the IEP that was sent in the mail on February 8. *Id.* at p. 532-33. Parents accused Case Manager #2 of never having sent the IEP (or any other IEP since September). *Id.* SEIS responded with a copy of the certified mail receipt, showing that USPS attempted to deliver the package on February 8 but that no one was present to accept delivery. *Id.* Parents disputed the validity of the receipt and

provided their USPS informed delivery notifications for 30-days to show that the certified mail was never listed there. *Id.* at pp. 537-543.

77. During this investigation, Parents indicated they rarely, if ever, received the items the School said it sent via mail. *Id.* During this investigation, Case Manager #2 stated that Parents never signed for documents that required a signature. *Interview with Case Manager #2.* When documents were sent without a signature required, Parents said they were never delivered (even when the mail carrier indicated the item was delivered). *Id.* Parents also refused to pick documents up in the office or permit them to be sent home with Student. *Id.*

K. Implementation of the 2022 IEP

78. On September 30, Assistant Principal sent an email regarding Student's IEP to a number of School staff including Student's teachers, School administrators, School's behavior intervention team, and School's mental health team. *Exhibit M*, pp. 953-54. Assistant Principal attached Student's IEP snapshot and stated:

It's important that **all** adults who might interact with [Student] throughout the school day are familiar with his needs and also familiar with how to support him. . . . The expectation is that all pieces of his IEP are to be followed at all times, across all school environments. Particularly, it is very important that we all know how to recognize when [Student] is escalating, what that looks like, and the steps to take in order to de-escalate him.

Id. at pp. 953-54. Assistant Principal directed the recipients to review the accommodations and annual goals in Student's IEP and complete a Google form once they completed the review. *Id.* at p. 954.

79. On October 4, Case Manager #2 emailed the 2022 IEP to Parents and indicated she also sent a copy via mail. *Exhibit 11*, p. 138. She also informed Parents that all relevant staff had reviewed Student's IEP. *Id.*
80. Case Manager met regularly with Student's teachers regarding his IEP. *Interviews with Case Manager #2, Science Teacher, and Social Studies Teacher.* Initially, these meetings ensured staff understood the requirements of Student's IEP. *Interview with Case Manager #2.* As time went on, Case Manager #2 continued to meet with staff to address specific assignments or assessments. *Id.*

Psychological Services

81. The 2022 IEP required Student to receive 60 minutes per month of direct psychological services provided by a school psychologist outside the general education classroom. *Exhibit*

B, p. 51. The 2022 IEP was finalized in late September, and Student began receiving psychological services on October 6. *Exhibit B*, p. 27; *Interview with School Psychologist*; *Exhibit G*, p. 1.

82. In February 2023, Student began to refuse his psychological services. *Interviews with Case Manager #2 and School Psychologist*. At the time, Student had missed several sessions in a row due to his absences and School Psychologist's absence. *Interview with School Psychologist*; *Exhibit G*, pp. 1-2. Student seemed fixated on the missed days and told School Psychologist it was her fault. *Interview with School Psychologist*. In contrast, Student said he felt like School Psychologist was "watching him" in class. *Exhibit M*, p. 137. He said she "yelled" at him and "made [him] feel bad" for having an IEP. *Interview with Student*.
83. Student initially told School Psychologist he could not meet because he "had work to do." *Exhibit M*, p. 138. Case Manager #2 encouraged Student to be honest and tell School Psychologist that he did not want to meet with her. *Id.* Case Manager #2 was encouraging Student's self-advocacy skills and not endorsing Student's decision not to meet with School Psychologist. *Id.*; *Interview with Case Manager #2*.
84. Case Manager #2 let Parents know that he was refusing services and said that she could convene the IEP Team if they needed to discuss mental health services. *Exhibit M*, p. 139.
85. School did not have another school psychologist on staff that could provide Student's services. *Interview with School Psychologist*. School had a social worker but that change in service provider would have required amending Student's IEP. *Id.* The District did not convene Student's IEP Team to discuss his refusal of psychological services. *Id.*; *Interview with Case Manager #2*.
86. According to School Psychologist's service log, Student received the following psychological services during the 2022-2023 school year:
 - October: Student received 50 minutes of services. One session was missed due to standardized testing.
 - November: Student received 45 minutes of services. One session was missed due to the Thanksgiving holiday.
 - December: Student received 30 minutes of services. Two sessions were missed: one due to an emergency situation at School and one for an undisclosed reason.
 - January: Student received 30 minutes of services. Three sessions were missed: one due to an undisclosed reason, one due to School Psychologist's absence, and one due to Student's absence.

- February: Student received 55 minutes of services. One session was missed due to Student's absence. Additionally, School Psychologist reported providing Student 45 minutes of services on February 6; however, Student's attendance records indicate he was absent that day. Student refused services on three days.
- March: Student received no services in March. Student was absent twice and refused services twice.
- April: Student received no services in April. Student refused services twice.
- May: Student received no services in May, and the service log does not indicate he was offered any services.

Id. at pp. 1-2.

87. Based on this information, the SCO finds and concludes that the District failed to provide Student with 370 minutes of psychological services, broken down as follows:

- October: 10 minutes
- November: 15 minutes
- December: 30 minutes
- January: 15 minutes. The SCO has given the District credit for the session missed due to Student's absence.
- February: 0 minutes. The SCO has given the District credit for the session missed due to Student's absence.
- March: 60 minutes. The SCO has given the District credit for the two sessions missed due to Student's absence.
- April: 120 minutes
- May: 120 minutes

See id.

Accommodations

88. The accommodations in 2022 IEP included, in part:

- Extended time to complete assessments and assignments,
- Shortened assignments to retain content and reduce reading, writing, and math demands,
- Alternative options for student response, such as oral, video, or bulleted lists,
- Breaks for movement or refocusing, when requested,
- Encouragement to use strategies such as asking for breaks or meeting with a trusted adult when Student becomes agitated, and
- A trusted adult Student can meet with when upset and elevated.

Exhibit B, p. 48. Parents allege that the District failed to provide Student the accommodations related to his assignments and his breaks. *Interview with Parents*.

89. Student reported that some teachers modified his assignments perfectly, even allowing him to choose from a few modified options. *Interview with Student*. However, at times, some of his other teachers did not modify his assignments for him and he was left to figure out what he should do. *Id.* Student had the most difficulty with modified assignments in his science class. *Id.* The Complaint detailed the issues Parents raised with Student’s teachers regarding modified assignments, though most of the issues raised by Parents occurred in September before the 2022 IEP was finalized and as Student’s teachers were still familiarizing themselves with the 2021 IEP. *Complaint*, pp. 23-26.
90. All teachers interviewed during this investigation indicated they did their best to implement accommodations. *Interviews with A/V Teacher, Science Teacher, and Social Studies Teacher*. All three teachers modified assignments and checked for understanding. *Id.* In science, Science Teacher often told Student to focus on certain questions on the assignment, but Student would insist that he got to pick the questions and would pick only multiple-choice questions. *Interviews with Case Manager #2 and Science Teacher*.
91. At the same time, all three teachers reported that Student was frequently playing games on his phone during class. *Id.* When redirected, Student would sometimes respond positively, but, other times, he completely refused to put his phone away. *Id.* Even when teachers worked directly with Student, he would ignore them. *Exhibit M*, p. 1222.
92. Parents frequently emailed Case Manager #2 asking about accommodations for a specific assignment. *Interviews with Case Manager #2 and Parents*. Case Manager #2 would talk to the teacher to figure out what was going on and how she could help. *Id.* This system frustrated Parents. *Exhibit M*, pp. 1569-1572.
93. Parents asserted that Student was removed from class to receive his accommodations, resulting in a change to his LRE. *Interview with Parents*. Case Manager #2 acknowledged that, at times, she took Student out of his general education classes to receive his accommodations. *Interview with Case Manager #2*. Case Manager #2 pulled Student on occasion for oral assessments and scribing for assignments or assessments. *Id.*; *Interview*

with A/V Teacher, Case Manager #2, Social Studies Teacher, and Science Teacher. When possible, Case Manager #2 tried to pull Student during his advisory period. *Interview with Case Manager #2*. She recalled taking Student out of math on two occasions when Student finished math early. *Id.* These removals were infrequent (less than weekly), short in duration, and did not take Student away during instruction time. *Id.*; see *Exhibit M*, p. 1569.

94. Though the record shows occasions in which Student's teachers did not implement his accommodations, particularly regarding writing expectations, the SCO finds that, overall, School staff provided Student's accommodations related to modified assignments with fidelity.
95. Regarding breaks, Parents contend Student was not always allowed to take a break and, even when he took a break, often could not find one of his trusted adults. *Interview with Parents*. Sometimes Student's trusted adults were not in their office or classroom, and sometimes they were busy and told Student he would have to wait. *Interviews with Parents, Student, and Case Manager #2*. Student felt that he could not wait and would escalate further, often calling Parents to express his frustration and feel heard. *Interview with Student*. Case Manager #2 and Student's teachers indicated that Student was permitted to take breaks and to meet with trusted adults. *Interviews with A/V Teacher, Case Manager #2, Science Teacher, and Social Studies Teacher*. Though Student's trusted adults tried to be available for him, they could not control if they had to attend to other students or were absent or unavailable that day. *Interview with Case Manager #2*.
96. On February 16, SEIS also addressed Parents' concerns regarding Student's list of trusted adults. *Exhibit M*, p. 287. Initially, Student met with Case Manager #2 to develop a list of trusted adults. *Id.* The IEP amendment required Student's list to have at least six adults. *Id.* When Student took breaks, he would look for a trusted adult so he could talk about what was bothering him. *Interviews with Case Manager #2 and Parents*. Sometimes just talking to a trusted adult was enough to help Student de-escalate and be able to return to the classroom. *Id.*
97. Student took a picture of his list of trusted adults. *Id.* The following day, he told Case Manager #2 that he had talked to Parents and needed to remove some of the trusted adults from his list, leaving only two adults remaining. *Interview with Case Manager #2*. Case Manager #2 refused and left all six adults on the list. *Id.* SEIS indicated that Student's list would not be limited to the two adults he most recently named but, instead, would include other adults Student previously viewed as trusted. *Exhibit M*, p. 287. Including all six adults was not only compliant with Student's IEP but also gave Student more options when he needed a break in case his two trusted adults were unavailable. *Interview with Case Manager #2*.
98. School staff indicated there were a few occasions in which Student was not permitted to take a break due to his safety. *Interviews with Assistant Principal and Case Manager #2*.

School uses an electronic pass system to monitor who is out of class or in the restroom. *Id.* The system prevents students who have known conflicts from using a break at the same time. *Id.* Despite these occasions, the SCO finds that School staff provided Student's accommodations related to breaks with fidelity.

99. Student received all A's and B's during the 2022-2023 school year and made progress on most of his IEP goals. *Exhibit J*, pp 1, *Exhibit G*, pp. 7-16.

L. Allegations of Bullying

100. Parents' Complaint alleges that Student was denied FAPE due to ongoing bullying. *See Complaint*, pp. 1-59. Parents contend he was "repeatedly physically assaulted" and "afraid to go to the bathroom and would hold it all day." *Id.* at p. 27. Per Parents, certain students repeatedly harassed Student by asking him for money or calling him "cracker" or "spermy." *Id.* at pp. 25, 31. Parents also reported an occasion in which Student felt he was excluded during group work because his peers were Hispanic and speaking Spanish when Student did not speak Spanish. *Id.* at p. 31.
101. District's records document two incidents of physical aggression being directed at Student: one on September 26 and one on March 20. *Exhibit F*, p. 1; *Exhibit P*, pp. 6-7.
102. On September 27, Student reported an incident of bullying to School staff that occurred the previous day. *Exhibit F*, p. 1. In Student's account, his classmates stole his stickers and called him a "cracker." *Id.* Student then called his classmates the N-word. *Id.* One classmate ("Classmate #1") became angry, took Student's computer and phone, and physically attacked him. *Id.*
103. School staff interviewed Classmate #1. *Id.* at p. 2. Per Classmate #1's recollection, Student "was upset because someone had taken his stickers and he was blaming [Classmate #1] and other black students because 'that's all [N-word plural] know how to do.'" Student kept "calling [Classmate #1] names and [said] that he, [Student] was 'the superior race.'" *Id.* Classmate #1 took Student's computer and called him a "cracker" after Student continued to disparage him. *Id.* According to Classmate #1, Student said he would not get in trouble for what he said because "his parents believed the same and said black people are only good for joining gangs." *Id.*
104. School staff also met with Math Teacher, who witnessed the incident. *Id.* Math Teacher recalled Student becoming upset because one of his stickers was missing. *Id.* Student found the sticker on the floor and accused his classmates of stealing it: "After [Student] found the sticker he was agitated and started saying toward two other students in the class that their kind stole it because that's what their kind does." Student then said he "[was] the only member of the superior race at this school and he [was] sick of being called cracker." *Id.* Student then used the N-word towards some of his classmates, saying that "their race [was]

inferior.” *Id.* Classmate #1 then took Student’s computer and phone. *Id.* “He then went over to [Student] and put his hands on [Student’s] neck and said for him to stop saying those things.” *Id.*

105. Two other students corroborated the version of the incident shared by Classmate #1 and Math Teacher. *Id.* at pp. 2-3. In response to the incident, School provided paraprofessional support in the two classes shared by Student and Classmate #1 and assigned appropriate discipline for Classmate #1. *Id.* at p. 3.
106. Parents claimed the incident was the result of staff not properly implementing the accommodations in Student’s IEP. *Complaint*, p. 30.
107. On March 20, a classmate allegedly took a vape pen from Student as members of a sports team were preparing for team pictures in the locker room after school. *Exhibit P*, pp. 6-7; *Interview with Parents*. In response, Student called the classmate and another student the N-word. *Exhibit P*, pp. 6-7. In an audio-recording made by Student, he could be heard calling his classmates the N-word. *Id.* When the classmates asked Student to stop, he continued to repeat the N-word two more times. *Id.* After that, one of the classmates punched Student. *Id.* The punch caused a concussion, and Student spent several days in the hospital. *Interview with Parents*.
108. In October, Student reported that he was tripped during football practice, leaving him with severe bruises, though the District could not determine who tripped Student or exactly what happened. *Complaint*, p. 37.
109. Student also reported being called derogatory names. *Interview with Student*. In December, Student reported to Paraprofessional #1 that several other students had called Student “semen” and “spermie” at different points during the school year. *Exhibit F*, p. 6. School staff interviewed the accused students, and two of the students admitted to calling Student those names. *Id.* School staff “respond[ed] to the incidents with appropriate behavioral consequences.” *Id.* The accused students were notified that they would be subject to additional behavioral consequences if they used derogatory language toward Student in the future. *Id.*
110. In February, Student notified School staff that one of his classmates made fun of him for being in special education and called him a “white a**.” *Id.* at p. 4. The teacher confirmed hearing a classmate call Student a “white a** [N-word].” *Id.* Another student reported hearing Student being called “SPED” early that day. *Exhibit M*, p. 1149.
111. On March 13—the date the Complaint was filed—the District conducted a threat assessment after Student’s classmates reported that he posted a threatening video on Snapchat. *Exhibit P*, pp. 8-32. According to the District, in the video, Student can be seen wielding a knife saying “N-word, I will pop you off. I will f*cking slice your neck open

motherf*cker, f*cking prick b*tch.” *Id.* at p. 9. Student then allegedly said “and then there would be blood all over the walls. . . I can make the school shine again.” *Id.*

112. Parents reported that members of the football team—including students who had been bullying and harassing Student through the school year—invited Student to a group on Snapchat. *Interview with Parents.* The students in the group chat “were goofing around trying to act gangster.” *Id.* In their videos, Parents allege other students were holding a machete and even a gun. *Id.* In Student’s video, Parents said he was smiling and laughing and never mentioned the school or a person. *Id.* Parents believe other members of the group set Student up by encouraging him to create the video and then turning him in. *Id.* Though Parents asserted that the District did not have a copy of the video, members of the threat assessment team indicated they had viewed the video and that it did not appear to be a joke. *Interviews with Assistant Principal and Case Manager #2.*
113. Aside from the behavior directed at Student, staff recalled instances in which Student made offensive comments to his classmates. *Interviews with Assistant Principal, AV Teacher, and Case Manager.* Student’s teachers felt that Student’s use of racial slurs created conflict with his peers. *Id.* Sometimes his classmates would let Student’s comments go, while other times they lashed out at Student in response to his comments. *Id.*
114. Regarding racial slurs—particularly the N-word—Parents indicated Student “generally parrots his peers as a common coping mechanism to ‘fit in’ and it’s his most common ‘learning’ tool.” *Complaint*, p. 5. As a result, Parents contend the racial slurs Student used were merely repeated racial slurs used by his classmates. *Id.*
115. Assistant Principal acknowledged that Students at School frequently use the N-word (without the hard “r” ending) colloquially. *Interview with Assistant Principal.* Though Assistant Principal regrets the frequency with which School’s students use the N-word, she indicated the way in which Student used the N-word felt different (with the hard “r” ending and often accompanied by other derogatory language) to staff and other students. *Id.*
116. One of Student’s prior school districts reported he made derogatory comments to peers regarding their gender, appearance, nationality, ethnicity, and sexual orientation during fourth and fifth grade. *Exhibit A*, p. 82; *Exhibit P*, pp. 6-17. Such comments included, but were not limited to, calling peers the N-word, fat*ss, and “China girl.” *Exhibit P*, pp. 16-17.
117. Parents and Student raised issues regarding bullying during the IEP Team meeting held on September 23. *Complaint*, p. 27. The District did not otherwise convene any IEP Team meetings to address the impact of bullying on Student. *Interviews with Case Manager #2 and Parents.*
118. During 2022-2023, School’s population was 78% Hispanic, 10% White, 6% Asian, 3% Black, 2% multiple races, and less than 1% American Indian. *CDE Exhibit 3*, p. 1.

M. Manifestation Determination

119. On March 14, Parents requested the District conduct an MDR. *Exhibit M*, p. 364. Case Manager #2 cited School records which showed that Student had only had eight days of removals and inquired whether Parents had a different understanding of Student's removals. *Id.* Parents replied: "Yes, there were additional days. I believe the attorney is going to address it." *Id.* at p. 799. The record does not contain any additional discussion regarding an MDR at that time.
120. On March 20, Case Manager #2 contacted Parents and asked to schedule an MDR. *Id.* at p. 135. Case Manager #2 asked which days and times worked for Parents but indicated she hoped to schedule the meeting by the end of the week. *Id.*
121. At the time of Case Manager #2's request, Student had recently been released from the hospital for treatment of a concussion. *Interview with Parents; Exhibit M*, p. 133. Parents asked the District to explain how it calculated Student's days of removal. *Id.*
122. On March 22, Case Manager #2 informed Parent that:

After reviewing suspension days, we have decided to count Friday 3/10 as a day of removal for the purpose of counting the days. Technically, it was not a day of suspension, but in case that may not have been clear, we are counting it, even though it wasn't in your original count. That puts us at 10 days. The 11th day of suspension has not been proposed.

Exhibit M, p. 366. Though the District felt an MDR was not required at that point, it was "trying to be proactive." *Id.*

123. The District identifies Student's removals as follows:

- September 26, 2022: Student received one half-day of out-of-school suspension ("OSS") for harassment based on race for the incident in which Student called two of his classmates the N-word and told them he belonged to the "superior race."
- September 27, 2022: Student served one day of in-school suspension ("ISS") for the September 26 incident.
- February 17, 2023: Student received one half-day of ISS for disruptive conduct. After a substitute teacher asked Student to stop making sexual motions, he told the substitute "I don't have to f*cking listen to you, you're just a f*cking sub."
- February 22, 2023: Student served one day of ISS for the February 17 incident.

- March 7-9, 2023: Student received three days of OSS for threatening behavior in a video posted on Snapchat.
- March 10, 13, and 14, 2023: Student was not suspended, though the District acknowledges it did not clearly communicate to Parents that Student could return to School during the pendency of the threat assessment.
- March 15, 2023: Student served one day of OSS for disruptive conduct related to his refusal to return to the classroom.

Response, p. 22; *Exhibit Q*, pp. 1-4; *Exhibit F*, pp. 1-2.

124. Parents' Complaint asserted that Student was removed on twelve other occasions that range in length from 20 minutes to two hours. *Amended Complaint*, p. 3. Parents' alleged removals total 14 hours or approximately two school days. *Id.* Though Parents listed the dates and length of time for these alleged removals, they have not provided any detail regarding the removals (such as why they believe Student was removed). *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: Student did not transfer to the District within the same school year, making 34 C.F.R. § 300.323(g) inapplicable. No violation of the IDEA occurred.

With the first allegation, Parents contend the District failed to timely obtain Student's records from the BOCES.

Under the IDEA, a school district must take reasonable steps to obtain a student's records when a student transfers into the school district "within the same school year." 34 C.F.R. § 300.323(g). This requirement does not explicitly apply to students who move to a new school district between school years. However, the IDEA requires IEPs to be in effect "[a]t the beginning of each school year." *Id.* § 300.323(a). This provision, in essence, requires districts to ensure they obtain students records in enough time to ensure an IEP can be in effect when school starts. *See id.*

Here, Student moved to the District over the summer and did not transfer within a school year. (FF # 4.) On its face, § 300.323(g) does not apply to Student's transfer. Therefore, the SCO finds and concludes that no violation of 34 C.F.R. § 300.323(g) occurred.

Conclusion to Allegation No. 2: The District did not have Student’s IEP in effect at the beginning of the 2022-2023 school year, in violation of 34 C.F.R. § 300.323(a). No denial of FAPE occurred.

Parents’ concern is that the District failed to have an IEP in effect at the start of the school year.

At the beginning of the school year, a school district must have an IEP in effect for every student with a disability. 34 C.F.R. § 300.323(a). This requirement applies even to students who change school districts over the summer: “For all students with disabilities, AUs must have IEPs in effect at the beginning of each school year, regardless of changes in district enrollment/attendance.” *CDE IEP Procedural Guidance*, p. 52. In Colorado, students who move to a new school district in the state over the summer must be provided comparable services. *Id.* at p. 111. The district may administratively transfer the IEP into its system without an IEP Team meeting, but any changes to the student’s IEP would need to be made through an IEP Team meeting or an amendment to the IEP. *CDE IEP Procedural Guidance*, p. 111.

Each school district can determine how to ensure IEPs are in effect for all students when school starts; however, the Department of Education cautions that school districts *may* need to convene an IEP Team meeting prior to the start of the school year to ensure an IEP is in effect at the beginning of the school year. *Letter to Siegel*, 119 LRP 6129 (OSEP 2019); *Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act*, 121 LRP 33345 (OSEP 2023), Question A-1. This is especially true where an incoming student may be moving to a new educational level “where the programs/options are likely entirely different from the child’s previous program and IEP.” *Letter to Siegel*, 119 LRP 6129. If a parent requests an IEP Team meeting prior to the start of the school year and the school district refuses to do so, the school district must provide the parent with PWN of the refusal. *Id.*

A. Summer Programming and Football

The summer programs Student attended and his early football practices occurred before the 2022-2023 school year began. (FF #s 13-14.) As such, the plain language of 34 C.F.R. § 300.323(a) did not require the District to have Student’s IEP in effect for the summer programming or football practices. This is especially true where the summer programs were designed as orientation for incoming ninth-grade students and were not extended school year services, as defined by 34 C.F.R. § 300.106(b). (FF # 13.) And Student’s participation in these programs was based on his status as a ninth-grader and his Parents’ decision, not on a determination by an IEP Team that Student needed the summer programming to receive FAPE. (*Id.*)

However, the inapplicability of 34 C.F.R. § 300.323(a) does not absolve the District of all responsibility. The IDEA mandates that school districts ensure students with disabilities have an equal opportunity to participate in extracurricular activities and nonacademic services:

Each [school district] must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity to participate in those service and activities.

34 C.F.R. § 300.107(a). This includes sports. *Id.* § 300.107(b).

To comply with 34 C.F.R. § 300.107(a), the District needed to take steps to ensure Student had an equal opportunity to participate in both the summer programming and football. On the second day of summer programming, Case Manager #1 provided Student's 2021 IEP and a snapshot of the 2021 IEP to School staff in charge of the program. (FF # 17.) Parents' correspondence with School staff indicates that Student was taking breaks and receiving check-ins during the summer programming. (FF # 20.)

With regard to football, the District acknowledges that it did not provide the 2021 IEP to the football coaching staff during Summer 2022. Student's 2021 IEP was written for an online environment and certainly did not contemplate Student's participation in football. (FF #s 4-12.) Suffice to say, it had no accommodations specifically for sports (or any other extracurricular activity for that matter). (*Id.*)

The use of Student's accommodations in the summer programming and football need not be perfect so long as Student had an equal opportunity to participate in both activities. Nothing in the record suggests that Student was unable to participate in these activities. (See FF #s 13-20.) For these reasons, the SCO finds and concludes that the District took steps to ensure Student had an equal opportunity to participate in School's summer programming and the football team, consistent with 34 C.F.R. § 300.107(b).

B. 2022-2023 School Year

The 2022-2023 school year began on August 22, 2022. (FF # 21.) At that time, the 2021 IEP was not a part of the District's system, and staff had not been provided a copy of Student's IEP. (*Id.*) The District was waiting to convene Student's IEP Team to determine whether or not it would adopt Student's existing IEP or develop a new IEP. (*Id.*) As a result, Student's IEP was not in effect when the 2022-2023 school year began (though it was in effect following the August 30 eligibility determination meeting). (FF # 32.) Student was moving from an online school to a brick-and-mortar school *and* to a new educational level (middle school to high school), increasing the need for the District to convene an IEP Team in the summer to ensure an appropriate IEP would be in effect when the school year began. Without an IEP in effect, the District could not properly implement the IEP, resulting in a violation of 34 C.F.R. § 300.323(a). The SCO analyzes this violation under the materiality standard used for failures to implement. See *Tyler J. v. Dep't of Ed.*, 2015 WL 793013, at *7-8, 115 LRP 8357 (D. Haw. 2/24/2015).

C. 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. 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, the District failed to have an IEP in effect for Student during the first week of the school year. (FF #s 21, 32.) During this time, Student did not receive the specialized instruction required by his IEP, though he was attending special education math and language arts classes. (FF # 22.) His teachers were not aware of his accommodations and, thus, were not providing them in the classroom. (FF # 21.) Though Parents should not have to bear the burden, the SCO notes that Parents were routinely communicating with Student's teachers during the first two weeks of school about individual assignments and accommodations for those assignments, reducing the impact of the failure on Student. (FF #s 89, 93.) Considering that this failure lasted for only a week—and primarily impacted Student's receipt of accommodations—the SCO finds and concludes that the District's failure did not result in a denial of FAPE.

Conclusion to Allegation No. 3: The District failed to implement Student's IEP, resulting in a violation of 34 C.F.R. 300.323(c)(2). A denial of FAPE occurred.

Parents' concern is that District failed to implement Student's IEP by: (1) not making Student's IEP accessible to teachers and staff; (2) not providing Student the accommodations required by his IEP; (3) not providing Student the psychological services required by his IEP; and (4) 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).

As an initial matter, the SCO clarifies that this allegation pertains solely to the 2022 IEP. The SCO has already addressed Parents’ concerns regarding the 2021 IEP in Allegation No. 2.

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, Assistant Principal and Case Manager #2 ensured School staff, including Student’s teachers and other relevant staff, were aware of their responsibilities under Student’s IEP. (FF #s 78-79.) After each IEP Team meeting, either Assistant Principal or Case Manager #2 emailed Student’s IEP to his teachers and relevant staff. (*Id.*) At one point, staff were required to review the IEP and complete a form acknowledging that they had done so. (FF # 78.) Additionally, Case Manager #2 met regularly with Student’s teachers to ensure they understood and were implementing his accommodations in their classes. (FF # 80.) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

C. Accommodations

While the 2022 IEP contained myriad accommodations, Parents’ Complaint relates primarily to Student’s assignments and breaks. (FF # 88.) Regarding assignments, the IEP required that School staff modify Student’s assignments to reduce reading, writing, and math demands. (*Id.*) Student should be allowed extended time to complete assessments and assignments, as well as alternative means for responding (such as oral responses). (*Id.*)

As for breaks, the IEP required staff to allow Student breaks for movement or refocusing upon request. (*Id.*) When Student became agitated, staff should encourage Student to ask for a break or to meet with a trusted adult. (*Id.*) The IEP also called for a trusted adult to be available when Student was upset or frustrated. (*Id.*)

The Findings of Fact demonstrate that Student’s teachers implemented his accommodations with fidelity but that, nonetheless, Student was occasionally denied the benefit of his accommodations when a teacher failed to modify an assignment or permit him to take a break. (FF #s 89-94.) Outside of these occasional failures, Student’s teachers modified his assignments and allowed him to demonstrate his knowledge in alternate ways consistent with his IEP. (*Id.*)

Similarly, Student was allowed to take breaks and meet with his trusted adults. (FF #s 95-98.) At times, his trusted adults were busy helping his classmates or Student was not allowed a break due to safety. (*Id.*) But, overall, School staff worked diligently to ensure Student received the breaks required by his IEP. (*Id.*) Though insignificant, the instances in which School staff failed to provide Student with his accommodations resulted in a failure to implement Student's IEP in violation of 34 C.F.R. § 300.323(c)(2).

D. Psychological Services

The 2022 IEP required Student to receive 60 minutes per month of psychological services from the school psychologist outside the general education classroom. (FF #s 59, 81.) The District failed to provide Student with 370 minutes of psychological services during the school year. (FF #s 86-87.) At least 300 of the missing minutes can be attributed to Student's refusal to receive services. (*Id.*) However, Student's refusal did not relieve the District of its obligation to provide the services under Student's IEP. The District should have convened Student's IEP Team pursuant to 34 C.F.R. § 300.324(b). Without a change to Student's IEP, the District remained obligated to provide Student psychological services. Thus, the District's failure to provide all the required psychological services resulted in a violation of 34 C.F.R. § 300.323(c)(2).

E. Educational Placement

The IDEA requires an IEP to identify 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).

Parents' concerns regarding educational placement relate to his accommodations. Parents assert that Student was frequently removed from his general education classes to receive his accommodations (either for the class he was missing or another class). (FF # 94.)

Here, Student's IEP required him to spend at least 80% of his time in the general education classroom. (FF #s 59, 81.) Case Manager #2 acknowledged that, at times, she removed Student from his general education classes to provide his accommodations. (FF # 94.) As examples, Case Manager #2 indicated she would pull Student out to provide him verbal checks for understanding or verbal assessments. (*Id.*) Case Manager #2 infrequently pulled Student and ensured he did not miss instructional time. (*Id.*) The teachers interviewed during this investigation agreed with Case Manager #2's characterization of the removals. (*Id.*)

The SCO finds that the removals did not deprive Student of access to the general education curriculum or his peers. Though he undoubtedly missed some time in the general education classroom, the minimal time he missed allowed him to receive his accommodations in an appropriate setting. It is not always feasible to verbally administer an assessment in the general education classroom while other students are completing a written assessment. For these

reasons, the SCO finds and concludes that the District educated Student consistent with the educational placement in his IEP. No violation of the IDEA occurred.

F. 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. 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, the District failed in two ways. First, the District neglected to provide Student with the accommodations required by his IEP on occasion. Second, the District failed to provide Student with 370 minutes of psychological services. Outside of an occasional failure to provide Student with his accommodations, Student's teachers implemented the accommodations in his IEP. As noted above, the IDEA does not require perfection, only fidelity. For that reason, the SCO finds and concludes that the District's failure to provide Student's accommodations was immaterial when considered in the context of an entire school year. This failure did not result in a denial of FAPE.

The SCO's determination regarding psychological services is different. Student's IEP required 60 minutes of psychological services per month. (FF # 59) Student's psychological services were his only related services. (*Id.*) The District failed to provide Student with 370 minutes of psychological services, equating to nearly six months of service time. (FF # 88.) This failure to implement was material and resulted in a denial of FAPE. Given the degree to which a FAPE was denied, Student is entitled to compensatory education. *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

G. Compensatory Services

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).

Here, the District failed to provide Student with 370 minutes. (FF # 88.) Thus, the SCO orders the District to provide Student with 300 minutes of direct psychological services.

Conclusion to Allegation No. 4: The District failed to provide Parents with proper notice of IEP Team meetings, resulting in a violation of 34 C.F.R. § 300.322(a). No denial of FAPE occurred.

Parents' concern is that the District failed to provide adequate notice of the August IEP Team meeting to ensure they had an opportunity to attend. Additionally, Parents claimed the notices of meeting did not inform Parents of the purpose of meetings or who would be in attendance.

Under the IDEA, school districts must notify parents of IEP Team meetings "early enough to ensure they have an opportunity to attend" and schedule meetings at a mutually agreeable time and place. 34 C.F.R. § 300.322(a). Notice of the meeting must indicate the purpose, time and location, and attendees of the meeting and inform parents that they may invite other individuals. *Id.* § 300.322(b)(i)-(ii).

A. Adequacy of Notices of Meeting

Here, the District failed to provide Parents adequate notice of Student's IEP Team meetings. On August 26, SEIS offered to convene Student's IEP Team on August 29, August 30, or August 31. (FF # 29.) Depending on the date selected, Parents would have received only three to five days' notice of the IEP Team meeting. The SCO finds such short notice to be inadequate under the IDEA. The District contends the meeting was scheduled in haste because Parents threatened to file a state complaint with the CDE. (FF #s 28-30.) However, Parents actually said they would file a state complaint if the District did not schedule an IEP Team meeting within five days; Parents did not expect the meeting to be held within five days. (FF # 30.) Regardless, Parents' request for expediency does not relieve the District of the requirements of 34 C.F.R. § 300.322(a). The SCO finds and concludes that the District failed to provide adequate notice of the August IEP Team meeting, resulting in a procedural violation of 34 C.F.R. § 300.322(a).

In contrast, the District gave Parents ample notice of the IEP Team meetings held in September and November. Specifically, Parents were notified of the September and November IEP Team meetings 11 and 21 days in advance, respectively. (FF #s 50, 66.) Such notice was adequate under the IDEA, at least in terms of providing Parents notice early enough to ensure they could attend. However, a question arises about whether the way the notices were sent was appropriate. Parents vehemently (and repeatedly) told the District they did *not* consent to electronic delivery of formal notices, including notices of meeting. (FF # 26.) The District delivered all three notices of meeting to Parents via both mail and email. (FF #s 31, 50, 66.)

Under the IDEA, parents may elect to receive prior written notices, procedural safeguards notices, and due process complaint notices electronically. 34 C.F.R. § 300.505. Relatedly, the Department of Education has "stated that the IDEA statute and regulations do not prohibit the

use of electronic mail to carry out administrative matters under . . . the IDEA, so long as the parent of the child with a disability and the public agency agree.” *Letter to Breton*, 114 LRP 14938 (OSEP 2014). Parental consent is the key.

Here, the District lacked Parents’ consent for electronic delivery of official notices (though Parents seemed content to receive unofficial versions of the notices electronically). Therefore, in determining whether the District’s notices were adequate, the SCO must consider only the mailed notices. The Record does not indicate when (or, perhaps, if) Parents received the mailed versions of the notices. Therefore, the SCO cannot determine whether the mailed copies provided Parents adequate notice. As a result, the SCO finds and concludes that the District failed to provide adequate notice of the September and November IEP Team meetings, resulting in a procedural violation of 34 C.F.R. § 300.322(a).

Regarding Parents’ concerns about the purpose of meeting and attendees, the SCO finds no violation of the IDEA. When Parents’ initially received electronic notice of the September IEP Team meeting, Parents asked Case Manager #2 to revise the notice to include the purpose. (FF # 50.) That same day, Case Manager #2 corrected the notice and provided the corrected copy to Parents. (*Id.*) Both the notice for the August and the November meetings stated a purpose for the meeting. (FF #s 31, 66.)

All three notices of meeting listed the attendees by role, not by name. (FF #s 31, 50, 66.) Under the IDEA, the notice of meeting must state “who will be in attendance.” 34 C.F.R. § 300.322(a). The IDEA does not explicitly require individual names to be listed. *See id.* CDE’s IEP Procedural Guidance provides a form notice of meeting which lists attendees by title (such as “General Education Teacher” or “Special Education Teacher”) and directs districts to “[e]nter the title and, if appropriate, the agency of any individuals invited to attend.” *CDE IEP Procedural Guidance*, pp. 118-19. Given the lack of specificity in the IDEA and the CDE guidance, the SCO finds and concludes that the District’s identification of attendees using titles (instead of names) complied with the IDEA.

B. Procedural Violation

A procedural violation results in a denial of FAPE if it: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Here, the District’s violation had none of these impacts. District staff scheduled the meetings in consultation with Parents and provided Parents electronic notice of the meetings. (FF #s 29-31, 47-51.) Parents viewed and responded to the electronic notices, demonstrating that they were able to access the notices (even if it was not their preferred means of communication). (*Id.*) Parents attended all three meetings, and there is no indication Parents would have invited other

attendees but for the short notice of the August meeting. (FF #s 32, 52, 68.) For these reasons, the SCO finds and concludes that the procedural violation did not result in a denial of FAPE.

Conclusion to Allegation No. 5: The District failed to provide Parents a copy of Student’s IEP, in violation of 34 C.F.R. § 300.322(f). No denial of FAPE occurred.

Parents’ concern relates to whether they were provided a copy of Student’s IEP, both after the 2022 IEP was developed in September 2022 and after it was amended in November 2022.

School districts must provide parents a copy of their child’s IEP at no cost. 34 C.F.R. § 300.322(f). The IDEA does not specify that the IEP be provided within a certain timeframe. *See id.*

A. Copies of IEPs

Here, Parents explicitly informed the District that they did not consent to electronic delivery of official IDEA documents, including IEPs. (FF # 26.) Instead, Parents demanded that all documents be mailed. (*Id.*) Case Manager #2 emailed Parents—both in October and November—indicating that she was sending a copy of the 2022 IEP and the amended 2022 IEP to Parents via mail. (FF #s 63, 70-71.) At the same time, the District has not produced any receipts to show that the documents were actually mailed to Parents. (FF #s 63, 71.) As a result, the SCO finds and concludes that the District failed to provide Parents a copy of Student’s IEP in October and November 2022. This resulted in a procedural violation of 34 C.F.R. § 300.322(f).

With this finding, the SCO makes no judgment on the credibility of either Case Manager #2, who says she sent the documents, or Parents, who say they did not receive them. Though the IDEA does not require the District to send IEPs via a trackable means, the District needs some way to show that the IEPs were actually mailed other than an email saying they will be sent or were sent. For example, Case Manager #2 could have added the mailing information to the communication log she already maintained or sent a tracking number to Parents via email.

B. Procedural Violation

A procedural violation results in a denial of FAPE if it: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Here, even though the District cannot show it mailed copies of the IEP, Parents undoubtedly received the IEPs via email. Though email is not Parents’ preferred means of communication, Parents had access to the IEPs here and the opportunity to read them. Nothing in the Record indicates that the District’s failure had any impact on Parents’ opportunity to participate in the

decision-making process or on Student's right to a FAPE. For these reasons, the SCO finds and concludes that the procedural violation did not result in a denial of FAPE.

Conclusion to Allegation No. 6: After Parent refused consent for a comprehensive evaluation, the District was not obligated to complete the evaluation of Student's academic performance under 34 C.F.R. § 300.303 or § 300.304. No violation of the IDEA occurred.

Parents' concern is that the District failed to evaluate Student's academic performance, even though Parents provided consent for an evaluation in this area.

Under the IDEA, school districts must reevaluate students at least once every three years. 34 C.F.R. § 300.303(b). A reevaluation must assess the student "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." *Id.* § 300.304(b)(5). As with an initial evaluation, the district must obtain parental consent to conduct the reevaluation. *Id.* § 300.300(c). If the parent refuses consent, the district may, but is not required to, pursue the reevaluation using the consent override process outlined in the IDEA. *Id.*

Here, the District sought Parents' consent to conduct evaluations in the areas of general intelligence, communicative status, academic performance, social and emotional status, health, and motor abilities as part of Student's triennial reevaluation. (FF # 33.) Parents provided consent for an evaluation of Student's academic performance but adamantly refused evaluations in all other areas. (FF # 34.) In fact, Parents bristled when Case Manager #1 informally suggested the District would want to evaluate Student's social/emotional status or conduct an FBA before the school year started. (FF # 26.) Once Parent provided only partial consent, the District took no steps to assess Student's academic performance and did not pursue the reevaluation using the consent override process. (FF # 45.)

The SCO acknowledges that Parents provided the District with some evaluation data, namely the Private Evaluation and the Vineland. (FF #s 35-41.) However, that evaluation data was neither comprehensive nor current. (*Id.*) For example, the Private Evaluation assessed Student's cognitive abilities using the WISC-V and his academic performance using the WJ-IV. (FF #s 37-39.) The evaluator did not use any other assessments, resulting in a lack of information regarding Student's social/emotional status. (FF # 37.) The Private Evaluation was completed in Spring 2020, when Student was in sixth grade and as he was beginning what would become a nearly two-and-one-half year stint in online schools. (FF #s 3, 36.) Student is, perhaps, not the same student now that he was the time of the Private Evaluation.

The Vineland provided by Parents was recent but had limited value given that Parent was the only rater. (FF # 40.) It did not provide the District any information on Student's functioning in a classroom. Moreover, the results of the Vineland—where Student scored below the first percentile in all domains—raise concerns about its validity, given the assessment results in the Private Evaluation and from Student's prior districts. (FF #s 42-44.)

Parents' refusal to provide consent was unreasonable under the circumstances. "Every court to consider the IDEA's reevaluation requirements has concluded 'if a student's parents want him to receive special education under the IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation.'" *M.T.V. v. DeKalb County Sch. Dist.*, 446 F.3d 1153, 106 LRP 24219 (11th Cir. 2006). "The school cannot be forced to rely solely on an independent evaluation conducted at the parents' behest." *Id.*

Again, the IDEA obligates the District to conduct a *comprehensive* reevaluation. If the District were to conduct a reevaluation that lacked comprehensiveness, the District would risk violating 34 C.F.R. § 300.304(b)(5). As result, the SCO finds and concludes that the limited consent provided by Parents effectively served as a refusal of consent and terminated any obligation the District had to assess academic performance. Finding otherwise would allow a unilateral action by Parents to force the District to violate the IDEA. The SCO finds no violation of the IDEA.

Conclusion to Allegation No. 7: Student's IEP Team considered Parents' concerns and Student's most recent evaluation data in development of the 2022 IEP, consistent with 34 C.F.R. § 300.324(a). No violation of the IDEA occurred.

Parents' concern is that District failed to develop an IEP that was appropriately tailored to Student's individualized needs when it did not consider Parents' concerns or Student's most recent evaluation data.

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

Both concerns raised by Parents attack the development of the IEP, not the sufficiency of the IEP itself. Additionally, Parents waived their right to challenge the adequacy of the IEP itself by refusing to consent to a comprehensive evaluation. Parents' refusal to provide consent prevented the District from gathering the information it needed to determine Student's educational needs. Therefore, the SCO analyzes this allegation only under the first prong of *Rowley*.

A. Parents' Concerns

An IEP is “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 *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).

Here, Parents have alleged the District did not consider their concerns when developing Student’s IEP. This allegation relates specifically to the District’s failure to include Parents’ written statements of concerns (and Student’s statements) in the final versions of his IEP. (FF # 63.)

The IDEA requires that parent participation be meaningful, to include carefully considering a parent’s concerns for enhancing the education of the child in the development of the child’s IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). However, the IDEA does not require a parent input section. *See id.* § 300.320. Instead, the IEP, considered in its entirety, must be reflective of meaningful participation. Meaningful participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the child. *O’Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Here, importantly, Parents have not alleged that they were, in any way, denied meaningful participation in IEP Team meetings. Each version of Student’s IEP contains at least some input shared by Parents and Student during IEP Team meetings, though the IEPs do not contain the full “parental concerns” letters Parents prepared before meetings. (FF # 62.)

Consideration of Parents’ concerns is also evident in the final version of the IEP. During this investigation, Parents produced their copy of a draft IEP that details their proposed revisions. (*Id.*) A comparison of this redline to the final version evidences that the IEP Team heard Parents’ concerns. (*Id.*) Even if the final IEPs did not encompass everything shared by Parents, the Findings of Fact make clear that the IEP Team considered Parents’ concerns. For this reason, the SCO finds and concludes that the District’s development of the 2022 IEP was consistent with 34 C.F.R. § 300.324(a) and did not result in a violation of the IDEA.

B. Evaluation Data

Regarding evaluation data, Parents’ Reply clarified that this concern relates to the eligibility determination meeting held on August 30, 2022. (FF # 32.) Parents were frustrated that staff had not reviewed the prior evaluation data they provided in advance of the meeting, though they acknowledged School staff reviewed it before the September IEP Team meeting. (*Id.*)

Though 34 C.F.R. 300.324(a) applies to development of an IEP during an IEP Team meeting, it does not apply to eligibility determinations. Parents have not raised any objections to the outcome of the eligibility determination meeting (that is, Parents and the District appear to agree on Student's eligibility). Thus, the SCO finds no violation of 34 C.F.R. § 300.324(a)(1)(iii).

Conclusion to Allegation No. 8: The District was not required to review and revise Student's IEP to address the effects of bullying on Student's needs under 34 C.F.R. § 300.324(b). No violation of the IDEA occurred.

To provide FAPE, an IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Under the IDEA, school districts must review and revise a student's IEP, as appropriate, to address lack of expected progress toward annual goals and in the general education curriculum, the results of a reevaluation, information provided by parents, the child's needs, or other matters. 34 C.F.R. § 300.324(b).

"[B]ullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a . . . FAPE under the IDEA that must be remedied." *Dear Colleague Letter*, 113 LRP 33753 (OSERS/OSEP 2013). The Department of Education characterizes bullying as "aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time." *Id.* Bullying can take a variety of forms, including physical, verbal, emotional, or social behaviors. *Id.*

School districts "have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP." In response to bullying, a school district should convene the student's IEP Team to "determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit." *Id.* Parents may also request an IEP Team meeting to discuss the impact of bullying. *Id.*

Here, both Parents and School staff have identified incidents in which Student was the subject of aggression where the aggressor had more real or perceived power than Student and where the aggression was repeated (or had potential to be). (FF #s 100-12.) This alone makes Student a victim of bullying. The District was on notice of the vast majority of these incidents, as Parents frequently sent emails detailing their concerns about bullying. (*Id.*) Though Parents might be dissatisfied with the District's handling of these incidents, the Record makes clear that the District investigated the reported incidents by interviewing Student, the alleged aggressors, and witnesses (other students and teachers). (*Id.*) The District indicated aggressors received discipline where it was warranted. (*Id.*)

Student expressed his concerns about bullying during the September IEP Team meeting, though the District did not convene another IEP Team meeting to address the bullying. (FF # 117.)

However, available information made clear that Student was still receiving a FAPE. Student consistently received all A's and B's throughout the school year and made progress on most of his annual goals. (FF # 99.) There is no indication that bullying impacted Student's ability to receive FAPE. For these reasons, the SCO finds and concludes that the District was not obligated to review and revise Student's IEP to address the effects of bullying under 34 C.F.R. § 300.324(b). No violation of the IDEA occurred.

At the same time, the SCO cannot ignore Student's use of racial slurs. During interviews, staff never condoned physical aggression that was directed towards Student. (FF # 113.) However, all staff members acknowledge that his use of racial epithets ostracized him and, often, enraged his peers. (*Id.*) Even after his classmates would ask him to stop, Student frequently repeated the epithets again, which, on occasion, resulted in physical aggression being directed at him. (FF # 107.) At the time of the incidents and during this investigation, Parents have suggested that Student does not understand the concept of race and, therefore, uses racial slurs without understanding their meaning and without any ill intention. (FF #s 65, 114.) Per Parents, Student's use of racial slurs is merely parroting and a way Student tries to fit in. (*Id.*) The Findings of Fact raise a question about Student's understanding of racial slurs.

Student has a documented history of using racial epithets at school. A prior district reported that Student made derogatory statements to peers about their gender, appearance, nationality, ethnicity, and sexual orientation when he was in fourth and fifth grades. (FF # 116.) The context of the statements indicated that Student was not parroting other students at School. (*Id.*)

While Student used the N-word towards Black peers, he told his classmates he belonged to the "superior race" and accused them of stealing his things, saying that's all "[N-word plural] know how to do." (FF # 103.) These statements demonstrate understanding, and Parents' continued insistence that they are mimicry undermines the harm they cause to Student's peers and the impact they have on Student's social relationships at School.

Conclusion to Allegation No. 9: The District educated Student in the LRE, consistent with 34 C.F.R. §§ 300.114 and 300.116 and ECEA Rule 4.03(8)(a). No violation of the IDEA occurred.

Parents' concerns relates to Student's placement in the LRE and is twofold. First, Parents contend the District enrolled Student in special education math and language arts classes at the beginning of the 2022-2023 school year, even though he previously was in general education classes. Second, once Student's IEP Team convened in September, Parents contend the IEP Team did not consider whether Student could be successful in the general education classes.

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 general education 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). A child’s placement must be based on his or her IEP and be made by the IEP Team. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a).

A. Determining Student’s Placement Based on his IEP

Under the 2021 IEP, Student spent at least 80% of his time in the general education classroom. (FF # 10.) Student was in the general education setting 93% of the time. (*Id.*) Under the 2021 IEP, Student received 30 minutes per week of specialized math instruction outside the general education environment and 60 minutes per week of specialized language arts instruction outside the general education environment. (FF # 9.) In lieu of these pull-out services, the District enrolled Student in special education courses for math and language arts, where a special education teacher taught grade-level curriculum in a smaller environment. (FF # 22.) The decision was made by Case Manager #1, not Student’s IEP Team. (*Id.*)

Parent argues this placement was inconsistent with Student’s IEP. However, the SCO disagrees. From August 22—when School started—until September 23—when Student’s IEP Team met, Student still spent at least 80% of his time in the general education environment, though it was reduced from 93% to 81% due to the special education classes. (FF # 59-60.) For this reason, the SCO finds and concludes that the District determined Student’s placement based on his IEP, consistent with 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a). No violation of the IDEA occurred.

B. Ensuring Maximum Time with Nondisabled Peers

Here, both of Student’s IEPs required him to spend at least 80% of his time in the general education classroom. (FF #s 10, 60.) The minutes in the special education classes exceeded the minutes he received for pull-out instruction, resulting in the decrease of his time in general education from 93% to 81%. (*Id.*) But, ultimately, Student’s overall placement in the LRE did not change between the two IEPs. (*Id.*) The 2022 IEP memorializes the advantages and disadvantages

of the different LRE options. (*Id.*) As advantages, the IEP Team noted that Student was “being provided specialized instruction in a class that is paced well for [Student’s] needs in a sheltered math and literacy class.” (*Id.*) The advantages reflected that Student would otherwise have access to general education classes, where he could develop socially and emotionally and have access to grade-level standards. (*Id.*)

For these reasons, the SCO finds and concludes that the District ensured Student was educated to the maximum extent possible with nondisabled peers consistent with 34 C.F.R. §§ 300.114. No violation of the IDEA occurred.

Conclusion to Allegation No. 10: The District amended Student’s IEP at the November IEP Team meeting, consistent with 34 C.F.R. § 300.324(a)(6). No violation of the IDEA occurred.

Parents’ concern is that the District amended Student’s IEP in November 2022 outside of an IEP Team meeting and without their approval. Specifically, Parents contend Case Manager #2 altered the accommodations in the amendment to Student’s IEP.

The IDEA allows an IEP to be amended in one of two ways: (1) By the entire IEP Team at an IEP Team meeting, or (2) In a written document outside of an IEP Team meeting, as long as parents and the school district agree. 34 C.F.R. § 300.324(a)(6).

Here, the parties agree that Student’s IEP Team met in November 2022 to amend his IEP; indeed, the stated purpose of the meeting was to review and discuss an amendment to the IEP. (FF # 66.) The dispute concerns the substance of the amendment. While Parents contend no substantive changes were made to Student’s IEP, the District relies on the Amended IEP and accompanying PWN as evidence of the changes that were made. (FF #s 68-73.) The next school day after the November IEP Team meeting, Case Manager #2 sent draft language for the sections of Student’s IEP that were being amended. (FF # 69.) Her email requested that the recipients—including Parents—review her draft to ensure it accurately reflected what was decided in the meeting. (*Id.*) School Psychologist responded, agreeing with Case Manager #2’s draft and adding one additional change. (*Id.*) Parents never responded. (*Id.*)

One week after the meeting, Case Manager #2 finalized the amendment and sent a copy of the amendment to Parents. (FF # 70.) Parents did not respond to that email either to object to the content of the amendment. (*Id.*) Instead, Parents only objected to the amendment in January 2023, when Case Manager #2 sent a summary of a conversation she had with Student about his accommodations. (FF #s 72-73.) Nothing in the Record supports Parents’ contention that the Amended IEP did not accurately reflect what was decided at the IEP Team meeting. Neither party provided an audio recording of the meeting. For these reasons, the SCO finds and concludes that the amendment of Student’s IEP complied with 34 C.F.R. § 300.324(a)(6). No violation of the IDEA occurred.

Conclusion to Allegation No. 11: No disciplinary change of placement occurred. As a result, the District was not required to conduct an MDR under 34 C.F.R. § 300.530(e). No violation of the IDEA occurred.

Parents' concern is that District failed to conduct an MDR within 10 school days of Student's disciplinary change of placement on or around March 14, 2022.

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 a disciplinary change in placement, a school district must perform an MDR. *Id.* § 300.536(a). 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 result of the school district's failure to implement the student's IEP. *Id.* § 300.530(e)(1). Such a determination triggers additional obligations for the school district. *Id.* § 300.530(f). On the contrary, if the behavior is *not* a manifestation of the student's disability, the school district may discipline the student in the same manner as a non-disabled student. *Id.* § 300.530(c). The district must, however, ensure the student continues to receive educational services as specified in 34 C.F.R. § 300.530(d).

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

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). Such a pattern exists where the removals involve "substantially similar" behavior and where other factors—such as the length of each removal, total amount of time removed, and the proximity of removals—support the existence of a pattern. *Id.* § 300.536(a)(2)(i)-(iii). The school district must determine whether a series of removals constitutes a pattern on a case-by-case basis, and such a determination is inherently subjective. *Id.* § 300.526(b)(1); *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46729 (Aug. 14, 2006).

Here, no disciplinary change of placement occurred. The Findings of Fact make clear that Student was never removed from his placement for more than 10 consecutive school days. (FF #s 123-24.) Three types of behavior led to Student's short-term removals: harassment based on race, disruptive conduct, and threatening behavior. (FF # 123.) Student was suspended 1.5 days for harassment arising from the incident in which he called his classmates a racial slur and referred to himself as a member of "superior race." (*Id.*) Student was removed for 2.5 days for disruptive conduct related to non-compliant behavior. (*Id.*) Finally, the District removed Student for six days for threatening behavior related to the video of Student holding a knife. (*Id.*) The removals for

harassment and threatening behavior both involved the use of a racial slur and, as a result, could be found to be substantially similar under 34 C.F.R. § 300.536(a). However, even if the behaviors were substantially similar, the removals would total only 7.5 days, less than the threshold for a disciplinary change of placement.

The SCO cannot include the shorter removals alleged by Parents in this analysis because the Record does not indicate what behavior led to those removals. (FF # 124.) Even if the SCO were to consider the additional removals alleged by Parents, the outcome would not be different. The 12 removals alleged by Parents range in length from 20 minutes to two hours. (*Id.*) In total, the removals account for 14 hours or nearly two school days. (*Id.*) Even assuming all 12 removals had behavior that was substantially similar to the harassment and threatening behavior, the removals would total 9.5 days and would still be less than the threshold for a disciplinary change of placement (FF #s 123-24.)

For these reasons, the SCO finds and concludes that no disciplinary change of placement occurred under 34 C.F.R. § 300.530, and, as a result, the District was not required to conduct an MDR.

When Parents requested an MDR on March 14, the District denied Parents' request, noting that a disciplinary change of placement had not yet occurred. (FF # 119.) Yet, only one week later, the District asked Parent to participate in an MDR, stating that the District now indicated Student's removals totaled 10 days. (FF # 120.) As discussed above, Student's short-term removals—even if they totaled 10 days—did not constitute a pattern and, therefore, there had not been a disciplinary change of placement requiring an MDR. As guidance, the SCO notes that the District can preemptively conduct an MDR if it so chooses, but a preemptive MDR would not relieve the District of completing another MDR once a disciplinary change of placement actually occurs. *See Weld Cty. Sch. Dist. 6*, 120 LRP 24999 (SEA CO 06/22/20). Relatedly, nothing in the IDEA required the District to conduct an MDR based solely on Parents' request and not on the existence of a disciplinary change of placement.

Conclusion to Allegation No. 12: Because no disciplinary change of placement occurred, the District was not required to notify Parents of a disciplinary change of placement under 34 C.F.R. § 300.530(h). No violation of the IDEA occurred.

Parents' concern is that they were not notified of a disciplinary change of placement.

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). Here, because no disciplinary change of placement occurred, the District was not required to notify Parents' of the change of placement or provide a copy of the procedural safeguards notice. No violation of the IDEA occurred.

Systemic IDEA Violations: This investigation demonstrates violations that are systemic in nature 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 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 SEA’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Allegation No. 2: IEP in Effect at Beginning of School Year

Here, the District’s failure to have Student’s IEP in effect at the beginning of the school year appears systemic in nature. Student transferred to the District during the summer between eighth and ninth grade. (FF #s 1, 4.) Because he came from outside the District, his IEP was not automatically available in the District’s system. (FF # 15.) In contrast, the IEP of a student who attended the District in eighth grade would already be in the District’s system. (*Id.*) District staff indicated that Student’s IEP could not be added to the system until an IEP Team meeting was held to transfer his IEP. (*Id.*) During that time period, Student’s IEP would have been inaccessible to his teachers and other relevant school staff. This technicality prevented Student’s IEP from being in effect when the school year began. Nothing in the record indicates that the outcome would be any different for any other student who transferred to District over the summer from outside the District. Limited availability of special education staff over the summer made it difficult to convene Student’s IEP Team and transfer his IEP in time. For these reasons, the SCO finds and concludes that the District’s failure to have Student’s IEP in effect is systemic.

Allegation No. 3: Implementation of Student’s IEP

The District’s failure to implement Student’s IEP hinges, in large part, on Student’s refusal of his psychological services. Of the 370 missed minutes, 300 resulted from Student refusing to meet with School Psychologist. (FF #s 86-87.) At the time, Case Manager #2 informed Parent she *could* convene Student’s IEP Team if Parents wanted to discuss Student’s mental health services. (FF # 84.) This is where the mistake occurred. Instead of offering this option to Parents, Case Manager #2 should have told Parents an IEP Team meeting was necessary to discuss his services. Case Manager #2 and School Psychologist both recognized that a change to Student’s service provider would require an IEP Team meeting. (FF #s 84-85.) Nothing in the record suggests that this violation exists School-wide or District-wide. As a result, the SCO finds and concludes that the District’s failure to implement Student’s IEP is not systemic.

Allegation Nos. 4 and 5: Notices of Meeting and Copies of IEPs

The District's failure to provide Parents adequate notices of meeting and copies of Student's IEP stems from the District's lack of documentation evidencing that the documents were mailed and delivered to Parents. Though Case Manager #2 often told Parents, via email, that she was sending a specific document in the mail, it is unclear when or if the documents were actually mailed or were delivered to Parents. The SCO suspects that the majority of parents in the District consent to receive documents electronically or through their Student's backpack, drastically reducing the likelihood that these violations are systemic in nature. Moreover, this Decision only addresses Case Manager #2 practice for mailing documents; other School and District staff members likely have different practices that might better allow the District to demonstrate proof of mailing and delivery. For these reasons, the SCO finds and concludes that the District's failures to provide adequate notices of meeting and copies of Student's IEPs are not systemic in nature.

REMEDIES

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

- a. Failed to have Student's IEP in effect at the beginning of the school year, in violation of 34 C.F.R. § 300.323(a);
- b. Failed to fully implement Student's IEP, resulting in a violation of 34 C.F.R. § 300.323(c)(2);
- c. Failed to provide Parents proper notice of IEP Team meetings, in violation of 34 C.F.R. § 300.322(a); and
- d. Failed to provide Parents a copy of Student's IEP, in violation of 34 C.F.R. § 300.322(f).

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

1. Corrective Action Plan

- a. By **Friday, September 29, 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 the District is responsible. 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 the District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Special Education Director, Senior Manager of Special Education, SEIS, Principal, Assistant Principal, School Psychologist, Case Manager #1, Case Manager #2, and all of School's special education teachers must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.322 and 300.323. This review must occur no later than **Friday, October 6, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, October 13, 2023**.

3. Procedures

- a. By **Friday, November 10, 2023**, the District must submit written procedures detailing steps staff must take to ensure the IEPs of newly enrolled students from outside the District are in effect when the school year begins, consistent with 34 C.F.R. § 300.323(a).
- b. The District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. The District must ensure that all special education teachers in the District receive a copy of the procedures no later than **Friday, December 8, 2023**. Evidence that the procedures were shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Wednesday, December 13, 2023**.

4. Compensatory Education Services

- a. Student shall receive **300 minutes of direct psychological services** provided by a licensed school psychologist selected by the District. All 300 minutes must be completed by **Friday, December 22, 2023**.
- b. **By Friday, September 8, 2023**, Parents shall provide written consent for the provision of compensatory services to the District. If Parents do not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by the District, the written consent shall be provided to the District's counsel, Charles Fine. The District's counsel shall provide a copy of Parents' consent to CDE Special Education Monitoring and Technical Assistance Consultant by **Monday, September 11, 2023**.
- c. **By Friday, October 6, 2023**, the District shall schedule compensatory services in collaboration with Parents. 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 the CDE no later than **Friday, October 13, 2023**. If District and Parents cannot agree to a schedule by Friday, October 6, 2023, the CDE will determine the schedule for compensatory services by **Friday, October 20, 2023**.

- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parents and documents such efforts. A determination that the District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
- d. 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.
- e. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student 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 Parents and notify the CDE of the change in the appropriate service log.
- f. 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).

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

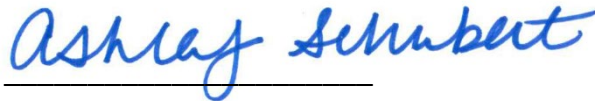
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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 27th day of August, 2023.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-59

- Exhibit 1: Supplemental letter of concerns

Amended Complaint, pp. 1-5

Response, pages 1-25

- Exhibit A: Documentation regarding Student's records from his prior school district
- Exhibit B: IEPs
- Exhibit C: Blank
- Exhibit D: Mailing receipts
- Exhibit E: Evaluation results
- Exhibit F: Documentation regarding bullying
- Exhibit G: Service provider logs and progress monitoring
- Exhibit H: Prior written notices
- Exhibit I: Notices of meeting
- Exhibit J: Student's schedule, grades, and attendance
- Exhibit K: District's calendar for 2022-2023 school year
- Exhibit L: District's policies and procedures
- Exhibit M: Email correspondence
- Exhibit N: Witness information
- Exhibit O: Verification of delivery of Response to Parents
- Exhibit P: Documentation of behavioral issues
- Exhibit Q: Documentation of discipline
- Exhibit R: MDR documentation
- Exhibit S: Blank
- Exhibit T: Eligibility determination

Reply, pages 1-72

- Exhibit 2: Documentation regarding breaks
- Exhibit 3: Documentation regarding bullying
- Exhibit 4: Documentation regarding collaboration
- Exhibit 5: Documentation regarding miscellaneous issues
- Exhibit 6: Examples of communication
- Exhibit 7: Documentation regarding accommodations
- Exhibit 8: Documentation regarding LRE
- Exhibit 9: Documentation regarding notices of meeting
- Exhibit 10: Documentation regarding Student's records
- Exhibit 11: Documentation regarding IEP meetings

- Exhibit 12: Documentation regarding missing assignments
- Exhibit 13: Documentation regarding Parents' access to Student's IEP
- Exhibit 14: Documentation regarding Parents' concerns
- Exhibit 15: Instagram posts
- Exhibit 16: Voicemail

CDE Exhibits

- CDE Exhibit 1: Online school FAQ
- CDE Exhibit 2: School newsletter
- CDE Exhibit 3: School demographics

Telephone Interviews

- Assistant Principal: July 25, 2023
- A/V Teacher: August 14, 2023
- Case Manager #2: July 21, 2023
- Parents: July 20, 2023
- School Psychologist: July 27, 2023
- Science Teacher: August 14, 2023
- SEIS: July 26, 2023
- Social Studies Teacher: August 14, 2023
- Student: July 21, 2023