

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Individuals with Disabilities Education Act (IDEA) and  
the Protection of Individuals from Restraint and Seclusion Act (PPRA)

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**State-Level Complaint 2023:589**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On October 6, 2023, the Parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)<sup>2</sup> and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”).<sup>3</sup> Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

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. 34 C.F.R. § 300.153(c); Rule 2620-R-2.07(2)(f). Accordingly, this investigation will be limited to the period of time from October 6, 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.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

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

<sup>2</sup> The Protection of Individuals from Restraint and Seclusion Act, C.R.S. § 26-20-101, *et seq.*, was previously titled the Protection of Persons from Restraint Act and referred to as the “PPRA.” This acronym lives on despite amendment of the Act’s title.

<sup>3</sup> The Rules are codified at 1 C.C.R. 301-45.

1. Failed to properly implement Student’s IEP, from October 2022 to present, in violation of 34 C.F.R. § 300.323, specifically by:
  - a. Failing to provide Student the accommodations required by his IEP (as detailed in the Complaint); and
  - b. Failing to follow Student’s behavior intervention plan (“BIP”).

And whether District violated the PPRA because District:

2. Improperly restrained Student on or about August 29, 2023, specifically by:
  - a. Restraining Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a) and C.R.S. § 26-20-103(1)(a);
  - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of Rule 2620-R-2.01(1)(b) and C.R.S. § 26-20-103(b)(I)-(II);
  - c. Restraining Student as a punitive form of discipline or as a threat to control or gain compliance of Student’s behavior, in violation of Rule 2620-R-2.01(2) and C.R.S. § 26-20-103(1.5); and
  - d. Failing to comply with the documentation and notification requirements for restraint, in violation of Rule 2620-R-2.04(2) and C.R.S. §§ 22-32-147(3)(b5)-(c), 26-20-106, and 26-20-111(7).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>4</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is nine years old and, during the 2022-2023 and 2023-2024 school years, attended a school (“School”) in District. *Response*, p. 1.
2. Student is identified as a child with an autism spectrum disorder (“ASD”) and a speech or language impairment. *Exhibit A*, p. 5.

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<sup>4</sup> The appendix, attached and incorporated by reference, details the entire Record.

3. Student is very smart and creative. *Interviews with Parents, Student's third-grade teacher ("Third Grade Teacher"), Student's fourth-grade teacher ("Fourth Grade Teacher") and Student's school psychologist for second and third grade ("School Psychologist 1")*. He is a talented artist. *Id.* He is twice exceptional, as he has been identified as gifted. *Exhibit 5, p. 71.* He is sweet and caring. *Interview with Parents*. He loves macaroni and cheese. *Interviews with Parents and School Psychologist 1*.
4. Student is a perfectionist, which can lead to frustration and challenging behaviors. *Interviews with Third Grade Teacher and School Psychologist 1*. Student struggles with understanding social cues and tolerating frustration. *Interview with Third Grade Teacher*. Student has sensory sensitivities and struggles with transitions. *Interviews with Parents and School Psychologist 1*.

#### **B. October 2022 Accommodations**

5. Student's IEP from October 11, 2022 ("October IEP") contained 18 accommodations. *Exhibit A, p. 33.* It also included a list of several requirements from Student's BIP, which will be discussed in a review of the BIP. *Id.*
6. Among other things, the accommodations included:
  - Opportunities for breaks in a quiet space;
  - Opportunities for movement and heavy work;
  - Access to noise reduction headphones or quiet spaces;
  - Breaks outside the classroom when needed;
  - Visual strategies including a first/then board, feelings chart, calming strategies, problem meter;
  - Verbal countdowns for transitions;
  - Consistent communication between School and home;
  - Modified assignments when necessary, including showing mastery with fewer problems;
  - Calm down space with a trusted adult; and
  - Use calm voice when redirecting Student.

*Id.*

7. Use of a comfort item or stuffed animal is not mentioned in the October IEP, except in the review of the October BIP. *Id.*
8. For state testing, Student required multiple stop the clock breaks for all subjects. *Id.* at p. 35.

### C. October 2022 BIP

9. According to Student's BIP from October 12, 2022 ("October BIP"), the target behavior was dysregulation. *Exhibit B*, p. 2. The likely functions of the behavior included getting something, obtaining adult or peer attention and sensory difficulties. *Id.* While target behaviors usually last less than 15 minutes, it takes Student 90-210 minutes to be ready to return to class. *Id.*
10. The October BIP includes several setting event strategies to help avoid behaviors. *Id.* at pp. 3-4. Many involved ensuring Student had access to ample food, as limited food intake was thought to contribute to his behaviors. *Id.* For instance, Student could get nothing but mac and cheese from the cafeteria and Parents would send snacks. *Id.* Student was to have snack breaks throughout his day. *Id.* The final setting event strategy is "bean bags." *Id.* at p. 4.
11. The October BIP also includes antecedent strategies to make behaviors less likely. *Id.* at pp. 3-5. The antecedent strategies included:
- Noise dampening headphones;
  - Calm down areas in the class and hallway like a beanbag with a weighted blanket;
  - Flexibility in how Student demonstrates mastery if he has missed instruction due to dysregulation.
  - Opportunities to draw during read aloud time;
  - Use of a token economy to earn drawing time at the end of day;
  - Clear, concise expectations for personal items like his stuffed animal;
  - Advance notice for transitions and shortening assignments if he is not on track to finish in the time allotted;
  - Processing with an adult every morning and if he has sensory sensitivities;
  - Close adult proximity during free time; and
  - Encouragement to eat a snack when agitated.

*Id.*

12. The October BIP includes six strategies for teaching replacement behaviors. *Id.* at pp. 3-4. These include:
- Teaching Student appropriate ways to get adult attention;
  - Teaching Student expected language to request tangible items;
  - Teaching Student coping skills and helping him create a coping skills toolbox to carry with him with visual strategies;
  - Practicing Zones of Regulation; and
  - Reinforcing expected versus unexpected behaviors at school.

*Id.*

13. The reinforcement strategies in the October BIP were the token economy and “Home School reinforcement.” *Id.* at p. 3.
14. The October BIP also includes a crisis intervention plan for several different possibilities. *Id.* at p. 5.
15. First, if Student is being unsafe, classmates would go to a designated spot while the safety team responded. *Id.* One member of the safety team would take the lead while the rest tried to stay out of sight. *Id.*
16. If Student was screaming in the classroom, he would be prompted to go to his calm down area in the hallway and the safety team would be called. *Id.* If Student would not leave, the safety team would be called, and peers would be directed to another location. *Id.*
17. If Student was being aggressive toward objects, as much as possible things within his reach would be removed. *Id.* In some cases objects could be removed from his hands or close adult proximity could be used to discourage the aggression. *Id.*
18. Although Student’s behavior had never put in anyone in danger, the October BIP notes that nonviolent crisis intervention (“NCI”) procedures would be used if he created an imminent danger for himself or others. *Id.* If a restraint was used, building administrators would be notified, paperwork would be completed, and Parents would be notified verbally that day and in writing within one day. *Id.*

#### **D. May 2023 Accommodations**

19. On May 2, 2023, Students special education teacher (“Special Education Teacher”), School’s assistant principal (“Assistant Principal”), School’s principal (“Principal”), special education instructional specialist (“SEIS”), Student’s speech and language pathologist (“SLP”), School Psychologist 1 and Parents met to revise Student’s October IEP and BIP. *Exhibit A*, p. 4. They agreed to meet after determining that Student’s behavior that led to a suspension in April 2023 was a manifestation of his disability. *Id.*
20. In the revised IEP (“May IEP”), only two accommodations, regarding modifying Student’s assignments, were removed. *Compare, Id.* at pp. 16, 33. The summary of the October BIP was also removed from the accommodations section. *Id.*
21. Eight accommodations were added. *Id.* New accommodations included:
  - Extra breaks in math and writing;
  - Access to movement activities like swinging or trampoline;

- Allow Student to demonstrate mastery in fewer problems;
- Opportunities for non-conditional breaks;
- Give Student choices of work to complete; and
- Access to a comfort item, like a stuffed animal, throughout the day.

*Id.*

#### **E. May 2023 BIP**

22. During the May 2 meeting, the IEP team also substantially modified Student's BIP ("May BIP"). *Compare, Exhibit B, pp. 3-5, 10-13.*
23. "Bean bags" as a setting event strategy was changed to access to bean bag and/or calm down area both in the classroom and the hallway outside the classroom. *Id.* at pp. 4, 11. This also remained as an antecedent strategy. *Id.* at pp. 3, 10.
24. A new strategy of allowing Student to have one stuffed animal with him as a comfort item was added. *Id.* at p. 11.
25. A few antecedent strategies were also modified or added. *Id.* at pp. 3-5, 10-13.
26. Instead of a token economy to earn drawing time, Student would have the opportunity to earn reward breaks to color or read. *Id.* at pp. 4, 11.
27. Student would be able to demonstrate mastery with fewer problems if dysregulation and recovery caused him to miss instruction. *Id.* at p. 10.
28. He could also draw or read during scheduled breaks or at teacher approved times like read aloud. *Id.* at pp. 3, 4, 10, 11.
29. Student was also supposed to get a non-verbal cue card with visuals to indicate when he needed a break. *Id.* at p. 11.
30. The May BIP also includes a script for when Student refused to do work with specific prompts. *Id.* at p. 12. For example, teachers could ask if he wants a break or if he is hungry, or give him space. *Id.* Student would also be praised for working. *Id.*
31. Finally, directives should be phrased as questions, such as "take your medicine, okay?" *Id.*
32. The May BIP kept "home school reinforcement" as a reinforcement strategy. *Id.* at p. 10. It also included additional reinforcement strategies including framing the positive, e.g., you need to complete work to earn x. *Id.*

33. The crisis intervention plan was completely rewritten. *Id.* at pp. 5, 12-13.
34. Details were added for the daily check in, including only allowing Student to bring one stuffed animal to class and checking in every 10 minutes but avoiding “forced choice” if Student was having difficulty coping. *Id.* at p. 12. The office would only be used as a last resort if Student was struggling. *Id.*
35. A script was also included for prompting Student with his coping strategies when he exhibits signs of becoming upset like clenching fists or removing shoes. *Id.* at pp. 12-13. Teachers were directed to contact the school psychologist for support. *Id.* at p. 13.
36. If Student’s behavior started disrupting the class, Student would be asked to go to his hallway calm down area. *Id.* If Student could not comply, the safety team would be called for support. *Id.* If Student was calming himself in the hallway, he would be checked on every 10 minutes to see if he wanted help or to return to class. *Id.* Once calm, Student would have the chance to “process with a trusted adult before re-entering the classroom” so he did not continue to be triggered by the event. *Id.*
37. If Student became physically aggressive, he would be directed to the hallway space and the teacher would call the safety team. *Id.* The safety team would “use no or minimal physical support” to have Student leave the classroom and would then walk him to a “safe location to calm down.” *Id.* The classroom would be cleared if Student would not leave. *Id.*
38. Only one member of the safety team would take the lead, removing items in Student’s reach and prompting him to use his coping tools. *Id.*
39. If Student was hurting himself or others, he would be warned that a hold would be necessary. *Id.* NCI procedures would be used, and administrators and Parents would be notified of any use of restraint. *Id.* If a short hold was needed, Parents would be notified. *Id.*

#### **F. Knowledge of IEP Requirements**

40. Special education providers, usually teachers, are responsible for ensuring that everyone working with a student is aware of their responsibilities under the student’s IEP and BIP. *Interview with District’s Senior Manager of Special Education for elementary schools (“Senior Manager”).* Building administrators are backup to ensure this is happening, and District staff can be called in for additional support as needed. *Id.*
41. At a minimum, special educators are expected to follow up with all providers annually, after the IEP meeting, and anytime there is a change in the plans or the student’s behavior. *Id.* If the student has a BIP or other higher-level needs, consultations should be more frequent. *Id.*

42. School Psychologist 1 provided Third Grade Teacher with a copy of Student's IEP and BIP before the start of the 2022-2023 school year. *Interview with Third Grade Teacher*. They then sat down together to review the IEP and talk about what Student was like in the classroom. *Id.* She attended the meetings to revise the documents in October 2022 and May 2023. *Id.*
43. Third Grade Teacher met regularly with Special Education Teacher and School Psychologist 1 to work together on supporting Student. *Id.*
44. Special Education Teacher provided Fourth Grade Teacher with a copy of Student's May IEP and BIP before the start of the 2023-2024 school year. *Interview with Fourth Grade Teacher*. Third Grade Teacher, Fourth Grade Teacher, School's ASD center-based program teacher ("ASD Teacher"), Special Education Teacher and Assistant Principal sat down together to talk about Student's IEP and how to support him. *Id.*
45. Fourth Grade Teacher checks in frequently with administrators and special education teachers at School for help supporting Student. *Id.*
46. Both Assistant Principal and Principal were familiar with the requirements of Student's IEPs and BIPs when asked. *Interviews with Principal and Assistant Principal*. Both also attended the meetings to revise Student's plans in May 2023. *Exhibit A*, p. 4.

#### **G. Access to Breaks**

47. Student had multiple breaks throughout the day in third grade. *Interview with Third Grade Teacher*. He had scheduled breaks and could ask for them as needed. *Id.* He took many of those breaks in School Psychologist 1's office. *Id.*
48. By the end of the year, he had three scheduled breaks. *Interview with School Psychologist 1*. He benefited from the opportunity to reset. *Id.* At least once a month, Student was expected to complete work before he could take a break. *Id.* This contributed to escalation, and she could not always offer a break at a later time. *Id.*
49. Student had scheduled breaks throughout his day in fourth grade. *Interview with Fourth Grade Teacher; Exhibit 4*. Student was frustrated that he was forced to take breaks in the ASD class instead of getting a choice. *Interview with School Psychologist 2*.

#### **H. Hallway Break Space**

50. After the first month of the 2022-2023 school year, Student had a bean bag chair right outside his third-grade classroom. *Interview with Third Grade Teacher*. He would go there almost every day, sometimes multiple times per day to regroup. *Id.*



51. Student has a bean bag inside his fourth-grade class and in the hallway just outside. *Interview with Fourth Grade Teacher*. He uses these daily, sometimes multiple times per day. *Id.* Depending on how regulated he is, sometimes Student will ask to go to his bean bag in the hallway, other times he points to the door or a cue card or writes on a whiteboard. *Id.*
52. Initially Student also had a desk in the hallway, but it was removed at the end of September because he would turn it upside down or stand on it. *Id.* Principal directed staff to remove all items from the hallway because of Student and directed staff to ignore Student if he was in the hallway. *Interview with School's second school psychologist ("School Psychologist 2")*. Student became upset on September 18, 2023, because his desk was removed. *Exhibit 1*, p. 10; *Exhibit 4*, p. 19. That same day Student was told he would have to take his breaks in the ASD classroom at School. *Exhibit 4*, p. 19.
53. SEIS facilitated a meeting in early October 2023 to address Parent's concerns about implementation. *Interview with SEIS*. During the meeting they discussed the importance of having a break space outside Student's classroom. *Id.* On October 9, School agreed to return Student's bean bag to the hallway after Special Education Teacher and School's social worker ("Social Worker") "review[ed] hallway/break expectations with" Student. *Exhibit 1*, p. 51.

#### **I. Access to Comfort Items**

54. Student came to School in third grade with a stuffed animal, which Third Grade Teacher found unusual. *Interview with Third Grade Teacher*. He initially stored the bear in a closet but ended up putting it on a table in the classroom instead. *Id.* By November he was keeping the stuffed animal at his desk with him. *Id.* Third Grade Teacher did not take the stuffed animal away but would not pick it up for Student if he threw it. *Id.*
55. Student started with just the one stuffed animal, but over time he started bringing more. *Id.* At one point there were so many in his backpack he could not get it in his locker. *Id.* He would talk to Special Education Teacher about them and pick just one to bring to class. *Id.*
56. District contends that Student was disrupting the learning environment by having so many stuffed animals and that he would engage in play with as many as 10 stuffed animals during his breaks. *Response*, p. 3. On those occasions, Student allegedly did not want to return to class. *Id.*
57. Third Grade Teacher reports only one incident when Student was playing with multiple stuffed animals during a break. *Id.*
58. During fourth grade, Student brings one stuffed animal with him throughout his day. *Interview with Fourth Grade Teacher*. Occasionally he brings a different one, but he never brings more than one. *Id.* No one has ever taken the stuffed animal away from him. *Id.*

## **J. Reduced Workload**

59. Student had shortened work assignments in third grade. *Interview with Third Grade Teacher.* For instance, she might have him complete five of ten math problems to demonstrate mastery. *Id.* Many of Student's assignments were lightened to promote success. *Id.*
60. Student only needs fewer problems on math assignments. *Interview with Fourth Grade Teacher.* She asks him how many problems he thinks he can complete or bases the decision on his emotional state. *Id.*
61. As they approach the end of a lesson, Fourth Grade Teacher checks what Student has completed. *Id.* If he has done enough to demonstrate mastery, she will let him know that he can be done with the assignment. *Id.*
62. SEIS used to directly support School and is now the lead elementary school specialist. *Interview with SEIS.* She observed Student several times last spring to address Parents' implementation concerns. *Id.* During an observation she saw Third Grade Teacher give Student the choice of which problems to complete to demonstrate mastery. *Id.*

## **K. Visual Strategies**

63. For third grade, Student had non-verbal cue cards with visual reminders of various coping skills. *Interview with School Psychologist 1.* He even created some of his own. *Id.*
64. Student tended to rip up his cue cards, so Third Grade Teacher started trying other solutions. *Interview with Third Grade Teacher.* She tried asking him yes or no questions but found letting him write on a whiteboard to be more effective. *Id.*
65. At the start of fourth grade, Student cut up the cue cards he got from School and made his own. *Interview with Fourth Grade Teacher.* His cards are a complex flow chart he can complete with a dry erase maker. *Id.* He can select how he is feeling and then select from various strategies for regulating that emotion. *Id.*
66. During the October meeting with SEIS, members of the School team said Student did not have cue cards because he was writing things down instead. *Interview with SEIS.* After the meeting they agreed to go back to implementing nonverbal cue cards so long as it was in the IEP. *Id.*

## **L. CMAS Testing**

67. Student was the only one at School with stop the clock breaks for state testing. *Interview with Assistant Principal.* As a result, he took the test in a one-on-one setting. *Id.* He tested in

Assistant Principal's office, with the door closed. *Id.* Another teacher proctored the exam. *Id.*

68. The first day, Student became upset and refused to finish that session of testing. *Id.* Student came to School dysregulated that day and jumped on the trampoline before starting testing. *Interview with School Psychologist 1.*
69. Parents and Assistant Principal discussed ideas to help support him the next morning, and he did well throughout the rest of testing. *Interviews with Parents and Assistant Principal.*

### **M. Home School Communication**

70. In third grade, Parents were in regular communication with Third Grade Teacher and School Psychologist 1. *Interview with Parents.* This allowed them to collaborate. *Id.* For example, Parents talked with both providers about helping Student learn to prioritize problems by size or urgency. *Exhibit I, pp. 163-166.*
71. Fourth Grade Teacher emails Parents when Student has a good day, but communication about challenges came from others. *Interview with Fourth Grade Teacher.* Parents report being unable to reinforce what Student's School team is working on without more communication. *Interview with Parents.*
72. On October 18, 2023, after a meeting, School agreed to start sharing their daily behavior tracker with Parents. *Exhibit 4, p. 27.* Assistant Principal believed the tracker contained enough information for Parents to discuss Student's day with him after school. *Id.*
73. The tracker indicates how Student did during each class, as well as how long breaks last. *Exhibit 4, pp. 18-20.* It describes Student's behavior when he is frustrated as well as how staff responded. *Id.*
74. For instance, on September 26, 2023, Student participated in "core" but then tore his work up when he became frustrated. *Id.* at p. 19. Later that day, a paraprofessional supported Student when he did not want to go to recess, and he eventually went. *Id.*
75. The tracker also notes successes like asking for help or permission to type a writing assignment. *Id.*
76. On September 13, 2023, Student came to School upset. *Exhibit 4, p. 18.* While in the ASD classroom he said life was stupid and not worth living. *Id.* He said he was trying to hurt himself and that he wanted to suffocate himself. *Id.* Parents were not made aware of this until after they received the tracker on October 18. *Interview with Parents; Exhibit I.*

77. Initially, when Parents received the tracker on October 18, there were no other notes for the rest of the day, except that he went back to class at 10:55. *Exhibit 4*, p. 18. However, the tracker had been updated by October 30 to say Student participated in a math test. *Id.* at p. 1. No information is included after 12:30. *Id.*
78. Student also expressed suicidal thoughts on April 18, 2023, during the incident that led to his suspension. *Interview with Parents*. Parents were immediately contacted by School Psychologist 1 to help complete a suicide risk assessment. *Id.*; *Exhibit I*, pp. 157-160.

#### **N. Using Calm Voice to Redirect**

79. Third Grade Teacher, Fourth Grade Teacher, Assistant Principal and Principal report redirecting Student with a calm voice and observing others to do so as well. *Interviews with Third Grade Teacher, Fourth Grade Teacher, Assistant Principal and Principal*. None recalled any scripts or recommended language for when Student was dysregulated or refusing to work. *Id.* They also did not describe phrasing directives as questions. *Id.*
80. Student complains to Parents that it is not what staff says to him but how they say it that is triggering. *Interview with Parents*. His sibling reports that Principal never speaks calmly to him and is always yelling. *Id.* Parents have observed Principal speaking to Student with an angry tone and demanding that he look her in the eyes while she is speaking. *Id.*
81. Student also reported to School Psychologist 1 that Assistant Principal and Principal yelled at him and did not treat him fairly. *Interview with School Psychologist 1*. She could sometimes see his escalation increase when School administrators responded to an incident. *Id.*
82. School Psychologist 1 observed both Assistant Principal and Principal speaking to Student with an elevated tone of voice. *Id.* Principal has told Student to look her in the eyes when she is speaking to him. *Id.*
83. School Psychologist 2 was assigned to School one day a week for about seven weeks. *Interview with School Psychologist 2*.
84. On one occasion other than August 29, 2023, she observed Assistant Principal yelling directions at Student. *Id.* On another occasion, Student was escalated in the hallway with ASD Teacher and Social Worker. *Id.* ASD teacher was talking over Student and refusing to listen to him. *Id.* School Psychologist 2 asked ASD Teacher to take a break and let her and Social Worker support Student. *Id.*
85. During her observations, SEIS never saw Principal respond to Student. *Interview with SEIS*. She saw Assistant Principal respond to Student while he was in an escalated state on one occasion. *Id.* At that time, Assistant Principal spoke with a calm voice and acted consistent with Student's IEP and BIP. *Id.*

### **O. August 29, 2023 Incident**

86. On August 29, 2023, Student's fourth grade class lined up for dismissal and Student was in or near the line. *Interview with Fourth Grade Teacher*. When she was outside at the pickup line, Fourth Grade Teacher realized Student had not said goodbye and asked if another teacher had seen him leave. *Id.* Since she had not, the other teacher radioed the office. *Id.*
87. A call went out over the radio that Student needed to report to the office. *Exhibit E*, p. 2. Then a call went out to all staff with walkie talkies that Student was missing at dismissal. *Id.*
88. The mental health office is across from Student's fourth grade classroom. *Interview with School Psychologist 2*. School Psychologist 2 and Social Worker found Student sitting on the ground in his classroom. *Id.*; *Exhibit E*, p. 2. They notified administrators that Student had been found safe and no additional assistance was required. *Id.*
89. School Psychologist 2 and Social Worker sat on the ground with Student who was not yet able to verbally communicate what was going on. *Id.* Just as he started to talk to them, Principal and Assistant Principal arrived in the classroom. *Id.*
90. Student did not respond to Assistant Principal's stern request to leave the classroom. *Interviews with School Psychologist 2 and Principal*. Assistant Principal then picked Student up by his arms and physically escorted him into the hallway. *Id.*; *Interviews with School Psychologist 2 and Assistant Principal*.
91. Student was not endangering himself or others at that time. *Interviews with Principal and Assistant Principal*. However, "losing a kid at the end of the day felt very unsafe" and emotions were heightened. *Id.* If she could go back, she would not have done the same. *Interview with Assistant Principal*.
92. School Psychologist 2 and Social Worker exited the classroom shortly thereafter and found Student sitting and crying in the hallway, with his shoes off. *Interview with School Psychologist 2*.
93. The entire hold lasted less than one minute. *Exhibit E*, p. 2; *Interviews with Principal and Assistant Principal*. Parent arrived in the hallway very shortly thereafter and began calming Student. *Id.* Administrators left at that point, and Parent and School Psychologist 2 helped Student regulate. *Id.* No one discussed what had occurred with Parent. *Interviews with Parents, School Psychologist 2, and Assistant Principal*.
94. Parent reports that when he arrived, Student was trying to get back inside the locked classroom and Assistant Principal was pulling him away from the door by his upper arms. *Interview with Parent*. School Psychologist 2, Principal, and Assistant Principal do not

remember anything of that nature occurring that day. *Interviews with School Psychologist 2, Principal and Assistant Principal; Exhibit E.*

#### **P. August 29 Incident Reports**

95. Immediately after the incident, School Psychologist 2 discussed the situation with her manager, who suggested she complete a restraint report. *Interview with School Psychologist 2.* The next day, she consulted with District's NCI trainer, who helped her complete the form. *Id; Exhibit E.*
96. She also met with Principal and Assistant Principal to debrief the incident and explained why they needed to complete the form. *Interview with School Psychologist 2.* Assistant Principal did not think what occurred constituted a hold, but School Psychologist 2 said she had started the form. *Interviews with Assistant Principal and School Psychologist 2.*
97. School Psychologist 2 did not hear anything further from School administrators, so she completed the form and submitted it to District. *Interview with School Psychologist 2.* She did not provide Parents with a copy. *Id.*
98. After the meeting, Assistant Principal completed a different hold form. *Exhibit 1*, pp. 1-5. This form, with a very brief description of the event, was provided to Parents on September 1. *Interview with Parents; Exhibit 1*, p. 13.

#### **Q. Student's Current Status**

99. Parents observe that Student has become more withdrawn. *Reply*, p. 2. He regularly tells his Parents his life is stupid and he is sorry they have a bad kid. *Interview with Parents.*
100. He has expressed suicidal ideation and is experiencing psychosomatic stomach pains from stress about school. *Id.; Exhibit 2*, pp. 39-40.
101. His escalations are more severe, resulting in more frequent classroom disruptions. *Reply*, p. 2. The class was evacuated once each month in September, October, and November. *Exhibit 4*, pp. 11, 17, 19.
102. Student is escalated three or four days a week and is usually removed from the class. *Interview with Fourth Grade Teacher.* Once escalated, usually it will happen again that day. *Id.* She estimates that he is missing 50-60% of class time due to escalations. *Id.*
103. Student has developed a mental block around math, which he perceives as very difficult. *Interview with Third Grade Teacher.* Math is the subject where Student becomes dysregulated the most and requires additional support. *Interview with Fourth Grade*

*Teacher*. A few days a week he takes a break in the doorway or hallway, which can last anywhere from five to twenty minutes in a 70-minute lesson. *Id*.

104. There are no grades available yet for fourth grade. *Exhibit P*, p. 3. Other than in homeroom, Student earned mostly threes (met expectations) and fours (exceeded expectations), throughout third grade. *Exhibit P*, pp. 1-2. Through June of 2023, he also appeared to make progress on most of the goals from the October 2022 IEP. *Exhibit O*, pp. 9-16.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District failed to implement several accommodations and supports required by Student’s IEPs and BIPs, in violation of 34 C.F.R. § 300.323. This resulted in a denial of FAPE.**

Parents’ concern is that District has not implemented Student’s accommodations or BIP with fidelity.

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.” *Endrew 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).

An IEP must identify the special education and related services and supplementary aids and services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id* at § 300.320(a)(4). 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.” 34 C.F.R. § 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).

#### **A. Knowledge of Student’s IEPs**

The SCO first determines whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Third Grade Teacher and Fourth Grade Teacher received copies of Student’s IEP and BIP,

had opportunities to learn more from School Psychologist 1 and/or Special Education Teacher, and had the chance to ask questions as needed. (FF #s 42-45.) Principal and Assistant Principal were also familiar with the requirements of Student’s plans. (FF # 46.) Thus, the SCO finds and concludes that District ensured Student’s teachers and providers were aware of their responsibilities under the October IEP and BIP and the May IEP and BIP. No violation of 34 C.F.R. § 300.323(d) occurred.

## **B. Implementation of Accommodations and BIP**

Here, minimal contemporaneous records exist about the implementation of accommodations and behavior plans. Instead, much of this investigation requires making determinations about the relative credibility of various witnesses. Overall, the SCO finds that School Psychologists 1 and 2 were the most credible witnesses because (1) their statements fell somewhere in the middle between what Parents and School reported and (2) some of their statements were backed up by notes or other contemporaneous records.

### *i. Breaks*

Student’s October IEP required a quiet space for breaks, as well as an opportunity for breaks outside the classroom. (FF # 6.) The October BIP further specified that Student would have a calm down area both inside the classroom and in the hallway. (FF # 11.) Student had access to a bean bag outside his third-grade class, which he used daily. (FF # 50.) However, at least once a month he was prevented from taking a break with School Psychologist 1 until he completed work. (FF # 48.)

The May IEP required the same, with the addition of extra breaks in math and writing and specified that Student would be allowed “non-conditional” breaks, which he could access without completing work or exhibiting certain behaviors. (FF #s 20, 21.) The May BIP continued to require access to a calm down area with a bean bag just outside Student’s classroom. (FF # 23.) Student continued to have scheduled breaks in fourth grade. (FF # 49.) He also continued to use the hallway calm down space frequently. (FF # 51.) However, the desk and bean bag he used there were removed by September 18, 2023. (FF # 52.) At that point, he was required to take breaks in the ASD classroom, which frustrated him. (FF #s 49, 52.) Three weeks later, on October 9, School agreed to return the bean bag outside Student’s classroom after reviewing hallway expectations with Student. (FF # 53.)

Because Student sometimes was not allowed to take scheduled or requested breaks due to incomplete assignments and he lost access to his calm down space in the hallway for at least three weeks, the SCO finds that District failed to consistently implement the breaks required by Student’s IEP and BIP, in violation of 34 C.F.R. § 300.323.



ii. Comfort Item

Student's October IEP did not mention access to a comfort item or stuffed animal. (FF # 7.) The October BIP required clear expectations for personal items, like a stuffed animal. (FF # 11.) The SCO finds that neither required that Student have the stuffed animal with him, or on his person at all times. Thus, the SCO finds that having Student keep the stuffed animal in his locker, on a table or at his desk, was not a violation of Student's October plans. (FF # 54.)

The May IEP required access to a comfort item throughout the day, and the May BIP included allowing Student to have a stuffed animal with him as a comfort item. (FF #s 21, 24.) The May BIP further specified that he would only bring one stuffed animal to class. (FF # 34.) In fourth grade, Student keeps one stuffed animal with him throughout the day. (FF # 58.) Nothing in the Record suggests that his stuffed animal has been taken away from him during the school day.

Thus, the SCO finds and concludes that District has complied with this requirement of his plans, consistent with 34 C.F.R. § 300.323.

iii. Reduced Workload

The October and May IEPs and BIPs require allowing Student to demonstrate mastery with fewer problems. (FF #s 6, 11, 21, 27.) Third Grade Teacher shortened Student's assignments and SEIS observed her doing so last spring. (FF #s 59, 62.) Fourth Grade Teacher shortens Student's math assignments and shortens other assignments as necessary when they are nearing the end of a lesson. (FF #s 60, 61.) Even if Student is sometimes losing break time to finish work, nothing in the Record supports that Student has not received shortened assignments. (FF # 48.)

Thus, the SCO finds and concludes that District has complied with this requirement of his plans, consistent with 34 C.F.R. § 300.323.

iv. Visual Strategies

The October and May IEPs required visual supports, including for calming strategies. (FF #s 6, 20, 21.) The October BIP required teaching Student coping skills and helping him create a coping skills toolbox he could carry around with visual strategies. (FF # 12.) The May BIP specifically required that Student have a non-verbal cue card to indicate when he needs a break. (FF # 29.)

School Psychologist 1 made Student non-verbal cue cards with various coping skills. (FF # 63.) However, Student would often rip them up. (FF # 64.) Third Grade Teacher found that Student could often write what he needed on a whiteboard. (*Id.*) Nevertheless, no change was made to these requirements during the May amendments. (FF #s 20, 21, 29.) Student again destroyed his nonverbal cue cards in fourth grade, so he made his own. (FF # 65.) However, School still had him writing down what he wanted instead of using cue cards in the fall of 2023. (FF # 66.) After a meeting in October, School agreed to again provide Student with nonverbal cue cards. (*Id.*)

The SCO finds and concludes that District was having Student write things down, instead of providing nonverbal cue cards, at various points throughout both third and fourth grade. Thus, the SCO finds and concludes that District failed to implement this requirement of his plans, in violation of 34 C.F.R. § 300.323.

v. State Testing

Student's only accommodation for state testing in the October IEP was multiple breaks which stop the clock. (FF # 8.) As the only student with stop the clock breaks, Student was in a one-to-one testing environment in Assistant Principal's office. (FF # 67.) The first day of testing did not go well. (FF # 68.) The fact that Student refused to finish the test does not mean he was not provided with breaks. (*Id.*) The Student may have done better after Parents and Assistant Principal discussed strategies to support him. (FF # 69.) However, breaks were the only accommodation required by his IEP. (FF # 8.)

Thus, the SCO finds and concludes that District complied with this requirement of Student's October IEP, consistent with 34 C.F.R. § 300.323.

vi. Home School Communication

The October and May IEPs required consistent communication between home and school. (FF #s 6, 20, 21.) Both BIPs relied on "home school reinforcement" as a reinforcement strategy. (FF #s 13, 32.) For Parents to reinforce school expectations at home, they must be aware of what is happening.

During third grade, Parents received regular updates from both School Psychologist 1 and Third Grade Teacher. (FF # 70.) Fourth Grade Teacher only emails Parents when Student has a good day. (FF # 71.) Although she indicates others notify Parents when Student has a hard time, no one told them when Student was expressing suicidal ideation on September 13, 2023. (FF #s 71, 76.) Thus, the SCO finds that Parents were not receiving consistent home school communication at that time.

However, since October 18, 2023, Parents have had access to a daily log of Student's behavior. (FF # 72.) The log includes details about how Student did in each class as well as how long his breaks last. (FF # 73.) The SCO finds that this is a substantial amount of information, sufficient to support home school communication. Parents are always free to contact Student's providers for more information about individual incidents.

For these reasons, the SCO finds that from August 2023 until October 18, 2023, District was not providing Parents with consistent home school communication, in violation of 34 C.F.R. § 300.323.

### vii. Redirection

The October and May IEPs require redirecting Student with a calm voice. (FF #s 6, 20, 21.) The May BIP also includes a script for prompting Student when he is refusing to work and a reminder to phrase directives as a question. (FF #s 30, 31.)

Teachers and administrators report consistently using a calm voice to redirect Student. (FF # 79.) However, Student, as well as his sibling and Parents, report that some adults, especially Principal and Assistant Principal, struggle to redirect Student with a calm voice. (FF #s 80, 81.) School Psychologists 1 and 2 have also observed Assistant Principal, Principal and/or ASD Teacher speaking to Student with an elevated tone of voice. (FF #s 82, 84.) As noted above, the SCO found School Psychologists 1 and 2 to be the most credible witnesses.

None of the providers the SCO interviewed recalled a particular script for redirecting Student with specific suggestions or discussed phrasing directives as questions. (FF # 79.)

The incident after school on August 29, 2023, will be discussed in relation to the PPRA in Allegation No. 2. However, the SCO has concerns about the implementation of this hold. Student was not endangering himself or others at that time. (FF # 91.) Two qualified mental health professionals had the situation under control. (FF #s 88, 89.) Assistant Principal spoke sternly, not calmly, to Student and used a hold in a non-emergency situation to remove him from the classroom. (FF # 90.)

Student's May BIP required that Parents be notified of even a short hold. (FF # 39.) No one notified Parents of what occurred before Parent arrived on August 29. (FF # 93.) Further, Assistant Principal did not intend to complete any restraint paperwork before meeting with School Psychologist 2. (FF # 96.) As a result, the SCO finds that District was not consistently complying with the May BIP's requirement to notify Parents of short holds.

Based on the credibility of School Psychologists 1 and 2 and what occurred on August 29, 2023, the SCO finds and concludes that District has not consistently implemented Student's plans, in violation of 34 C.F.R. § 300.323.

### 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. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services).

Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App’x 202, 205 (2d Cir. 2010).

“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 ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, District failed to implement requirements around breaks, nonverbal cue cards, home school communication, and redirection from October 2022 to present. Combined, this is a significant portion of the plan intended to help prevent Student from becoming escalated and to minimize the amount of instruction he misses once escalated. Student continued to meet or exceed almost all the expectations in third grade, but no grades are yet available for this year. (FF #s 3, 104.) However, as Student is twice exceptional, grades alone are not the best indicator of how the failure to implement has impacted him.

For instance, he has developed a mental block around math, which is contributing to increased dysregulation. (FF # 103.) He requires additional adult support and takes breaks for up to 20 minutes in the 70-minute lesson a few times per week. (*Id.*) He usually takes these breaks in the doorway or on his beanbag in the hallway just outside of the classroom. (*Id.*) This also means that while the beanbag was removed, he was missing instruction entirely to take his breaks.

Student also becomes more escalated when certain building administrators respond. (FF # 81.) As it takes him up to 210 minutes to fully regulate and return to class after an event, increasing his escalation is likely resulting in more missed instruction. (FF # 9.) More intense escalations this year are also disrupting the learning environment for everyone, as staff has had to clear the classroom for Student once a month. (FF # 101.) At this point, Fourth Grade Teacher estimates Student is missing 50-60% of his class time due to scheduled breaks and escalations. (FF # 102.)

These challenges have also had a social-emotional impact on Student. He has become more withdrawn and is experiencing psychosomatic pain related to school. (FF #s 99, 100.) In choosing to discontinue or change Student’s supports like visual strategies or hallway breaks outside of an IEP meeting, District has also impeded Parents’ opportunity to participate in the decision-making process. (FF #s 52, 53, 63-65.) If a whiteboard was more effective for Student than visual cue cards, then that is something the IEP team should have discussed and, if necessary, revised. Parents’ participation was also directly hindered by District’s failure to provide consistent home school communication for about two months during the 2023-2024 school year. (FF #s 71-77.)

The SCO recognizes that some of these concerns may indicate that Student’s needs have changed over time or in response to increasing academic demands. If so, additional evaluations might be appropriate. Nevertheless, the SCO concludes that at least some of Student’s increasing behavioral challenges, which are hindering his access to his education, are the result of District’s failure to implement. Thus, the SCO finds and concludes that this failure to implement is material and has resulted in a denial of FAPE.

#### **D. Compensatory Services**

Compensatory education is an equitable remedy intended to place a student in the same position he would have been in, 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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

At this point, Student has been able to maintain his grades, but he is experiencing increasing difficulties around math. (FF #s 103, 104.) School staff have also had ongoing difficulties effectively responding to his escalations, so he is missing large amounts of class time. (FF # 102.) Thus, the SCO, in consultation with CDE Content Specialist, has designed an award of consultative supports designed to help Student regulate and miss less instruction.

**Conclusion to Allegation No. 2: Because the hold lasted less than one minute, Student was not restrained within the meaning of the PPRA. No violation of the PPRA occurred.**

Parents’ concern is that District inappropriately restrained Student on August 29, 2023.

#### **A. The PPRA’s Definition of “Restraint”**

The SCO must first determine whether Student was “restrained” within the meaning of the PPRA. The PPRA defines restraint, in relevant part, as follows:

“Restraint” means any method or device used to involuntarily limit freedom of movement, including bodily physical force, mechanical devices, or chemicals. . . .

C.R.S. § 26-20-102(6). “Physical restraint” is defined:

“Physical restraint” means the use of bodily, physical force to involuntarily limit an individual’s freedom of movement *for more than one minute*; except that “physical restraint” does not include

the holding of a child by one adult for the purposes of calming or comforting the child.

C.R.S. § 26-20-102(5) (emphasis added).

Here, Assistant Principal picked Student up by his arms and physically escorted him out of the classroom and into the hallway. (FF # 90.) The SCO finds that the entire contact lasted less than a minute. (FF # 93.) As a result, the SCO finds and concludes that this was not a “restraint” within the meaning of the PPRA.

Parents also alleged a second hold when Student tried to reenter the classroom. (FF # 94) No other staff present that day saw anything of that nature. (*Id.*) Because the SCO found School Psychologist 2 to be a credible witness, who also made a contemporaneous record of the incident, the SCO finds that no second hold occurred. (FF #s 94, 96.)

Allegation No. 2, subparts a through d, concern PPRA requirements that apply only when a student has been restrained. Because the SCO does not find that District “restrained” Student within the meaning of the PPRA, District did not need to meet these requirements. Thus, the SCO finds and concludes that District did not violate the PPRA by improperly restraining Student on August 29, 2023.

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

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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. 46,601 (Aug. 14, 2006).

Here, the SCO found that Student’s providers were aware of their responsibilities under Student’s IEPs and BIPs and yet still failed to implement several components. Nothing in the Record suggests that this is a systemic issue impacting the provision of services to other Students. Instead, this appears to be a function of School’s perception of Student and how to best support him.

## REMEDIES

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

- a. Failing to implement Student’s IEP and BIP, in violation of 34 C.F.R. § 300.323.

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

### **1. Corrective Action Plan**

- a. By **Friday, January 12, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom 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 District’s timely correction of the areas of noncompliance.

### **2. Final Decision Review**

- a. Senior Manager, SEIS, School’s newly assigned SEIS, Principal, Assistant Principal, Special Education Teacher, ASD Teacher, and any mental health providers assigned to School must review this decision, as well as the requirements of 34 C.F.R. § 300.323. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Friday, February 2, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, February 9, 2024**.

### **3. Compensatory Education Services – Consultation**

- a. By **Friday, January 12, 2024**, District must identify an expert in behavior management, such as a mental health provider or board certified behavior analyst, to observe (“Observer”) Student and implementation of Student’s IEP and BIP. This person can be a District employee, but cannot be a School employee.
  - i. District’s proposed observer, along with their credentials, must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for approval. CDE will either approve Observer or provide feedback on what training or certification is required by **Friday, January 19, 2024**.

- ii. If CDE and District cannot agree on an Observer by Friday, February 2, 2024, CDE will identify an observer to complete the observations and provide technical assistance.
- b. Once approved, Observer must observe Student at School for at least eight (8) hours over a minimum of four (4) visits. At least one visit must include observation of one full escalation cycle for Student.
  - i. Before conducting any visits, Observer must first review Student's then-current IEP and BIP. Completion of this review should be included in the log required in Remedy 3(d).
  - ii. All observations must be completed by **Friday, March 15, 2024**.
- c. Based on these observations, Observer shall then provide direct support to Student over the course of four (4) 70-minute math classes in order to support Student in engaging in the instruction and model appropriate interventions and support to minimize the frequency and duration of any escalations.
  - i. All direct intervention must be completed by **Tuesday, April 30, 2024**.
- d. Based on these observations and direct support, Observer shall provide at least two hours of indirect, consultative services to Student's providers including those who respond in periods of escalation.
  - i. At a minimum, this shall include Principal, Assistant Principal, Special Education Teacher, ASD Teacher, Fourth Grade Teacher and Student's mental health provider.
  - ii. This consultation shall address Student's identified deficits and support implementation of Student's accommodations.
  - iii. Up to one hour of consultation can occur based on observations alone, with the rest to occur once all other services are complete. All consultative services shall be provided by **Friday, May 17, 2024**.
- e. To verify that Student has received these services, 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 (e.g. observation or consultation), including who was present and what was observed, must be included in the service log.



- f. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session.
  - i. Student will not be deemed unavailable if he is in the building but outside of the classroom due to dysregulation. Instead, District must continue to provide the planned observation or modeling outside of the classroom.

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 5th day of December, 2023.



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Rachel Dore  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-6

#### Response, pages 1-8

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Service Logs
- Exhibit D: Behavior Logs
- Exhibit E: Restraint Documentation
- Exhibit F: Restraint Training
- Exhibit G: Annual Restraint Review
- Exhibit H: Policies and Procedures
- Exhibit I: Correspondence
- Exhibit J: Staff Contacts
- Exhibit K: Verification of Delivery
- Exhibit L: School Calendar
- Exhibit M: Notices of Meeting
- Exhibit N: PWN
- Exhibit O: Progress Reports
- Exhibit P: Report Cards

#### Reply, pages 1-7

- Exhibit 1: Restraint Documentation
- Exhibit 2: Behavior Documentation
- Exhibit 3: Parent Request
- Exhibit 4: Correspondence
- Exhibit 5: IEP Documentation
- Exhibit 6: Accommodation Implementation
- Exhibit 7: Accommodation Implementation
- Exhibit 8: Records
- Exhibit 9: PII
- Exhibit 10: Consequences
- Exhibit 11: Updated IEP Documentation
- Exhibit 12: Recordings

#### Telephone Interviews

- Fourth Grade Teacher: November 8, 2023
- Third Grade Teacher: November 8, 2023
- Parents: November 8, 2023

- Assistant Principal: November 8, 2023
- Principal: November 8, 2023
- School Psychologist 1: November 9, 2023
- Senior Manager: November 14, 2023
- School Psychologist 2: November 15, 2023
- SEIS: November 17, 2023