

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

**State-Level Complaint 2024:541
Arapahoe County School District 6**

DECISION

INTRODUCTION

On April 4, 2024, the parent (“Parent”) 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 Arapahoe County School District 6 (Littleton Public Schools) (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. 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). Accordingly, this investigation will be limited to the period of time from April 4, 2023 to the present for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to conduct a manifestation determination review (“MDR”) within ten school days of the District’s decision in or around February 2023 to change Student’s placement, in violation of 34 C.F.R. § 300.530(e).

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.

2. Failed to either conduct a functional behavior assessment (“FBA”) or review Student’s behavior intervention plan (“BIP”) and modify it as necessary to address Student’s behavior, after determining that Student’s conduct was a manifestation of her disability during the MDR held on April 7, 2023, in violation of 34 C.F.R. § 300.530(f)(1).
3. Failed to return Student to the placement from which she was removed after determining that Student’s conduct was a manifestation of her disability during the MDR held on April 7, 2023, in violation of 34 C.F.R. § 300.350(f)(2).
4. Conducted an FBA without Parent’s consent in or around May 2023, in violation of 34 C.F.R. § 300.300(c).

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 twenty-year-old young woman enrolled in the District’s secondary transition program. *Interviews with Director of Student Support Services (“Director”) and Parent.*
2. Student is eligible for special education and related services under the disability category of Autism Spectrum Disorder (“ASD”). *Exhibit A, p. 1.*
3. Student is a friendly young woman with a great sense of humor. *Arapahoe County Sch. Dist. 6, p. 3, ¶ 4 (SEA CO 12/8/23) [hereinafter *First Decision*].* She enjoys being around her peers and excels at advocating for her needs. *Id.* Student has difficulty navigating social situations and staying emotionally regulated. *Id.* Student’s social struggles and frequent seizures impact her ability to participate in the transition programming. *Id.*

B. Prior State-Level Complaints

4. In October 2023, Parent filed a state-level complaint (“First Complaint”) against the District. *Id.* at p. 1. The First Complaint alleged, in part, that the District failed to properly implement Student’s IEP during the 2022-2023 and 2023-2024 school years. *Id.* at pp. 1-2.
5. The investigation into the First Complaint considered whether the District failed to implement Student’s IEP, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to educate Student in the least restrictive environment required by Student’s IEP from October 2022 to present;

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

- b. Failing to provide Parent periodic reports on Student’s progress in or around May 2023; and
- c. Failing to follow Student’s behavior intervention plan (“BIP”) on February 3, 2023 and February 9, 2023.

Id.

- 6. The SCO determined, in part, that the District did not properly implement Student’s IEP during Spring 2023 and Fall 2023. *Id.* at pp. 12-13. This violation stemmed from the District’s decision to educate Student in a more restrictive environment than required by her IEP. *Id.* Though Student’s IEP required her to spend time in a general education environment through community outings, Student was excluded from those outings and later isolated in a District administrative building (“Administrative Building”). *Id.* This violated 34 C.F.R. § 300.323 and resulted in a denial of FAPE. *Id.* To remedy this violation, the SCO awarded Student 200 hours of transition services. *Id.* at pp. 14, 21.
- 7. Additionally, the SCO found that the District improperly determined Student’s placement outside of an IEP Team meeting on two occasions in February 2023. *Id.* at p. 16. First, the District changed Student’s placement in the LRE when it precluded Student from attending community outings with the transition program. *Id.* The second change occurred when the District unilaterally moved Student from the primary building used for the transition program (“Transition Headquarters”) to the Administrative Building. *Id.* This violated 34 C.F.R. §§ 300.116(a)(1), 300.321(a)(1), 300.327, 300.501(c)(1) and ECEA Rule 4.03(8)(a). *Id.* at pp. 16-17. Though this violation resulted in a denial of FAPE, the SCO did not award any additional compensatory services. *Id.* at p. 17. Instead, the SCO found that the impact of the District’s violation overlapped with the impact of the implementation violation. *Id.*
- 8. In February 2024, Parent filed a second state-level complaint (“Second Complaint”) against the District. *Arapahoe County Sch. Dist. 6*, 124 LRP 15412 (SEA CO 4/23/24) [hereinafter *Second Decision*]. The Second Complaint alleged that the District did not provide Student with the related services required by her IEP in Spring 2023. *Id.* at pp. 1, 3.
- 9. In the Second Decision, the SCO concluded that the District failed to provide Student with her related services in Spring 2023, in violation of 34 C.F.R. § 300.323. *Id.* at pp. 6-8. This violation resulted in a denial of FAPE. *Id.* The SCO awarded Student two hours each of speech language services, social emotional services, and physical motor services to remedy the District’s violation. *Id.* pp. 8, 10.
- 10. More background information on Student and her IEP, as well as more details regarding the outcome of Parent’s prior complaints, can be found in the First Decision and Second Decision. *See First Decision and Second Decision.*

11. With this Complaint, Parent asserted violations related to an alleged disciplinary change of placement that occurred in Spring 2023. *Complaint*, pp. 1-5. Parent seeks reimbursement of legal fees to remedy the alleged violations. *Id.*

C. Student's Reduced Schedule

12. The 2022-2023 school year was Student's first year in the District's transition program. *First Decision*, p. 3, ¶ 1. At the beginning of the school year, Student attended the transition program for approximately 30 hours per week. *Id.* at p. 3, ¶ 5; *Exhibit D*, pp. 57-58. Student received her transition services either at the Transition Headquarters or through community outings. *First Decision*, p. 3, ¶ 5.

13. In October 2023, Student's elopement behavior increased. *Id.* at p. 6, ¶ 18. The District responded to Student's behavior by reducing her schedule to alleviate some of the stress and anxiety staff felt were contributing to Student's elopement. *Id.* Student's IEP was not amended to reflect this change in her schedule. *Id.*

14. Under the new schedule, Student only attended the transition program for 18.75 hours per week. *Id.*; *Exhibit D*, p. 74. This resulted in a reduction of Student's services by 11.5 hours per week (or 38%). *Exhibit D*, p. 74. The reduced schedule remained in effect for the remainder of the first semester of the 2022-2023 school year. *First Decision*, p. 6, ¶ 19.

15. Student's elopement behavior spiked again in February 2023. *Id.* at pp. 8-9. District staff felt these elopements were more serious than prior incidents. *Interview with Director*. Instead of wandering into a hallway or another space in the building, Student eloped into busy intersections and was unresponsive to redirection from staff. *Id.*

16. Following an elopement on February 9, the District further modified Student's schedule by eliminating her access to community outings. *First Decision*, p. 9, ¶ 38. Though Student still received 18.75 hours of services per week, she was no longer allowed to join her peers in the community for vocational or social programming. *Id.*

17. Student eloped again on February 17. *Id.* at p. 9, ¶ 39. In response, the District unilaterally changed the length and location of Student's programming. *Id.* Beginning on February 22, Student received three hours of transition services per day at the Administrative Building. *Id.* This left Student with only 15 hours per week of transition services—only half the transition services she received at the beginning of the school year. *Id.* Additionally, Student had very limited access to peers while at the Administrative Building. *Id.* at p. 9, ¶¶ 40-41.

18. Though the District intended Student's placement at the Administrative Building to be short term, Student remained in that placement until the end of the 2022-2023 school year. *Id.* at p. 9, ¶ 40.

D. Manifestation Determination

19. In an email on March 4, 2023, Parent emailed District staff expressing concern over Student's removals from the transition program. *Exhibit J*, p. 5. Parent included a blog post from the U.S. Department of Education's Office of Special Education Programs ("OSEP") discussing why informal removals matter. *Id.*

20. Based on Parent's concern, the District agreed to initiate the MDR process during a meeting on March 9. *Id.* at pp. 18-20. According to the District's meeting notes, Director indicated the District "should have initiated [the MDR process] prior to today's meeting." *Id.* at p. 20.

21. On April 7, 2023, the District conducted an MDR regarding Student's elopement on February 21, 2023. *Exhibit 6-C*, p. 1. Parent participated in the MDR. *Interview with Parent*.

22. At the time of the MDR, the District indicated Student had been removed from the transition program for six days. *Exhibit 6-C*, p. 1. The District calculated Student's removals as follows:

- October 14, 2022: Student eloped on October 10 and October 13, 2023. *Exhibit D*, p. 74. Following these incidents, the District requested Student stay home on October 14. *Id.* This was considered one day of removal. *Id.*; *Exhibit 6-C*, p. 2.
- October 26, 2022: Following an elopement on October 26, 2023, the District asked Student to stay home on October 27, resulting in one day of removal. *Exhibit D*, p. 74; *Exhibit 6-C*, p. 2.
- February 3, 2023: Student eloped on February 3, 2024. *Exhibit D*, p. 86; *Exhibit 6-C*, p. 2; *First Decision*, p. 8. The District requested Student stay home on February 6 and 7 (the following Monday and Tuesday) to allow the District to develop a new plan to address Student's elopement. *Exhibit D*, p. 86; *Interview with Director*. This resulted in two days of removal. *Exhibit D*, p. 86; *Exhibit 6-C*, p. 2.
- February 10, 2023: Following an elopement on February 9, 2024, the District asked Student to stay home on February 10, 2024. *Exhibit D*, p. 86; *First Decision*, p. 8. This was considered one day of removal. *Exhibit D*, p. 86.
- February 22, 2023: Student eloped on Friday, February 17. *Exhibit D*, p. 85. There was no school on Monday, February 20 due to President's Day, so the District requested Student stay home on Tuesday, February 21. *Id.* at pp. 85-86. This resulted in one day of removal. *Id.*

23. The MDR Team determined that Student’s elopement was a manifestation of her disability. *Exhibit 6-C*, p. 5. Additionally, the MDR Team found that the District had not consistently implemented Student’s IEP and BIP “during the period of time when elopement behavior was observed.” *Id.*
24. Based on their determination, the MDR Team checked the boxes on the form indicating that the District would conduct an FBA and review Student’s existing BIP. *Id.* The MDR Team did not check the box regarding returning Student to her previous placement. *Id.* Director indicated this was a mistake. *Interview with Director.*
25. In correspondence afterwards, Parent argued that Student’s shortened schedule resulted in far more days of removal. *Exhibit J*, p. 37; *Exhibit D*, pp. 1-21. By her count, Student’s scheduled days at home and her shortened schedule totaled 74 days of removal. *Exhibit J*, p. 37.
26. During this investigation, the District asserted that the changes to Student’s placement were not due to a “violation of a code of student conduct” and, therefore, that no MDR was required. *Response*, p. 3. The District held the MDR based on Parent’s request “even though from the District’s perspective there had not been any disciplinary removals.” *Id.* When asked about informal removals, Assistant Superintendent and Director recognized that Student’s exclusion following an elopement could be an informal removal. *Interviews with Assistant Superintendent and Director.* However, they did not acknowledge that use of a shortened schedule could also constitute an informal removal. *Id.*

E. FBA and Student’s Placement

27. On April 21, 2023, the District requested consent to an FBA “in order to better understand [Student’s] behavioral needs and update her Behavior Intervention Plan accordingly.” *Exhibit 6-F*, p. 1; *Exhibit 6-G*, p.1. A prior written notice embedded in the consent to evaluate indicated that the IEP Team considered updating the BIP without an FBA. *Exhibit 6-F*, p. 1. However, the IEP Team “rejected this option due to the need for more evaluative data and to identify supports and strategies that allow [Student] access her education.” *Id.*
28. Parent emailed Special Education Coordinator (“Coordinator”)—who oversaw the transition program—denying consent for the FBA: “Now I see clearly what you were doing – trying to get our family to agree to a change of placement for [Student] by requiring us to have an FBA or the special evaluation. OMG!” *Exhibit 6-G*, p. 1. Parent continued by stating: “We 100% will not be agreeing to or signing either document AND IN NO WAY AGREE TO ANY CHANGE OF PLACEMENT FOR [Student].” *Id.* (emphasis in original). Parent also noted her refusal on the consent form and returned that form to the District. *Exhibit 6-I*, p. 1; *Exhibit J*, p. 41. In her accompanying email, Parent indicated she wanted to rely on Student’s prior FBA. *Exhibit J*, p. 41. That FBA was completed in 2019. *Exhibit 7-E*, p. 1.

29. The District stated that it would not move forward with the FBA based on Parent's refusal to provide consent. *Response*, p. 4; *Interviews with Assistant Superintendent and Director*. No FBA was completed during Spring 2023. *Response*, p. 4; *Interviews with Assistant Superintendent and Director*.
30. The District did not revise Student's BIP during Spring 2023. *Interviews with Assistant Superintendent and Director*. Student's existing BIP addressed elopement; however, District staff felt Student's elopement had escalated. *Id.* Without new information from an FBA, the District did not have anything else to add to Student's BIP. *Id.* Any revisions would have been speculative and based on assumptions. *Id.*
31. However, Parent felt the District moved forward with an FBA by using an "ABC data sheet" to collect information regarding Student's behavior. *Interview with Parent*. That form contained columns for setting event(s)/antecedent(s), behavior/medical response, and staff response. *Exhibit 7-G*. At the top, the form indicated it was used "to collect data to determine the function of one's behavior. This data sheet will be used to ensure the interventions and strategies used directly address the why behind the behavior." *Id.*
32. When Parent questioned the District about use of the form, the District stated it was designed to "monitor progress related to the frustration tolerance and coping skill development programming that we are working on with [Student]." *Exhibit J*, pp. 65-66. This description conflicted with that contained on the form itself. *See Exhibit 7-G*.
33. On at least four occasions, District staff completed the form with information regarding Student's behavior or a seizure. *See Exhibit 7-K, Exhibit 7-L, Exhibit 7-N, Exhibit 7-Q*.
34. Despite the outcome of the MDR, Student remained in her placement at the Administrative Building through the end of the 2022-2023 school year. *Id.* The District felt Student's placement had not changed, just her service location. *Interview with Assistant Superintendent*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District failed to conduct an MDR within ten school days of the District's decision to change Student's placement, in violation of 34 C.F.R. § 300.530(e). This resulted in a denial of FAPE.

The first allegation of Parent's Complaint contends the District failed to conduct an MDR within ten school days Student's disciplinary change of placement in February 2023.

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 to determine whether the student’s behavior was a manifestation of the student’s disability. *Id.* § 300.536(a). The student’s behavior must be found 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). As discussed in more detail below, 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 of the change of placement.

A. What Constitutes a Disciplinary Change of Placement

A disciplinary change of placement occurs if: (1) a student has been removed from her current educational placement for more than ten consecutive school days or (2) a student has been subjected to a series of short-term removals that total more than ten 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) [hereinafter *Assistance*].

School districts must consider both formal removals (such as suspensions) and informal removals. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161, Question C-6 (OSERS 07/19/22) [hereinafter *Discipline Q&A*]. Though not defined by the IDEA, the U.S. Department of Education has provided guidance on what constitutes an informal removal:

Informal removal . . . means action taken by school personnel in response to a child’s behavior that excludes the child for part or all of the school day, or even an indefinite period of time. These exclusions are considered informal because the school removes the child with a disability from class or school without invoking IDEA’s disciplinary procedures. **Informal removals are subject to IDEA’s requirements to the same extent as disciplinary removals by school personnel**

using the school’s disciplinary procedures. Informal removals include administratively shortened school days when a child’s school day is reduced by school personnel, outside of the IEP Team and placement process, in response to the child’s behavior.

Id. at p. 54 (emphasis added). The U.S. Department of Education cautioned that the repeated use of informal removals to address behavior “could constitute a disciplinary removal from current placement” and make the IDEA’s disciplinary procedures applicable. *Id.* at Question C-6.

The IDEA’s disciplinary procedures apply to a removal unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child’s IEP; and (3) the child continues to participate with nondisabled children to the extent the student would have in the student’s current placement. *Assistance*, 71 Fed. Reg. 46715; *Discipline Q&A*, Question C-6. Guidance has restated the first of these requirements as affording the student “the opportunity to continue to be involved in and make progress in the general education curriculum.” *Dear Colleague Letter*, 68 IDELR 76 (OSERS 2016).

B. Whether a Disciplinary Change of Placement Occurred

Here, a disciplinary change of placement occurred. During the 2022-2023 school year, Student was subjected to a series of short-term removals that totaled more than ten days.

Parent and the District agree that Student was removed from transition services for six school days. (FF # 22.) Each of these removals occurred when District staff asked Student to stay home for one or two school days following an elopement. (*Id.*)

The District also acknowledges that it shortened Student’s schedule twice due to elopement: once in October and again in February. (FF #s 13, 14, 17.) As a result of the reduced schedule, Student was excluded from the transition program for part of the school day from late October through May. (*Id.*) In October, Student’s 30-hour school week was shortened by 11.5 hours per week. (FF # 14.) Within six weeks—or around mid-December—Student’s short-term removals totaled more than ten days. (*See id.*) All the removals were substantially similar and constituted a pattern.

Even though the District did not code the removals as disciplinary, they were. The District cannot avoid its obligations under the IDEA simply by arguing that Student’s behavior did not violate the code of conduct. (FF # 26.) Whether Student’s behavior violated the code of conduct or not, the District’s actions were disciplinary in nature. Requiring Student to stay home following an

elopement and shortening Student's schedule neither addressed Student's behavior nor provided any benefit to Student.

The change to Student's placement reduced her opportunity to be involved in the general curriculum and deprived her of some of the specialized instruction required by her IEP. (FF # 6, 7, 9, 17.) Either of these limitations would be enough to invoke the IDEA's disciplinary protections. *Assistance*, 71 Fed. Reg. 46715; *Discipline Q&A*, Question C-6. For these reasons, the SCO finds and concludes that the District's actions, namely requiring Student to stay home following an elopement and reducing her schedule, constituted a disciplinary change of placement under the IDEA.

C. Timeliness of MDR

A school district is required to conduct an MDR within ten school days of its decision to make a disciplinary change of placement. 34 C.F.R. § 300.530(e)(1). Here, the disciplinary change of placement occurred during the Fall 2023 semester. Yet, the District only moved forward with an MDR upon request of Parent (and, even then, a month after Parent's request). (FF #s 19, 20 21, 26.) The MDR was completed on April 7, 2023—far more than ten school days after the District's decision to change Student's placement. (FF # 21.) For this reason, the SCO finds and concludes that the District failed to timely conduct an MDR, resulting in a procedural violation of 34 C.F.R. § 300.530(e)(1).

D. Impact of the District's Procedural Violation

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

Here, the District delayed completing Student's MDR for several months. (FF #s 19-21.) This delay impacted Parent's opportunity to participate in the decision-making process, though Parent was ultimately able to participate in the MDR held in April 2023. (FF # 21.) The District's delay also denied Student the disciplinary protections afforded by the IDEA and, in turn, deprived Student of an educational benefit. Perhaps if an MDR had been timely completed, Student could have been returned to the placement from which she was removed much sooner. For these reasons, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

The remedies awarded in the First Decision and the Second Decision compensated Student for the District's improper change of placement and the specialized instruction and related services

she missed as a result. (FF #s 6, 9.) The impact on Student's right to a FAPE caused by the District's failure to timely conduct an MDR overlaps with the violations already remedied in the First Decision and Second Decision. Therefore, no Student-specific remedies have been awarded for this violation.

Conclusion to Allegation No. 2: Parent's refusal to provide consent prevented the District from completing an FBA following the MDR, consistent with 34 C.F.R. § 300.530(f)(1). No violation of the IDEA occurred.

Parent alleges the District failed to conduct an FBA or review Student's BIP following the determination that Student's elopement was a manifestation of her disability.

If an MDR Team determines that a student's behavior was a manifestation of the student's disability, the IEP Team must conduct an FBA or review and, as necessary, revise an existing BIP. 34 C.F.R. § 300.530(f).

The IDEA requires school districts to obtain informed consent from a child's parents before performing an evaluation or reevaluation to determine the nature and extent of the special education and related services needed by the child. 34 C.F.R. §§ 300.15, 300.300. An FBA qualifies as an evaluation or reevaluation under the IDEA where the FBA is used to determine a student's need for special education and related services. *Letter to Christiansen*, 107 LRP 45740 (OSEP 2/09/07). In that case, parental consent would be required for an FBA. *Id.*

Here once the District determined that Student's elopement was a manifestation of her disability, the District became obligated to conduct an FBA or revise Student's existing BIP. 34 C.F.R. § 300.530(f)(1). Without Parent's consent, the District could not complete the FBA. Yet District staff viewed an FBA as necessary for understanding the escalation in Student's elopement. (FF # 30.) Minus an updated FBA, any revisions to Student's BIP would have been speculative and not tailored to Student's individualized needs. (*Id.*) As a result, the District chose not to revise Student's BIP until an FBA was conducted. (*Id.*) Thus, the District was torn between its obligations under the IDEA and Parent's staunch refusal to consent to an FBA. (FF #s 28-29.)

A parent cannot stand in the way of a school district completing an evaluation and subsequently file a state complaint attacking the district's inaction. *See Denver Pub. Schs.*, 2023:525 (SEA CO 8/27/23). The SCO recognizes the frustration Parent felt regarding Student's placement at that time. (FF # 28.) However, in the end, Parent was the sole reason the District was unable to complete the FBA, revise Student's BIP, and fulfill its obligations under the IDEA. For that reason, the SCO finds and concludes that Parent's refusal to provide consent prevented the District from completing an FBA or revising Student's BIP, as required by 34 C.F.R. § 300.530(f)(1). No violation of the IDEA occurred.

Conclusion to Allegation No. 3: The District failed to return Student to her placement following the MDR held on April 7, 2023, in violation of 34 C.F.R. § 300.530(f)(2).

The third allegation in Parent’s Complaint asserts that the District failed to return Student to her placement after the District determined that Student’s elopement was a manifestation of her disability.

A. The District’s Obligation to Return Student to Her Placement

If an MDR concludes that a student’s behavior was a manifestation of the student’s disability, the student must be returned to the placement from which the student was removed. 34 C.F.R. § 300.530(f)(2). This requirement does not apply if the parent and the school district agree to a change of placement. *Id.* Additionally, a student does not need to be returned to the prior placement if one of the special circumstances outlined in 34 C.F.R. § 300.530(g) applies. *Id.*

Here, the MDR team determined that Student’s elopement was a manifestation of her disability on April 7, 2023. (FF #s 21, 23.) Despite that determination, Student remained at the Administrative Building for the remainder of the 2023-2024 school year. (FF # 18, 34.) District staff indicated that they believed Student’s placement had not changed, only the location of her services. (FF # 34.) The SCO disagrees (and previously disagreed in the *First Decision*). When the disciplinary change of placement occurred, Student was attending the transition program at the Transition Headquarters, not at the Administrative Building. (FF # 12.) This change went beyond a mere change in location. Student had less contact with peers, less access to general education, and less access to her specialized instruction and related services. (FF #s 6, 9, 17.)

Following the MDR, the District was obligated to return Student to the Transition Headquarters. The SCO finds and concludes that the District failed to return Student to her prior placement, resulting in a procedural violation of 34 C.F.R. § 300.530(f)(2).

B. Impact of the District’s Procedural Violation

As noted above, a failure to comply with a procedural requirement amounts to a denial of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765 (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

The District’s failure to return Student to her placement at the Transition Headquarters deprived Student of an educational benefit. Student’s placement at the Administrative Building hindered her access to peers, general education, and specialized instruction and related services. (FF #s 7, 17.) For that reason, the SCO finds and concludes that the District’s violation resulted in a denial of FAPE. No Student-specific remedy has been awarded to address this denial of FAPE, as the

remedies ordered by the First Decision and Second Decision have already compensated for the harm done to Student due to the change of placement.

Conclusion to Allegation No. 4: The District initiated an FBA without Parent’s consent in May 2023, in violation of 34 C.F.R. § 300.300. This resulted in a denial of FAPE.

In her Complaint, Parent asserts that the District proceeded with an FBA in May 2023, even though she did not provide consent for such an evaluation.

A. Whether the District Conducted an FBA

As detailed above, the IDEA requires school districts to obtain parental consent before completing an evaluation or reevaluation regarding a child’s disability related needs. 34 C.F.R. § 300.300. An FBA qualifies as an evaluation or reevaluation under the IDEA where the FBA is used to determine a student’s need for special education and related services. *Letter to Christiansen*, 107 LRP 45740 (OSEP 2/09/07). The IDEA does not define what constitutes an FBA; however, guidance from the U.S. Department of Education provides as follows:

FBA is used to understand the function and purpose of a child’s specific, interfering behavior and factors that contribute to the behavior’s occurrence and non-occurrence for the purpose of developing effective positive behavioral interventions, supports, and other strategies to mitigate or eliminate the interfering behavior.

Discipline Q&A, p. 54. School districts do not need to obtain parental consent to review existing data or administer tests or evaluations that are given to all children. 34 C.F.R. § 300.300(d).

Here, the dispute centers on whether the action taken by the District constitutes an FBA, rather than the existence of consent. All parties agree that Parent refused to provide consent for an FBA. (FF #s 27-29.) Parent, however, argues that the District proceeded with the FBA without her consent. (FF # 31.) The Findings of Fact make clear that the District initiated the FBA process without Parent’s consent. (FF #s 31-33.) The District’s “ABC data sheet” collected information regarding Student’s behavior, including setting events, antecedents, Student’s response, and staff’s response. (FF # 31.) This form’s stated purpose was to “collect data to determine the function of one’s behavior.” (*Id.*) The District’s assertion that it was monitoring Student’s progress on “frustration tolerance and coping skill development” cannot be supported by either the form or the information it sought. (FF #s 31-34.) For these reasons, the SCO finds and concludes that the District initiated an FBA without parental consent, resulting in a procedural violation of 34 C.F.R. § 300.300.

B. Impact of the District's Procedural Violation

As noted above, a failure to comply with a procedural requirement amounts to a denial of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765 (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

The District impeded Parent's right to participate in the decision-making process by circumventing her refusal to provide consent. Under the law, this resulted in a denial of FAPE. Had Parent consented to the FBA, the District could have freely gathered information to develop strategies and interventions to better support Student. Parent's refusal to provide consent tied the District's hands. However, the District could have sought to override Parent's consent through the IDEA's consent override mechanism. See 34 C.F.R. § 300.300(c)(2), but the District could not simply proceed in spite of Parent's refusal to provide consent. For these reasons, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

Systemic IDEA Violation: This investigation demonstrates a violation that is systemic or likely to impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

Pursuant to its general supervisory authority, the CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are "critical" to the State Enforcement Agency'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).

Here, the District's violation related to initiation of an FBA without parental consent appears to be an isolated incident. This failure arose when the District found itself in a difficult situation involving a strained relationship with a parent. Nothing in the Findings of Fact suggests that this violation is pervasive throughout the District.

However, the same cannot be said about the District's failures to timely conduct an MDR and to return Student to her placement. Ultimately, both violations stemmed from the District's use of informal removals to address Student's behavior. The District only conducted an MDR upon Parent's request, and the District did not return Student to her original placement, believing that no change of placement had occurred (only a change in location). (FF # 20, 21, 34.) During this investigation, District staff recognized that the District informally removed Student from the transition program by asking her to stay home the day after an elopement. (FF # 26.) However, District staff did not recognize that the use of a shortened school day could also constitute an

informal removal and, eventually, trigger the IDEA disciplinary protections. (*Id.*) This lack of recognition creates concern that informal removals, particularly those resulting from a shortened school day, may not be adequately tracked throughout the District. The SCO has ordered remedies to address this systemic concern.

REMEDIES

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

- a. Failing to conduct an MDR within ten school days of the District’s decision to change Student’s placement, in violation of 34 C.F.R. § 300.530(e);
- b. Failing to return Student to her placement after determining that her behavior was a manifestation of her disability, in violation of 34 C.F.R. § 300.530(f)(2); and
- c. Initiating an FBA without parental consent, in violation of 34 C.F.R. § 300.300.

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

1. Corrective Action Plan

- a. By **Monday, July 8, 2024**, 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. Assistant Superintendent, Director, Transition Services Instructional Coach, and the current Special Education Coordinator overseeing the transition program must review this Decision, as well as the requirements of 34 C.F.R. § 300.530. This review must occur no later than **Monday, August 12, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, August 16, 2024**.

3. Written Procedures

- a. By **Monday, September 9, 2024**, the District shall submit to CDE Special Education Monitoring and Technical Assistance Consultant, for review and approval, proposed written policies and procedures to address the use of informal removals in the District.
- b. At a minimum, such procedures shall:
 - i. Define what constitutes an informal removal;
 - ii. Provide guidance to District staff regarding the use of informal removals; and
 - iii. Outline a system for tracking informal removals of students with disabilities from classroom instruction due to behavioral incidents.
- c. The District must ensure that all District special education staff, all school principals, and all school assistant principals receive a copy of the approved procedure no later than **Monday, October 7, 2024**. Evidence that the procedures were shared with staff, such as a copy of the email sent, must be provided to the CDE no later than **Friday, October 11, 2024**.

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 3rd day of June, 2024.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-5

Response, pages 1-5

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Blank
- Exhibit D: Elopement Documents
- Exhibit E: Blank
- Exhibit F: MDR Documentation
- Exhibit G: Blank
- Exhibit H: District's Calendar
- Exhibit I: District Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: Witness information
- Exhibit L: Verification of delivery of Response to Parent
- Exhibit M: Other documents

Reply, pages 1-24

- Exhibits 1(a)-1(h): Various supporting documents
- Exhibit 2(a): BIP
- Exhibits 3(a)-3(g): Various supporting documents
- Exhibit 4(a)-4(v): Various supporting documents
- Exhibit 5: Blank
- Exhibits 6(a)-6(n): Various supporting documents
- Exhibit 7(a)-7(z): Various supporting documents
- Exhibit 8: Blank
- Exhibit 9: Blank
- Exhibit 10: Blank
- Exhibit 11: Blank
- Exhibit 12: Blank
- Exhibits 13(a)-13(e): Various supporting documents

Telephone Interviews

- Assistant Superintendent: May 16, 2024
- Director: May 16, 2024
- Parent: May 31, 2024