

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

State-Level Complaint 2020:510
Jefferson County School District R-1

DECISION

INTRODUCTION

The parents (“Parents”) of a child (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Jefferson County School District R-1 (“District”) on February 5, 2020.

The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.152. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has 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 consider only events that occurred not earlier than February 5, 2019 to determine whether or not a violation of IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate all allegations accepted in this matter. Findings of non-compliance, if any, shall be limited to one year prior to the date the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District denied Student a FAPE because the District:

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.

1. Changed Student's placement pursuant to a disciplinary removal on or about January 13, 2020 and subsequently failed to notify Parents of the removal or provide Parents with a copy of the procedural safeguards, in violation of 34 C.F.R. §§ 300.530(h);
2. Failed to conduct a manifestation determination within ten school days of the District's decision on or about January 13, 2020 to change Student's placement, in violation of 34 C.F.R. § 300.530(e); and
3. Failed to provide educational services to Student after his tenth school day of removal during the 2019-2020 academic year, in violation of 34 C.F.R. § 300.530(b)-(d).

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS OF FACT ("FF"):

A. Background

1. Student attends eleventh grade at a separate school operated by the District ("Separate School"). Separate School provides an individualized education in a therapeutic environment to support students' social-emotional health. *Interview with Assistant Special Education Director ("Assistant Director")*. As detailed below, Student began eleventh grade at his neighborhood high school ("School") and hopes to return to School before graduation.
2. Student is eligible for special education and related services under the disability category of Serious Emotional Disability ("SED"). *Exhibit A*, p. 3.
3. Parents and School staff members describe Student as a polite, respectful, caring young man. *Interviews with Parents and School Social Worker ("Social Worker")*. He enjoys building computers and learning about cars, history, and the military. *Id.* Student becomes stressed relatively easily and struggles to regulate his emotions. *Id.*

B. Student's 2019 IEP

4. On March 1, 2019, a District multidisciplinary team identified Student as a child eligible for special education and related services, and Student's IEP team developed his initial IEP ("2019 IEP"). *Response*, p. 2; *Exhibit A*, pp. 60-76. Student was in the general education classroom in excess of 80% of the time. *Exhibit A*, pp. 73-74.
5. Per the 2019 IEP, Student received 60 minutes per month of direct mental health services. *Id.* at p. 73. The mental health services were designed to help Student develop and

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

maintain interpersonal relationships, regulate his emotions, and manage anxiety in the classroom. *Id.* at p. 68. His 2019 IEP also provided special education instruction, both inside and outside the general education classroom. *Id.* For the minutes inside the general education classroom, Student met with his Case Manager for extra help with his academic coursework. *Interview with Case Manager.* Student completed the minutes outside the general education classroom by serving as a peer mentor in a significant support needs classroom. *Id.*

6. The 2019 IEP contained two social-emotional wellness goals: one related to development of Student's emotional regulation skills and one related to Student's social functioning. *Id.* at pp. 70-71.

C. First Semester of Eleventh Grade

7. Student began eleventh grade in August 2019. *Interview with Parents.* Shortly after the beginning of the academic year, the School conducted a building-level threat assessment ("BLTA") based on possible threats made by Student. *Exhibit C*, p. 6. The BLTA concluded that Student's comments were not threatening but, instead, were used to express his own fears. *Id.* The District reviewed the BLTA but determined that a district-level threat assessment ("DLTA") was not necessary. *Id.* No additional BLTAs or DLTAs were performed during the fall semester. *Interview with Social Worker.*

8. At the beginning of the fall semester, Student worked on a coping skills program during regularly scheduled 20-minute sessions with Social Worker. *Id.*

9. As the semester progressed, Student had more trouble regulating his emotions and started spending more time in the counseling office. *Id.* At times, Student arrived at School already struggling with intrusive thoughts; other times, events in the classroom triggered Student's intrusive thoughts. *Id.* When the latter occurred, Student would alert the teacher and be escorted to the counseling office or self-report to the counseling office during the passing period. *Id.*

10. Social Worker or Counselor then helped Student deescalate so he could return to the classroom. *Id.* Over the course of the fall semester, Student started deescalating faster, though he was experiencing more episodes of escalation overall. *Id.* Social Worker described the fall semester as "triage." *Id.* She instituted daily check-ins with Student to assess his mental health, but Student's increasing episodes of escalation consumed his time in the counseling office, leaving Social Worker with little time to focus on Student's 2019 IEP goals. *Id.*

11. Additionally, Student's extra time in the counseling office caused him to miss significant amounts of instructional time. *Id.* Though the minutes varied by month, Social Worker's treatment notes indicate that she spent much more time with Student than the 60 minutes per month required by the 2019 IEP. *See Exhibit B*, pp. 1-3.

D. First Week of Second Semester

12. The second semester of Student’s eleventh grade year began on Monday, January 6, 2020, though Student did not attend School this day due to anxiety. *Interviews with Social Worker and Parents.*

13. The following day—January 7—Student went to School but did not attend any classes. *Id.* After he arrived at School, Student went to the office shared by Dean of Students (“Dean I”) and Dean of Students/Assistant Principal (“Dean II”) and told them he was having suicidal thoughts and feeling unsafe. *Interview with Dean II; Exhibit C, p. 7.*

14. Dean II took Student to Social Worker’s office, where Social Worker performed a suicide risk assessment (“SRA”). *Interviews with Dean II and Social Worker.* During the SRA, Student said he was feeling aggressive towards other students and spoke of a dream about being in the aftermath of a school shooting (though, in his dream, Student was not the shooter). *Interview with Social Worker.*

15. Based on the SRA, the School decided to proceed with a BLTA. *Id.* Dean II, Social Worker, Counselor, and one Parent participated in the BLTA on January 7. *Id.; Exhibit C, pp. 7-11.* The BLTA concluded that the situation could be resolved within the School by strengthening Student’s safety plan, evaluating Student, and preparing a Behavior Intervention Plan (“BIP”). *Exhibit C, p. 11; Interview with Social Worker.* At that point, Student did not have a BIP. *Interview with Social Worker.*

16. Student left with a Parent following the BLTA. *Interview with Parents.*

17. Following the BLTA on January 7, the District referred Student for a DLTA. *Interviews with Principal and Dean II.* The District requires a DLTA for any student who has more than one BLTA during a single school year. *Interviews with Dean II and Director of Judicial Services.* Director of Judicial Services, who oversees threat assessments for the District, referred Student to a local county juvenile assessment center (“JAC”) for an assessment on January 7 or January 8 as a result of the BLTA, but it had not yet been completed. *Id.*

18. Student returned to School on January 8. *Interview with Social Worker.* He resisted attending classes, so Social Worker escorted Student to each class. *Id.* Student completed a few of his classes but spent the remainder of time in the counseling office. *Id.*

19. On January 9, Social Worker similarly escorted Student to his classes. *Id.* Like the prior day, Student was able to complete a few classes but otherwise remained in the counseling office. *Id.*

20. On Friday, January 10, 2020, Student attended his first two classes. *Response, p. 5.* During language arts class—which was co-taught by Case Manager—Student appeared upset, so Case Manager checked in with him. *Interview with Case Manager.* Student said he was

having homicidal thoughts (about an individual unaffiliated with School). *Id.* Case Manager walked Student to the counseling office. *Id.* Social Worker contacted School Resource Officer, who—in consultation with Principal—decided to transport Student to the JAC for an assessment. *Interview with Social Worker.*

21. Staff at the JAC assessed Student on the afternoon of January 10. *Exhibit E*, pp. 1-3. On the assessment, Student scored in the “caution” range in the area of “Depressed-Anxious” and in the “warning” range for “Suicide Ideation” and “Traumatic Experiences.” *Id.* at p. 1. During the assessment, Student indicated he had a recurring dream “where he saw a school shooting at [School], and it was the same day and same people who were being killed in the dream.” *Id.*

22. Following the assessment, Director of Judicial Services informed Parents that a DLTA would be scheduled for the following week. *Interview with Director of Judicial Services.* Director of Judicial Services requested Student stay home from School until after completion of the DLTA. *Id.*

E. The DLTA

23. On Wednesday, January 15, a team of District staff (“DLTA Team”) convened to conduct the DLTA. *See Exhibit C*, pp. 1-6. A DLTA evaluates “students who pose a threat for targeted violence” using a screening tool to determine the level of threat posed by a student. *Id.* at p. 2.

24. Student and Parents participated in a portion of the DLTA. *Interviews with Parents and Principal.* During this portion of the meeting, the participants discussed Student’s intrusive thoughts and his increasing mental health needs. *Interview with Principal.* Student clarified that he is never the perpetrator in his dream involving the aftermath of a school shooting. *Interview with Parents; Exhibit C*, p. 4.

25. Student and Parents were then excused, and the DLTA Team engaged in further discussion regarding Student’s future at School. *Id.* Principal noted that Student might require more mental health support than School could provide. *Response*, p. 6; *Exhibit C*, p. 5 (“[Principal] does not have the mental health supports at [School] to accommodate [Student’s] needs.”).

26. Ultimately, the DLTA Team decided to recommend that Student not return to School and that Student’s IEP Team consider a change in placement. *Exhibit C*, p. 6. The DLTA based this recommendation on School’s inability to meet Student’s mental health needs and concerns over the safety of Student and his classmates. *Interviews with Principal and Social Worker.*

27. Director of Judicial Services contacted Parents at the conclusion of the DLTA. *Interview with Director of Judicial Services.* She was unable to reach Parents on January 15 but spoke with one Parent on Thursday, January 16. *Interviews with Director of Judicial Services and Parents.* At that time, Director of Judicial Services informed Parent that Student would not be permitted to return to School until his IEP Team could meet to determine next steps. *Id.*

F. IEP Team Meeting

28. Due to the Martin Luther King, Jr. holiday, School was not in session on Monday, January 20. *Interview with Principal.*

29. Based on the DLTA Team's recommendation, Student's IEP Team met on Wednesday, January 22. *Interviews with Case Manager, Social Worker, and Assistant Director.* At the time of the IEP Team meeting, Student had been out of school for seven school days. *Id.* Ultimately, the IEP Team determined that Student should be placed at a separate school and developed a new IEP reflecting this change of placement ("2020 IEP"). *Id.; Exhibit A*, pp. 28-53. The IEP Team considered reevaluating Student but "determined that the current eligibility category [was] accurate" so the IEP Team reviewed existing data and records from the fall semester. *Exhibit A*, p. 50.

30. The 2020 IEP provided that Student would receive 1,800 minutes per week of direct special education instruction and 90 minutes per week of direct mental health services. *Id.* at p. 48. Additionally, Student would receive 45 minutes per month of indirect special education instruction and 30 minutes per week of indirect mental health services. *Id.* This was a significant increase from the 2019 IEP. *See id.* at p. 73. The 2020 IEP contained four goals:

- Writing: Student will demonstrate the ability to add appropriate supportive evidence and analysis to support a thesis and point with 75% accuracy in 2 of 4 attempts.
- Social/Emotional Wellness: Student will improve his emotional self-regulation skills, including using strategies to deescalate and be in control of intense emotions from 2 out of 5 attempts to 4 out of 5 attempts.
- Social/Emotional Wellness: Student will increase his social/emotional language by identifying and using the correct expressive emotion and identifying a scripted statement he can use when elevated in 4 out of 5 attempts.
- Mathematics: Student will demonstrate the ability to solve linear and multi-step equations with 90% accuracy in 2 out of 4 attempts.

Id. at pp. 43-45.

31. The IEP Team considered four placement options for Student: (1) Placing Student in a general education classroom at least 80% of the time, (2) Placing Student in a general education classroom 40-79% of the time, (3) Placing Student in a general education classroom less than 40% of the time, and (4) a separate school. *Id.* at pp. 49. The IEP Team rejected the first three options because none of them provided a structured, therapeutic environment like a separate school. *Id.* According to the IEP Team, the advantages of a separate school included a "smaller, more structured therapeutic environment and more access to mental health, including

individual and group.” *Id.*, p. 49. However, the IEP Team acknowledged that Student would have limited access to grade level curriculum. *Id.* Nonetheless, the IEP Team felt this placement would “help support [Student’s] social emotional preparation to be successful for a course of study and career as an Auto Technician.” *Id.* at pp. 49. The IEP Team knew that the DLTA Team recommended that Student not return to School, but the IEP Team developed the 2020 IEP based on what was best for Student, not the DLTA Team’s recommendation. *Interview with Assistant Director.*

32. The IEP Team anticipated that it might take some time for Student to be placed in a separate school. *See id.* at p. 50; *Interviews with Assistant Director, Social Worker, Case Manager.* In the interim, the 2020 IEP specified that Student should receive interim services through Transitional Program. *Exhibit A*, p. 50; *Interviews with Assistant Director and Principal.* Transitional Program is a District program where students report to a physical site to access their learning—either the curriculum from their neighborhood school or online courses—while awaiting a more permanent placement. *Interviews with Assistant Director and Principal.* Though an on-site teacher is available to assist students as needed, students primarily work independently. *Id.*

33. The 2020 IEP indicated that, until Transitional Program was established, School would provide Student access to his School coursework through Google Classroom and through paper and pencil work provided by his teachers. *Exhibit A*, p. 50. Case Manager was responsible for ensuring Student had access to School’s coursework during this interim period. *Id.*; *Interview with Case Manager.* According to the record, once the 2020 IEP was created, neither School nor District took any steps to implement the 2020 IEP—including designating an individual as responsible for implementation or providing the 2020 IEP to anyone for implementation. *Interviews with Assistant Director and Case Manager.* Instead, it appears that once the 2020 IEP was created, School abandoned the 2019 IEP but took no action on the 2020 IEP. The IEP Team simply prepared the 2020 IEP and then set it aside until a separate school was located for Student. *Id.*

G. Student’s Interim Educational Services & Change of Placement

34. Student did not physically attend school from Monday, January 13 to Wednesday, February 26, 2020, when he began attending Separate School. *Interview with Parents.* The 2020 IEP was not implemented—either in whole or in part—until Student began at Separate School. *Interviews with Case Manager, Social Worker, and Parents.*

35. Once the DLTA Team recommended that Student not return to School on Wednesday, January 15, Case Manager informed Student’s teachers and asked them to provide Student access to his coursework, either through Google classroom or through pencil and paper work. *Interview with Case Manager.* All of Student’s courses were already available on Google classroom, but teachers participate in Google classroom to varying degrees (one teacher might simply post homework while another teacher might distribute and collect homework and

facilitate discussion). *Interview with Assistant Director*. At least one of Student's teachers provided paper packets of work that Parents picked up. *Interview with Case Manager*.

36. At some point, Case Manager reached out to Parents to inquire why Student was not completing his work. *Interview with Case Manager*. Parents indicated that Student was upset about how everything had been handled at School. *Id.* At this point, Parents and Student felt that neither School nor the District had offered them an explanation as to why Student had not been permitted to return to School. *Interview with Parents*.

37. Case Manager did not otherwise follow up with Student or his teachers, nor did Case Manager review Student's individual classes to ensure he had adequate access to the curriculum through Google Classroom or otherwise. *Interview with Case Manager*.

38. Between fall and spring semester, Student worked on an online course for credit recovery. *Interview with Parents*. At the time Student was removed from School, he had not yet completed the final exam, which needed to be proctored by a School staff member. *Interview with Case Manager*. On January 27, Learning Specialist met Student at a public space to proctor the final exam. *Interview with Case Manager*. Student failed the final exam by a few points, so, on January 30, Case Manager met Student at a public library to retake the final exam. *Id.* Afterwards, Social Worker provided Student with 45 minutes of mental health services. *Id.*; *Interview with Social Worker*.

39. Neither Case Manager nor Social Worker provided Student any other special education or related services between Friday, January 10, 2020 and Tuesday, February 25, 2020. *Interviews with Social Worker and Case Manager*. No progress monitoring on IEP goals was performed during this time period. *Interview with Case Manager*.

40. On or around Tuesday, February 11—nearly three weeks after the IEP Team meeting—the District notified Parents that Student could begin Transitional Program. *Interview with Parents*. At the same time, Parents learned that Separate School could accept Student on February 25, 2020. *Exhibit J*, p. 140. Because Student struggled with transitions, Parents were concerned about having Student begin Transitional Program and then begin Separate School two weeks later. *Interview with Parents*.

41. To alleviate these concerns, the District provided Student access to two online courses on February 11. *Response*, p. 11. In the next two weeks, Student completed 17% of the coursework for Environmental Science and 22% of the coursework for Modern American History. *Id.*

42. Student had too much anxiety to begin Separate School on February 25 but has been attending Separate School since February 26. *Interview with Parents*.

43. District interviewees were unable to explain why it took so long for Student to be enrolled in either Transitional Program or Separate School. *Interviews with Assistant Director, Principal, Dean II, Case Manager, and Social Worker.*

44. During this interim period, the SCO finds that District could have considered other options to provide Student his special education and related services consistent with the 2020 IEP. *Interview with CDE Consultant.* Options that could have been considered include: (1) Case Manager and Social Worker meeting with Student outside of School to provide special education and mental health services, (2) preparation of an interim IEP outlining the services Student would receive during this time period, or (3) placing Student in School's Center for Academic Transition and Success—which serves at risk students—with one-on-one adult support to ensure safety. *Id.*

H. Student's Suspension

45. After Student and Parents left the DLTA on January 15, Principal and Community Superintendent directed Dean II to retroactively issue a five-day suspension of Student from Monday, January 13 to Friday, January 17 for Student's behavior on January 10 (and, perhaps, January 7, though it is unclear). *Interview with Dean II.* At the time, Dean II was told the suspension was necessary to document why Student was not at School (even though School had asked Student not to return pending the DLTA and the IEP Team meeting). *Id.*

46. Once faced with the paperwork for Student's suspension, Dean II was not sure how to articulate the basis for his suspension, so she reached out to other District staff members for guidance. *Id.* Because she did not receive a response, Dean II forgot to complete Student's suspension paperwork. *Id.* And, as a result, neither Student nor Parents were notified about Student's suspension. *Id.; Interview with Principal.*

47. During the week of January 27, Principal asked Dean II about the status of Student's suspension paperwork. *Interview with Dean II.* Dean II then remembered that she had not completed the paperwork. *Id.* Principal was out of the office, so Dean II asked Assistant Principal about the basis for Student's suspension. *Id.* Assistant Principal told Dean II to cite District Policy JKDA/JKEA #360—"Threats to disrupt school or district operations"—as the basis for Student's suspension. *Id.*

48. Dean II mailed a notice of suspension to Parents on January 31, 2020 suspending Student from January 13 to January 17. *Response*, p. 10; *Exhibit O*, p. 3.

49. After the notice of suspension was issued, Principal discussed Student's suspension with Community Superintendent. *Interviews with Principal and Assistant Director.* Because the notice of suspension was not timely sent, the suspension was removed from Student's record. *Id.*

I. Manifestation Determination

50. During the week of January 27, School decided to conduct a manifestation determination review (“MDR”). *Interview with Case Manager*. Though she was confused about Student’s current status, Social Worker noticed that Student’s attendance record indicated he had been suspended for seven days and logged unexcused absences for three days. *Id.*; *Exhibit O*, p. 1. This total of ten days prompted Social Worker to suggest scheduling an MDR. *Interview with Case Manager*; *Exhibit O*, p.1.

51. The MDR was held on January 31, 2020. *Exhibit D*, pp. 1-7. The MDR team found that Student’s behavior—“an expression with trusted adults about his suicidal and homicidal ideation”—had a direct and substantial relationship to his disability. *Id.* at p. 4.

52. When asked why the District held an MDR on January 31 after the IEP Team changed Student’s placement on January 22, Case Worker said she did not recall whether that was considered. *Interview with Case Worker*.

53. Indeed, a CDE Consultant with expertise in disciplining students with special needs and students with SED indicated that there was no rationale for holding the MDR after the IEP Team changed Student’s placement. *Interview with CDE Consultant*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District did not change Student’s placement pursuant to a disciplinary removal and, therefore, did not violate any of the notification requirements for disciplinary removals.

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. A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of removals that total more than 10 school days and constitute a pattern. 34 C.F.R. § 300.536(a).

Whether counted consecutively or cumulatively, Student’s removal from School did not total ten days and, therefore, did not amount to a disciplinary change of placement under 34 C.F.R. § 300.536. Student’s last day at School was Friday, January 10. (FF #s 19, 22, 34.) That day, Director of Judicial Services told Parents that Student could not return to School until the DLTA was completed. (FF # 22.) The following week—Monday, January 13 to Friday, January 17—School suspended Student for a violation of District policy. (FF # 48.) The SCO finds that the

retroactive nature of Student's suspension (FF #s 45, 48) has no bearing on whether the discipline resulted in a change of Student's placement.

As an aside, the SCO questions Student's suspension. Nothing in the record indicates that Student threatened any other Student or School staff member. Instead, Student reported his unsafe thoughts directly to trusted adults at School. (FF #s 13, 14, 19.) It is also unclear how Student's unsafe thoughts disrupted School operations. Regardless, School disciplined Student.

Due to the Martin Luther King, Jr. holiday, School was not in session on Monday, January 20. (FF # 28.) At the time of the IEP Team meeting on Wednesday, January 22, Student had been removed from School for seven consecutive school days. (See FF # 29.) Student's removal had not yet met the ten-day threshold in Section 300.536(a) for a disciplinary change in placement.

At the January 22 meeting, Student's IEP Team changed his placement from School to a separate school. (*Id.*) The SCO finds that the IEP Team's change of placement stopped the ticking of the clock on any disciplinary change of placement. That is, once the IEP Team placed Student in a separate school, the discipline imposed by School could no longer change Student's placement; the IEP Team had already done that. The causal connection between Student's discipline and his removal from School was broken.

For this reason, the SCO concludes that Student's removal from School did not constitute a disciplinary change of placement under 34 C.F.R. § 300.536. Because a disciplinary change of placement did not occur, School was not obligated to notify Parents or provide a copy of the procedural safeguards pursuant to 34 C.F.R. § 300.530(h). The SCO finds no violation of 34 C.F.R. § 300.530.

Conclusion to Allegation No. 2: No disciplinary change of placement occurred. As a result, the District was not even required to hold a manifestation determination.

The IDEA requires school districts to conduct an MDR within ten school days of a disciplinary change of placement. 34 C.F.R. § 300.530(e). An MDR determines whether the student's behavior that resulted in discipline (1) was "caused by, or had a direct and substantial relationship to" the student's disability, or (2) was a result of the school district's failure to implement the student's IEP. *Id.* § 300.530(e)(1).

As noted above, Student's removal did not constitute a disciplinary change of placement. Only a disciplinary change of placement triggers the MDR requirements; therefore, the District was not required to hold an MDR. The MDR held on January 31, 2020 was voluntary, even though School may not have realized it at the time. (See FF #s 50-52.) As indicated in the record, School staff were confused about Student's status and how his removal should be treated under the IDEA. (FF # 50.) Regardless, because no MDR was required, the SCO finds no violation of § 300.530(e).

Conclusion to Allegation No. 3: Because no disciplinary change of placement occurred, the District was not required to provide educational services consistent with 34 C.F.R. § 300.530(a)(2). However, the District’s failure to timely implement Student’s 2020 IEP, from January 22 to February 25, resulted in a denial of FAPE.

Under the IDEA, after a disciplinary change of placement, a school district must provide services to the student during any subsequent days of removal (i.e. after the tenth day of removal). 34 C.F.R. § 300.530(a)(2). As discussed above, Student’s removal from School did not constitute a disciplinary change of placement. Therefore, the obligations of § 300.530(a)(2) did not apply.

The IEP Team changed Student’s placement before his removal amounted to a disciplinary change of placement, but this action did not absolve the District of its responsibility to provide Student his special education and related services consistent with an IEP.

A. Timely Implementation of the 2020 IEP

Under the IDEA, a school district is required to provide eligible students with disabilities a FAPE by providing special education and related services individually tailored to meet the student’s unique needs, in conformity with an IEP that meets the IDEA’s requirements. *Id.* § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). To that end, the U.S. Supreme Court concluded that an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at p. 999.

The IDEA does not specify a time frame in which an IEP must be implemented but, instead, requires school districts to make special education and related services available to students “[a]s soon as possible following development of the 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).

Though the phrase “as soon as possible” does not require immediate implementation, there must be some basis for the delay. *See D.D. v. New York City Bd. of Ed.*, 465 F.3d 503, 46 IDELR 181 (2d Cir. 2006). In the *D.D.* decision, the Second Circuit relied on commentary from prior versions of the regulation. *Id.* There, the Secretary of Education at the time indicated IEPs should be implemented without “undue delay”:

[W]ith very limited exceptions, IEPs for most children with disabilities should be implemented without undue delay following the IEP meetings There may be exceptions in certain situations. It may be appropriate to have a short delay (e.g., (1) when the IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the child does not need special education and related services until the next school year begins); or (2) when there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider or making transportation arrangements for the child)).

Id. (citing *Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities*, 64 Fed. Reg. 12406, 12579 (Mar. 12, 1999)). To determine whether an IEP has been implemented “as soon as possible”, the factors to be considered include, but are not limited to: (1) the length of the delay, (2) the reasons for the delay, including the availability of services, and (3) the steps taken to overcome the obstacles delaying prompt implementation. *Id.*

On Wednesday, January 22, Student’s IEP Team changed Student’s placement to Separate School and updated his IEP accordingly. (FF # 30). Nothing in the record indicates that District ensured that Student’s teachers and service providers were informed of their obligations under the 2020 IEP. (FF # 33.) Instead, it appears that no one knew who was responsible for fulfilling the obligations of the 2020 IEP, and everyone assumed the obligations under the 2019 IEP ceased. (*Id.*)

Student’s 2020 IEP reflected a significant increase in both special education and mental health minutes. (FF # 30.) Yet the 2020 IEP was not implemented until Tuesday, February 25 when Student could begin at Separate School. (FF # 34.) And Student stopped receiving the services specified in the 2019 IEP on Monday, January 13. (FF #s 34-39.) Therefore, for the four and one-half weeks between January 22 and February 26, Student was without the benefit of necessary special education and related services. This was a significant portion of Student’s second semester of eleventh grade.

During that time period, Student received only 45 minutes of mental health services and zero minutes of special education services. (FF #s 38-39.) From January 22 to February 10, Student had access to at least some of his School coursework through Google Classroom. (FF #s 35-37.) Nothing in the record indicates that Student had adequate access to his coursework; indeed, it appears as if no one was really monitoring what access Student had. (FF # 37.) From February 11 to February 25, Student only had access to two online courses. (FF #s 40-41.)

The SCO recognizes that placing Student in a separate school takes time. But Student cannot be expected to suffer as a result of administrative challenges. While District located a separate school for Student, the services Student needed were available via other means. Different

options could have been considered to ensure Student received his special education and related services while the District located a separate school for Student. (FF # 44.) For example, Case Manager and Social Worker could have met with Student outside of School to provide his direct special education and mental health services. (*Id.*) Or District could have prepared an interim IEP, outlining what services Student would receive and how he would receive them during this interim period. (*Id.*) Alternatively, the District could have temporarily placed Student in School's Center for Academic Transition and Success that serves at risk students, while providing one-on-one adult support for safety. (*Id.*) But none of the District witnesses indicated any of these options (or any others) were considered. (FF # 43.)

As a result, the SCO finds that the District violated 34 C.F.R. §§ 300.323(c)(2) and 300.323(d) by failing to implement Student's 2020 IEP "as soon as possible" and failing to inform Student's teachers and service providers of their obligations under the 2020 IEP.

B. Materiality of Failure to Implement 2020 IEP

The failure to implement a "material", "essential", or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn 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." *Id.* But a child's educational progress, or lack thereof, may indicate whether there has been more than a "minor shortfall in the services provided." *Id.*

Here, the District failed to implement the 2020 IEP in its entirety for four and one-half weeks. During this time, Student received no special education instruction or mental health services, and neither the School nor anyone else in the District performed any progress monitoring on IEP goals. (FF #s 38-39.) From February 11 to February 25, Student had access to online courses in Environmental Science and Modern American History. Neither of these courses targeted Student's 2020 IEP goals in writing or mathematics. The District's failure to timely implement the 2020 IEP denied Student the opportunity to make any progress on his IEP goals for a significant portion of the spring semester. As a result, the SCO finds the District's failure to implement Student's 2020 IEP to be material. This failure resulted in a denial of a FAPE to Student. Given the degree to which a FAPE was denied, "Student is entitled to compensatory services." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

C. Compensatory Education

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

Here, the District wholly failed to implement Student’s 2020 IEP for four and one-half weeks between January 22, 2020 and February 25, 2020. If the 2020 IEP had been implemented properly, Student would have received 90 minutes of direct mental health services during each of those weeks. (FF # 30.) Here, the SCO finds an hour-by-hour award of compensatory mental health services appropriate. Student’s IEP Team removed Student from School in the middle of his eleventh grade year due to his mental health needs. The SCO understands that Student wants to return to School before he graduates. (FF #1.) These mental health services are crucial to Student making progress on the two social/emotional wellness goals in his 2020 IEP. (FF # 30.)

The compensatory education award of access to online coursework over the summer will allow Student to stay on track to graduate on time.

REMEDIES

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

- a. Failing to timely implement an IEP, in violation of 34 C.F.R. § 300.323(c)(2).

To remedy this violation, the District is ORDERED to take the following actions:

1. By **Thursday, May 28, 2020**, the District shall submit to CDE a proposed 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 the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. The District must review its written procedures regarding provision of special education and related services to IDEA-eligible students awaiting placement in a separate school. Such procedures should specify what special education and related services will be provided to the student during the transition period (i.e., what IEP

controls) and specify who will be responsible for providing such services. The procedures may, but are not required to, provide for development and implementation of an interim IEP for students awaiting placement in a separate school.

- b. If the District believes existing procedures are adequate, the District must provide the written procedures and an explanation of their adequacy to CDE for approval by **June 18, 2020**.
 - c. If the District needs to revise its procedures to ensure special education and related services are provided to IDEA-eligible students awaiting placement in a separate school, the District should revise the procedures and provide the revised procedures to CDE for approval by **June 25, 2020**.
 - d. To the extent the District does not currently have any applicable written procedures, the District must develop such written procedures and submit them to CDE for approval by **June 25, 2020**.
2. Compensatory Education Services for Denial of a FAPE
- a. The District shall provide Student with 405 minutes of direct mental health services outside of the general education setting by Tuesday, December 22, 2020. These services may be provided remotely given the COVID-19 crisis and temporary suspension of in-person instruction/learning. To document the provision of these services, District must submit records of service logs to CDE by the second Monday of each month until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
 - b. District shall provide Student with continued access to **three online courses through Edgenuity during Summer 2020**. To document the provision of these services, District must submit records of Student's access to these courses by **Monday, August 17, 2020**.
 - c. **By May 19, 2020**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with

District within this time period, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents its efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.

- d. District shall submit the schedule of compensatory services to CDE no later than **Monday, June 1, 2020**. 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 in consult with Parents, as well as notify CDE of the change in the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Michael Ramirez
1560 Broadway, Suite 1100
Denver, CO 80202-5149

Failure by District to meet any of the timelines set forth above may adversely affect District's annual determination under the IDEA and subject District to enforcement action by CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, the aggrieved party may file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 28th day of April, 2020.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-4

- Exhibit 1: DLTA Meeting Summary
- Exhibit 2: Student's 2019 IEP
- Exhibit 3: Procedural Safeguards Notice
- Exhibit 4: Timeline
- Exhibit 5: Email correspondence
- Exhibit 6: JAC Assessment Results
- Exhibit 7: BLTA Results
- Exhibit 8: District Threat Assessment Process

Response, pages 1-18

- Exhibit A: IEPs
- Exhibit B: Service Logs
- Exhibit C: DLTA and BLTA
- Exhibit D: MDR report
- Exhibit E: JAC Assessment Results
- Exhibit F: Prior Written Notices
- Exhibit G: Blank
- Exhibit H: Notices of Meetings
- Exhibit I: Blank
- Exhibit J: Correspondence
- Exhibit K: District policies and procedures
- Exhibit L: Blank
- Exhibit M: Student's transcript
- Exhibit N: Student's 2019-2020 schedules
- Exhibit O: Documents related to suspension
- Exhibit P: Proof of delivery
- Exhibit Q: Student's attendance record

Telephonic Interviews:

- Parents: March 17, 2020
- Director of Judicial Services: April 2, 2020
- Social Worker: April 3, 2020
- Principal: April 3, 2020
- Dean II: April 6, 2020
- Assistant Director of Special Education: April 7, 2020
- Case Manager: April 13, 2020
- CDE Consultant: April 13, 2020