Case No. BESE 2022-0134C
Involving the Calhoun County School District
Report Issued: April 18, 2022

BACKGROUND
The Florida Department of Education (FDOE), Bureau of Exceptional Education and Student Services (bureau), received a state complaint from Mr. Kevin Golembiewski on February 17, 2022, alleging that the Calhoun County School District (district) violated federal and state laws relating to the education of students with disabilities (SWD).

The 60-day timeline for completion of the inquiry began with receipt of the required complaint components, with an anticipated completion date of April 18, 2022. The district and the complainant were asked to submit relevant documents and information to the bureau. Ms. Staci Williams, director, Exceptional Student Education (ESE), submitted documentation on behalf of the district. The complainant also submitted documentation.

Because the state complaint did not include allegations regarding a specific student, the investigation focused on the district’s implementation of the broader procedural and substantive requirements of the Individuals with Disabilities Education Act (IDEA) that were the subject of the complaint.

The complainant’s allegations generally focused on the policies, procedures and practices at a public alternative school within the district. As such, the investigation focused on and responded to the specific allegations encompassed in the state complaint regarding the alternative school, where appropriate.

Consistent with the requirements of Title 34, sections 300.151 and 300.152, Code of Federal Regulations (C.F.R.), and Rule 6A-6.03311, Florida Administrative Code (F.A.C.), regarding minimum state complaint procedures, the investigation procedures included the following:

- **Review of Policies and Procedures**—Section 1003.57(1)(b)1, Florida Statutes (F.S.), requires that district school boards submit to the FDOE proposed procedures for the provision of special instruction and services for exceptional students once every three years. Approval of this document, hereafter referred to as “the P&P,” by the FDOE is required by Rule 6A-6.03411, F.A.C., as a prerequisite for the district’s use of weighted cost factors under the Florida Education Finance Program. This document also serves as the basis for the identification, evaluation, eligibility determination and placement of students to receive ESE services, and is a component of the district’s application for funds available under the IDEA. The district’s 2019-2020 P&P was in effect during the 2020-2021 and 2021-2022 school years as of September 16, 2020, and relevant portions of the document were reviewed. In addition, relevant portions of the district’s Code of Student Conduct and other district-level policy documents were reviewed.

- **Interviews**—Members of the investigation team and bureau staff conducted interviews with district-level and school-level administration regarding the issues that were the subject of the state complaint. The interviews were conducted via Zoom conference on March 14, 2022.

- **Review of Student-Level Records**—A number of records, including student-specific education records, were reviewed.
SUMMARY OF COMPLAINT ALLEGATIONS

ISSUE: Whether the district’s Character Attitude Responsibility Education (CARE) Program failed to make available a free appropriate public education (FAPE) to the students within its jurisdiction as required in 34 C.F.R. §§ 300.17 and 300.101 and Rules 6A-6.03028 and 6A-6.03411, F.A.C., specifically, by:

- Failing to develop appropriate individual educational plans (IEPs) to meet the students’ needs in accordance with 34 C.F.R. §§ 300.320 and 300.324 and Rule 6A-6.03028, F.A.C., specifically by amending the students’ “services” when entering the CARE Program to meet the need of the program’s resources;
- Failing to implement the students’ IEPs by not providing specially designed instruction and supports with fidelity; and
- Failing to provide instruction on the access points curriculum by an ESE teacher.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c) and Rule 6A-6.03311(5), F.A.C., the bureau has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the time period from February 18, 2021, to February 17, 2022, for the purpose of determining if a violation of Part B of the IDEA or state requirements occurred. Information beyond this time period may be included for context. Findings of noncompliance, if any, shall be limited to the time period of the investigation within the bureau’s jurisdiction to investigate.

FINDINGS OF FACT

1. The CARE Program serves grades 6 through 12, including SWD.
2. For the 2020-21 school year, 1.8 percent of SWD was placed in the CARE Program.
3. For the 2021-22 school year, 2.8 percent of SWD was placed in the CARE Program.
4. The district’s 2019-2020 P&P, Sections C and D, included the following prompts and responses pertaining to placement:
   a. Continuum of alternative placements:
      i. Prompt: Describe the district’s continuum of alternative placements (e.g., instruction in regular classes, special classes, special schools and home instruction, and instruction in hospitals and institutions) and whether a district contracts with another district to provide a placement option.
      ii. Response: “[The district] offers a full continuum of placement options for [SWD] which include regular class placements, resource class placements, separate class placements, virtual school placements, discipline class placements, home instruction, and hospital/homebound instruction.”
   b. Pattern of removals related to a change of placement:
      i. Prompt: Describe the district’s procedures for determining whether a pattern of removals constitutes a change of placement.
      ii. Response: “It is the district’s policy that [SWD] are not removed for more than ten cumulative school days within the same school year so there will not be a pattern of removal that constitutes a change of placement. If an incident occurs in which the student is removed for more than ten cumulative days, it will be reviewed on a case by case basis by the IEP

1 Information received from Florida’s PK-20 Education Information Portal.
team to determine if the pattern of removal constitutes a change of placement. If a SWD is recommended for expulsion, the IEP team determines how services will continue to be provided to the student.”

c. Notifying parents of a change of placement:
   i. Prompt: Describe the district’s procedures for notifying parents on the date that a decision is made to make a removal that constitutes a change of placement and providing parents with a copy of the notice of procedural safeguards on this date.
   ii. Response: “Notification to parents and/or adult students of a change in placement is made in person by the ESE Director, ESE staffing specialist or designee if the parent and/or adult student attends the Manifestation Determination/Review of Placement meeting. Additionally, a copy of all documents created at the meeting, procedural safeguards and IAES [interim alternative educational setting] enrollment information are provided to the parent and/or adult student at the meeting. Notification to parents and/or adult students who do not attend the Manifestation Determination/Review of Placement meeting is made by phone the day of the meeting by the ESE Director, ESE staffing specialist or designee, if possible. This verbal notice includes contact information for the ESE Director or designee. The ESE staffing specialist or designee will ensure that a copy of all documents created at the meeting along with procedural safeguards and IAES enrollment information are sent by U.S. mail to the parent and/or adult student. If phone contact can not be made with the parent and/or adult student, a copy of all documents created at the meeting, procedural safeguards and IAES enrollment information are delivered to the home address and verbal explanation of the change in placement is provided by the ESE staffing specialist or designee. Contact information for the ESE Director/designee is also provided to the parent/adult student.”

d. Removals to an IAES:
   i. Prompt: Describe the district’s procedures for tracking students’ removals to an IAES to ensure that the 45 school-day limit is maintained.
   ii. Response: “In these types of circumstances, a subsequent meeting date is set at the initial meeting where the IAES is determined. The meeting will be scheduled and convened no later than 45 school days after the IAES placement is made. The ESE staffing specialist or designee communicates with parents and adult students regarding fulfillment of the forty-five (45) school day requirement and reconfirms the meeting date to ensure that a transition meeting occurs. The transition process includes a review of student behavior and achievement data in order to ensure the most appropriate services to increase the likelihood of student success upon exit of the IAES and entrance to the next school setting. Special circumstances are considered when the team, to include the parent and student, determines that continued placement in the IAES is the appropriate decision.”

5. The district’s Code of Conduct and Discipline in effect for the 2019-2021 through 2021-2022 school years included the following:
   a. “The CARE program is a discipline-based alternative education program for students who demonstrate serious behavioral difficulties considered detrimental to the regular classroom setting. A change of placement to the CARE program is made when a student’s adverse behavior results in a specified number of suspension days, or [the student] is involved in an incident serious enough to warrant immediate placement. The CARE Program strives to be positive in nature, employ alternative teaching methodologies, curricula, learning activities, and diagnostic and assessment procedures in order to meet the needs, interests, abilities, and talents of eligible at-risk students. The CARE Program includes, but not limited to: tutoring, mentoring, computer assisted instruction, credit recovery, smaller class sizes, and flexible scheduling.”
   b. “After 10 days of accumulated in-school suspension [ISS] and/or out-of-school suspension [OSS], the Principal or his/her designee may recommend assignment of the student to the CARE Program, as an alternative placement intervention prior to expulsion.”
c. “Prior to 10 days of accumulated suspension, students may be assigned to CARE for an extreme act(s) of misconduct, such as, but not limited to, drug use, violence or sexual offenses.”
d. “Students assigned to CARE must complete a minimum of forty-five (45) days and demonstrate satisfactory behavior by successfully completing the level system in order to be considered for reappointment into the regular classroom, unless otherwise determined by a Problem Solving Team and/or IEP Team.”
e. “Students will be placed in the CARE Program or receive other Educational Services as an alternative placement at any time the Problem Solving Team deems that program to be:
   • an appropriate alternative,
   • the completion of an existing assignment or program, or
   • a transition from a more restrictive program.”
f. Regarding IEP decisions: “[IEP] Teams make[sic] all final placement decisions for [SWD]. As a result, IEP teams may recommend placement options that differ from the discipline consequences outlined in the Student Code of Conduct and Discipline for varying reasons. It is not the intent of the IEP team to give [SWD] any unfair advantage. In most cases, the same consequences listed in the Student Code of Conduct and Discipline will apply to [SWD]. However, this will be determined on a case by case basis as necessary.”
g. Regarding change in placement: “For the purposes of removals of a [SWD] from the student’s current educational placement, a change of placement occurs when the removal is for more than 10 consecutive or cumulative school days.”
h. Regarding manifestation determination: “When a [SWD] has been suspended from school for 10 school days, the IEP team shall convene to review the student’s [IEP] and other records and to make a manifestation determination. A manifestation determination examines the relationship between the student’s disability and the specific behavior that may result in disciplinary action. If the IEP team determines that the student’s behavior was not related to the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities. However, services must be continuously provided if the discipline constitutes more than 10 days of [ISS] and/or [OSS].”
i. Regarding long-term removals:
   i. “The district must notify the parent of the suspension and provide the parent with a copy of the notice of procedural safeguards as required by Florida rule on the same day as the date of the removal decision.”
   ii. “An IEP team must meet within 10 school days of the removal decision in order to perform a manifestation review.”
   iii. “Services must be continuously provided for [SWD] after 10 consecutive or cumulative days of [ISS] and/or [OSS].”
iv. “No later than 10 school days after either first removing the student for more than 10 school days in a school year or beginning with a removal that constitutes a change in placement:
   a. The IEP team must meet to develop a functional behavior assessment (FBA) and a positive behavior intervention plan (PBIP) if not in place before the behavior that resulted in the removal occurred.
   b. If the student has a PBIP and FBA, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior.”
j. Regarding alternative placement: “After reviewing a student’s [IEP], discipline records, cumulative records and any other information the team deems important, the IEP team may recommend an alternative setting or placement for the student. The placement must be selected so as to enable the student to continue to progress in the general curriculum and to continue to
receive services and accommodations, including those described on the student’s current IEP, which will enable the student to meet IEP goals or make alternate placement decisions based on student need and IEP team recommendations.”

k. Regarding an IAES:
   i. “The IEP team determines the IAES, unless it is determined by an administrative law judge.
      a. The IAES must be selected so as to enable the student to continue to progress in the general curriculum and to continue to receive services and modifications, including those described in the student’s current IEP, that will enable the student to meet IEP goals.
      b. The IAES must include services and modifications to address the behavior that resulted in the change of placement and that are designed to prevent the misconduct from recurring.”
   ii. “School personnel may place a student in an IAES for the same amount of time a student without a disability would be placed, but not for more than forty-five (45) calendar days without the consent of the parent or guardian if the student:
      a. Carries a weapon to school or to a school function, or
      b. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function or
      c. Inflicts serious bodily injury upon another individual while at school, on school premises, or at a school function.”
   iii. “School personnel must notify the parent of an IAES placement decision and provide the parent with a copy of the notice of procedural safeguards, consistent with the State Board Rules on the day the placement decision is made.”

6. The district’s Student/Parent Handbook in effect for the 2019-2020 through 2021-2022 school years indicated the following regarding the CARE Program:
   a. The CARE Program is a “Dropout Prevention Program with strategies that differ from traditional education programs and schools in scheduling, administrative structure, philosophy, setting and curriculum.”
   b. The CARE Program is a “discipline-based program that provides an education for students who demonstrate serious behavioral difficulties considered detrimental to the regular classroom setting. A change of placement to the CARE Program is made when a student’s adverse behavior results in a specified number of suspension days, or he/she is involved in an incident serious enough to warrant immediate placement.”
   c. The CARE Behavioral Management Program is “designed to focus more on positive behaviors than toward negative behaviors displayed. Students will earn a set criterion of ‘GOOD DAYS’ on each level before being able to proceed to the next level. Another component meshed into the progression from level to level is the participation and demonstration of appropriate affective skills acquisition.”
   d. The CARE Behavioral Management Program consists of four levels: Level 1—transition, Level 2—advancement, Level 3—accomplishment and Level 4—mastery.
   i. “A movement through the levels is based on a student’s behaviors within the school program. Behaviors are broken down into two main areas: MINOR DISRUPTIVE BEHAVIORS and MAJOR DISRUPTIVE BEHAVIORS. If a student exhibits either MINOR or MAJOR BEHAVIORS during the day, they will not be able to earn points for that time of day. If no MINOR or MAJOR BEHAVIORS are exhibited, then students will earn points for that hour during the day.”

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2 Section 1003.53, F.S., indicates that dropout prevention programs can include educational alternatives, disciplinary programs and teenage parent programs.
ii. “If a student does exhibit a MINOR or MAJOR BEHAVIOR, then a ‘slash’ (/) is given during the hour in which the behavior occurred. Regardless of how many times a student may exhibit the behavior during the same recording time frame (hour), only one slash is given.”

e. The CARE Program also has a “Workback Program” for discipline regarding drugs. “[The district] supports and enforces the zero tolerance policy for unlawful possession, use and distribution of illicit drugs, controlled substances of any kind, or is in possession of any drug paraphernalia. However, for a student’s FIRST offense for possession and/or use of a controlled substance, the student and parent may be offered alternative placement in the CARE Program in lieu of placement at the CARE Program for one calendar year. This alternative placement shall only be available for a student’s first offense for possession and/or use of a controlled substance as well as first time placement at CARE Program. Students previously placed at CARE are not eligible for the Workback Program. The principal may recommend that a student not participate in the Workback Program due to the circumstances of the expellable offense. Violations of zero tolerance policies are cumulative (not on a year to year basis) offenses in a student’s educational career regardless of where the offense occurred. Second offenses are not eligible for the Workback Program. Upon successful completion of the Workback Program, the student shall transition back to the regular school program.”

i. “The terms of the alternative placement shall be as follows:

1. The student will be suspended for five days and recommended for placement at the CARE Program for one calendar year.

2. Prior to the expiration of the five day suspension, the student and parents must notify the school district, in writing, that the student chooses to participate in the Workback Program and agrees to placement in the CARE Program on the following terms and conditions:

   a. CARE placement shall be for a minimum of ninety school days. Students are required to follow all rules and regulations of the CARE program.”

ii. “When a student has attended a minimum of 90 days then an administrative committee will determine if the student can return to regular classroom setting.”

7. The district’s narrative response to the allegations dated February 25, 2022, indicated that students attending the CARE Program receive virtual instruction in Plato Edmentum3 in all core content areas except for reading, which occurs in a face-to-face setting. The individual student’s needs are met through continued assistance from teachers and staff through the provision of accommodations that are identified for students in accordance with their IEPs. Additionally, instruction is guided by student’s IEP goals and objectives as well as progress monitoring data.

8. The district’s narrative response to the allegations dated February 25, 2022, indicated that through the IEP process, an IEP for a student attending the CARE Program is developed to address supports needed by the student based on the student’s previous IEPs and current data.

9. In a bureau-conducted interview with the district on March 14, 2022, district staff indicated the following regarding IEP development for a student entering the CARE Program:

   a. Before a determination is made to place a student in the CARE Program, the IEP team meets to discuss the student’s progress at the student’s current location, which may include data from the student’s referrals, teachers, grades and attendance. Based on this review, the IEP team then decides if the CARE Program is the best setting for the student. All interventions should have been exhausted in the student’s current location before the student is placed in the CARE Program.

   b. When developing an IEP for a student who is entering the CARE Program, the IEP team meets and develops an IEP, including a PBIP, that is individualized to address the student’s needs.

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3 Plato Edmentum is an FDOE-approved virtual instruction program for grades 6 through 12.
A student’s IEP, including a PBIP, may change, but those changes are to be based on student need and not the CARE Program because the CARE Program does not determine the supports.

c. The CARE Program is considered to be a general education classroom; however, the program has a smaller teacher-to-student ratio in a smaller setting. Because of that, students tend to do better because there are less distractions and more assistance when needed. Some students even request to not return to their previous school settings.

10. From February 18, 2021, to February 17, 2022, SWD attended/still attend the district’s CARE Program. The students’ IEPs indicated the following changes before and after being placed in the CARE Program; specifically, the students’ services and least restrictive environments (LREs):

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<th>Student</th>
<th>Services in Effect</th>
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<td>Before Entering the CARE Program</td>
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11. In an email dated March 24, 2022, the district informed the bureau that the assigned classroom paraprofessional was available to all students at the CARE Program.

12. Based on a review of documents, prior written notices were provided to parents before students were placed in the CARE Program, which addressed the proposed changes to students’ locations and services. Furthermore, the IEP teams met and determined placement before each student was placed in the CARE Program.

Implementation

13. The district’s 2019-2020 P&P, Section D, included the following prompts and responses pertaining to implementation:

   a. Procedures for providing FAPE:
      i. Prompt: Describe the district’s procedures for providing FAPE for SWD who are suspended or expelled or placed in an IAES.
      ii. Response: “The district’s ESE teachers on staff at the IAES will ensure the [SWD] placed in the IAES will continue to receive educational services to enable them to participate in the general curriculum. In addition, the ESE teachers will ensure that the students are working toward meeting annual IEP goals, and that the students receive (as appropriate) behavioral intervention services and modifications designed to address the targeted behavior so that it does not reoccur.”

   b. Training and supports for staff members:
      i. Prompt: Describe the district’s procedures for providing training and supports for staff members who provide services to SWD who are suspended or expelled or placed in an IAES.
      ii. Response: “A certified ESE teacher is assigned to the alternative education school in [the district] and the district provides support such as classroom paraprofessionals, behavioral analyst, related service providers and mental health counselors as needed and appropriate. The personnel at the alternative education site in [the district] are also afforded the
opportunity to attend all appropriate staff development/in-service opportunities made available to all district personnel.”

14. The district’s narrative dated February 25, 2022, stated the following regarding the implementation of specially designed instruction and supports:
   a. All SWD’s (including students on access standards) unique and individual needs are considered when a determination is made for a change in placement to the CARE Program. Because the CARE Program has fewer students enrolled, the CARE Program administrator serves dual roles. The administrator also serves as a certified ESE teacher who designs the instruction for students on access standards and may provide the instruction or guide the provision of instruction by other staff members to include teachers and/or paraprofessionals/aides. Even more careful consideration is given when a student on access standards is recommended for the CARE Program.
   b. Although most of the students in the CARE Program use a computer-based virtual curriculum, ESE services are provided to the students with fidelity. The students placed at CARE typically make academic gains in their core academic courses while also receiving reading remediation. In addition, they receive individual math instruction from a certified math teacher on skills needed. Instruction is guided by students’ IEP goals and objectives as well as progress monitoring data. Accommodations are provided daily along with any modifications needed for students on access standards. Daily checks of students’ academic progress are provided along with daily reports of behavioral progress. The students who attend the CARE Program usually improve both academically and socially. The CARE Program is extremely structured and teaches students how to improve time management as well as their interpersonal skills. Fidelity is built into the program to help ensure students’ growth and success.

15. In a bureau-developed questionnaire, the ESE service provider at the CARE Program indicated the following regarding implementation:
   a. Responsibilities related to the implementation of the students’ IEPs:
      i. Prompt: Describe your specific responsibilities related to the implementation of students’ IEPs when entering the CARE Program.
      ii. Response: “Ensure students are enrolled in the appropriate classes for continuation of academic progress. Inform teachers and staff about students’ IEPs and provide information needed for provision of services as stated in IEPs. Provide course accommodations and modifications to courses as stated in IEPs. Provide support facilitation services and individual direct support to students per IEPs.”
   b. Behavioral services, counseling services and/or other related services:
      i. Prompt: Describe how the students in the CARE Program received behavioral services, counseling services and/or other related services, such as occupational therapy, language therapy, etc., from February 18, 2021, to February 17, 2022.
      ii. Response: “SLPs [speech and language pathologists] and [occupational therapists] come to the CARE Program to provide in person services as indicated on student’s IEPs according to their scheduled therapy times. Counselors and behavioral services staff do not have a set schedule that is followed. However, the counselors and behavioral services staff provide in person supports for students at the CARE Program for the services as indicated on IEPs.”
   c. Assistance in academic courses:
      i. Prompt: Describe how the district provides the students “assistance in academic courses through support facilitation by the ESE teacher” while attending the CARE Program from February 18, 2021, to February 17, 2022.
      ii. Response: “The students who are enrolled in virtual curriculum at CARE receive daily support facilitation services from either [the ESE service provider] or [named teacher] who is a certified ESE teacher. The support facilitation services include reteaching concepts, provision of accommodations, reviewing progress in virtual classes and resetting lessons/tests
as needed. In addition, [another named teacher] provides small group and/or individual instruction for students even though [that named teacher] does not have ESE certification.”

16. In an interview with the district on March 14, 2022, the staff indicated the following regarding implementation of the students’ IEPs:
   a. The classroom at the CARE Program looks like a traditional computer lab setting with desks and textbooks for curriculum at each one. Small-group and individual services, accommodations, and modifications are provided to each student. If a student cannot access the virtual curriculum, the staff will provide direct instruction, if needed.
   b. It is rare that a student who is placed on the access points curriculum attends the CARE Program, but when/if they are placed there, the ESE administrator would develop the access points instruction in conjunction with the students’ prior school’s teacher. Also, the ESE administrator would either provide the instruction or guide other staff in how to provide the instruction.

17. A review of responses to interviews and questionnaires, service logs, student schedules, and staff schedules indicated the following regarding the implementation of IEP services for IEPs that were in effect while students attended the CARE Program:
   a. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
   b. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
   c. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Discipline
18. The district’s 2019-2020 P&P, Section D, included the following prompts and responses pertaining to discipline:
   a. Scheduling manifestation determination reviews (MDRs):
      i. Prompt: Describe the district’s procedures for scheduling MDRs within required timelines and determining participants for these reviews.
      ii. Response: “[The district] will convene [an MDR] any time removal beyond 10 days in a school year is considered. School based administrators are responsible for notifying the district ESE office in writing when [an SWD] has been suspended from school. District ESE staff will schedule [an MDR] meeting and determine who the relevant members of the team are which will include the parent(s) of the student. District ESE staff will contact school personnel who will then coordinate meeting notices and meeting invitations/notices for parents, teachers and school staff. The meeting is convened no later than 10 school days after any decision to change the placement of [an SWD] because of a violation of a code of student conduct.”
   b. Behavior is not a manifestation of the student’s disability:
      i. Prompt: Describe the district’s procedures for providing FAPE for students when the behavior is determined not to be a manifestation of the student’s disability.
      ii. Response: “Student’s whose behavior is determined not to be a manifestation of the student’s disability may be disciplined in the same manner as students without disabilities and for the same duration in which they would be applied to [students without disabilities], except that services necessary to provide FAPE will be provided to the [SWD]. Any removal for more than the original suspension will result in placement in the district’s [IAES]. Students placed in the IAES will continue to receive educational services to enable them to participate in the general education curriculum, to progress toward meeting IEP goals, and to receive (as appropriate) behavioral intervention services designed to address the targeted behavior.”

19. In an interview with the district on March 14, 2022, regarding discipline procedures, district staff indicated that the district’s manifestation determination process was as follows: School principals will
contact the district’s ESE director whenever they know that SWD are getting close to 10 days of suspension; the district then holds an MDR meeting and an IEP meeting at the same time and determines the student’s placement.

20. The following reasons were used in the determination of placing SWD in the CARE Program:

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<th>Student</th>
<th>Offense/Reason (Consequence) Student was Placed in the CARE Program</th>
<th>MDR Date and Outcome</th>
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CONCLUSIONS

21. The complainant alleged that the district denied students in the CARE Program individual IEPs tailored to their unique needs, failed to provide students in the CARE Program with specially designed instruction and supports with fidelity, and failed to provide students in the CARE Program who are on the access points curriculum with direct instruction by an ESE teacher.

22. According to the IDEA, a FAPE must be available to all students residing in the state between the ages of 3 and 21, inclusive.  

23. FAPE means special education and related services that, among other things, are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324. 

24. Accordingly, at the beginning of each school year, each school district must have an IEP in effect for each SWD within its jurisdiction.

25. An IEP means a written statement that is developed, reviewed and revised in a meeting and must include:
   a. A statement of the student’s present levels of academic achievement and functional performance, including how the student’s disability affects the student’s involvement and progress in the general education curriculum (i.e., the same curriculum as for students without disabilities);
   b. A statement of measurable annual goals, including academic and functional goals designed to—
      i. Meet the student’s needs that result from the student’s disability to enable the student to be involved in and make progress in the general education curriculum; and
      ii. Meet each of the student’s other educational needs that result from the student’s disability;
   c. A description of how the student’s progress toward meeting the annual goals will be measured; and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; and
   d. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student—
      i. To advance appropriately toward attaining the annual goals;
      ii. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
      iii. To be educated and participate with other students with and without disabilities in the activities previously described. 

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6 34 C.F.R. § 300.101 and Rule 6A-6.03028, F.A.C.
7 34 C.F.R. § 300.17 and Rule 6A-6.03411, F.A.C.
8 34 C.F.R. § 300.323 and Rule 6A-6.03028, F.A.C.
9 34 C.F.R. § 300.320 and Rule 6A-6.03028, F.A.C.
26. In developing each student’s IEP, the IEP team must consider the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and the academic, developmental and functional needs of the student. In addition, each district must ensure that the IEP team reviews the student’s IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and revises the IEP, as appropriate, to address information about the student provided to, or by, the parents and the student’s anticipated needs, among other matters.\(^{10}\)

27. Furthermore, each district must ensure that a continuum of alternative placements is available to meet the needs of SWD for special education and related services. The continuum must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.\(^{11}\)

28. Additionally, in determining the educational placement of an SWD, the district must ensure that:
   a. The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and is made in conformity with the LRE provisions;
   b. The student’s placement is determined at least annually, based on the student’s IEP and as close as possible to the student’s home;
   c. Unless the IEP of an SWD requires some other arrangement, the student is educated in the school that the student would attend if nondisabled;
   d. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that the student needs; and
   e. An SWD is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.\(^{12}\)

29. Lastly, Rule 6A-1.0503, F.A.C. indicates that “Primary instructor” refers to any instructional employee of a Florida public school district who provides direct support in the learning process by planning, delivering, and evaluating instruction, including through virtual or blended environments, for all students during the entire class period. Furthermore, in the 2021-2022 Course Code Directory and Instructional Personnel Assignments, Section 1- Narrative Section, under “Access Courses for Students with Significant Cognitive Disabilities,” indicates that access courses in the core academic areas require teachers to be certified in the applicable core content area in accordance with the level of instruction. In addition, Section 4 - Exceptional Students Education K-12 [Kindergarten through Grade 12] Education Courses indicates that the ESE teacher must meet qualification requirements in accordance with the ESE course number and must meet qualification requirements for any ESE area, which includes certification in ESE and elementary education.

30. Regarding the development of the students’ IEPs, the bureau finds that all students had IEPs in effect at the beginning of the school year. Some students were not developed in accordance with the applicable requirements of 34 C.F.R. §§ 300.320 and 300.324 and Rule 6A-6.03028, F.A.C. More specifically, the

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\(^{10}\) 34 C.F.R. § 300.324 and Rule 6A-6.03028, F.A.C.

\(^{11}\) 34 C.F.R. § 300.115 and Rule 6A-6.03028, F.A.C.

\(^{12}\) 34 C.F.R. § 300.116 and Rule 6A-6.03028, F.A.C.
For the remaining students, the district ensured that a continuum of alternative placements was made available to meet the needs of SWD for special education and related services and that the services and supports were provided in accordance with the students’ IEPs. The continuum included instruction in regular classes, and made the provision for supplementary and related services.

31. Additionally regarding the development of the students’ IEPs, Services that are offered to every student in the CARE Program are not services that are individually based and, therefore, should not be placed on an IEP.

32. Regarding implementation of the students’ IEP,

33. For these reasons, the district violated the requirements of 34 C.F.R. §§ 300.101, 300.115, 300.116 and 300.324, and the corresponding requirements of Rules 6A-1.0503 and 6A-6.03028, F.A.C.

Additional Findings of Noncompliance

34. Within 10 school days of any decision to change the placement of an SWD because of a violation of a code of student conduct, the district, the parent, and relevant members of the student’s IEP team (as determined by the parent and the district) must review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability; or if the conduct in question was the direct result of the district’s failure to implement the IEP. Furthermore, for disciplinary changes of placement, if the behavior that gave rise to the violation of a code of student conduct is determined not to be a manifestation of the student’s disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities. Additionally, the student must continue to receive educational services, so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student’s IEP and receive, as appropriate, an FBA and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. However, regarding special considerations, the district may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability, if the student:
   a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function;
   b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
   c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.\footnote{34 C.F.R. § 300.530 and Rule 6A-6.03312, F.A.C.}

35.  

\footnotetext{15}{34 C.F.R. § 300.530 and Rule 6A-6.03312, F.A.C.}
36. For these reasons, the district violated the requirements of 34 C.F.R. § 300.530 and the corresponding requirements of Rule 6A-6.03312, F.A.C.

**CORRECTIVE ACTIONS**

Pursuant to 34 C.F.R. §§ 300.149 and 300.600, the district must make every effort to remedy its noncompliance as soon as possible, or by the deadlines set in this written decision, and in no case later than one year from the bureau’s identification of the noncompliance. Failure by the district to meet any of the timelines set forth below may adversely affect the district’s annual determination under Part B of the IDEA.

1. Regarding XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX If the district finds that the student regressed, then the IEP team must meet to review and revise the students’ IEPs, if necessary, and develop a compensatory services plan. Verification of the IEP team meeting, which must include the evidence the district used to determine the students’ progress and need of compensatory services, and the compensatory services plan must be provided to the bureau by **May 23, 2022**.

2. The compensatory services plan must address the following:
   a. The location where the services will be provided and whether services will be provided remotely;
   b. The schedule and duration of the compensatory services;
   c. How the district will respond when a session is missed due to the absence of the student;
   d. How the district will respond when a session is missed due to the absence of a service provider; and
   e. How the district will respond if new safety factors (e.g., those related to emergency school closures) arise that affect the timing and provision of services.

3. Additionally, by **June 6, 2022**, the district must ensure that all relevant district and school-based staff are provided training on the following requirements:
   a. 34 C.F.R. §§ 300.17 and 300.101 and corresponding requirements of Rules 6A-6.03411 and 6A-6.03028, F.A.C., specifically regarding the provision of FAPE;
   b. 34 C.F.R. §§ 300.320 and 300.324 and corresponding requirements of Rule 6A-6.03028, F.A.C., specifically regarding the development of the student’s IEP based on student need;
   c. 34 C.F.R. §§ 300.115 and 300.116 and corresponding requirements of Rule 6A-6.03028, F.A.C., specifically regarding the continuum of alternative placements and placements;
   d. 34 C.F.R. § 300.530 and corresponding requirements of 6A-6.03312, F.A.C., regarding discipline procedures;
   e. Rule 6A-1.0503, F.A.C., regarding the definition of qualified instructional personnel; and
   f. The district’s P&P, specifically regarding removals to an IAES.

4. **By May 23, 2022**, the district must send the proposed training materials to the bureau for approval.
5. **By June 20, 2022**, the district must submit documentation as verification of the training to the bureau to include the date of the training; printed names, signatures and titles of training participants; copies of any content presented; and the name and title of the presenter.

Upon completion of each corrective action, the district must report in the General Supervision Website (GSW) and submit appropriately labeled supporting documentation as verification via ShareFile. For access to the GSW or ShareFile, please contact the bureau via email at BEESScomplaints@fldoe.org or via telephone at 850-245-0475.
REQUIRED ACTIONS
The district must review and revise the Code of Conduct and Discipline to clarify that the CARE Program is a dropout prevention program and how the district determines a student’s placement in the program. Please provide these revisions to the bureau for review by June 6, 2022.

REMINDER: ALTERNATIVE DISPUTE RESOLUTION OPTIONS
Clearly identified conflicts may be effectively addressed through the use of capable third parties. These collaborative conflict resolution options are characterized by interest-based problem solving. The IDEA provides for several distinct dispute resolution processes, including mediation, while Florida also makes state-sponsored facilitation available to parents and educators as an alternative dispute resolution option.

For more information regarding these collaborative processes, the bureau encourages you to visit the FDOE website at https://www.fldoe.org/academics/exceptional-student-edu/dispute-resolution/.
For more information regarding the continuum of dispute resolution processes and practices, the bureau encourages you to visit The Center for Appropriate Dispute Resolution in Special Education website at https://www.cadreworks.org/cadre-continuum.