

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	
<p>[PARENTS], on behalf of their minor child, [STUDENT],</p> <p>Complainants,</p> <p>vs.</p> <p>POUDRE SCHOOL DISTRICT, R-1,</p> <p>Respondent.</p>	▲ COURT USE ONLY ▲
	<p>CASE NUMBER:</p> <p>EA 2022-0041</p>
DECISION	

This decision follows a hearing per the Individuals with Disabilities Education Act (“IDEA”) as described in 20 U.S.C. Section 1415 and 34 C.F.R. sec. 300, and also per the Exceptional Children’s Educational Act (“ECEA”) as described in Section 22-20-101, C.R.S. and 1 CCR 301-8. The hearing was held remotely February 21-24, 2023 before Matthew E. Norwood, Administrative Law Judge (“ALJ”). Igor Raykin, Esq., appeared on behalf of the Complainants. Robert P. Montgomery, Esq., appeared on behalf of the Respondent (“School District”).

Summary

The Complainants assert that their son “[Student]” was denied a free appropriate public education (“FAPE”) and that the School District violated the IDEA’s “child find” obligations. [Student] attended school in the School District from August to mid-November 2020. Thereafter, his parents sent him to two out of state boarding schools: [Boarding School 1] and [Boarding School 2]. The amended complaint in this matter seeks reimbursement related to [Boarding School 2] only. However, Complainants’ March 10, 2023 closing statement seeks reimbursement for both placements.

There is insufficient evidence that [Student’s] presentation while attending school in the School District showed that he required special education. Most of his instruction during this time was by remote learning because of the Covid-19 pandemic. It was not until September of 2022 that [Student’s] mother requested a special education evaluation of [Student] School District personnel traveled out of state to evaluate him at [Boarding School 2]. A January 25, 2023 individualized education program (“IEP”) was then drawn up by [Student’s] IEP team.

The Complainants have failed to establish any procedural violations on the part of the School District, or that the IEP was other than reasonably calculated to enable

[Student] to receive educational benefits. Nor have they established a failure of the School District to meet its “child find” obligations. No violation of the IDEA or the ECEA is established and no compensatory services or other remedies are ordered.

Findings of Fact

Based on the evidence presented at the hearing, the ALJ makes the following findings of fact:

1. “[Student]” is the student in question, born in [month] 2007, and now 15 years old. He is the eldest son of the Complainants [Parents]

2. At the age of four, he attended pre-school at [Elementary School] in [City, State]. In pre-school, he received special education services through an IEP in the area of “other health impairment.”

3. In 2013 he was diagnosed by a [Psychiatrist], as suffering from Attention Deficit/Hyperactivity Disorder (“ADHD”). Exhibit 10.

4. In October 2015, in second grade, he was found eligible for services through a “504 plan.” Such plans are implemented to ensure compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. sec. 794.

5. In the summer between fourth and fifth grades, [Student] performed [in a theatre production] in the “[Play Name]” musical. At that time he attended [Private School] in [City, State Name], a private school.

6. At age 11, [Student] was assessed in [State Name] to be at the 85th percentile in reading. Exhibit 8.

7. [Student] attended public school in sixth and seventh grade at [Middle School] in [City, State name]. As of May 2020, [Student] remained on the 504 plan at [Middle School]. His diagnoses then were listed as ADHD, Generalized Anxiety Disorder, Obsessive Compulsive Disorder, and Major Depressive Disorder. Exhibit 9.

8. In the summer of 2020, [Student] and his family moved to [City Name], Colorado. He started his eighth grade school year at [Middle School] in the School District doing remote learning because of the Covid-19 pandemic. There was then a brief period of “hybrid” learning, both in person and remote, in around October 2020. The school then returned to remote learning for that fall semester.

9. [Student] performed well in remote schooling. He turned his camera on and completed most of his assignments. This was better than many of his peers. His behavior was also better than most of his peers. He was engaged and not disruptive.

10. “Engineering” was one of [Student’s] classes at [Middle School]. He was assigned a series of eight “modules” to complete in that class. Exhibits 12-17. [Student] completed a majority of the modules, including making a video of a paper [object] he constructed.

11. Nothing in [Student’s] presentation during those months caused his teachers or counselor to suspect that he required special education. Nothing in

[Student's] performance at [Middle School] implicated the School District's "child find" obligations as described at 34 C.F.R. sec. 300.111.

12. The School District prepared its own 504 plan for [Student] Exhibit 10. The plan listed [Student's] impairments as ADHD, Anxiety, Depression, and others.

13. Exhibit B contains a series of emails from [Student's] mother to school personnel, including [Counselor], the eighth grade counselor at [Middle School]. The emails date from September 27, 2020 to October 8, 2020. [Student's] mother reported that [Student] had [hurt himself] in a [accident] on September 26. She asked if he could be assigned a scribe through special education services. One of the emails contains a description of some of [Student's] challenges. She reported that he works with a psychologist and a psychiatrist. These individuals are psychologist [Psychologist] and psychiatrist [Psychiatrist]. Both of these individuals live in [State Name]. Exhibit HHHH. [Student's] mother wrote that [Student] had said that he liked school and the way his teachers treated him. There was no request for an IEP evaluation in the emails.

14. [Student's] parents were knowledgeable in the area of special education and IEP's. [Student's] younger [sibling] was on an IEP in [State Name]. On November 9, 2020, the School District sent [Student's] parents a prior written notice and a request for evaluation for this younger[sibling]. Exhibit 20. The parents signed the notice attesting that they had been provided the special education procedural safeguards.

15. The parents signed another similar notice in January 2021. Exhibit 21.

16. [Student's] parents were sent a consent for evaluation form by the School District for one of [Student's] younger [siblings] November 9, 2020. They were also sent a 15-page pamphlet on their special education rights. Exhibit 37.

17. On August 4, 2020 [Student's] mother sent an email to [registrar/counseling secretary], the registrar/counseling secretary at [Middle School]. [Student's] mother asked if the 504 plan would be used until [Student] could be evaluated for an IEP. Exhibit A, p. 2. On Sunday, August 16, 2020, [Student's] mother sent to [Registrar/counseling secretary] a course selection sheet. Exhibit A, p. 27. The sheet contains questions whether new students have ever been enrolled in any special programs. [Student's] mother checked the line for "504 Plan." Next to the line for "Special Education ("IEP")," [Student's] mother wrote "needs evaluation." She also wrote that he had been tested as gifted and talented.

18. In 2020, [Student's] parents made no real, substantive request for an IEP evaluation as described at 34 C.F.R. sec. 300.301 (b), and did not request a consent form for such an evaluation. As described, from their experiences with [Student's] [sibling] and with [Student] in [State Name], they were knowledgeable about the IEP process. Had they in fact sought an evaluation, they would have made their request known. Under the facts of this case, the note "needs evaluation" was not such a request. [Student's] parents did not pursue an evaluation prior to sending [Student] out of state November 17, 2020.

19. In August 2021, [Student's] parents signed a prior notice and consent for reevaluation form (per 34 C.F.R. secs. 300.9, 300.300, and 300.503) for one of [Student's] [siblings]. Exhibit 22.

[Boarding School 1]

20. In November 2020, [Student's] family learned that he had [inappropriately behaved], and that he had [inappropriate behaviors]. His parents withdrew him from the School District and sent him to [Boarding School 1], a residential treatment facility in [City, State name]. [Student's] mother reported this to [Counselor] in an email. Exhibit F. [Boarding School 1] specializes in the treatment of [disorder]. Exhibit 43. On November 9, 2020, [Student's] parents notified persons at [Middle School] that [Student] would be undergoing residential treatment. Exhibit 11. [Student] was admitted to [Boarding School 1] November 17, 2020. Exhibit S.

21. Upon [Student's] removal to, [Boarding School 1] and thereafter, the "child find" obligation became that of the local educational agency ("LEA") where [Boarding School 1] and later, [Boarding School 2], were located. Thirty four C.F.R. sec. 300.131(f).

22. As of November 17, 2020, [Student] had been performing at [Middle School] at grade level (a score of "3") in Math, Science, Engineering, and Physical Education. He was below grade level in Social Studies (a score of "2") and English-Language Arts ("1"). Exhibit 18.

23. [Boarding School] is a school associated with [Boarding School 1]. The School District transferred its records to [Boarding School] in November 2020. Exhibits 19, G and L.

24. [Therapist], issued a "[Evaluation Name]" of [Student] based on a number of tests performed in February 2021. (The report is dated February 2, 2021, but the test dates are described as February 3, 2021.) Exhibits 23 and R. At the time of the evaluation, [Student] was at [Boarding School 1]. [Therapist] gave the diagnoses of: Generalized Anxiety Disorder, by history, Major Depressive Disorder, Autism Spectrum Disorder (Level 1) without accompanying intellectual impairments, and by history, ADHD. This is the first time [Student] had been diagnosed with autism. Level 1 autism is the mildest form.

25. [Therapist] performed a "[Test Name]" of [Student] dated April 8, 2022. Exhibits 24 and GG. The report was based on the "[Test Name]" test as well as interviews. [Therapist] interviewed [Student], his mother, and [Clinical Director at Boarding School 1], the [Boarding School 1] Clinical Director and current therapist. [Therapist] writes that the findings and conclusion were made in conjunction with [Boarding School 1] clinical staff. [Therapist] recommended additional residential treatment for [Student] upon completion of the [Boarding School 1] program.

26. [Student] completed the remainder of eighth grade for the 2020-2021 school year at [Boarding School] with [Boarding School 1] He repeated eighth grade at [Boarding School] for the 2021-2022 school year.

27. In February 2-14, 2022 [Student] was hospitalized at [Name of Hospital] in [City, State Name] for mental health concerns.

28. As of April 17, 2022, [Student] had completed 17 months of [name of treatment] at [Boarding School 1]. At that point his parents had found a new residential treatment center for him at "[Treatment Center Name]." However, [Treatment Center Name] ultimately chose not to accept [Student] Exhibits CC and DD.

[Boarding School 2]

29. In May 2022, his parents sent [Student] to [Boarding School 2], near [City, State Name] for residential treatment and to complete eighth grade. [Student] started ninth grade at [Boarding School 2] in August 2022. [Boarding School 2] is a therapeutic boarding school for “neuro-diverse” adolescent males with level 1 autism or who struggle with social relationships, anxiety, and traditional academic approaches. Exhibit 46. It is accredited by various organizations. Exhibit 45. It has charged a discounted monthly tuition of \$12,800 and an enrollment fee of \$4,000 for [Student’s] education and care. Exhibits MMMM and UUUU. The monthly fee includes an academic cost, a residential cost, and a clinical cost. Exhibits 44 and TT. [Boarding School 2] utilizes a personal growth plan for students. Exhibit SS.

30. [Student] was often late to class or skipped class at [Boarding School 2]. Exhibit AAAA.

31. In addition to therapy at [Boarding School 2], [Student] also receives therapy twice per month in the community for issues of [inappropriate behaviors].

32. While [Student] was at [Boarding School 1], he had no contact with extended family. He did have a highly structured visit with his siblings and parents at [Boarding School 1] in April 2022. [Student’s] parents have visited him at [Boarding School 2] every four to six weeks. The parents also have regular FaceTime sessions with [Student] and his therapist at [Boarding School 2].

33. On August 17, 2022, the Complainants filed a due process complaint against the School District with the Colorado Department of Education. On August 29, 2022, the School District filed its response.

34. On September 7, 2022, [Student’s] mother requested that [Student] be evaluated for special education in the School District. Exhibit 41. This is the first time she requested such an evaluation.

35. On September 19, 2022, [Student’s] parents and School District personnel had a virtual meeting to discuss the concerns of the parents and to determine an evaluation plan. Exhibit 25.

36. Exhibit 26 is a School District prior written notice and consent for initial evaluation form for [Student] dated September 23, 2022. [Student’s] parents again attested that they had been provided the special education procedural safeguards on that date.

37. On October 17, 2022 the School District sent four employees to evaluate [Student] at [Boarding School 2]. They performed their evaluation October 18-19, 2020. A final virtual assessment was done November 3, 2022. Exhibit EEE. The evaluation team was made up of [Psychologist], a psychologist, [Speech Language Pathologist], a Speech Language Pathologist, [LCSW and Assistant Director of Special Education & out of district coordinator for the district], LCSW and Assistant Director of Special Education, and [special education teacher], a special education teacher. [LCSW and Assistant Director of Special Education] also acts as the out of district coordinator for the School District.

The School District Evaluation Report--Exhibits 27 and DDD

38. The School District personnel administered a number of tests to evaluate [Student] as part of their visit to [Boarding School 2].

a. He was tested with the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). His Full Scale IQ was determined to be in the high average range at the 93rd percentile. This score was comparable with a test performed by [Therapist] in February 2021.

b. He was also tested with the Behavior Rating Inventory of Executive Function-2nd Edition (BRIEF2). This showed him to exhibit "Clinically Elevated" symptoms related to emotional regulation. This means that he may be inflexible and can lose emotional control when routines or perspectives are challenged. The test was based on surveys of [Student], [Student's] mother, [Assistant Program Director at Boarding School 2], Assistant Program Director at [Boarding School 2], and [Academic Director at Boarding School 2], the Academic Director at [Boarding School 2]. [Student] judged himself better regulated than did his mother. The scores of the [Boarding School 2] individuals were in the middle.

c. [Student] was also tested with the Adaptive Behavior Assessment System-3rd Edition (ABAS-3). This test of daily living skills was also based on surveys of [Student's] mother, [Assistant Program Director at Boarding School 2] and [Academic Director at Boarding School 2]. Their impressions were not consistent. [Student's] mother reported his adaptive skills as extremely low, [Assistant Program Director at Boarding School 2], as low, and [Academic Director at Boarding School 2] as just below average.

d. The Test of Language Development-Intermediate, 4th Ed. (TOLD-I4) produced a result of "average to superior language skills" for [Student].

e. The Behavior Assessment System for Children, Third Edition (BASC-3) is a behavior rating scale used to measure maladaptive behaviors, functional skills, and behavioral strengths. This test of [Student] was also based on ratings by [Student's] mother, [Assistant Program Director at Boarding School 2], and [Academic Director at Boarding School 2]. [Student's] mother and [Academic Director at Boarding School 2] identified problems in anger control, emotional self-control, deficits in executive functioning, and negative emotionality. They each also identified additional deficits. [Assistant Program Director at Boarding School 2] scored [Student] as average or "at risk." [Student] completed a self-assessment in which he scored himself as average except as to "attitude to school," in which he put himself as "at risk."

f. The Conners 4th Edition gathers information about symptoms of ADHD. Based on information from [Student's] mother, [Assistant Program Director at Boarding School 2], and [Academic Director at Boarding School 2], [Student] showed "very elevated" symptoms.

g. The Children's Depression Inventory-2nd Edition (CDI-2) assesses for depressive symptoms. Information from [Student's] mother, [Assistant Program Director at Boarding School 2], and [Academic Director at Boarding School 2], generally put [Student] in the overall severity of depressive symptoms as "very elevated."

h. The Multidimensional Anxiety Scale for Children, 2nd Edition (MASC 2), as the name suggests, tests for anxiety. This was done based on information from [Student's] mother, [Assistant Program Director at Boarding School 2], and [Student], assisted by [Psychologist]. [Student] viewed himself as having limited to no symptoms of anxiety. [Student's] mother and [Assistant Program Director at Boarding School 2] saw him as having very elevated symptoms.

i. Autism Diagnostic Observation Schedule-2nd Edition (ADOS-2), evaluates for autism spectrum disorders. The School District team evaluated [STUDENT] using "module 3," applicable to persons such as [Student] with fluent speech. His scores were consistent with an ADOS-2 Classification of "non-spectrum." A single assessment of this type is not appropriate as the sole determining factor in the identification of autism disorder.

j. Autism Spectrum Rating Scales (ASRS) measure behaviors associated with autism disorder for children and youth. It relies on questionnaires. [Student's] mother and [Academic Director at Boarding School 2] completed such a questionnaire, but [Assistant Program Director at Boarding School 2] did not. [Student's] mother and [Academic Director at Boarding School 2] did not have corresponding "very elevated" scores in any specific area.

k. The Social Responsiveness Scale, 2nd Edition (SRS-2) identifies social impairment associated with autism spectrum disorder. [Student's] mother generally identified [Student] as exhibiting severe symptoms. [Assistant Program Director at Boarding School 2] generally scored [Student] in the normal range. [Academic Director at Boarding School 2] generally scored [Student] in the moderate range. One would expect more consistent scoring by observers in the case of a child with autism.

l. The School District team also reviewed tests performed at [Boarding School 1] by [Therapist] and others.

m. Academic functioning. The School District personnel reviewed [Student's] grades after leaving the School District. [Student] earned A's and B's at [Boarding School 1]/[Boarding School]. He earned A's and B's at the [Boarding School 2] summer session, but much worse grades by October 2022.

39. While at [Boarding School 2], [Psychologist] observed [Student] after he had left or was escorted from his music class. He was upset, crying, and yelling. He ate a banana and then calmed down. [Psychologist] asked [Boarding School 2] staff about a behavior plan or crisis plan and was told that [Boarding School 2] did not have a specific plan in writing to address behavioral issues. [Boarding School 2] has not completed a formal "Functional Behavioral Assessment" ("FBA"). The School District would likely perform such an assessment and create a "Behavior Intervention Plan" ("BIP") if [Student] were to return to schooling with it.

40. Following a December 1, 2022 meeting, the School District determined that [Student] was eligible for special education under the categories "serious emotional disability," "autism spectrum disorders," and "other health impairment." These categories are described at Sections 2.08(3), 2.08(1), and 2.08(7), 1 CCR 301-8. Exhibit 28.

The IEP

41. Following a January 25, 2023 meeting, [Student's] IEP team developed an IEP for him. Exhibit 30. It set out annual goals in the areas of: 1) social/emotional wellness (two goals) and 2) self-determination (three goals). In general, the [Boarding School 2] members of the IEP team felt that the goals were too ambitious, while School District representatives felt that they were not.

42. Both continued residential facility treatment at [Boarding School 2] and general education 40% to 79% of the time were considered for [Student] Again, [Boarding School 2] members of the IEP team favored a continued stay at [Boarding School 2], while the School District representatives felt that general education was more appropriate. Pros and cons were considered. Advantages of a residential facility such as [Boarding School 2] that were identified included: 1) specialized instruction, 2) peers with similar interests, and access to practice skills within the community. Disadvantages identified included: 1) access to a range of peers with a variety of interests, abilities, 2) a lack of opportunity to practice goals in an environment and community where the family resides, and 3) lack of an opportunity to access a variety of challenging general education classes.

43. Advantages of partial general education identified included those considerations identified as *disadvantages* for residential facility treatment. The advantages also included: 1) specialized instruction, 2) access to counselors, 3) access to mental health specialists, 4) access to smaller class size, 5) social and emotional support, 6) individualized programming, 7) opportunities to explore interests with peers as well as opportunities to model peers, and 8) access to practice skills in the community.

44. Disadvantages of partial general education identified included: 1) support needed around the clock outside of the academic day, 2) larger school size and number of students.

45. In general, [Boarding School 2] staff and [Student's] mother felt that [Student] was not ready to transition to a public school setting. In the testimony from [Boarding School 2] staff at hearing, they were unable to identify when they believed [Student] would become ready for a public school setting. According to them, when he became ready, he would require a transition program of many months. [Boarding School 2] personnel developed an undated draft of IEP goals and objectives. Exhibit 47.

46. Complainants assert that [Boarding School 2] is superior in that it offers "24/7 wrap-around services." However, after-hours therapeutic services are available in the [Name of City] area.

47. While the two camps had different ideas about [Student's] placement, the decision was ultimately made to have [Student] return to the public school option with the School District. The IEP plan document contains the following statement:

The District considered placing [[Student]] at [Boarding School 2] but rejected this option because the services in his IEP can be provided in the Poudre School District. Moreover, [[Boarding School 2]] is the most restrictive setting and evaluation data demonstrates that [[Student]] is capable of accessing a less restrictive setting. In addition, if [[Student]]

needs additional mental health supports outside of school, including assistance attending school, there are resources available in [Name of City] and surrounding areas to ensure [[Student]] and his family are supported. The IEP provides such services in the service delivery statement.

48. Based on the decision of the IEP team, [Name of School] was identified as the appropriate placement for [Student] That school has a program for students with “Severe Emotional Disability.”

49. [Name of School] is the least restrictive environment (“LRE”) for [Student] *vis a vis*, [Boarding School 2] (as LRE is described at 34 C.F.R. sec. 300.114).

50. As of the time of the hearing, [Student] was still residing at [Boarding School 2].

[Professor of Special Education].

51. [Professor of Special Education] was until 2019 a professor of special education at the [Name of School]. He retired in 2022. He is now a research professor at the University. He has written a February 14, 2023 expert report setting forth his view as to the most appropriate setting for [Student’s] schooling. Exhibit 50. His conclusion is that [Name of School] is the best setting and the least restrictive environment for [Student] [Professor of Special Education] has toured [Name of School] and has interviewed the special education personnel which that school provides.

52. In his report, [Professor of Special Education] describes a shift in the special education field’s thinking as to residential and segregated school programs such as [Boarding School 2]. There have been concerns since the late 1980’s that “seriously emotionally disturbed” youth were not well served by these programs. It was felt that these programs, while committed to mental health, were not adequately meeting their students’ academic needs which were required for successful entry back into society. The inclusive education movement in schools has been driven by this problem. The [Name of School], in [Professor of Special Education’s] opinion, would provide this access to general education classes and would benefit [Student] more than would residential treatment.

53. It is also [Professor of Special Education] view that the continued focus in residential treatment on [Student’s] depression and dysregulation has the effect of making him more unable to function as treatment continues. Without the opportunities and experiences of general education, [Student] will see himself as more disabled and as a failure, with the potential to make his acting-out behaviors a central feature of his social life, per [Professor of Education]. According to [Professor of Education], professional literature indicates that specialized, segregated programs such as [Boarding School 2] are unlikely to provide [Student] with the normalizing experiences of social interaction or the academic experiences necessary for entry into adult society. He believes that what [Student] will experience in residential placement does not resemble the conditions of life to which he must learn to adapt.

[Psychologist], Ph.D.

54. [Psychologist] is a licensed psychologist in Colorado. She also is a licensed school psychologist as such psychologists are licensed by the Colorado Department of Education. Additionally, she holds a [other credential] from the Department of Education. Exhibit 51. She has extensive experience working with students with autism, attention difficulties, and other mental health challenges. As described, she was part of the School District team that evaluated [Student] in person at [Boarding School 2].

55. [Psychologist] does not believe that autism is the primary impact on [Student's] current level of functioning. She testified that [Therapist's] determination of Autism Spectrum Disorder (Level 1) without accompanying intellectual impairments for [Student] was not well-supported by the tests for autism in [Therapist's] own February 2021 "Comprehensive Needs and [Evaluation Name]," exhibit 23. Her own testing and that of the School District team does not, in her opinion, support autism as the primary impact. As part of the IEP team she acquiesced to the listing of "autism spectrum disorders" as secondary to "serious emotional disability" in the IEP as part of the collaborative process. She herself does not support the autism categorization.

56. The ALJ credits view as to the role of autism in [Student's] diagnostic picture. Her professional qualifications as reflected in exhibit 51 are impressive. She testified at the hearing in a convincing manner, while [Therapist] did not testify. [Therapist] describes himself as a "Certified School Psychologist Examiner/Educational Diagnostician." Exhibit 23. [Therapist] was the first to identify autism. [Psychologist] and psychiatrist [Psychiatrist], M.D., did not identify autism in their prior treatment of [Student].

57. Based on the testimony of [Psychologist], the School District's extensive examination and report at exhibit 27, based on [Professor of Special Education] credentials and report, and also based on the testimony of [LCSW and Assistant Director of Special Education & out of district coordinator for the district], the ALJ specifically finds that:

a. [Student] needs a school environment where he is around non-disabled students.

b. [Student] is experiencing emotional upset and is exhibiting poor behavior, but this is caused to a significant degree by the [Boarding School 2] environment.

c. [Student] has regressed behaviorally in residential treatment, and further at [Boarding School 2].

d. [Boarding School 2] does not appropriately address [Student's] behavior. It has not made a written "Functional Behavioral Assessment" or created a written "Behavior Intervention Plan."

e. [Student] is highly intelligent and should have access to high level general education. He is not being appropriately challenged at [Boarding school 2].

f. [Student] is emotionally distressed from being away from his home and family for so long. This absence is likely contributing to some of his poor behavior seen at [Boarding School 2].

g. The IEP's proposal of general education 40% to 79% of the time is the better placement for [Student], not residential treatment. The School District can provide after-

school services. The IEP is reasonably calculated to enable [Student] to receive educational benefits and will provide [Student] with a FAPE. Private placement and reimbursement per 34 C.F.R. sec. 300.148 is not warranted.

58. On February 2, 2023, the Complainants moved to amend the due process complaint, and attached an amended due process complaint. The motion was unopposed by the School District, and was granted by the ALJ the following day. Nothing in either the original or amended complaint identifies deficiencies in the IEP proposed by the IEP team.

59. There is insufficient evidence that the School District at any time denied [Student] a FAPE.

60. There is insufficient evidence that the School District failed to carry out any obligations per 34 C.F.R. sec. 300.111, “child find.”

61. There is insufficient evidence that the School District failed to timely perform an initial evaluation per 34 C.F.R. secs. 300.323 and 300.324.

62. There is insufficient evidence of any failure on the part of the School District to meet any procedural requirements of the IDEA and the ECEA.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

FAPE

1. A FAPE is available to all children with disabilities between the ages of three and 21. Twenty U.S.C. Section 1412(a)(1)(A). A FAPE shall be provided to any child residing in the School District. Thirty four C.F.R. sec. 104.33. A child shall be deemed to reside in a school district if the child’s parents reside in the school district. Section 22-1-102(2), C.R.S.

2. The burden of proof in an administrative hearing challenging an IEP is placed on the Complainants, the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 58 (2005). The Complainants have failed to prove a violation of the IDEA or ECEA on the part of the School District.

3. The issues to be addressed at a due process hearing are limited to the two-year period prior to the complaint. Thirty-four C.F.R. Sections 300.507(a)(2) and 300.511(e).

4. To comply with the IDEA, a school district must satisfy the two-part test set out in *Board of Education v. Rowley*, 458 U.S. 176 (1982). It must first meet procedural requirements. Second, the IEP must be reasonably calculated to enable the child to receive educational benefits. The ALJ has found above and concludes here that the School District has met this two-part test.

5. The IDEA requires only a “basic floor of opportunity” to provide “some educational benefit,” and does not require schools to “maximize each child’s potential.”

Thompson R2-J School District v. Luke P., 540 F.3d 1143, 1149 (10th Cir. 2008), *citing Rowley*. The IDEA does not guarantee any substantive outcome. *M.M. v. Government of the District of Columbia*, 607 F. Supp. 2d 168, 174 (D.D.C. 2009). The sufficiency of an IEP must be judged prospectively as of the time of its drafting. *R.E. v. N.Y.C. Dep't of Educ.*, 694 F.3d 167, 185 (2d Cir. 2012). An IEP must be appropriately ambitious in light of a child's circumstances and every child should have the chance to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 402 (2017). If progressing smoothly through the regular curriculum is not a reasonable prospect for a child, the IEP need not aim for grade-level advancement. *Id.* Barely more than *de minimis* progress is not satisfactory under the IDEA. *Id.*

6. The least restrictive environment ("LRE") requirement mandates that disabled children be educated in regular classrooms to the maximum extent possible. *L.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004).

7. As stated, there is insufficient evidence of any procedural violations of the IDEA or ECEA or that any procedural violations impeded [Student's] right to a FAPE. Relief for procedural errors is limited to cases of substantive harm to the child or the child's parents, deprivation of an IEP or loss of an educational opportunity. *Systema ex rel. Systema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008).

Child Find

8. States must have in effect policies and procedures to ensure that children with disabilities are identified, located, and evaluated. Thirty four C.F.R. sec. 300.111. Child find must include children suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade. Thirty four C.F.R. sec. 300.111(c)(1); *D.T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1274 (10th Cir. 2022). Child find does not require a formal evaluation of every struggling student and schools are to identify disabled children within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. *D. K. v. Abington Sch. Dist.*, 696 F.3d 233, 249-250 (3d Cir. 2012). As found, nothing in [Student's] performance at [Middle School] indicated the need for an IEP. A school district violates the child find provisions of the IDEA only if "school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." *Bd. of Educ. of Fayette County, Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007).

9. Upon [Student's] removal to [Boarding School 1], and thereafter, the child find obligation became that of the local educational agency ("LEA") where [Boarding School 1] and [Boarding School 2] were located. Thirty four C.F.R. sec. 300.131(f).

10. The ALJ concludes that no violation of the IDEA or ECEA has been established. No compensatory services or other remedies are ordered.

DONE AND SIGNED

March 15, 2023



MATTHEW E. NORWOOD
Administrative Law Judge

Exhibits:

The exhibits identified by the Complainants are lettered and those identified by the School District are numbered.

The parties had stipulated to the admission as evidence of a number of exhibits. The stipulated lettered exhibits of the Complainants are: B, F, G, L, R, GG, SS, TT, YY, ZZ, AAA through GGG, ZZZ, AAAA, CCCC, GGGG, HHHH, FFFF. The stipulated numbered exhibits of the School District are: 1, 5, 6, 8-10, 19, 23-30, 36, 38, and 43-47.

The following exhibits of the Complainants were offered and admitted: A, CC, DD, MMMM, UUUU, JJJJ, VVVV, HHH, p. 13, HHH, pp. 98-99, WWW, RRRR, UU, KK, EEE, HHH, p. 91, HHH, p. 107. The Complainants' exhibits MM and VV were offered, but not admitted.

The following exhibits of the School District were offered and admitted (note that some of these exhibits are lettered exhibits of the Complainants): 37, 20, 21, 22, S, DDDD, pp. 92-93, DDDD, p. 103, 11, 12, 13, 14, 15, 16, 17, 2, 4, 18, 41, 51, 52, 49, and 50.