STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	
[Father] and [Mother] on behalf of [Student], Complainants, vs. **DOUGLAS COUNTY SCHOOL DISTRICT,** Respondent.	**COURT USE ONLY** **CASE NUMBER:** **EA 20150007**

AGENCY DECISION

On March 5, 2015, the Colorado Department of Education ("CDE"), Exceptional Student Services Unit, received a due process complaint filed by Complainants [Parents] ("Parents") on behalf of their minor son, [Student], alleging that the Douglas County School District ("Douglas County," or "District") violated the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 - 1482, ("IDEA"), under its implementing regulations at 34 C.F.R. § 300.511, and the Colorado's Exceptional Children's Educational Act ("ECEA"), 1 CCR 301-8. Specifically, Parents' March 5, 2015 due process complaint (three amended complaints were subsequently filed, set forth below) alleged the following violations of the IDEA:

1. [Student]'s IEP fails to address educational benefit.
2. The IEP reflects educational services which are not provided and/or not applicable.
3. District failed to change the IEP when it knew such was insufficient and his skills were regressing.
4. District made changes to the IEP without documenting such.
5. District made predetermined decisions outside the confines of the IEP.
6. District's change to the IEP included a new reading program and the teacher and aides are not qualified or trained to implement the program.[1]

For relief for these alleged violations, Parents requested private education for [Student] including transportation, at the cost of the District, or in the alternative, that the District provide [Student] a reading program and private tutoring at the District's

[1] The alleged violations in all four of Parents' due process complaints are quoted verbatim. Spelling and grammatical errors have not been corrected. The only change made was using initials in place of the minor child's name.

expense.

On April 14, 2015, Parents filed an amended due process complaint, which alleged the following violations:

1. [Student]'s IEP fails to address educational benefit.
2. The District repeatedly rebuffed the parents request for an IEP team meeting.
3. The District was and is aware [Student]'s IEP reflects educational services which are not provided and/or not applicable yet chose not to amend the IEP.
4. District failed to change or address the IEP when it knew such was insufficient and [Student]'s skills were regressing.
5. District made unilateral changes to the IEP outside the confines of the regularly and established process defined in the IDEA act.
6. District made predetermined decisions outside the confines of the IEP team environment.
7. District's change to the IEP included a new reading program and the teacher and aides are not qualified or trained to implement the program or otherwise align any of its goals.
8. The District made changes to the IEP but did not provide the parents with any supporting documentation to substantiate their decisions.
9. The District did not provide Prior Written Notice to the parents inclusive of advising the parents of its procedural safeguards.
10. The District did not timely file for a due process hearing.
11. The District failed to consider the IEE.
12. The District failed to provide an IEE even though one was needed.
13. The District did not advise the parents that the offer of ESY services extended outside the bounds of the District.
14. The District denied the parents the opportunity to participate in the IEP process even though the District is fully aware that such participation is essential for [Student]'s success.
15. The District failed to provide [Student] with LRE.

For relief, Parents requested private education and transportation for [Student], at the cost of the District, and attorneys' fees, or, if continued public schooling was warranted, private tutoring and associated compensatory services, software, private evaluations, and private IEP expert fees, at the cost of the District, and attorneys fees.

On September 23, 2015, Parents filed a second amended complaint alleging the following six violations:

1. Exclusion of parental involvement in IEP development and Failure to Update the IEP when required.

2. Not providing an IEP that confers meaningful educational benefit and services withdrawn.
3. District failed to measure student progress/failed to Address Present Levels of Educational Performance.
4. Predetermination of the IEP services or placement/Teacher not qualified.
5. Breach of Contract.
6. Retaliation against Parent's and [Student] in response to parent's efforts to enforce rights.

Parents requested the following:

1. District pays the full cost of prospective private tutoring of [Student] 2-3 hours per school day, through age 21.
2. District reimburses the parents transportation costs or transport [Student] to his tutor and then to school.
3. The District reimburses the parents per the stated contract amount of $5716.66.
4. District reimburses the parents for tutoring costs between August 10, 2015 – present.[2]
5. The Court order the District that it cannot retaliate against [Student] or the parents and reimburse the Parent's their fees and costs incurred as a result of the retaliation.
6. The District forfeits the right to continue to 'educate' [Student].
7. Attorneys fees and costs.

On October 10, 2015, Parents filed a third amended complaint. The court permitted only one new alleged violation: that the District violated the IDEA's requirement that children be placed in the least restrictive environment ("LRE").

The due process complaints were forwarded to the Office of Administrative Courts ("OAC") and assigned to Administrative Law Judge ("ALJ") Tanya T. Light for an impartial due process hearing, which was held at the OAC on November 10, 12, and 13, 2015. Parents represented themselves, and Robert S. Ross represented Douglas County. [Director], Director of Personalized Learning Special Education for the Douglas County School District, was Douglas County's advisory witness. At hearing, the ALJ admitted into evidence Parents' exhibits P1 – P8, P10 – P13, P15 – P87[3], and Douglas County's exhibits R1 – R7. Exhibits P13, P28, P33, P34, and P47 were admitted for purposes of calculating compensation only, if warranted, by agreement of the parties. The proceedings were electronically recorded in Courtroom 2, and a court reporter was

[2] Which at that time was September 23, 2015.

[3] Toward the end of the hearing, the parties stipulated to the admission of over 40 of Parents' exhibits, which the court permitted. These exhibits include documentation of settlement negotiations and other actions by the parties throughout the summer of 2015. Because there was a stipulation to the exhibits, the ALJ admitted them.

provided by the CDE. The parties agreed that post-trial briefs would be due December 11, 2015, with the ALJ's decision due December 31, 2015.

In Parents' post trial brief, they mention that there is a "pending" motion in limine. The ALJ decided all matters that were the subject of pre-hearing motions at or before hearing. There are no outstanding motions in limine.

ISSUES PRESENTED[4]

1. Whether the District committed procedural violations of the IDEA, and if so, whether those violations resulted in a denial of a free, appropriate public education ("FAPE") for [Student].

2. Whether [Student]'s Individualized Education Programs ("IEPs") were reasonably calculated to provide him FAPE.

3. Whether the District committed other miscellaneous violations that denied [Student] FAPE and are compensable.

FINDINGS OF FACT

2013-2014 School Year

1. [Student] is a [age] year old sophomore at [High School] in [City], Colorado. He was born on [date of birth]. [Student] has been diagnosed with Tourette Syndrome, dyslexia and ADHD. His current IEP identifies his primary disability as Intellectual Disability and a secondary disability of Other Health Impairment.

2. Prior to the 2013-2014 school year, [Student] and his family lived in [Other State], where he attended school from kindergarten through seventh grade. [Student] received special education services there. [Mother] indicated that [Student] did not make any progress during his last school year in [Other State]. Exhibit R2, bates 0425.

3. [Student], his mother and step-father moved to Colorado in 2013, and [Student] attended [Middle School] for eighth grade.

[4] Parents have alleged 28 separate violations in four due process complaints, three of which Parents titled "amended" complaints. An amended complaint entirely replaces an original pleading, whereas a supplemental complaint is limited to events occurring after the original complaint was filed and is an addition to the first complaint. C.R.C.P. 15; *Eagle River Mobile Home Park v. District Court*, 647 P.2d 660 (Colo. 1982). The court is unable to determine by the allegations contained in the three subsequent pleadings whether Parents intended them to replace the first complaint, or whether they pertain solely to events occurring after the filing of the first complaint. Instead of attempting to divine Parents' intentions, the ALJ will consider all 28 violations, but as grouped into three main issues. *See Macaluso v. Easley*, 81 Colo. 50, 253 P. 397 (1927) (explaining that a complaint captioned as an amendment as opposed to a supplemental complaint does not prejudice the opposing party when the allegations are sufficient in substance).

4. Colorado used different criteria than [Other State] to identify certain disabilities; therefore, the District reevaluated [Student] on or around September 23, 2013. A second reevaluation was done on or around November 22, 2013 because Parents disagreed with the results of the first reevaluation. Exhibits P23 and P41.

5. An "annual review – transition" IEP meeting was held on December 17, 2013. Parents did not attend because they and the District were in agreement about the IEP. Exhibit R2.

6. The December 17, 2013 IEP included nine specific, measurable annual goals in core academic subjects such as reading, writing, and math, as well as social/emotional wellness and communication goals; extensive academic achievement updates and testing results; progress reporting; informal reading, writing, and math assessments; occupational therapy updates; transition planning; parent input; and other items, all of which collectively were reasonably calculated to guarantee some educational benefit to [Student] *Id*.; *Endrew F. v. Douglas County School District Re-1*, 798 F.3d 1329 (10th Cir. 2015).

7. An IEP review was held on March 11, 2014 in order to change [Student]'s qualification for extended school year ("ESY") services from "to be determined" to "qualifies." [Mother] signed this IEP acknowledging that she had received special education procedural safeguards. Exhibit P49. Proper notice of the meeting was sent to Parents. Exhibit R3.

8. The March 11, 2014 IEP included much of the same information from the December 17, 2013 IEP, as well as updates from his Significant Support Needs ("SSN") teacher, [SSN Teacher], and communication updates from [SLP], the District's speech language pathologist, who indicated [Student] had improved in his communication appropriateness since the December 2013 IEP meeting. Exhibit P49.

9. Both the December 2013 and the March 2014 IEPs stated that [Student] would receive 765 minutes per week of specialized instruction in reading, writing, math, and science provided by the SSN teacher outside of the general education classroom, and 600 minutes per week of modified coursework provided by an educational assistant ("EA") directly supervised by the SSN teacher, within the general education setting. *Id.*

10. The March 11, 2014 IEP was reasonably calculated to guarantee some educational benefit to [Student] as evidenced by the number of minutes of specialized instruction, specific and measurable goals, goal end dates, and progress reports, among other things.

11. A transition IEP meeting, called a "matriculation" meeting by the District, was scheduled for the spring of 2014 because [Student] was going to be moving from [Middle School] to [High School] for the 2014-2015 school year.

12. Parents[5] arrived at 9:15 for the meeting, which was scheduled to begin at 9:30 A.M. By 10:00 the meeting had not occurred, and Parents were told to leave. The meeting did not occur and was never rescheduled, without explanation.

2014-2015 School Year

13. On July 16, 2014, [High School SSN Teacher], a [High School] teacher who would be [Student]'s SSN teacher for the 2014-2015 school year, reached out to [Mother] by email to introduce herself and offered to meet. Exhibit P5.

14. On August 5, 2014, [High School SSN Teacher] and [Mother] met and by all accounts had a productive, positive meeting about [Student]. At this meeting, [Mother] informed [High School SSN Teacher] that [Student] could not read, that Parents were going to have him tested at Children's Hospital that fall, and that she would provide the results of the Children's Hospital testing to [High School SSN Teacher].

Children's Hospital Report

15. On September 22, 2014, Parents had [Student] evaluated at Children's Hospital by [Learning Specialist], a Learning Specialist.[6] [Learning Specialist] has a Masters degree in Clinical Psychology.

16. Among other testing, [Learning Specialist] administered the Brief Intellectual Ability ("BIA") cluster of the Woodcock Johnson III, which provided an estimate of [Student]'s general intellectual ability. The results indicated that [Student] was in the 2nd percentile, or below average range, in verbal comprehension; below the 1st percentile in concept formation, and below the 1st percentile in visual matching, with a BIA average of 50, which is below the 1st percentile. Exhibit P12.

17. Based on [Student]'s results, [Learning Specialist] recommended the Orton Gillingham approach be used to help [Student] read. Specifically, she recommended that "[p]rograms structured in the Orton-Gillingham approach, with a tutor qualified in working with intellectually disabled students would be extremely beneficial for [Student]. Due to his cognitive deficits this type of program will take an extended period of time to reach completion." *Id.*

18. Orton Gilllngham is a structured, sequential approach to reading, but it is not an actual reading program, system, or method. Various reading programs use the Orton Gillingham approach.

19. The Wilson reading program uses the Orton Gillingham approach.

[5] Or [Mother] by herself. The evidence was not clear on that point.

[6] [Mother] testified that when she had [Student] tested at Children's she was merely trying to get help for [Student]; she did not know that the testing would be considered an Independent Education Evaluation ("IEE").

20. [Learning Specialist] credibly testified that [Student] did not qualify for a diagnosis of dyslexia.

21. [Learning Specialist] credibly testified that she believed a school district could provide appropriate services to [Student] with appropriately trained professionals.

22. [Learning Specialist]'s report ("Report") was provided to [High School SSN Teacher] on or around October 22, 2014. After receiving the Report, [High School SSN Teacher] emailed [Learning Specialist] to discuss how to help [Student].

23. Parents met with [High School SSN Teacher] after she received the Report. [High School SSN Teacher] was receptive to the Report's recommendations.

24. On November 13, 2014, [Father] told [High School SSN Teacher] "we are insistent in that the District incorporate the Children's Hospital findings of October 3, 2014, and begin to employ the Orton-Gillingham Approach . . . We are asking the District to implement this Approach by the beginning of school in January, 2015 . . . If the IEP team or other individuals wish to meet with me to discuss the matter, as always, I will make myself available." Exhibit P22.

25. On December 3, 2014, [Father] told [High School SSN Teacher] "[g]iven the fact that there has been no response I am expecting that on or before December 19, 2104, we will engage the full IEP team and all of us meet in person, including those whom are copied on this correspondence, so that we may take the steps necessary for [Student] to receive the services he needs." Exhibit P86.

26. On December 7, 2014, [High School SSN Teacher] asked [Coordinator], a Douglas County Special Education Coordinator, "[w]ould you like me to go ahead and schedule a meeting? I can do that, but I don't think at this time I would make any changes to his current IEP, and understand that we cannot specify a curriculum." Exhibit P82.

27. On December 10, 2014, [High School SSN Teacher] asked [Father] if December 17, 2014 would work to meet to discuss "a plan for [Student]." [High School SSN Teacher] did not indicate that the December 17, 2014 meeting would be an IEP meeting. Exhibit P86.

28. [High School SSN Teacher], as [Student]'s SSN teacher, was the person who would have scheduled an IEP meeting, and would have been responsible for sending formal notice of an IEP meeting to Parents. No such notice was sent to Parents prior to the December 17, 2014 meeting, nor was a draft IEP sent to Parents.

29. On December 15, 2014, [High School SSN Teacher] asked [Coordinator] if she knew whether the school district had the Wilson curriculum. [Coordinator] responded that the district had the Wilson program, and gave her the name of the Wilson trainer, [Wilson trainer]. Exhibit P86.

December 17, 2014 Meeting

30. On December 17, 2014, a meeting was held with Parents, [Student], [High School SSN Teacher], [Coordinator], [Assistant Principal], [High School] Assistant Principal and [Student]'s advisor, and [SSN Supervisor], [High School SSN Teacher]'s supervisor.[7] [Learning Specialist] participated by telephone.

31. [Coordinator] thought the December 17, 2014 meeting was going to be an IEP meeting, and was surprised it was not. She credibly testified that had it been an IEP meeting, the IEP team would not have specifically listed the Wilson method in the IEP. Rather, the team would have listed the specific skills they wanted [Student] to develop.

32. [Director] credibly testified that specific curricula are not typically included in IEPs, nor are they required to be included.

33. [Father] presented a letter at the meeting, titled "IEP Team Request Meeting RE: [Student]." The letter stated that the purpose of this meeting was "to determine what the Douglas County School District . . . proposes as it relates to a reading program for [Student]." Exhibits P12 and P20.

34. [Father] wrote:

> The parents think very highly of [High School SSN Teacher]. Mother and Stepfather met with [High School SSN Teacher] to discuss the report. On November 11, 2014, it was agreed with [High School SSN Teacher] that if the District adopted the Report the following would occur:
>
> 1. The parents would pay for tutoring for [Student]. Said tutoring would be implemented in conjunction with [High School SSN Teacher]'s directives.
> 2. [High School SSN Teacher] would adopt and learn the Orton-Gillingham approach.
> 3. Children's Hospital staff would work with [High School SSN Teacher] to instruct her regarding said approach.
>
> [High School SSN Teacher] did advise us that the District representatives did not approve of such because his IQ scores were too low. *Id.*[8]

[7] [SSN Supervisor] did not testify at hearing.

[8] As will be discussed in the Conclusion of Law below, the ALJ does not find as fact that District representatives stated to [High School SSN Teacher] that they did not approve of the Report or the Orton Gillingham approach because [Student]'s IQ was too low. Nor was persuasive evidence presented at hearing that [High School SSN Teacher] made that comment to [Father].

35. [Father] also wrote what he alleged were the District's violations up to that point:

> 1. The District has been aware for over a year that [Student] has demonstrated limited progress and/or regression in his reading skills yet failed to consider any alternatives.
> 2. The District has predetermined that [Student] will not qualify for an alternative reading program.
> 3. The District has been provided the report but has not considered such.
> 4. The parents are aware that the District has no obligation to adopt the report and demand a specific reading program. However, the District was and is obligated to implement an alternative program and has failed. *Id.*

36. At the time [Father] presented these allegations, District representatives would have been aware that Parents agreed with the December 2013 IEP, and that [Mother] signed the March 2014 IEP, which was the IEP in effect as of the December 17, 2014 meeting.

37. The District had not predetermined that [Student] would not qualify for an alternative reading program.

38. District representatives considered the Report, at least as of the December 17, 2014 meeting, and [High School SSN Teacher] considered it as soon as she received it. The District was under no obligation to consider the report by a date certain.

39. The District was under no obligation to implement any specific "alternative program."

40. Parents had [Student] read from a Colorado Driver's manual at the meeting. He did not have the ability to read the manual.

41. At the December 17, 2014 meeting, [Coordinator] first brought up the idea of using the Wilson reading system. She mentioned it because she knew that the District had used Wilson successfully in the past. The Barton reading system was also discussed at this meeting. Barton also utilizes the Orton Gillingham approach. However, the District had the Wilson system at their disposal.

42. [Learning Specialist] was asked her opinion of Wilson. She explained that Wilson was appropriate for [Student] but that the District needed to ensure someone was trained in the program. She also explained that the program had to be supplemented.

43. The District was and is under no obligation to adopt specific reading

programs insisted upon by Parents or recommended by the Report.

44. [Learning Specialist]'s opinions and recommendations were considered by the District during the December 17, 2014 meeting.

45. [High School SSN Teacher] stated at the meeting that she did not have experience with the Wilson system but would receive training.

46. [Coordinator] testified that she understood from the meeting that [High School SSN Teacher] would begin using the Wilson system with [Student] the first week or so after school started after the winter break in January of 2015.

47. [Mother's] understanding from the meeting was that [High School SSN Teacher] would be trained in the Wilson system over winter break and would being teaching [Student] using Wilson the first day after winter break.

48. [Mother] believed that if she disagreed with the use of the Wilson program, that [Student] would not receive any help. [Mother] believed that it was a situation where she had to accept Wilson or receive nothing – a "take it or leave it" situation.[9]

49. Despite [Mother]' belief, the discussion of using the Wilson system was not "take it or leave it."

50. [Coordinator] does not have the ability to independently create or change IEPs; only IEP teams create or change IEPs. [Coordinator] did not create or change [Student]'s IEP at the December 17, 2014 meeting.

51. [Coordinator] did not tell Parents at that meeting or at any time that the District was going to reject the Report.

52. By deciding to use the Wilson method, which utilizes the Orton Gillingham approach recommended in the Report, the District considered the Report's recommendations at the meeting.

53. No formal notes were taken at the December 17, 2014 meeting. No IEP goals were developed or modified at the December 17, 2014 meeting. No changes in placement of [Student] were decided at the December 17, 2014 meeting.

54. The December 17, 2014 meeting was not an IEP meeting.

[9] At times Parents seemed to understand that Orton Gillingham was an approach to reading, not a specific reading system or program (*see*, *e.g*. exhibits P12 and P20, where [Father] refers to Orton Gillingham as an approach); however, after the December 17, 2014 meeting, documents in evidence suggest that he and [Mother] believed that Orton Gillingham was a specific reading program recommended by the Report, and that the District chose a different reading program, Wilson, over Orton Gillingham, against their wishes and contrary to the Report's recommendation. Such interpretation starts with a false premise about what Orton Gillingham is, and is contrary to [Learning Specialist]'s own credible testimony.

January – March of 2015

55. [High School SSN Teacher] did not receive training in the Wilson program over the 2014-2015 winter break, nor did she begin using Wilson with [Student] the first week after winter break. [Mother] was frustrated by this fact.

56. On January 22, 2015, [High School SSN Teacher] asked [Coordinator] if any of the District's schools had a Wilson starter kit that [High School SSN Teacher] could borrow, or, in the alternative, if the District could purchase one. [Coordinator] followed up with [High School SSN Teacher] and gave her the phone number of [Wilson trainer], the Wilson trainer for the District. Exhibit P86.

57. On January 26, 2015, [High School SSN Teacher] informed [Mother], [Assistant Principal], [SSN Supervisor], and [Coordinator] that "I've been in contact with various people to get things started and will be picking up the starter kit for Wilson in the next day. We will start the curriculum this week….I will be in touch to give updates and inform on possible tutors…" *Id.*

58. On January 28, 2015, [Mother] emailed [Coordinator] the following:

> It has now been over 3 weeks since the kiddos have returned to school from Christmas Break and past the due date the Wilson Reading program was to be implemented. The Wilson Reading Program is the program you chose over our recommendation, so as you would guess we are concerned for the lack of progress of same. Please advise who obtained the proper certification (as mandated under IDEA) and the days/times that [Student] will receive instruction. Exhibit P27.

59. No credible evidence was presented that Parents gave a recommendation of a reading program other than Wilson to the District or that the District chose a reading program over Parents' recommendation. As found above, Orton Gillingham is not a reading program but an approach that reading programs, including the Wilson reading program, utilize.

60. On January 28, 2015, [Coordinator] informed [Mother] that [High School SSN Teacher] was working on obtaining the Wilson program and should have it by the following day. *Id.*

61. On January 29, 2015, [Coordinator] told [Mother] that [High School SSN Teacher] had received Wilson training, was doing an online training in Wilson, had two educational assistants who had received Wilson training, and that [High School SSN Teacher] would be starting the Wilson program with [Student] the next day. Exhibit P27.

62. On January 31, 2015, [High School SSN Teacher] informed [Mother] and [Coordinator] that staff had begun working with [Student] using Wilson. Exhibit P86.

63. On February 4, 2015, [Mother] asked [High School SSN Teacher] when a meeting would be held to amend [Student]'s IEP to reflect his new reading program and goals. *Id.*

64. On February 8, 2015, [Mother] asked [High School SSN Teacher] for the status of her previous request. She also stated that [Student] had told her he only had received reading instruction once during the previous week. *Id.*

65. On February 9, 2015, [High School SSN Teacher] responded to [Mother]:

> I apologize, I had given you a call…[Student] did have multiple readings this week, one of which was with a volunteer so I am wondering if that was what he was referring to…when we are doing the reading with him he has been a little defiant…he has an iep coming up in March…we could schedule that a little early at the end of Feb to address new goals. *Id.*

66. On February 19, 2015, [High School SSN Teacher] asked [Mother] for a date for [Student]'s IEP. They agreed on March 9, 2015 at 2:00 P.M. Exhibit P86.

67. Parents did not receive a draft IEP prior to the March 9, 2015 IEP meeting.

March 9, 2015 IEP Meeting

68. On March 4, 2015, Parents filed their first due process complaint and hand delivered the complaint and a letter to [Director]. The letter informed [Director] they had not received any documentation prior to the scheduled IEP meeting; they would need documentation at least 10 days prior to an IEP meeting; and therefore the IEP meeting should be delayed until after the due process complaint was heard. Exhibit P2.

69. On March 6, 2015, [Director] informed [Father] she had received his letter and wanted to speak with him that afternoon by phone. She asked for a good time to call. Exhibit P86.

70. The IEP team met without Parents on March 9, 2015, but discontinued the meeting and left the draft IEP open due to the fact that Parents were not present. *Id.*

71. "Enrich" is program provided by the CDE that school districts may, but are not required to use to develop IEPs. The District uses Enrich. When an IEP is opened in Enrich, the date it is first opened is displayed on the upper right hand side of each page of the IEP as the IEP "Date of Meeting." When an IEP is finalized, the finalized IEP "Date of Meeting" will revert back to the date the IEP was first opened, even if those are two different dates. Therefore, even though [Student]'s IEP was left open in draft form as of March 9, 2015, beginning on that date and through its finalization the IEP "Date of Meeting" was always listed as March 9, 2015. This fact caused confusion and misunderstanding about when [Student]'s IEP meetings were held. *See* Exhibit R5.

72. An annual IEP was due in March of 2015. 34 C.F.R. § 300.324(b)(i).

May 21, 2015 IEP Meeting

73. [Director] unsuccessfully attempted to speak with Parents by phone and email several times between March 11 and 19, 2015. She also asked to meet with Parents. Exhibit P86.

74. On March 19, 2015, [Mother] requested a draft IEP 10 days in advance of any IEP meeting. *Id.*

75. On March 31, 2015, [High School SSN Teacher] asked [Mother] if the week of April 20 worked for an IEP meeting, and attached a progress report for [Student]. The progress report indicated that [Student] had progressed in reading, moving from a reading level 6 in the Developmental Reading Assessment ("DRA") to a level 10. Exhibit P54.

76. On April 3, 2015, [Father] asked the District for all reports concerning [Student], all correspondence between [High School] staff concerning [Student], and all of [Student]'s test results. He explained that once he received those items Parents would submit a proposed IEP and would schedule an IEP meeting with the District. Exhibit P21.

77. [Mother] and [Director] met on April 9, 2015. After the meeting [Director] provided [Mother] the names of outside, neutral education advocates. Exhibit P42. [Mother] indicated she was unhappy with the tone and substance of the meeting. *See* exhibit P46.

78. On April 17, 2015, [Father] told the District that he and [Mother] would agree to attend an IEP meeting if the District admitted it violated FAPE. Exhibit P28.

79. On April 20, 2015, [Director] emailed Parents proposing IEP dates in April 2015. Exhibit P50.

80. On May 1, 2015, [High School SSN Teacher] provided [Director] and [Mother] an update on [Student]'s progress in reading, including dates and summaries of the services he received on those dates and the skills addressed. The update included all of the reading time that was spent with [Student] in April of 2015. Exhibit P59.

81. On May 7, 2015, [Director] told Parents the IEP team would be meeting on May 21, 2015 at 9:00 A.M. at [High School] to finalize the IEP that had been opened on March 9, 2015. She asked Parents to let her know if they would be attending. Exhibit P53.

82. On May 11, 2015, [High School SSN Teacher] provided [Mother] a Notice of Meeting for [Student]'s May 21, 2015 IEP meeting. She also sent a copy of the notice home with [Student], as well as a copy of the procedural safeguards. Exhibit P62.

83. On May 13, 2015, [High School SSN Teacher] provided a draft IEP to Parents in advance of the May 21, 2015 IEP meeting. Exhibit P65.

84. Approximately two days prior to the scheduled IEP meeting, [Mother] informed [Director] that Parents could not meet for [Student]'s IEP because they had not received [Student]'s records and because the scheduled time was during [Mother]'s work hours as a bus driver for the District.

85. On or around May 19, 2015, [Father] asked to review [Student]'s file.

86. In response to the request for records, [Director] explained that "[t]he DRA assessments and the draft IEP that we have shared with you make up the copies of district evaluation reports or draft reports for the 2014-2015 school year that you requested. In your email last week you also asked about reviewing [Student]'s file. A request for a file should be submitted to [High School] using the attached request to inspect form. Finally, the request for correspondence between district staff and [High School] staff will be processed through our legal office." Exhibit P58.

87. The IEP team decided to meet despite [Mother] being unavailable on May 21 because District staff would soon be leaving for the summer, and because an IEP meeting was due.

88. Because Parents could not attend the meeting, the District decided to leave the May 21, 2015 IEP in draft form, and attempt to set up a meeting with Parents about the IEP after May 21.

89. The May 21, 2015 IEP increased [Student]'s instruction with the SSN teacher outside of the general education classroom to 1350 minutes per week. He would be receiving 15 minutes per quarter of occupational therapy inside the general education classroom. [High School SSN Teacher] provided the following update: "[Student] began individualized reading instruction focusing on phonemic awareness on January 27, 2015 until May 4, 2015 to address his needs in the area of decoding."

90. The IEP indicated that [Student]'s scores on the DRA remained the same from March 2015 to May 2015 in reading engagement, went one point down in oral reading fluency, and improved from 10 to 14 correct out of 28 items reading comprehension. Exhibit R5.

91. Other progress listed included that [Student] had improved his ability to pause at punctuation, and had met the annual reading goal of comprehending reading materials at a 1.5 and 2.0 grade level as evidenced by answering questions. *Id.*

92. The IEP stated that "recommendations from the Children's Hospital report will be incorporated into the accommodations and services for [Student]." *Id.* at Bates 513.

93. In the "Student Needs and Impact of Disability" section of the IEP, specifically in academics, the IEP team stated that "based on records reviews, informal data collection, and classroom observation, [Student] continues to need individualized instruction in the areas of math, reading, and writing in order to increase his functional academic skills and work towards developmentally appropriate standards." *Id.* at Bates 516.

94. Under "Recommended Placement in the Least Restrictive Environment" section, the IEP team wrote:

> By being in the general education class less than 40% of the time, [Student] will be given specialized instruction to help reach post secondary goals and work towards grade level standards. Disadvantages to being in the general education classroom more than the specified amount would not give [Student] the support he needs and the specialized instruction in the areas of math, reach and writing as well as independent living skills and community based instruction. [Student] requires explicit instruction in functional reading, decoding, functional math, functional writing, and functional life sills. *Id*. at Bates 526.

95. Meeting notes from the IEP stated:

> 3/9/15 – The IEP team convened as scheduled and parents were not in attendance. The IEP team agreed to discontinue the meeting and re-schedule with the parents. 5/21/15 – The IEP team convened as scheduled and parents were not in attendance. The IEP team met and reviewed the draft, adding pertinent updates to the draft. A math goal was added, the social emotional goal was revised and the reading goals were refined. *Id.* at Bates 528.

96. The "Parent Contact Log" showed multiple attempts by the District to include Parents at the IEP meeting. *Id.* at Bates 532-533.

97. On May 26, 2015, [Director] informed [Father] that the IEP team met on May 21 to review the draft IEP. She explained that if he and [Mother] could not meet before June 4 (presumably the last day of the school year), that the IEP would be finalized, but that they could request an IEP meeting at any time. Exhibit P58.

98. The March 9, 2015 IEP was finalized on or around June 4 or 5, 2015.[10]

[10] The date of the finalized IEP is March 9, 2015, as previously explained.

99. [High School SSN Teacher] registered for an Orton Gillingham training class being held on June 8-12, 2015.

Subsequent Events

100. During the summer and fall of 2015, well after the first and second due process complaints were filed, Parents and the District engaged in settlement negotiations, meetings, and various disputes, including a dispute concerning whether the District was intentionally withholding records from Parents.

101. Concerning the issue of records, as will be discussed below, the District had a duty to provide Parents with [Student]'s educational records and did not do so timely. However, the ALJ finds, based on the exhibits in evidence as well as hearing testimony, that the District did not intentionally withhold, destroy, or hide any records from Parents. Rather, District personnel made diligent efforts to search for and provide Parents with all records pertaining to [Student] that could be located. There simply were not as many records as Parents thought there would be.

102. Concerning the remaining issues and disputes that occurred during the summer and fall of 2015, evidence of which was admitted by stipulation of the parties, the ALJ does not find anything about those issues relevant to whether [Student] received FAPE, or relevant to the three main issues that were culled from the Parents' 28 alleged violations that set forth the framework of this decision. Accordingly, no factual findings are made about those issues.

103. In or around August of 2015, Parents hired [Learning Specialist] to privately tutor [Student] through her private tutoring company, outside of her position at Children's Hospital. She or her colleague have been tutoring [Student] from 9:30 to noon Mondays through Fridays at a library in [City]. [Student] then rides the bus to [High School] and finishes his day there. This arrangement is not in [Student]'s current IEP.

DISCUSSION

Burden of Proof

Although the IDEA does not explicitly assign the burden of proof, *Schaffer v. Weast*, 546 U.S. 49, 58 (2005) places the burden of persuasion "where it usually falls, upon the party seeking relief." *See also Thompson R2-J Sch. Dist. v. Luke P.,* 540 F.3d 1143, 1148 (10th Cir. 2008) (stating that "[t]he burden of proof . . . rests with the party claiming a deficiency in the school district's efforts"). Parents therefore bear the burden of proving by a preponderance of the evidence that the District violated its obligations under the IDEA.

Background

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education that emphasizes special

education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). A school district satisfies the requirement for FAPE when, through the IEP, it provides a disabled student with a "basic floor of opportunity" that consists of access to specialized instruction and related services that are individually designed to provide educational benefit to the student. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982). The school district is not required to maximize the potential of the disabled child, but must provide "some educational benefit." *Id.* at 199-200. "Some progress" toward the student's educational goals is all the IDEA requires. *Endrew F. v. Douglas County School District Re-1*, 798 F.3d 1329 (10th Cir. 2015); *Thompson R2-J Sch. Dist. v. Luke P.,* 540 F.3d at 1150-52.

Whether [Student]'s IEPs were reasonably calculated to provide him FAPE.

The requirements of an IEP are set forth in 34 CFR § 300.324. This provision mandates that IEPs be reviewed not less than annually. The content of IEPs is largely left to the states, and federal regulations require only that "they include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress." *Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P*., 540 F.3d 1143, 1151 (10th Cir. 2008). The sufficiency of an IEP is "whether the IEP is reasonably calculated to guarantee some educational benefit . . . not whether it will do so." *Endrew F. v. Douglas County School District Re-1*, 798 F.3d 1329, 1341 (10th Cir. 2015) (emphasis added).

[Student]'s IEPs were reasonably calculated to guarantee him some educational benefit. The IEPs in evidence showed [Student] received extensive testing, including two reevaluations. Goals were developed using his test results and with his disabilities in mind. The goals were in core academic subjects and were specific and measurable. [Student] made some progress in some of these goals.

Contrary to Parents' belief, the District did not engage in predetermination concerning [Student]'s IEP. [Coordinator] did not unilaterally choose the Wilson program. The meeting in which the Wilson program was discussed was not an IEP meeting. Specific teaching methodologies or curriculum are typically not included in IEPs in any event. Nothing in the IDEA requires school districts to choose specific teaching programs or methodologies. There was no legal reason why the District could not have a discussion about using the Wilson program for [Student] at the December 17, 2014 meeting, and there was no legal reason the District could not use the Wilson program with [Student].

Parents were understandably frustrated by the District's failure to implement Wilson as soon as school started in January 2015 after the winter break. [High School SSN Teacher] was supposed to be trained over the break and was not. Almost an entire month passed before [Student] began receiving help that Parents believed had been promised to begin the first week of January [Coordinator] also thought [Student] would start receiving help the first week or so after school started. The District could and should have done a better job of having [High School SSN Teacher] trained and

using Wilson with [Student] earlier in January and failed in this regard. Parents, however, failed to present any credible evidence that this one month delay deprived [Student] of FAPE.

Whether the District committed procedural violations of the IDEA, and if so, whether those violations resulted in a denial of FAPE

Parents have alleged several procedural violations. Procedural violations alone do not entitle Parents to relief:

> a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. § 300.513.

The alleged procedural violations are discussed below:

1. Failure to include Parents in IEP meetings and failure to provide [Student]'s records.

The IDEA requires parents be given an opportunity to "inspect and review" all of the education records related to "the identification, evaluation, and educational placement of the child" and the provision of FAPE to the child. § 300.501. Similarly, parents "must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child." *Id.* However, "a meeting does not include . . . conversations on issues such as teaching methodology, lesson plans, or coordination of service provision." *Id.* (emphasis added).

Concerning parent participation specifically in IEP meetings, school districts must give parents notice of the meetings early enough to afford them an opportunity to attend and must schedule the meeting at a mutually agreed upon time and place. § 300.322. The IDEA contemplates situations where parents do not attend:

> A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses

> received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. *Id.*

The evidence shows multiple telephone calls and emails from the District to Parents inviting them to [Student]'s March 2015 IEP meeting. When Parents did not attend, the team decided to reschedule it in order to accommodate Parents. Between March and the May 21, 2015 IEP meeting, the District again sent numerous emails, and made numerous phone calls to Parents inviting them to the IEP meeting. When Parents informed the District that they would not be attending, the District held the IEP meeting, as it was required to do, and again decided to keep the draft IEP open in another attempt to include Parents. After May 21, 2015, the District, through [Director], reached out and attempted to reschedule a time to finalize the IEP meeting. Parents did not respond and therefore the IEP was finalized in June of 2015. The District kept detailed records of these attempts.

The evidence also shows that Parents refused to attend the IEP meetings because 1) they wanted to receive [Student]'s records first and that had not happened, and 2) they wanted the District to admit it violated the IDEA by failing to provide [Student] FAPE. Parents had a right to receive [Student]'s educational records in a timely manner. The District failed to provide the records timely, and required Parents to fill out a formal "request for records" form prior to receiving a portion of [Student]'s records. The IDEA does not contemplate requiring parents to sign forms in order to receive their children's records. Although the District did eventually make a concerted effort to locate all of [Student]'s records, and eventually did provide them to Parents, the time it took the District to do so was not reasonable. However, Parents had a strong, but incorrect, belief, that many more records existed for [Student] than actually did. Because of that belief and the dispute over records that took place over the summer and fall of 2015, it is difficult for the ALJ to determine when exactly the District ultimately provided the entirety of [Student]'s records to Parents. Regardless, the records were not timely provided.

The question then becomes whether the District's failure to timely provide [Student]'s records amounts to the District failing to include Parents in [Student]'s IEP meetings because it justifies Parents' refusal to attend. The ALJ concludes it does not. Whatever may have been occurring in regard to the records dispute, the District was always legally required to hold an annual IEP for [Student] in 2015 and could not delay that meeting until the outcome of the records dispute or this proceeding.[11] Also, prior to the May 21 IEP meeting, [Director] and [High School SSN Teacher] had provided Parents with some of [Student]'s important educational records, including [Student]'s draft IEP, progress reports about use of the Wilson program, and DRA scores. The District was making a good faith effort to work with the Parents and include them in the IEP process. Finally, the Parents' request that the District admit it failed to provide

[11] Arguably the District was required to and should have finalized [Student]'s IEP at the March 9, 2015 IEP meeting because the prior IEP was dated in March of 2014. However, although Parents raise the issue that [Student]'s IEP was "expired" and untimely, they did not present credible evidence that the District's failure to finalize [Student]'s IEP in March of 2015 denied [Student] FAPE.

[Student] FAPE as a condition precedent to attending [Student]'s IEP meeting was not reasonable. Parents had already filed their first due process complaint at this point, and therefore the District would have been relinquishing its right to present a defense on the issue of FAPE, which is not a reasonable request. Parents have failed to prove the District kept them from participating in [Student]'s IEP.

Concerning [Student]'s records, Parents were required to show that the District's failure to timely provide them [Student]'s educational records kept [Student] from receiving FAPE. They failed to do so. [Student] continued to receive all of the services that were stated in his IEPs, which were reasonably calculated to provide him FAPE, while the records dispute was ongoing. Parents were not kept from participating in decisions about [Student]'s education, as just explained. Nothing about the records dispute deprived [Student] of any educational benefit. The parents have not proven these claims.

2. Prior Written Notice and Procedural Safeguards.

Parents allege in their second amended complaint that the District failed to provide Parents prior written notice and procedural safeguards as follows: "The District ignored the procedural safeguards under IDEA when presented with the IEE. The District never convened the IEP team and never provided the parents any Prior Written Notice . . . [Coordinator] and the District never provided the Parents with Prior Written Notice inclusive of disclosing its procedural safeguards." Prior written notice requirements include the following:

> (a) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. § 300.503.

It is difficult to determine from these allegations what actions the Parents are alleging triggered the District's duty to provide prior written notice and procedural safeguards. However, the kinds of changes that trigger the prior written notice requirements are fundamental changes to a child's education. They must be more significant than any change to [Student]'s education that was demonstrated by the evidence in this case. For example, in *Donna Weil, et ux., Plaintiffs-Appellants v. Board of Elementary and Secondary Education, et al.,* 931 F.2d 1069 (5th Cir. 1991), the court held that the transfer of a special education student to a new school was not a change in "educational placement," and therefore did not require prior written notice to the parents because both schools were under the same supervision, provided substantially similar classes, and implemented the same IEP for the child. *See also Christopher P. v. Marcus,* 915 F.2d 794, 796 n. 1 (2d Cir.1990), *cert. denied,* __ U.S. __, 111 S.Ct. 1081, 112 L.Ed.2d 1186 (1991) (explaining "The regulations implementing the Act interpret the

term 'placement' to mean only the child's general program of education."); *and see Lunceford v. District of Columbia Bd. of Educ.,* 745 F.2d 1577, 1582 (D.C.Cir.1984) (explaining one "must identify, at a minimum, a fundamental change in, or elimination of a basic element of the education program in order for the change [in schools] to qualify as a change in educational placement").

The only change in [Student]'s education was using the Wilson program. That change, however, was made in order to help [Student] achieve the same reading goals that were already present in his IEP. Moreover, even if the choice of Wilson somehow was construed as a change in educational placement (or a refusal to change the educational) sufficient to trigger the prior written notice requirements, the District's failure to provide that notice is not actionable. No evidence was presented that Parents' failure to receive notice prior to Wilson being implemented impeded [Student]'s right to FAPE. [Student]'s IEPs were reasonably calculated for him to receive some educational benefit. Lack of any prior written notice did not impede his receipt of the FAPE bestowed by his IEPs. Also, Parents did not submit any evidence that lack of prior written notice significantly impeded their opportunity to participate in decision making about [Student]'s education. They were present at the December 17, 2014 discussing the Report; they were sent numerous emails inviting them to attend [Student]'s March and May 2015 IEP meetings, and they met with the District in April 2015 and during the summer of 2015. Parents have failed to prove by a preponderance of the evidence that the District failed to provide required prior written notice or that [Student]'s receipt of FAPE was impacted. This claim fails.

Concerning receipt of procedural safeguards, the District was required to provide a copy to Parents once during each school year, as well as upon receipt of the first due process complaint. § 300.504. The required contents of procedural safeguards include information about parental consent, access to educational records, opportunity to initiate due process hearings, resolution hearing, and mediation, among other things. 34 CFR 300.504. On May 11, 2015, [High School SSN Teacher] sent a copy of the procedural safeguards home with [Student]. Exhibit P62. The record is silent on whether the District provided a copy to Parents upon filing of their first due process complaint. However, as with prior written notice, Parents had the burden of proving that any failure to receive procedural safeguards impeded [Student]'s receipt of FAPE or their opportunity to participate in decision making. For the same reasons discussed above, Parents have failed to prove that any failure by the District to provide them procedural safeguards is actionable. This claim fails.

Whether the District committed other miscellaneous violations that are compensable.

1. LRE

Parents' third amended complaint adds a claim for an alleged violation of LRE. The IDEA requires that:

> (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii)

> Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR § 300.114.

In other words, children such as [Student] should be educated in the "least restrictive environment . . . in public school classrooms alongside children who are not disabled." *Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1145 (10th Cir. 2008). Parents allege in their third amended complaint that "[Student] spends most of his time in a self-contained classroom, although his IEP calls for a far less restrictive environment. Therefore, the District violated its own IEP and protocol in placing him in a far more restrictive environment than that called for and in violation of the IDEA." The facts do not support this claim. [Student]'s current IEP calls for 1350 minutes per week of specialized SSN instruction. [Student] most likely does not actually receive that many minutes per week of SSN instruction because he is with a private tutor 2 ½ hours every morning by Parents' choice. Moreover, the IEP team explained in the IEP why the 1350 minutes of SSN time were necessary, and Parents did not submit any evidence about [Student]'s needs or abilities to counter the team's rationale. For example, Parents did not introduce test results or present expert testimony supporting this contention. [High School SSN Teacher] testified that [Student] presents higher than his abilities, and Parents may have interpreted that statement as proof that the District violated LRE. That statement is not persuasive evidence because [Student]'s abilities, not his appearance, are what dictate how many minutes of SSN instruction he should receive outside of the general education classroom. Parents have failed to meet their burden of proving that the District violated the IDEA's LRE requirement and this claim fails.

2. IEE and Failure to File a Due Process Complaint

Parents allege that the District "failed to provide an IEE even though one was needed," failed to consider their IEE, and failed to file a due process complaint when it should have. Concerning IEEs and due process complaints:

> (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. § 300.502.

The facts show that Parents never asked for an IEE to be conducted at public expense. When Parents disagreed with the first reevaluation that the District performed on [Student] in the fall of 2013, the District performed a second reevaluation, the results of which satisfied Parents such that they 1) did not request an IEE, and 2) did not feel the need to attend the IEP meeting in December 2013 because they were in agreement with everything the District was proposing. Because Parents never requested an IEE at public expense, the District did not need to file a due process complaint to show that its evaluation was appropriate. (*See also* § 300.303, explaining when reevaluations are warranted).

The District considered Parents' IEE, the Report, and, even though not required to, implemented its recommendations concerning using the Orton Gillingham approach. [High School SSN Teacher] reached out to [Learning Specialist] to discuss the Report and was receptive to the Report's recommendations. District representatives asked [Learning Specialist] for her opinion of the Wilson program at the December 17, 2014 meeting, and she indicated it was a program that used the Orton Gillingham approach. [High School SSN Teacher] received training in the Wilson program, and began using it with [Student] in late January 2015. Wilson was used with [Student] through May of 2015. [High School SSN Teacher] signed up to take an Orton Gillingham training class in June 2015. All of these facts demonstrate that the District considered the IEE. Parents claim [High School SSN Teacher] told them the District told her [Student]'s IQ was too low to use the Orton Gillingham approach and/or to adopt the recommendations in the Report. The ALJ is not persuaded that either of these statements were made as there was no documentary or testimonial evidence presented at hearing to substantiate that allegation. Parents had full opportunity to cross-examine [High School SSN Teacher] at hearing, and she did not testify that either she or the District made these comments. The District's actions demonstrate that they did not reject the Report. Parents had the burden of proof on these claims; they did not meet this burden and the claims fail.

3. Breach of Contract

Parents' breach of contract claim apparently arises out of this allegation taken from the Second Amended Complaint: "June 18, 2015, the Parents enter a contract to settle the matter with the District for $5716.66 for costs up to and including the drafting of a revised IEP, out of pocket expenses including independent evaluations, costs for tutoring to implement the IEE and for costs to draft an appropriate IEP. The District never follows up with the agreement or otherwise reimburses the parents." The District countered this charge in their answer by explaining that the June 18, 2015 "contract" was never executed because one of its terms called for the parents to withdraw their due process complaint, which they refused to do. Parents did not submit any evidence that a settlement agreement was entered into, such as a signed settlement agreement. There was no meeting of the minds and no contract existed. Putting aside the fact that the District was correct and this information should not have been before the court, Parents failed to meet their burden of proof on this claim and this claim fails.

4. Retaliation

Parents allege in their second amended complaint's narrative that "August 10, 2015 – Present – [High School] is retaliating against the parents through [Student]," and under "violations" state "Retaliation against Parent's and [Student] in response to parent's efforts to enforce rights." These two sentences make up the entirety of Parents' retaliation claim. Even under Colorado's liberal notice pleading standards, Parents did not plead the claim sufficiently for the ALJ to understand it,[12] nor did the Parents explain the claim at hearing. The Parents failed to meet their burden of proof on this claim and it fails.

5. Attorneys Fees

In several of Parents' due process complaints they requested attorneys fees. However, they were not represented by counsel, counsel never made an appearance on their behalf at any point in this proceeding, and they did not submit any evidence that they received outside help from an attorney. Parents' request for attorneys fees is denied.

Because the ALJ concludes that the District provided [Student] FAPE and does not conclude that the District violated the IDEA's LRE requirement, Parents' request for reimbursement for tutoring is denied. *See Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143 (10th Cir. 2008) (explaining "to obtain reimbursement for private tuition . . . parents must show, at a minimum, that the school district violated IDEA . . . parents can show a violation of IDEA in one of two ways. They can either show that the school district failed to provide [their son] with a free and appropriate public education; or they can show that, despite the school district's provision of a free and appropriate public education, it failed to provide that education, to the maximum extent appropriate, in the least restrictive environment).

DECISION

Parents complaint is dismissed.

This decision is the final decision of the independent hearing officer, pursuant to 34 CFR §§ 300.514(a) and 515(a). In accordance with 34 CFR § 300.516, either party may challenge this decision in an appropriate court of law, either federal or state.

DONE AND SIGNED

December _____, 2015

TANYA T. LIGHT
Administrative Law Judge

[12] The District did not file a Notice of Insufficiency on this claim.