

<p>STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor, Denver, Colorado 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>[Mother] and [Father] on behalf of [Student], Complainant,</p> <p>vs.</p> <p>DOUGLAS COUNTY SCHOOL DISTRICT RE-1, Respondent.</p>	
<p>AGENCY DECISION</p>	

On April 30, 2024, the Colorado Department of Education (“CDE”), Exceptional Student Services Unit, received a Due Process Complaint filed by [Mother] (“Complainant” or “[Mother]”) on behalf of her minor daughter, [Student], alleging that the Douglas County School District RE-1 (“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, 1 CCR 301-8, (“ECEA”) by failing to provide [Student] with a free appropriate public education (“FAPE”). On May 2, 2024, the due process complaint was forwarded to the Office of Administrative Courts (“OAC”) and assigned to Administrative Law Judge (“ALJ”) Tanya T. Light.

The hearing was convened in accordance with 20 U.S.C. § 1415(f), and held in person at the OAC in Denver, Colorado on November 12 through 15, 2024. Complainant was represented by Kate Gerland, Esq. and Alexandra D. Ferguson, Esq. of Education Law Offices, LLC. The District was represented by Robert Montgomery, Esq., of Semple, Farrington, Everall & Case, P.C. At hearing, the ALJ admitted into evidence the following stipulated exhibits: C, D, E, F, G, 30 (Exhibit 30 is in place of Exhibit H), I, J, K, L, M, Q, T, U, EE, FF, GG, HH, JJ, KK, SS, TT, 2, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 26, 27, 28, 29, 30, and 31. The following exhibits, not stipulated, were also admitted into evidence: The District’s exhibits 4, 5, 13, 14, 15, 32, 33, 34, 44, 45, 46, 47, 48, and Complainant’s exhibits N, O, P, R, S, V, W, Z, AA, BB, CC, DD, II, LL, MM, NN, OO, PP, WW, and XX.

ISSUE PRESENTED

Whether the District failed to provide [Student] FAPE and if so, what remedies are appropriate.

FINDINGS OF FACT

[Student]

1. [Student] is a 17 year-old young woman (date of birth [D.O.B.]) who was born prematurely at 23-25 weeks gestation with cocaine and marijuana in her system. She weighed one pound, 10 ounces, and had had no prenatal care. [Student] required oxygen therapy at birth, as well as a nasal tube, and then a g-tube. She had severe acid reflux and a heart condition called Atrial Septic Defect (“ASD”).

2. At 12 months-old [Student] had a hiatal hernia. At five months old, [Student] had GERD and feeding difficulties, as well as failure to thrive. Between 15 and 18 months old, [Student] had the ASD repaired, her adenoids removed, and the g-tube closed. [Student] had the g-tube in place until she was 15 years old.

3. [Student] spent the first five months of her life in the hospital. When she left the hospital she moved into a medical foster home. The foster parents were Complainant’s parents. [Student] lived with the foster parents for two years, at which time she was adopted by Complainant and her then-husband, [Father]. Her medical foster parents became her adoptive maternal grandparents.

4. [Mother] and [Father] were divorced in 2008, when [Student] was 7 years old. [Father] relocated to [Out of State]. [Student] visits with [Father] every summer. Other than what is discussed in this decision, [Father] is not involved in [Student]’s education.

School History

5. [Student] entered the District her kindergarten year. From kindergarten through fifth grades, [Student]’s teachers said [Student] struggled in math.

Fifth and Sixth Grades: 2018-2019, and 2019-2020

6. On May 7, 2019, when [Student] was in fifth grade, the District evaluated her to determine if she was eligible for special education and related services. She was administered the WISC-V, which showed her full scale IQ to be 84, which is below average. Exhibit M.

7. On May 14, 2019, [Student] was placed on an IEP. She qualified for special education and related services under the educational identification of specific learning disability (“SLD”) in math. The IEP provided [Student] with 450 minutes monthly for math support outside the general education classroom from the Moderate Needs teacher.

Exhibit N. On March 26, 2020, [Student]'s IEP was amended, adding 60 minutes of math support weekly. Exhibits O and P.

Seventh Grade: 2020-2021

8. The 2020-2021 school year was during the pandemic. [Student] received her education online. [Mother] started having concerns about [Student] in seventh grade because she was sexting with same age peers, fighting with peers, and sending and receiving concerning text exchanges.

Eighth Grade: 2021-2022

9. Eighth grade was difficult for [Student]. She started using marijuana, nicotine, and alcohol, and engaged in inappropriate sexual behavior. She had peer conflicts. [Student], who is African American, was bullied on account of her race and called the "N" word. A boy pulled her around in front of her class by her hair. [Mother] requested an administrative transfer of [Student] to a different school. The request was denied because the other school was full. See Exhibit R. [Student] remained on an IEP in eighth grade.

10. [Mother] credibly testified that around this time [Student]'s grades were falling. She was withdrawing at home and was having more intense mood swings than [Mother] had seen before. [Student] was highly irritable to her family, friends, and peers, and complained about school, stating that her teachers did not help her.

11. In February of 2022, [Student] was begging [Mother] to pull her out of public school. In February or March of 2022, [Mother] removed [Student] from the District and enrolled her in an online school called [Online School].

12. The statute of limitations in this case is April 30, 2022. The preceding information was background information only.

Ninth Grade: 2022-2023 – IEP Triennial Evaluation

13. [Student] did not do well in the online school, so on August 26, 2022, [Mother] applied for [Student] to attend [High School], a District school. Exhibit 5.

14. In the fall of 2022, [Student] had her triennial special education reevaluation. On September 1, 2022, [Mother] signed a consent to evaluate [Student] in two areas: academic performance and health. Exhibit 8. The District did not have consent to evaluate [Student] in the area of social and emotional functioning.

15. On September 22, 2022, [Student] was administered the Weschler Individual Achievement Test 4th edition ("WIAT-IV"). In "Math Problem Solving" on the WIAT-IV, [Student] received a standard score of 92, which placed her in the 30th percentile and the "average" range. Exhibit 12.

16. In “Math Calculation” on the WIAT-IV, [Student] received a standard score of 89, which placed her in the 23rd percentile and the “average” range. Exhibit 12. Her grade in math was 70% in pre-algebra at that time.

17. The reevaluation summary noted:

Overall, [Student] demonstrates that on standardized assessments, she is able to demonstrate Math Problem Solving and Math Calculation abilities within the average range as compared to her same age peers. Prior re-evaluation [Student] was eligible in the area of Math Problem Solving and Math Calculations. She has made tremendous improvement. *Id.*

18. CDE guidelines indicate that for an educational identification of SLD in math, the student should score below the 12th percentile in math on standardized tests. [Student]’s scores in the 30th and 23rd percentiles meant she no longer met the criteria for special education and related services under the educational identification of SLD in math.

19. On October 4, 2022, the District held an IEP meeting to review the reevaluation. The team agreed that the reevaluation had been sufficiently comprehensive to appropriately identify all of the [Student]’s special education and related services needs. Exhibit 13.

20. After reviewing all of the information, the IEP team determined that [Student] could receive reasonable educational benefit from general education alone. *Id.* At this point, [Student] was no longer eligible for special education and related services.

21. The court finds as fact, based on the data and testimony in evidence, that the IEP team properly determined that [Student] did not have an educational identification of SLD in math as of October 4, 2022.

22. [Mother] raised concern about [Student]’s struggles in math and was told that [Student] would be placed in the same pre-algebra class that she would have been placed in had she remained on an IEP.

23. There was no discussion of [Student]’s mental health at the October 4, 2022 IEP meeting. However, as stated above, the District did not have consent to evaluate [Student] in that area.

24. [Special Education Teacher] is a [High School] special education teacher and was responsible for [Student]’s October 4, 2022 IEP meeting.

25. [Special Education Teacher] credibly testified that if a student’s primary educational disability is SLD, he would typically seek consent to evaluate just academics and health.

26. [Special Education Teacher] credibly testified that he reviewed [Student]'s behavior data and noted none of her teachers identified her as being "disruptive/distracting to others." None of the teacher feedback suggested [Student] was struggling socially and emotionally.

27. [Special Education Teacher] works with students who have the special education identification of serious emotional disorders, or "SED." He credibly testified that [Student] had six out of six teachers say multiple positive things about her, which was an indication that [Student] did not have SED. See Exhibit Q.

28. [Special Education Teacher] credibly testified that at the Affective Needs center, where he worked, the students who were identified as SED would not have received the positive feedback and scores [Student] received from her teachers.

29. [Special Education Teacher] credibly testified that he saw nothing, and nothing was told to him, concerning [Student] having social/emotional struggles.

30. [Assistant Principal] is the Assistant Principal at [High School] and is also a special education teacher. She oversees the special education staff.

31. [Assistant Principal] attended [Student]'s October 4, 2022 IEP meeting. She credibly testified that the team celebrated [Student]'s success and how hard she had worked, and how her math scores had improved. [Assistant Principal] credibly testified that [Mother] did not voice any disagreement during the meeting.

32. On October 7, 2022, [Student] got into a fight at school. She was placed on a juvenile diversion program through the state.

Winter and Spring of 2023

33. On January 7, 2023, [Student]'s therapist, [Therapist], diagnosed her with adjustment disorder with anxiety. One of her goals was to "transition to mainstream educational setting." Exhibit L.

34. By February 10, 2023, [Student] had 16 absences and 17 tardies in the winter semester alone. [Student] was leaving class and going to the nurse's office complaining of stomach issues. She was seeing GI physicians at the time and the family was hoping to determine the cause of her stomach aches. Exhibit AA.

35. On February 10, 2023, [Mother] wrote to [School Counselor], [High School] school counselor, the following:

[School Counselor], is there anything you/[High School] can do to help [[Student]] be more successful in her grades. I know she tested out of her math IEP, but can we assess her needs for a 504 Plan/other

accommodations? Is there a mental health angle we can take to get her some extra help? She is seeing a therapist and has an official diagnosis of F43.22 – Adjustment Disorder with Anxiety. Exhibit AA.

36. On March 21, 2023, [Dean of Students], Dean of Students at [High School], sent [Student] the following email:

I just heard from security that you were seen in the halls and were told to go to class. I looked at your attendance and this is what I see. Also, you have 40 tardies so far this semester and have missed 35 class periods. This is not acceptable and school consequences will be coming. Exhibit BB.

37. After confirming with a teacher that [Student] had missed another class, on March 22, 2023, [Dean of Students] emailed [Student] again:

This is not okay. This is something that cannot happen. This is an unexcused absence. You need to stay in every class for the entirety of the class. Exhibits BB and CC.

38. On the night of March 22, 2023, [Student] sent “goodbye” text messages to some of her friends. The next day one of [Student]’s friends let [Mother] know about these texts. [Mother] immediately called the school and asked for a welfare check of [Student].

39. Around the same time of the welfare check phone call, [Student]’s teacher noticed a significant decline in her physical wellbeing and asked another student to walk her to the nurse’s office.

40. Once at the nurse’s office, [Student] admitted that she had taken 40 500 mg acetaminophen tablets in an attempt to take her life. The school called 911, and [Student] was taken to the hospital. She had charcoal therapy and IV antidotal therapy and had to be transferred to [Hospital] in Denver. [Student] remained at [Hospital] until March 26, 2023 and then transferred to [Psychiatric Facility], a psychiatric facility. Exhibit 30.

41. [School Counselor], the [High School] school counselor, credibly testified that a suicide attempt does not immediately trigger a referral for a reevaluation for special education. He further credibly testified that not all students who make suicide attempts are special education students.

42. On March 28, 2023, [Mother] requested an IEP for [Student]. See Exhibits 30 and DD. She wrote:

I am writing to formally request an Individual Education Plan assessment for [Student]. I am very concerned about [Student]’s ability to successfully achieve and access education due to her difficulties with social and emotional wellness. I believe that [Student]’s social and emotional health

impacts her access to education in the following ways: access to healthy peer relationships, poor teacher and authority relationships, declining grades, restricted access to general education when handling matters of discipline including suspension, restricted access to general education when out of school for her attempt of suicide at [High School], increase in risk taking behaviors (sexual activity, vaping, ditching, fights) which could be warning signs for dropping out of school. Exhibit DD.

43. On March 29, 2023, District employee [District Employee] responded:

Thank you for reaching out to us regarding [Student]. We want nothing but the best for her and we are in her corner. I/we will defer to [School Counselor] to begin the IEP process. Please know that we have your daughter's best interests in mind. The IEP/Special process will take some time and it involves many people and factors. It looks like [School Counselor] is currently making arrangements to discuss and gather information which is the first stage. Exhibit DD.

44. A virtual meeting was set up with the District a few days later. The District wanted to begin the special education evaluation process, but [Mother] expressed concern that [Student] returning to [High School] to be evaluated would not be safe for her, due to her suicide attempt there.

45. The District's response, according to [Mother], was that [School Counselor] acknowledged her concerns but said the only way to evaluate [Student] was at [High School].

46. At this point, [Mother] felt [High School] was not able or willing to help [Student], and she began researching other school options. [Mother] spoke to [Student]'s father, her ex-husband, because he was familiar with a school called [Private Agency] in [Out of State].

47. On April 4, 2023, [Mother] wrote [Student]'s therapist the following:

We informed [Student] of our decision to have her live with her dad for 2-14 months. She had been voicing all week at [Psychiatric Facility] that she wanted this change. Initially, she was very upset that the decision had ultimately been made without her though. Through []'s support, [Student] was in better spirits about it. She flew to [Out of State] with [Father] that very night...[Father] seems to be intensely focused on [Student]'s wellbeing while living with him and wants the best for her just like I do. He has already begun the intake paperwork for professional help through an organization called [Private Agency] there in [Out of State]. Exhibit EE.

April 5, 2023: [Student] Leaves the District and Has Not Returned

48. On April 5, 2023, [Mother] removed [Student] from the District. [Student] has not been a District student since that date.

49. On April 10, 2023, [Student] enrolled at [Out of State High School], a public school. Exhibit G.

50. On April 20, 2023, [Mother] contacted the District and asked that she be removed from their contact list. Exhibit 33.

51. On August 23, 2023, [Student] moved back into the District's boundaries. [Mother] did not tell anyone at the District that [Student] was back, nor did she request a reevaluation of [Student] for special education and related services.

52. On August 23, 2023, [Mother] enrolled [Student] at [Private School], a private school in Castle Rock. Exhibits LL and NN.

53. [Campus Director] is the Campus Director of [Private School]. He credibly testified that [Student] is doing very well at [Private School].

54. At least three of [Student]'s teachers at [Private School] are not licensed special education teachers in Colorado. A couple of her teachers do not hold Colorado teacher's licenses. See exhibits 46, 47, and 48.

55. [Student] has been attending [Private School] since August 23, 2023 and is still there. By all accounts, she is doing very well. Her current GPA is 3.15. Exhibit TT. On April 22, 2024, on the STAR Diagnostic Report for Math, [Student] scored in the 40th percentile. Exhibit SS.

56. [Campus Director] testified that [Student] has met the grade level, 10th grade standards in math with modifications. The court is unclear what the modifications are.

57. [Special Education Director], the District Director of Special Education, credibly testified, and the court finds as fact, that a District IEP team could not place a special education student at [Private School] because [Private School] does not provide special education and related services.

58. [Special Education Director] also credibly testified that the District has never placed a student at [Private School].

59. On March 21, 2024, [Mother] notified the District of her intent to seek reimbursement for [Student]'s tuition at [Private School]. [Mother] did not give the District 10 days advance notice. [Student] had not been a District student since April 5, 2023.

60. On March 21, 2024, [Mother] let the District know she disagreed with the determination that [Student] did not need special education. She requested that [Student] undergo an Independent Education Evaluation ("IEE") for special education. [Special

Education Director] credibly testified that she considered refusing the request since [Student] was not (and is not) a District student but decided to go ahead and have an IEE performed at District expense.

61. On April 11, 2024, [Mother] signed a Prior Written Notice and Consent for Initial Evaluation, agreeing to have [Student] evaluated in five areas: 1. General intelligence; 2. Communicative status; 3. Academic performance; 4. Social and emotional status; and 5. Health. Exhibit 20.

62. On May 23, 2024, the District gave [Mother] Prior Written Notice that it would be performing an educational evaluation of [Student]. Exhibit JJ.

63. [Special Education Director] met with [Mother] in May of 2024 and discussed a transition back to [High School]. [Mother] was not interested in transitioning [Student] back to the District.

The 2024 IEE

64. The District paid for [Psychologist] to perform an evaluation of [Student] in the fall of 2024. [Psychologist] is a clinical psychologist and a neuropsychologist specializing in evaluations of children and adolescents. Prior to opening his own business, [Psychologist] worked for [Hospital] providing neuro-psychological evaluations of children who had brain injuries. Prior to that, [Psychologist] was a public school teacher.

65. The court deemed [Psychologist] an expert witness in clinical psychology and pediatric neuropsychology.

66. [Psychologist] is not a special education teacher or a licensed school psychologist.

67. On September 16 and 24, 2024, [Psychologist] conducted an IEE of [Student]. Exhibit E. As part of the evaluation, he observed [Student] at [Private School]. [Psychologist] observed [Student] to be socially appropriate, engaged, content, and focused. [Student] often required information from her teachers to be repeated. She would become confused and needed her teachers to break down the information presented. [Psychologist] observed [Student] advocating for herself.

68. [Psychologist] noted that [Student]'s full scale IQ was 84, which is in the low average range. [Psychologist] explained that the score is not low enough to diagnose [Student] as having an intellectual disability.

69. [Psychologist] administered the Weschler Adult Intelligence Scale, Fourth Edition ("WAIS-IV"). In the WAIS-IV Working Memory Subtests, [Student] scored in the 25th percentile in Digit Span, and in the 16th percentile in Arithmetic. [Psychologist] credibly testified that in the Arithmetic subtest, [Student] needed almost every question repeated. Exhibit E.

70. [Psychologist] concluded that [Student] met the diagnostic criteria for ADHD. Exhibit E at 81.

71. [Student] was on medication for ADHD when she was evaluated by [Psychologist], and he noted that the medication helped her focus, and that she was not overly hyperactive. However, [Student] presented consistent, significant executive functioning deficits, such as difficulties with organization and planning.

72. [Psychologist]'s expert opinion was that [Student] likely struggles with focusing and paying attention in a busy environment.

73. [Psychologist]'s opinion as a psychologist was that [Student]'s "significant weaknesses in her math calculation and math conceptualization skills...remains consistent with a Specific Learning Disorder with impairments in Math (i.e. dyscalculia)." Exhibit E at 82.

74. [Psychologist]'s conclusion about [Student] having SLD was not based on the CDE's criteria for an educational identification of SLD. [Psychologist] testified that his SLD diagnosis was based on clinical criteria, and not on the CDE's criteria.

75. In all other academic areas, [Psychologist] found [Student] to be "solidly average if not above average."

76. [Psychologist] further concluded that [Student] was not currently showing clinical signs of Major Depressive Disorder, but that she had in the past, and therefore he concluded she suffered from "Major Depressive Disorder, in Remission." Exhibit E at 82.

77. Finally, [Psychologist] concluded that [Student] had an "Unspecified Anxiety Disorder, with features of posttraumatic stress symptomatology." *Id.*

78. [Psychologist] testified that his diagnoses of depression and anxiety disorder were based on clinical criteria, and not on the CDE's special education criteria. He did not know if the two sets of criteria overlapped.

79. [Psychologist] recommended that [Student] be placed on an IEP because, in his opinion, she has a complex learning and cognitive profile which makes learning math difficult. Also, he explained that her emotional and social issues impact her education. Exhibit E at 83. He believed [Student] met the clinical criteria for Serious Emotional Disorder, or "SED." However, the criteria he used was not the criteria used by the CDE.

80. The District paid for [Behavior Coach] to perform an evaluation of [Student]. Her specialty is in the area of behavior analysis, and she is a behavior "coach." [Behavior Coach] owns her own practice, called []. School districts seek her out to help support IEPs. She collaborates with districts to provided one-to-one support to students.

81. On August 19, 2024, [Behavior Coach] performed a functional behavioral analysis (“FBA”) of [Student] and did not see any significant behaviors. She testified that [Private School] had the tools available to support [Student]’s behavioral needs but were not using a behavior plan. None of [Student]’s teachers are Board Certified Behavior Analysts (“BCBAs”) but they did provide [Student] support.

82. [School Psychologist] is a District school psychologist. Her duties include performing eligibility evaluations and interventions for students. She has a MA in school psychology and is licensed by the CDE.

83. [School Psychologist] credibly testified that [Student]’s data in math calculation showed that she is in the average range, and that she can benefit from math instruction at the same rate and speed as her same-aged non-special education peers in the classroom.

84. According to [School Psychologist], [Student] is “perfectly capable” of math without special education and related services. [School Psychologist] concluded that at this time [Student] does not have a specific learning disability in math.

85. [School Psychologist] further credibly testified that there was no data that prompted a suspicion of SED for [Student]. She credibly testified that for SED to be a warranted identification, [Student] would have to exhibit a pattern of behaviors across settings that prevented her from accessing her education. Currently [Student] is accessing her education at [Private School].

86. [School Psychologist] credibly testified that clues to SED can be hallucinations, crying, and hiding under desks. She explained that almost all SED students are reluctant to interact with peers who are not friends. They struggle and have no self-advocacy. [Student] is not demonstrating any of these behaviors.

87. [School Psychologist] credibly testified that [Student]’s District “behavior detail report” which notes her fight, vaping, skipping classes, etc. at [High School], is not a significant report. She explained that none of this information was concerning in terms of whether [Student] met the criteria for SED. See Exhibit 28.

88. [School Psychologist] credibly testified that five out of six teachers rated [Student] as seeking help when needed. Five out of six said she worked well with peers/groups. None of the six teachers scored [Student] as “easily frustrated.” None of the six teachers indicated that [Student] was “disruptive/distracting to others.” Four out of six teachers said she stayed on task. [School Psychologist] credibly testified that having such great scores indicated there was no concern of a serious emotional disorder. In fact, [School Psychologist] credibly testified it was just the opposite: [Student] possessed “great” social emotional skills.

89. [School Psychologist] credibly testified that interacting with others and advocating for herself were strengths for [Student].

90. [School Psychologist] credibly testified that even if she had seen [Student]'s previous psychiatric report (Exhibit L), it would not trigger special education testing if her mental health diagnoses were not barriers to [Student] being able to access her education. Currently, [Student]'s mental health diagnoses are not barriers to her accessing her education.

91. [Social Worker] is a District Social Worker. Her role is to provide support for students whose social and emotional needs impact their access to education. [Social Worker] authored the social/emotional portion of [Student]'s IEE. Exhibit KK.

92. [Social Worker] credibly testified that [Student] was given the BASC, which showed that [Mother] had clinically significant concerns about [Student]'s aggression. However, other than [Mother]'s concerns, there was nothing clinically significant about [Student]'s BASC results.

93. [Social Worker] credibly testified that pursuant to the CDE, four criteria have to be met in order to be identified as having SED. In [Student]'s case, none were met. The four criteria are:

1. A variety of instructional and/or behavioral interventions were implemented within general education, and the child remains unable to receive reasonable educational benefits from general education.
2. Indicators of social/emotional dysfunction exist to a marked degree; that is, at a rate and intensity above the child's peers and outside of his or her cultural norms and the range of normal development expectations.
3. Indicators of social/emotional dysfunction are pervasive and are observable in at least two different settings within the child's environment. For children who are attending school, one of the environments shall be school.
4. Indicators of social/emotional dysfunction have existed over a period of time and are not isolated incidents, or transient, situational responses to stressors in the child's environment. Exhibit 44 (emphasis added).

94. [Social Worker] credibly testified that according to the above criteria, if [Student] had SED, the SED would not change between settings. In other words, if [Student] had a serious emotional disorder, it would show up at [Private School] as well as at [High School]. [Social Worker] gave questionnaires about [Student] to three [Private School] teachers, and they gave no information that would indicate concerns about SED. Indeed, all the credible evidence in the record is that [Student] is doing very well socially and emotionally at [Private School].

95. The BASC can also measure executive functioning problems. [Social Worker] credibly testified that none of the data showed executive functioning concerns for [Student], and that her ADHD was not clinically impacting her education.

96. [District School Psychologist] is a District School Psychologist and has been a school psychologist for 10 years. He provides mental health services for students who qualify for special education. On May 16, 2024. [District School Psychologist] reviewed the cognitive portion of [Student]’s IEE. He credibly testified that overall [Student] performed in the average range, similar to her general education peers. She had a weakness in working memory but overall she was able to learn and apply information in a way that was typical.

97. [District School Psychologist] credibly testified that the data painted a picture of [Student] as well engaged in the school setting, and he did not see any evidence that there were concerning behaviors occurring throughout the day.

98. [District School Psychologist] credibly testified that looking at a student’s “grade equivalency” scores is not helpful and is misleading. Rather, a body of evidence must be reviewed.

99. Finally, [Special Education Director] credibly testified that the CDE and the United States Department of Education caution school districts not to over-identify students as special education students. If students are over-identified, they will be wrongly excluded from general education.

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”). Complainant therefore bears the burden of proving by a preponderance of the evidence that the District failed to provide [Student] FAPE in violation of the IDEA.

Discussion

The Requirement of a FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that provides special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). Central to the IDEA is the requirement that local school districts develop, implement, and revise an IEP calculated to meet the eligible student’s specific educational needs. 20 U.S.C.

§ 1414(d). To satisfy FAPE's requirement, the school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. ___; 137 S.Ct. 988 (2017).

The appropriateness of a child's IEP is determined according to a twofold standard: (1) has the State complied with the procedures set forth in the IDEA; and (2) is the student's IEP reasonably calculated to enable the child to make progress that is appropriate in light of his circumstances. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 207 25 (1982); *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 1001 (2017).

The IDEA also mandates that districts have in place effective plans to identify and evaluate children for special education, which is known as the "Child Find" obligation. 34 CFR 300.111 states:

- (a) (1) The State must have in effect policies and procedures to ensure that
 - (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
 - (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

In this case, Complainant asserts that the District failed to provide [Student] FAPE and failed in its Child Find obligations because she was wrongly taken out of special education at the October 4, 2022 IEP meeting. The court disagrees. The CDE criteria is clear and objective, and for a reason: students should not be over-identified as requiring special education and related services when they are able to access their education without it. All of the data at the October 4, 2022 IEP meeting showed that [Student] was able to access her math education without special education. Her objective math scores were above the CDE guideline of 12%. While it is true that 12% is not a hard and fast cut off, there was not other math data sufficiently deficient to show that [Student] required special education in math. [Mother] was concerned about [Student]'s "grade equivalency" scores, and they were low. [Mother]'s testimony made clear that seeing the low grade equivalency scores was a major factor in leading her to conclude [Student] needed special education. Indeed, [Student] did need special education in math for three years, from 2019 through 2022. However, [District School Psychologist], the school psychologist, was a very credible and persuasive witness, and he credibly testified that grade equivalency scores are misleading. Not only that, but a grade equivalency score is just one data point. When the court looks at all of the data points in math, the court concludes, as did the District, that [Student] no longer met the criteria for SLD in math as of October 4, 2022. The court is further persuaded by all of the evidence in the record that [Student] currently does not meet the criteria for SLD in math. Her objective math

scores are all above 12%, and [Campus Director] testified that she is meeting grade standards in math at [Private School].

Complainant further asserts that the District failed in its Child Find obligation and failed to provide [Student] FAPE by not evaluating her social and emotional functioning and not considering an educational identification of SED. The persuasive evidence in the record is that at the time of the October 4, 2022 IEP as well as during the most recent IEE, [Student] simply did not and does not exhibit any of the characteristics of SED. Her teachers had positive things to say about her. She was able to interact with peers. She was able to advocate for herself. It is true that in the 2022-2023 school year [Student] engaged in negative and concerning behaviors, such as vaping, skipping class, sexting, and withdrawing at home. Sadly, these negative behaviors culminated in her suicide attempt in the spring of 2023. However, the evidence was persuasive that these behaviors, including the suicide attempt, do not mean that [Student] meets the educational identification of SED. Many students struggle with similar behaviors – often in middle school like [Student] – and are not special education students. For [Student] to meet the SED criteria, her social/emotional health would have prevented her from accessing general education. Immediately after [Student]’s suicide attempt, [Mother] asked for [Student] to be reevaluated for special education. For sake of argument, it is possible that at that time, had [Student] been able to be evaluated, she might have met criteria for SED. However, [Mother] removed [Student] from the District and enrolled her in an out of state public school before the District could reevaluate her. She told the District not to contact her. The District, through [School Counselor], had started the process for the reevaluation, but stopped once [Mother] removed [Student] and asked not to be contacted. Complainant asserted she felt she had no choice but to remove [Student] because the reevaluation was going to take place at [High School], and [Mother] was worried about [Student] returning there. The court does not know what was told [Mother] concerning testing, but the fact is that when [Student] was reevaluated in 2024, it was at the District offices, and not at [High School].

Concerning whether [Student] should have been identified with SED as of the 2024 IEE, [Social Worker]’s testimony was particularly persuasive, especially her point that if [Student] had SED, it would be persistent across settings, including at [Private School]. [Student] is showing no signs of SED at [Private School]. Even [Psychologist] noted her positive social and emotional behaviors at [Private School]. Furthermore, the kinds of signs that [Social Worker] testified about are behaviors [Student] never engaged in, such as hiding under her desk and avoiding peers who were not her friends.

The court concludes that Complainant had the burden to prove that the District did not provide [Student] FAPE, and she did not meet her burden of proof. Complainant’s case was based in large part on [Student]’s low grade equivalency scores in math, her difficulties and negative behaviors in 2022 and 2023, and on [Psychologist] and [Behavior Coach]’s reports. For the reasons explained above, [Student]’s grade equivalency scores are not reliable evidence that the District failed in its Child Find obligation or failed to provide [Student] FAPE. They are one isolated data point that [District School Psychologist] credibly testified is misleading. Similarly, it was Complainant’s burden to

prove that [Student]'s negative behaviors met one of the educational identification categories for special education. She did not meet that burden because as of the October 4, 2022 IEP, there was no data indicating that any mental health issues were preventing [Student] from accessing her education, based on objective test scores. Similarly, after [Student]'s suicide attempt, there was again no data indicating [Student] met the SED criteria because she was removed from the District before the District could perform a reevaluation. [Student]'s most recent IEE also demonstrates she does not meet the SED criteria. She is doing well at [Private School], and an important criterion for identification for SED is that it presents across settings. It is not presenting at [Private School], and therefore it simply is not an appropriate educational identification for [Student]. [Psychologist], while certainly experienced, admitted that his conclusions about [Student] needing special education were not based on CDE's objective guidelines but rather on his own clinical considerations. There is nothing in the record that persuades the undersigned that [Psychologist]'s non-CDE considerations should trump the CDE's objective criteria.

Finally, concerning Complainant's tuition reimbursement request, the court concludes it is not warranted. Complainant did not give the District 10 days advance notice. [Student] has not been a District student since spring of 2023. [Student] has not been a student identified as needing special education and related services since October of 2022, and even if she were so identified, the reimbursement request is for a school that is not providing special education and related services to [Student]. There are simply no grounds upon which the court could award tuition reimbursement.

DECISION

For all the reasons discussed above, it is the decision of the ALJ to dismiss all of Complainant's claims and deny all of her requests for relief. 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: January 16, 2025

/s/ Tanya T. Light
TANYA T. LIGHT
Administrative Law Judge