

<b>STATE OF COLORADO</b> <b>OFFICE OF ADMINISTRATIVE COURTS</b> 1525 Sherman Street, 4 <sup>th</sup> Floor, Denver, Colorado 80203	<div style="text-align: center;">▲ COURT USE ONLY ▲</div>
<b>[FATHER], Parent of [STUDENT],</b> Complainant,  vs.  <b>ACADEMY SCHOOL DISTRICT 20,</b> Respondent.	
<b>AGENCY DECISION</b>	

On February 12, 2025, the Colorado Department of Education (“CDE”), Exceptional Student Services Unit, received a Due Process Complaint filed by [Father] (“Complainant” or “Father”) on behalf of his minor son, [Student], alleging that the Academy School District 20 (“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 February 14, 2025, 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 by video and Google Meet in Denver, Colorado on May 19, 20, and 21, 2025. Complainant represented himself. The District was represented by Tonya Thompson, Esq., District in-house counsel, and John Stanek, Esq., of Orten Cavanagh Holmes & Hunt, LLC. [Mother], [Student]’s mother, observed the hearing but did not participate.

At hearing, the ALJ admitted into evidence Father’s exhibits 1, 2, 3, 4, 7, 15, 17, 18, 19, 21, 22, 25, 26, and 28, and the District’s exhibits A, B (Exhibit B is the same as Father’s Exhibit 2), C (Exhibit C is the same as Father’s Exhibit 1) D, E, F, G, H, I, J, K, N-Z, BB, DD, EE, FF (Exhibit FF is the same as Father’s Exhibit 18), GG, JJ, KK, LL, MM, NN, OO, PP (only pages 393-400; 438-451; 574-633; 654, 655, 719, 723, and 724 of Exhibit PP were entered into evidence), QQ, TT, UU, VV, FFF, III, JJJ, and MMM.

After the close of Father’s case in chief, the court granted the District’s motion for

summary judgment<sup>1</sup> as to the claim in Father's Due Process Complaint that the District violated the "stay put" provision. The court agreed that Father had not put forth any evidence of a stay put violation. The court denied the District's motion for summary judgment as to Father's claims concerning alleged defamatory statements made about Father that are in [Student]'s Individualized Education Program ("IEP") and reevaluation.

### **ISSUE PRESENTED**

Whether the District failed to provide [Student] FAPE by changing his IEP educational location to "[Other School]," and if so, what remedies are appropriate.

### **FINDINGS OF FACT**

[Student]

1. [Student] is an eight year-old boy (date of birth [DOB]) enrolled at [Elementary School 3] ("[Elementary School 3]") in its center-based Affective Needs program. [Student] was in third grade in the 2024-2025 school year.

2. [Student]'s parents are divorced and have 50-50 custody. [Student] lives with each parent one week at a time, switching households every week. Exhibit 2.

3. [Student] has attended [Elementary School 3] since January of 2023 when he was placed in the Affective Needs program halfway through his first grade year. Prior to attending [Elementary School 3], [Student] attended the [Elementary School 2] from August of 2022 through January of 2023. Exhibit 1.

4. From 2021 through fall of 2022, [Student] attended kindergarten at [Elementary School 1] ("[Elementary School 1]"), and Father felt he was successful there in the general education setting in the least restrictive environment ("LRE"). Father felt that [Student] received appropriate support at [Elementary School 1]. See e.g., Exhibit 4.

5. On November 17, 2022, [Student] was identified as a student in need of Special Education and related services in the educational identification category of Serious Emotional Disability ("SED"). Exhibits 1 and 2.

6. [Student] has been described as bright, curious, and sensitive. On February 7, 2025, [Student] was identified as a student for the District's Talented and Gifted Program ("TAG") in the area of general intellect. Exhibit 15.

7. [Student]'s IEP team has said of him:

[Student] is an intelligent and creative young man. He loves to share about topics he is passionate about. His smile is contagious and he loves to

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<sup>1</sup> The Court notes that the District's motions for summary judgment might more appropriately be called motions for directed verdict.

make jokes around people he is comfortable with. [Student] excels academically and has a passion for science and engineering. He will often share about his newest creation or recently learned science facts. Exhibit 1.

8. On August 30, 2024, Father was informed that [Student] was welcome to join the [Elementary School 3] Cross Country team. Exhibit 22. Father testified that this fact showed that [Student] was trying to be engaged and included with other students.

[Student]’s November 16, 2023 IEP

9. On November 16, 2023, [Student]’s IEP team met to review his IEP. [Student] was in the second grade. Below are highlights of [Student]’s November 16, 2023 IEP.

10. The IEP team determined several Measurable Goals for [Student]. The first Measurable Goal was “Social Emotional,” stating:

When [Student] becomes upset, he will select and use an appropriate coping strategy across multiple settings before getting to the red quadrant (hitting, kicking, throwing items, threatening) with no more than 1 prompt by November 2024. Exhibit 1.

11. The Social Emotional goal was implemented to target an Area of Need described as, “[Student] continues to need direct instruction regarding coping strategies and the appropriate use of those strategies.” *Id.*

12. As of the October 11, 2024 Reporting Date, [Student] had not met this goal. *Id.*

13. A second Measurable Goal was “Behavioral Regulation,” stating that, “By November 2024, [Student] will maintain self-control (safe body and words) 100% of the time with the use of 1 prompt, as demonstrated by teacher observation and daily chart.” *Id.*

14. The Area of Need this goal was targeting was “[Student] struggles to maintain safe hands and feet during transitions and during times of dysregulation.” *Id.*

15. As of October 11, 2024, [Student] had not met the Behavioral Regulation goal. The IEP team wrote:

[Student] has had several instances of physical aggression towards staff members. This physical aggression includes punching, hitting, kicking, and throwing objects such as books. He has also attempted to throw larger objects such as chairs or wobble stools but those attempts have been blocked by the staff members. In addition, there was an incident where he tore a piece of the trim off the wall in the quiet room while he was

dysregulated. During one of these instances of physical aggression, staff members had to utilize seclusion in order to maintain their safety due to the intensity of [Student]'s aggression toward them. Exhibit 1.

16. A third Measurable Goal on [Student]'s November 16, 2023 IEP was "Emotional Regulation." The goal stated:

By the end of the IEP year, November of 2024, [Student] will increase positive interactions with peers and adults by learning and implementing emotional regulation skills (naming feelings, identifying the size of the problem, name possible healthy solutions, coping/calming skills, etc.) which will be taught and practiced in counseling sessions, in order to manage his frustration/anger/stress/anxiety with no more than 2 adult prompts. This will be measured in 4 out of 5 observable opportunities. Exhibit 1.

17. The Area of Need this goal was targeting was explained as:

[Student] struggles with managing intense emotions, specifically frustration and anger, which often lead to physical aggression and behavioral concerns of unsafe choices and words. He requires ongoing mental health support and tools to help him cope with these emotions, so that he can participate in the general education curriculum and work on improving his emotional regulation skills. *Id.*

18. As of the October 11, 2024 Reporting Date, [Student] was partially meeting the Emotional Regulation goal. *Id.*

19. The IEP provided [Student] 3600 minutes per month of Special Education services, 120 minutes monthly of direct mental health services, and 10 minutes per month of occupational therapy. *Id.*

20. The IEP team determined that the LRE for [Student] was to be in the general education classroom 40% to 79% of the time. Exhibit 1.

#### [Student]'s November 13, 2024 IEP

21. On November 8, 2024, Father was sent notice of [Student]'s November 13, 2024 IEP meeting. Exhibit Z.

22. Father attended this meeting. Others in attendance were [Student]'s mother, [Mother]; [Affective Needs Teacher], [Student]'s Affective Needs teacher; [Assistant Principal], Assistant Principal; [Social Worker], [Student]'s social worker; [School Nurse], the school nurse; [Teacher], a teacher; [Assistant Principal 2], an Assistant Principal; and [Occupational Therapist], an Occupational Therapist. Exhibit 2.

23. [Affective Needs Teacher] noted in the IEP:

[Student] continues to exhibit refusal behaviors, verbal escalation, and

physical aggression. He continues to require a high level of support and access to an alternative classroom due to these behaviors. There has been an increase in consistent physical aggression toward staff members. [Student] is spending almost all of his time in the Affective Needs room due to these increased refusal and physically aggressive behaviors. Exhibit 2.

24. The IEP further noted:

- a. "Often, [Student] will refuse to go to his general education classroom and to complete his assignments in the AN room. This refusal can last for hours and sometimes involves him becoming physically aggressive towards staff members." *Id.*
- b. "There have been multiple instances of [[Student]] punching staff members repeatedly, throwing objects such as books and stools, and eloping from the classroom." *Id.*
- c. "There have been multiple days that he has refused to go to his general education classroom or join his peers for lunch and recess which results in him spending the entire day in the AN room." *Id.*
- d. "When [Student] is not having a good day, he has a really hard time behaving in class. He will lash out on his para's, throw things on the floor, and/or run out of the classroom." *Id.*

25. As of the November 13, 2024 IEP, [Student] was very strong in reading. His teacher said his reading and comprehension skills were excellent. However, this same teacher noted that "[Student] needs to be in the classroom more. He is missing out on collaboration with his peers and visualizations of the lessons." Exhibit 2.

26. [General Education Teacher], [Student]'s general education teacher, noted that [Student] had not been in the general education classroom for a few weeks. She explained that when he was having a good day, he would do great. When he was having a bad day or given a task he did not want to do, "he will run out of the classroom, throw things, rip papers, and sit on the floor with his head down and shakes his head refusing to even talk at times." *Id.*

27. This IEP added an "Area of Need" of "Work Refusal." A Measurable Goal of following directions was developed. *Id.*

28. [Student] was averaging 65% success in his Behavioral Regulation goal, which was modified as follows:

By November 2025, [Student] will refrain from physical aggression (i.e. kicking, hitting, pushing, throwing objects) 80% of the time across all environments in school with all adults and children as measured by his daily behavior chart. Exhibit 2.

29. [Student]'s Emotional Regulation goal was modified to explain that when [Student] became upset, angry, or frustrated, he would use self-regulation and coping strategies with one reminder 80% of the time. He was averaging 62% success in this goal. Exhibit 2.

30. [Student]'s Service Delivery Statement was changed such that he would receive 4800 minutes per month of Special Education services. He would continue to be in the general education classroom 40% to 79% of the time. *Id.*

#### [Student]'s Re-evaluation and January 9, 2025 Evaluation Report

31. In the fall of 2024, [Student]'s IEP team determined that a reevaluation was necessary due to [Student]'s increased physical aggression. [Student]'s mother, [Mother], signed the consent for evaluation. Exhibits 2 and N.

32. On December 9, 2024, [Social Worker], District Social Worker, sent a social history form to [Student]'s parents to complete and return as part of the reevaluation. [Mother] completed and returned the form. Father did not. See Exhibit JJJ.

33. Father objects to certain statements [Mother] made about his side of the family in the social history form. He filed this Due Process Complaint in part to ask the court to remove these statements from [Student]'s IEP and evaluation report.

34. On December 6, 2024, [School Psychologist 2], PhD, NCSP, a School Psychologist for the Pikes Peak BOCES<sup>2</sup> school district, sent Father an email with a link to complete forms for the BASC-3, one of the evaluation tests. On December 11, 2024, she sent a follow-up email because she had not received the completed BASC-3 forms from Father. Exhibit PP, pages 654 and 655.

35. Father testified that he did not open the link to complete the forms because it looked like a scam to him. Father also testified that he was not offered an opportunity to fill out these forms. The court finds as fact that Father was provided the forms and given an opportunity to complete them twice but did not do so.

36. The evaluation included a summary of documented behavior incidents that occurred during the 2024-2025 school year at [Elementary School 3]. Exhibit J.

37. The court will not list all of the incidents, but will highlight a few:

- a. 9/17/24: "work refusal, throwing objects at adults, pulling trim off wall in classroom, tearing posters off wall, refusing to eat lunch, hitting adults."

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<sup>2</sup> BOCES stands for Board of Cooperative Educational Services. BOCES are in essence school districts created from geographical areas where the population is not large enough to support individual school districts. The districts in these lowly populated areas pool their resources to form a BOCES district in order to provide students educational services that would not be available in individual districts.

Exhibit J. This instance of [Student]'s dysregulation lasted 3 hours with [Student] spending a total of 3 hours outside of the classroom that day. Exhibit J.

- b. 9/18/24: "ran out of Affective Needs room, throwing shoes, ran out of school building, throwing objects, hitting adults, slamming door." *Id.* This dysregulation lasted 4 hours, with [Student] was out of the classroom for the full 4 hours.
  - c. 9/19/24: "ran out of Affective Needs room, hitting and punching adults, slamming door, laughing as he was hitting adults." This dysregulation lasted 3 hours with [Student] outside the classroom for 3 hours. *Id.*
  - d. 9/23/24: "work refusal, stating he wants to skip school for a day, kicking door, punching staff, throwing wobble stools at adults, punching adults, pulled trim off wall, ripping work." *Id.* [Student]'s dysregulation lasted 3 hours with 3 hours spent outside the classroom.
  - e. 10/1/24: "hitting staff, pulling on staff member's lanyard, hitting his head with his water bottle, yelling at staff, threatening to throw water bottle at staff, refusing to eat lunch, throwing rocks at staff, hitting and pushing staff, throwing objects at staff, pulling trim off wall, pulling plastic covers off electrical wires on wall, threatening to break objects, slamming door, [stating] 'I did bad things at other schools and I can do the same thing here.'" Exhibit J. [Student]'s dysregulation lasted for 6 hours and he was out of the classroom for 6 hours.
  - f. There are many more incidents like the above, and from September through the end of the school year the incidents increased in severity and time out of the classroom. Many of the incidents involved [Student] punching, kicking, and hitting staff with his arms, legs, and objects, leaving the Affective Needs room, and trying to elope from school. His behaviors became increasingly dangerous to [Student] and to [Elementary School 3] staff. See Exhibit J.
38. [Student] scored "clinically significant" on the BASC-3 in the areas of hyperactivity, conduct problems, and aggression scales, among others.*Id.*
39. Results of the Emotional Disturbance Decision Tree ("EDDT") evaluation included:

[Student] has problems building and maintaining relationships, exhibiting inappropriate behaviors/reactions under typical circumstances, and struggles to problem solve when things do not go as he wants. These difficulties across settings are having a severe educational impact on [Student], often causing him to miss significant portions of instruction throughout his school day. Exhibits 3 and J.

40. Concerning [Student]'s EDDT scores, [Social Worker] wrote:

a student who obtains a High Severity or Moderate Severity score is more likely to have behaviors that are a serious obstacle to both school and personal adjustment. [Student]'s Level of Severity Cluster scores are in the Moderate Severity range at home, and High Severity at school. A student who obtains a High Impact or Moderate Impact score is displaying behaviors that are likely a serious obstacle to school progress. [Student]'s Educational Impact Cluster is in the High Impact range as rated by his teachers. Exhibit J.

41. A Functional Behavioral Assessment ("FBA") and a Behavior Intervention Plan ("BIP") were completed for [Student] as part of the reevaluation. Exhibit 3.

42. On January 14, 2025, [Affective Needs Teacher] emailed Father inviting him to submit a written statement to be included with [Student]'s evaluation to address his concerns about what [Mother] had written on the social history form about his side of [Student]'s family. Exhibit JJJ.

43. In this same January 14, 2025 email to Father, [Affective Needs Teacher] informed him that a team from the Pikes Peak BOCES had been invited to attend the upcoming January 29, 2025 IEP meeting. [Affective Needs Teacher] explained, "[Principal] and I attempted to call you on Friday to inform you that this team will be in attendance, but we were unable to reach you. We will discuss next steps as a team and determine what placement the team determines is the best fit at the IEP meeting which has been scheduled for January 29<sup>th</sup> at 10:30 am." Exhibit JJJ.

[Student]'s January 29, 2025 IEP and March 14, 2025 Reporting Date

44. On January 10, 2025, notice of a January 29, 2025 IEP meeting was sent to Father. Exhibit X.

45. Father believes [Student]'s IEP team predetermined that [Student]'s placement would be at the Pikes Peak BOCES' [Other School] prior to this IEP meeting.

46. The January 29, 2025 IEP included a chart showing [Student]'s daily hours of dysregulation and daily hours out of class. The dates range from September 17, 2024 through December 11, 2024, and several of the incidents were noted above. The [Elementary School 3]'s school day is seven hours. This chart shows that [Student] was out of the classroom for seven hours – the entire school day – on the following dates:

10/15/24  
10/21/24  
10/22/24  
10/24/24  
10/25/24  
10/28/24



10/29/24  
10/30/24  
10/31/24  
11/5/24  
11/11/24  
11/12/24  
11/13/24  
11/14/24  
11/15/24  
11/18/24  
11/19/24  
11/21/24  
11/22/24  
12/2/24  
12/3/24  
12/6/24  
12/11/24. Exhibit 3.

47. From September 17, 2024 through December 11, 2024, the average number of hours [Student] was out of the classroom was 6.77. He spent this time in a conference room with no other students and only one paraprofessional. He did not go to lunch, recess, gym, or any class where he would be around peers. *Id.*

48. Concerning the goal of Work Refusal, as of January 29, 2025 [Student] was averaging 74% based on 30 school days since November 2024. Exhibit 3. As of the Reporting Date of March 14, 2025, he was not meeting the goal, with a success rate of only 46%.

49. Concerning the Behavioral Regulation goal, [Student]’s success rate was 71% as of January 29, 2025. In March of 2025, [Student] did not meet this goal, with a success rate of 66%. The team noted:

[Student] continues to be physically aggressive with staff members. He will push, hit, kick, and throw objects at staff members. Additionally, he had instances of trying to stab staff members with thumb tacks that he took off of bulletin boards. Exhibit 3.

50. After reviewing [Student]’s evaluation and all of the data, the IEP team concluded that [Student]’s Education Environment needed to be changed from 40-79% general education at [Elementary School 3] to the Pikes Peak BOCES [Other School], [ ] and is more restrictive than the [Elementary School 3] Affective Needs program. Exhibit 3. The team explained:

[Student] will receive all special education and related services in [Other School] within the [Educational Program], which is a highly structured setting, with access to daily therapeutic and social skills

intervention. The program is staffed with a special education teacher, small class sizes and support staff within the classroom. Individual needs are considered when adding additional staff. Continuous behavior support is provided for social and emotional skills development. Specialized instruction is provided by a Special Education teacher and/or trained paraprofessionals under the direct supervision of the Special Education teacher according to Colorado Academic Standards.

[Student] will be closely monitored for safety throughout the school day and in all school environments. Mental health support will be provided in both group and individual sessions by a licensed mental health provider. Exhibit 3.

51. At the [Other School], [Student] would receive 1900 minutes per week of special education and related services, and 300 hours per month of direct mental health services. *Id.*

52. The Service Delivery Statement provided [Student] with “curb to curb transportation” to and from the [Other School]. *Id.*

53. Father objected to the placement and offered different techniques to deal with [Student] but testified that the District ignored him. Father believes [Student] should remain at [Elementary School 3] or move back to [Elementary School 1].

54. Prior Written Notice of the move to the [Other School] was given to [Student]’s parents. Exhibit 18.

55. On January 30, 2025, [Special Education Administrator], District Special Education Administrator, emailed Father and [Mother] to schedule a tour of the [Other School]. She also informed [Student]’s parents that they could speak to any of the [Other School] staff directly during the tour. Exhibit 19.

56. On February 7, 2025, [Special Education Administrator] informed [Student]’s parents that his enrollment at [Elementary School 3] would end on February 12, 2025, and he would begin at the [Other School] on February 13, 2025. *Id.*

57. Father told [Special Education Administrator] that he was “deeply concerned about the deceptive tactics used in this process.” Exhibit 19. Father objected to what he considered very short notice of [Student]’s transfer.

58. Father testified that the school made up the defamatory statements that were included in [Mother]’s social history form in order to have a reason to transfer [Student] from [Elementary School 3] to the [Other School].

59. Father filed this Due Process Complaint and invoked the IDEA's "stay put" requirement.

60. On February 12, 2025, the District sent Father a Prior Written Notice that [Student] would remain at [Elementary School 3] because of the stay put requirements. Exhibit EE.

[Affective Needs Teacher]

61. [Affective Needs Teacher] is [Student]'s Affective Needs teacher at [Elementary School 3], where she has worked for nine years. [Affective Needs Teacher] credibly testified that [Student] refused to go to the general education classroom and the Affective Needs room because other students were there.

62. [Affective Needs Teacher] credibly testified, and the court finds as fact, that Pikes Peak BOCES was invited to the January 29, 2025 IEP team meeting as a consideration, not as a pre-determination of placement.

63. [Affective Needs Teacher] credibly testified that the [Other School] was chosen by the team based on [Student]'s most recent reevaluation information.

64. [Affective Needs Teacher] credibly testified that at the January 29, 2025 IEP meeting, Father brought up having [Student] move back to [Elementary School 1], but that was not an option because [Elementary School 1] does not have an Affective Needs program.

65. [Affective Needs Teacher] credibly testified and the court finds as fact that the decision to move the location of [Student]'s special education services was made in part because he was not accessing the general education classroom 40-79% as called for in his IEP. He was not accessing general education at all.

66. [Affective Needs Teacher] credibly testified that the IEP team determined that [Student] needed more support than an Affective Needs center could provide because of his physical aggression. She explained that the team had implemented the highest level of support for [Student] at [Elementary School 3] and it was not working.

67. [Affective Needs Teacher] credibly testified that after Father filed this Due Process Complaint, [Student]'s behavior incidents have continued. On April 23, 2025, [Student] refused to complete his assignments, refused the support that was offered him, threw pencils at a staff member, and then hit, kicked and pushed staff members multiple times. Exhibit TT. [Affective Needs Teacher] credibly testified that [Student] was engaging in significantly more bad behavior.

68. [Affective Needs Teacher] credibly explained that when [Student] is dysregulated, he is in a state wherein he is unable to learn.

69. [Affective Needs Teacher] is concerned that [Student] was not meeting any

of his IEP goals and was not making progress. She credibly testified that the IEP team was looking for the right program for [Student], not a particular location.

70. [Affective Needs Teacher] agrees with the IEP team's decision of the [Other School].

[Social Worker]

71. [Social Worker] is the school Social Worker at [Elementary School 3]. She has a master's degree in social work and her work experience includes being a Program Manager at Rocky Mountain Options for Long Term Care; working as a medical social worker/care manager at UC Health; and working as a licensed psychotherapist. Exhibit III.

72. [Social Worker] was deemed an expert witness in evaluation procedures; mental health needs of children at [Elementary School 3]; the integration of social emotional and behavioral considerations into the IEP process; and development of appropriate mental health and behavioral supports for children with IEPs.

73. [Social Worker] provided [Student] his mental health minutes at [Elementary School 3].

74. [Social Worker] credibly testified that [Mother] completed the social history form that included the statements to which Father objects.

75. [Social Worker] credibly testified that [Student]'s scores on various tests during the reevaluation showed that [Student] is not accessing general education because of hitting, screaming, refusing to do work, and eloping.

76. [Social Worker] credibly testified that behavior is a form of communication, and [Student] is communicating that he needs help. He is attempting to share how he is feeling but it is coming out as elopement and task refusal.

77. [Social Worker] credibly testified, and the court finds as fact, that based on a body of evidence, [Student]'s IEP team determined that the best placement for [Student] was the [Educational Program] at BOCES, within which is the [Other School].

78. [Social Worker] credibly testified that [Student]'s problems are not because he wants a different general education team. He has had different paraprofessionals and general education teachers and has had problems with all of them.

79. [Social Worker] explained that [Student] has chosen to be in the conference room instead of with peers as a way to self-regulate. The BOCES [Other School] has fewer students and is quieter, which is the environment [Student] needs and is wanting.

80. [Social Worker] credibly denied that she had been pushed by any supervisor to advocate for the [Other School] or that she had been involved in discussions about placing [Student] there prior to the January 29, 2025 IEP team meeting.

81. [Social Worker] agrees with the IEP team that the [Other School] is the most appropriate educational location for [Student].

[Occupational Therapist], OT

82. [Occupational Therapist] is a District occupational therapist (“OT”). She holds a Doctor of Occupational Therapy degree and has worked at [Elementary School 3] since 2001. She is licensed to work in the school setting.

83. [Occupational Therapist] credibly testified that her testing and interaction with [Student] showed that he has severe difficulty in social participation. She credibly testified that [Student] needs accommodations such as a separate space; movement breaks; using a fidget, and opportunities to stand and take breaks.

84. From an OT perspective, [Occupational Therapist] concluded that the [Other School] would be better for [Student] because he would receive more one-on-one teacher interaction; decreased class sizes; decreased visual input; and decreased auditory input.

85. [Occupational Therapist] credibly explained that based on her education, experience, [Student]’s testing results, and her time spent one-on-one with [Student], she believes he is seeking out decreased environmental input.

86. [Occupational Therapist] agrees with the IEP team that the [Other School] is the most appropriate educational setting for [Student].

[BOCES School Psychologist]

87. [BOCES School Psychologist] is the Pikes Peak BOCES School Psychologist. She has been in this role for seven years.

88. [BOCES School Psychologist] explained that [Elementary School 3] is one of Pikes Peak BOCES’ associate member schools, which means that [Elementary School 3] is able to access BOCES’ services, including its [Other School].

89. [BOCES School Psychologist] attended the January 29, 2025 IEP meeting. She was invited to discuss services and answer questions.

90. [BOCES School Psychologist] credibly testified that the [Other School] can provide services to [Student] that are not available to him at [Elementary School 3]. The classrooms are smaller and there are more staff available. All the staff are highly trained on behavioral issues like [Student]’s, and all staff are trained in de-escalation techniques. The [Other School] has more direct mental health services provided one-on-one and in small groups, and a mental health provider is in the school daily. The teachers have behavior training and are all licensed, and many of the staff are registered behavior technicians.

91. [BOCES School Psychologist] credibly explained that at the [Other School], data on [Student] would be collected daily and hourly. Families receive daily communication from the staff, including the student's highs and lows that day, and quarterly reports. Talented and gifted services are also provided as a related service.

92. [BOCES School Psychologist] credibly testified that what she heard at the January 29, 2025 IEP team meeting that made the [Other School] appropriate for [Student] was his elopement, physical aggression, and work refusal.

93. [BOCES School Psychologist] agrees with the IEP team decision.

#### [Principal]

94. [Principal] is the [Elementary School 3] principal, and this was her first year in that role. She worked as an Assistant Principal at [Elementary School 3] for eight years prior to becoming the principal.

95. [Principal] attended [Student]'s January 29, 2025 IEP team meeting. She credibly testified that it was a difficult meeting because the IEP team's care and love for [Student] came out. One of their Assistant Principals regularly played chess with [Student], and [Principal] and [Student] used to play Mario Kart together. [Principal] testified that as the IEP team members went around the room, [Affective Needs Teacher] teared up. [Affective Needs Teacher] was very sad about [Student] not being at [Elementary School 3], even though she agreed with the [Other School] placement.

96. [Principal] credibly testified that [Student] has higher needs compared to other students in the [Elementary School 3] Affective Needs program. The other students are able to attend the general education classes, recess and lunch, and they are able to interact with other students.

97. [Principal] credibly testified that [Student]'s behavior is communicating that he needs more help, which the [Other School] can provide. There, [Student]'s Special Education services will be doubled. She believes that the [Other School] will be much better for [Student] to access 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 (10<sup>th</sup> Cir. 2008) (stating that, "[t]he burden of proof...rests with the party claiming a deficiency in the school district's efforts"). Father is the party seeking relief and therefore he bears the burden of proving by a preponderance of the evidence that the District failed to provide [Student] FAPE in violation of the IDEA. For reasons explained below, the court concludes that Father failed to meet his burden of proof.

## 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).

## Educational Placement Changes

Concerning parental participation in educational placement decisions, 34 CFR section 300.327 states that "Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." Section 300.501(c), "Parent involvement in placement decisions" mandates:

- (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
- (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).
- (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

According to the ECEA, located at 1 CCR 301-8, 4.03(8):

- (a) The determination of placement must be based on the child's IEP and made by the IEP Team. The terms 'placement' or 'educational placement' are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the physical location in which a child's IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee, subject to the limitations in this section 4.03(8).

4.03 (8)(b). Change in placement.

4.03 (8)(b)(i). Nonsignificant change in program/services.

When a child's educational program is altered, such as a change in the amount of a given service, the change in program/services is a nonsignificant change in program/services.

4.03 (8)(b)(i)(A). Prior written notice of such changes must be provided to the parent.

4.03 (8)(b)(i)(B). Consent is not required.

4.03 (8)(b)(i)(C). A non-significant change in program/services must be made by the IEP Team unless the parent and the administrative unit or state operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4). However, reevaluation is not required.

4.03 (8)(b)(ii). Significant change in placement:

4.03 (8)(b)(ii)(A). A significant change in placement for educational purposes includes placement or referral to a private school or eligible facility by the administrative unit, the addition or termination of an instructional or related service or any change which would result in the following:

4.03 (8)(b)(ii)(A)(I). The child having different opportunities to participate in nonacademic and extracurricular services;

4.03 (8)(b)(ii)(A)(II). The new placement option is a change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA; or

4.03 (8)(b)(ii)(A)(III). The child transfers from a brick and mortar school to an on-line program or vice versa.

4.03(8)(b)(ii)(B). A significant change in placement shall be made upon consideration of reevaluation. Such change shall be made only by an IEP Team with the addition of those persons conducting such reevaluation unless the parent and the administrative unit or state operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR §300.324(a)(4).

4.03(8)(b)(iii). A change in building or location. A change in building or location that is not a change in placement, as described in Section 4.03(8)(b), may be accomplished without convening the child's IEP Team or conducting a reevaluation. Decisions changing location or building should be made with due consideration for the impact on the child's total education program. A location or building decision that does not constitute a change in placement does not require prior written notice or an IEP Team meeting.



## Discussion

### False and Defamatory Statements

Father asserts that statements made in a social history about his side of the family are defamatory and must be removed from [Student]'s IEP and evaluation report. He asserts that the statements are a violation of FAPE because the District made them up in order to have a reason to change [Student]'s educational placement, and then predetermined that the placement would be the [Other School].

The court first notes that defamation is a tort and the purpose of this case is not to determine tort damages but to determine FAPE violations. Father may pursue any defamation claims with a court that has subject matter jurisdiction, which this court does not have. Moreover, Father had the burden of proof, and he did not provide any evidence to support this contention. Multiple witnesses credibly testified that Father's ex-wife made the statements in her social history form that she completed as requested by [Social Worker]. [Social Worker] credibly testified that she sent the social history form to [Student]'s parents and received it back from [Mother] with the comments to which Father objects. There is simply no evidence that the District made up these statements with an ulterior motive to change [Student]'s placement. Father has not met his burden of proof on this claim as it relates to FAPE.

### [Student]'s Placement – Procedural Violations

Father objects to [Student]'s placement at the [Other School] and contends that the District predetermined this placement prior to the January 29, 2025 IEP meeting and contrary to his input and requests. Father further asserts that the District committed serious procedural violations of the IDEA that amounted to substantive FAPE violations in its determination of the [Other School] as [Student]'s educational placement. Finally, Father asks this court to order that the educational placement of [Student] be at [Elementary School 3] or [Elementary School 1]. For the reasons below, the court concludes that Father has not met his burden of proof on any of these issues, and that the IEP team did not err as a matter of law when it concluded that [Student]'s educational placement be changed to the [Other School].

Concerning Father's claim of procedural violations, the facts in evidence clearly demonstrate that the District adhered to all of the IDEA's procedural requirements. Prior written notices were timely sent. IEP team meetings were correctly convened and necessary participants were invited and attended. Consent to evaluate [Student] was properly requested and received when his team became concerned that his IEP was not working and he was not accessing his education.

Furthermore, the court concludes that the District complied with all of the IDEA's procedural requirements concerning the development of the January 29, 2025 IEP. Both parents, including Father, were given ample opportunity to participate in the IEP meeting and in the development of the IEP. No evidence was presented that persuades the court that any procedural violations existed, let alone any that impeded [Student]'s right to

FAPE.

The court concludes as a matter of law that Father has not met his burden of proof on this issue.

#### [Student]'s Placement - Predetermination

Father contends that the District colluded prior to the January 29, 2025 IEP team meeting to change [Student]'s location to the [Other School]. Father did not present any evidence to support this allegation other than his own opinion. The court is persuaded by [Affective Needs Teacher]'s credible testimony that "considering" the [Other School] as a possible resource prior to the IEP meeting and "determining" it as a placement prior to the meeting are two different things. The evidence in the record is ample that prior to the IEP meeting, [Student] was not accessing his education at [Elementary School 3] despite the highest level of supports given to him. The data shows that prior to the meeting, [Student] was not accessing any education almost on a daily basis for the entire seven hour day because of how dysregulated he became. Thus, prior to the IEP meeting, and after considering [Student]'s re-evaluation, the team gathered resources to be considered at the meeting. Personnel from the [Other School] were invited not because the team had already predetermined [Student]'s placement but because nothing was working with [Student]'s current educational placement, and other locations had to be considered. Thus the court concludes that Father has not met his burden of proof on his claim of predetermination.

#### [Student]'s Placement – Violation of FAPE

Finally, Father asserts that the change of educational setting to the [Other School] is a violation of FAPE in and of itself. The court disagrees. Father is correct that the District has a legal obligation to provide FAPE to [Student]. The evidence is well documented that [Elementary School 3] is not able to provide FAPE to [Student] based on his physical aggression, work refusal, elopement, and self-isolation. He was not able to access education in any meaningful way an average of 6.77 hours out of a seven hour day this past school year. That number is significant evidence to the court that [Elementary School 3] is not the appropriate educational location. That fact coupled with the credible testimony of every District witness persuades the court that [Student] needs a more restrictive educational location than [Elementary School 3] or [Elementary School 1], the two locations Father wants the court to consider. Whether the change is considered a significant or non-significant change in educational placement, the court concludes that 1) the District did not err in making the placement change, and 2) the court agrees with the IEP team and concludes that the [Other School] is the appropriate educational setting for [Student]. The IEP team reevaluated [Student], which is required if this change is considered significant. The team made the decision with all of the required personnel and parents in accordance with section 4.03(8)(b)(ii)(B). Therefore, it does not matter if this change is considered significant or merely a change in building, the court concludes that the District complied with all IDEA and ECEA laws and rules in making this location change decision.

Moreover, the evidence is clear that the [Other School] is able to provide [Student] with the quieter, less stimulating environment that he needs and has been self-seeking

for almost an entire school year. The [Other School]'s staff are all trained in de-escalation procedures, and a mental health provider is in the building daily. The [Other School] is able to provide services to [Student] that neither [Elementary School 3] nor [Elementary School 1] can that he needs to be able to access education in any meaningful way.

Father disagrees with the decision of the IEP team and filed this Due Process Complaint, as is his right. He had the burden of proof to persuade the court that [Elementary School 3] or [Elementary School 1] are the appropriate placements and the court concludes he failed to meet that burden. The court concludes that [Student]'s appropriate placement is the [Other School] and further concludes that the January 29, 2025 IEP is and should be in effect from now through [Student]'s transition to the [Other School] and until that school holds its first IEP meeting.

### **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 his 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:** June 10, 2025

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