

Colorado Department of Education
Decision of the State Complaint Officer
Under the Individuals with Disabilities Education Act (IDEA)

**State Level Complaint 2015:507
Mountain BOCES**

DECISION

INTRODUCTION

This is a state-level complaint (“Complaint”), properly filed on May 5, 2015, against the Mountain BOCES administrative unit (“BOCES”), relating to alleged violations of the Individuals with Disabilities Education Act (“IDEA”) while Student was enrolled in and attended High School, a school within the School District, which is part of the BOCES.¹ The Complaint was filed by Student’s Parents (“Parents,” or individually, “Mother” or “Father”) on behalf of their child, Student.

Based upon the Complaint, the State Complaints Officer (“SCO”) identified two issues subject to the jurisdiction of the state level complaint process under IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.

COMPLAINT ALLEGATION

The Complaint raised the following issues:

1. Whether the School District violated its obligations under the IDEA’s “child find” requirements to locate, evaluate, and identify children who may have a disability, when it did not evaluate Student to determine whether he was an eligible child with a disability either upon his enrollment in 12th grade at [High School] in August 2014, or thereafter until February 27, 2015 (when Parents requested an evaluation).
2. Whether, in April 2015, the School District failed to conduct a sufficient evaluation to determine whether Student is an eligible child with a disability under IDEA and erred in finding him not to be eligible.

DISTRICT’S RESPONSE

The School District denies that it violated the IDEA’s child find requirement and submits that both the School District’s evaluation and subsequent determination that Student is not an eligible child with a disability, as that term is defined by IDEA and Colorado’s Rules

¹ For ease of reading, the SCO will refer to the respondent herein as “School District.”

for the Administration of the Exceptional Children’s Educational Act (“ECEA Rules”), were proper and appropriate. Specifically, the School District submits that upon enrolling at High School for the 2014-2015 school year, after being parentally placed for two years in an out-of-state private school, the education records and evaluation reports submitted to the School District did not suggest that Student was or might be a child with a disability eligible for special education and related services. Rather, the documents and other information indicated that Student had received (and would continue to require) general education supports and accommodations rather than specially designed instruction.

The School District developed for Student a “Response to Intervention” (“RTI”) plan to provide student with general education interventions to support Student in his areas of need, including enrolling him in a class designed to provide individualized attention and targeted interventions for homework completion and organization, study skills, note-taking behaviors, and executive functioning skills. Student’s participation in the class was sporadic, and he was often either late to class or failed to attend altogether. The BOCES submits that when Student did avail himself of the interventions, he was able to complete his work and be more successful in school; when he did not participate, his academic performance suffered, often as a result of a failure to complete or turn in assignments.

With respect to the evaluation to determine whether Student was an eligible child with a disability, the BOCES submits that upon receiving the Parents’ request that Student be evaluated, the School District responded timely and appropriately, and complied with the IDEA’s procedural requirements and timelines. The evaluation drew upon a variety of sources of information to determine whether Student was eligible under either the Other Health Impaired (OHI) category or the Specific Learning Disability (SLD) category, and correctly determined that, notwithstanding Student’s need for general education supports to be successful in School, Student did not require special education (*i.e.*, specialized instruction) to access the general education curriculum, and thus is not eligible as a child with a disability under IDEA. Ultimately, Student earned his general education high school diploma at the end of the 2014-2015 school year.

PARENT’S REPLY

Parents submit that the School District should have suspected that Student may have been a child with a disability upon his enrollment in the School District because Student had had academic problems prior to attending Private School and because Student’s parents answered “yes” on the High School enrollment forms, in response to the question, “Does the student have an IEP?” Parents also argue that Student’s academic problems during the first semester of the 2014-2015 school year, and through the Parents’ request for an evaluation on February 27, 2015, should have prompted the School District to evaluate Student for special education eligibility.

FINDINGS OF FACT

Based upon a careful and thorough review of the record, the SCO finds as follows:

1. At all times relevant to this Complaint, Student has been a resident of School District. Student was parentally placed in Private School, which is in another state, for the 2012-2013 and 2013-2014 school years.² On August 20, 2014, Student's parents enrolled Student at High School, which is part of the School District.³
2. Prior to attending Private School, Student had attended school in the School District and had received "response to intervention" ("RTI") services for executive functioning and math skills; he was never identified or served as a student with a disability under the IDEA, or received special education and related services as those terms are defined under the law.
3. According to Student's RTI plan from 9th grade (prior to going to Private School), Student's struggles were with "appropriate classroom and social behavior." The RTI supports Student received were not anything resembling special education - the RTI plan was designed to help Student "develop strategies for appropriate in-class behavior (Raising his hand, taking notes, not distracting others)" and "to monitor his own missing/late work."⁴ Student also received preferential seating, repeated directions and checking for understanding, redirection for misbehavior, and positive reinforcers and praise for positive behavior.⁵ The plan identified one of Student's strengths as "capabilities academically."⁶
4. Prior to enrolling Student in High School, Mother contacted High School's Counselor to coordinate with him regarding Student's enrollment at High School. Mother informed Counselor that while Student attended Private School, he received "instructional support."⁷ Mother stated that Student would "need some accommodations at [High School] so let me know how to proceed in that regard."⁸
5. Around the time of Student's enrollment, Parents provided High School with a private evaluation⁹ ("Private Evaluation") of Student that had just been completed; according to the evaluation report, Student was assessed on July 21, 2014 and the report was finalized on August 18, 2014.¹⁰

² Ex. 1, p. 4.

³ Ex. 1, pp. 4-7.

⁴ Ex. 5, p. 155.

⁵ Ex. 5, p. 156.

⁶ Ex. 5, p. 154.

⁷ Ex. 1, p. 1.

⁸ *Id.*

⁹ Interview with Mother.

¹⁰ Complaint, p. 18-22.

6. The SCO notes that Complaint refers to Private Evaluation as an Independent Educational Evaluation, or “IEE,” but this designation is incorrect. An IEE is a procedural safeguard under the IDEA, and refers to the right of a parent of a child with a disability to request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.¹¹ In this case, Parents did not request an independent educational evaluation at public expense because they disagreed with an evaluation by School District; indeed, Parents did not request an IEE at all - they obtained the Private Evaluation on their own, without any request that the School District pay for it or any involvement by the School District whatsoever. In fact, at the time the Parents obtained Private Evaluation, Student was not enrolled in the School District and had not been enrolled in School District for two years, and there was no evaluation that the School District had obtained with which the Parents could have disagreed. Accordingly, Private Evaluation was simply an evaluation that Parents sought on their own, at their own expense. It was not an IEE and will not be referred to as such in this Decision.
7. The Private Evaluation reports that Student’s intelligence is in the average range, and achievement scores were average in the areas of reading, written expression and oral expression.¹² Math scores were in the low average range.¹³ With respect to Student’s attention, the evaluator noted that Student “show[s] all the classic signs of a nonverbal learning disability, in addition to impaired auditory attention and related executive function difficulties...”¹⁴
8. The Private Evaluation reports that Student meets the DSM-V¹⁵ diagnostic criteria for Attention Deficit Hyperactivity Disorder (“ADHD”) and “Specific Learning Disorder, with impairment in Mathematics.”¹⁶ Private Evaluation did not recommend specialized instruction or special education for Student; rather, it recommended accommodations for Student, such as, *inter alia*, tutoring, extended time for tests, the use of a calculator for math tests, multiple opportunities to turn in and revise assignments, preprinted lecture notes, and a separate testing setting to eliminate “distractors.”¹⁷

¹¹ 34 C.F.R. § 300.502(b)(1).

¹² Complaint, p. 19.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ “DSM-V” is the Diagnostic and Statistical Manual – Fifth Edition, which is the American Psychiatric Association’s classification and diagnostic tool for identifying psychiatric and psychological disorders and conditions. Diagnosis of a disorder under the DSM-V is a clinical diagnosis rather than a disability determination for educational purposes, and thus does not mean a child is necessarily a “child with a disability” as that term is defined under the IDEA or Colorado’s ECEA Rules.

¹⁶ Complaint, p. 21.

¹⁷ *Id.* Interestingly, the Private Evaluation also recommended that among the greatest benefits to Student at Private School was the “structured living environment and high academic standards”; the evaluator recommended that Student continue in the boarding school setting for the remainder of high school.

9. On the forms enrolling Student in High School, Parents responded “yes” to the question, “Does the student have an IEP (Individualized Education Plan)?”¹⁸ The basis for this statement is unclear, however, given that Student had been attending Private School, and an IEP represents special education and related services provided in the public school setting.
10. Consistent with School District’s practice, High School staff sent a form to Private School requesting that any IEP or Section 504 plan documents for Student be provided to High School.¹⁹ In response, Private School provided only Student’s transcripts and grade reports.²⁰ Neither Parents nor Private School provided High School with any documentation reflecting that Student had received either specialized instruction or anything resembling “special education” as that term is defined by IDEA, or a description of the “instructional support” Student received.²¹
11. Around the start of the school year, Mother and Student met with Counselor to talk about Student’s class schedule and graduation track.²² Student had repeated 9th grade at Private School, such that while he was entering his fourth year of high school, he had only technically completed 10th grade. Counselor indicated that Student could be placed in 12th grade with his same-aged peers and friends, and Student was eager to do that. Mother had concerns about Student missing his junior year, but ultimately agreed to have Student be placed in 12th grade and on track to graduate at the end of the school year. Mother and Counselor continued to have telephone conversations and to exchange emails regarding Student’s class schedule.²³ Counselor described Mother’s primary concern as whether Student would be able to graduate.²⁴
12. In all of these communications, Mother made no mention of or request for special education services, nor did she describe Student’s needs for accommodations or support in terms that should have given Counselor (or other staff) suspicion that Student might be a child with a disability. In an interview with the SCO, Mother described her conversations with Counselor as revolving around interventions such as extra time to complete assignments, breaking assignments into smaller pieces, and organizational/time management supports. These were the types of supports Student had received at Private School, and the types of interventions recommended in Private Evaluation.²⁵ Neither Mother nor Counselor described conversations in which

¹⁸ Ex. 1, p. 4.

¹⁹ Ex. 2, p. 6; Interview with Special Education Director.

²⁰ Ex. 2.

²¹ Interview with Interventionist; Ex. 2.

²² Interview with Counselor; Interview with Mother.

²³ Interview with Counselor; Interview with Mother.

²⁴ Interview with Counselor.

²⁵ Interview with Counselor; Interview with Mother; Complaint, p. 21.

specialized instruction, rather than general education accommodations, was ever mentioned or implied.²⁶

13. The SCO also notes that Counselor is licensed as a special education teacher and has served as a special education teacher in the School District.²⁷ He also has a master's degree in counseling/psychology. As such, the SCO finds that Counselor had training and experience in special education matters, including the IDEA's "child find" requirements, and finds Counselor credible in his assertion that, based upon his interactions with Mother, Student, and Student's teachers throughout the course of the school year (during which Counselor had routine "check-ins" with Student), Student did not present as a child who might need special education and related services.²⁸
14. Soon after the start of school, Counselor contacted High School's Interventionist about putting in place instructional supports for Student.²⁹ Interventionist leads High School's response to intervention ("RTI") program,³⁰ and runs a class ("Student Achievement Center" or "SAC") in which she provides instructional supports and interventions for general education students who require such support in order to be successful in school.³¹ Interventionist is a licensed and trained educator, including certification in special education.³²
15. Interventionist reviewed Student's previous RTI plans that had been implemented by the School District before Student left to attend Private School two years prior, and with a copy of Private Evaluation. Interventionist also met with Student, talked to Parent on the phone, talked to all of Student's teachers, and conferred with High School's RTI team during the team's biweekly RTI meetings.³³
16. None of the information reviewed by Interventionist, including conversations with Student and with Mother, led Interventionist to conclude that in seeking "instructional supports" for Student, Parents were requesting or referring Student for evaluation to determine whether he was an eligible student with a disability. In all of the discussions with the RTI team, Student's teachers, Mother, or Student himself, the emphasis was on providing Student with instructional supports in the regular education setting so that Student would earn the credits he needed to graduate from high

²⁶ Interview with Counselor; Interview with Mother.

²⁷ Interview with Counselor.

²⁸ Interview with Counselor.

²⁹ Interview with Interventionist.

³⁰ "Response to Intervention" is also known as MTSS, or multi-tiered system of supports. It refers to targeted instructional supports and interventions for general education students who require extra support and assistance to be successful in school. (Interview with Interventionist.)

³¹ Interview with Interventionist.

³² Interview with Interventionist.

³³ Interview with Interventionist.

school. There was no talk or any implication that Parents were seeking special education and related services or that Student required specialized instruction rather than general education accommodations and instructional supports.

17. Based upon all the information available, Interventionist recommended that Student receive instructional supports from his general education teachers, and also attend the SAC. Student was enrolled in the SAC at the end of September 2014.
18. The RTI services Student received are described in Student's RTI plan. The plan states that Student would receive "support on executive functioning skills ... specifically organization and homework completion. The interventionist will also check in on math skills."³⁴ The RTI plan identified Student's areas of concern as "applying prior knowledge to new skills, note-taking, large assignments, multi-step equations, attention to detail, integrating non-verbal material, organization."³⁵ The RTI plan also provided Student with accommodations for taking the ACT.³⁶
19. Student was provided with accommodations and interventions in his RTI plan, both in the SAC and in math and writing classes. In the SAC, Interventionist would check in with Student and keep track of his assignments for all of his classes, work with him to stay organized and to complete assignments, and provide tutoring on specific academic skills, particularly in math. Interventionist credibly described in detail the manner in which she would work with Student to help him master academic skills using the "I do-we do-you do" teaching strategy, particularly in math; this method was successful with Student, and he was able to grasp and apply math concepts and skills.³⁷ Interventionist would also tailor her work with Student to his individual needs, depending upon what assignments or subjects he needed specific work on.³⁸
20. Interventionist credibly reported that nothing about Student's performance in the SAC or in school generally suggested that he might be an eligible student with a disability who required special education (*i.e.*, specialized instruction) and related services in order to access the general curriculum. When Student attended class and turned in his homework, he did extremely well. Interventionist stated that "when he sat down and did the work, it was amazing."³⁹
21. Additionally, the SAC was where Student received his accommodations on the ACT. Student was permitted additional time to complete the ACT, and used his time in the

³⁴ Ex. 4, v.1, p. 5.

³⁵ Ex. 4, p. 11.

³⁶ Ex. 4, p. 17.

³⁷ In this strategy, the teacher demonstrates the skill, then works with the student to demonstrate the skill on specific problems, and then the student applies the skill on his own, thereby gradually internalizing the skill/knowledge and learning to apply it himself. (Interview with Interventionist.)

³⁸ Interview with Interventionist.

³⁹ Interview with Interventionist.

SAC to do so.⁴⁰ Interventionist felt it was better for Student to take the ACT during the SAC rather than miss out of academic content in other classes.⁴¹

22. In his math and writing classes, Student received accommodations including preferential seating, frequent check-ins by the teacher, redirection, and the opportunity to take a break when he needed it.⁴²
23. However, Student's attendance in the SAC was extremely sporadic. Interventionist stated that during the first semester, Student attended approximately half of his SAC sessions, and those that he did attend, he was frequently 30 to 45 minutes late.⁴³ Student's attendance in class improved in the second semester, but he continued to be consistently late to class by at least 45 minutes.⁴⁴ Attendance records submitted by the School District support Interventionist's account of Student's attendance.⁴⁵ Student had numerous tardies and absences in other classes as well.⁴⁶ The School District Evaluation completed in April 2015 reported that "on average, [Student] attends 68% of classes."⁴⁷
24. Further, Student's grades suffered because of his consistent failure to turn in homework. Student's work product, when he did it and turned it in, demonstrated that he was able to access and be successful in the general curriculum when he applied himself.⁴⁸
25. Student's grades also suffered significantly because of a failing grade he received at the end of January 2015, on a research paper in civics class. Student received the failing grade because of allegations of plagiarism, specifically, Student's failure to properly cite to resources.⁴⁹ This failing grade jeopardized Student's ability to graduate on time.⁵⁰
26. There is no evidence that the failing grades either from failing to turn in homework, or from the plagiarism incident with the research paper, was the result of any disability that Student may have, or would have been prevented had Student received special education or related services.⁵¹

⁴⁰ Interview with Interventionist.

⁴¹ Interview with Interventionist.

⁴² Interview with Interventionist; Interview with Algebra Teacher.

⁴³ Interview with Interventionist.

⁴⁴ Interview with Interventionist.

⁴⁵ Ex. 6.

⁴⁶ *Id.*; Ex. 5, pp. 111-120.

⁴⁷ *Id.*

⁴⁸ Interview with Interventionist, Ex. 5, pp. 69-72.

⁴⁹ Interview with Interventionist.

⁵⁰ Interview with interventionist.

⁵¹ Interview with Interventionist; Interview with Special Education Teacher.

27. Further, given that Student demonstrated an ability to learn and access the general curriculum when he came to class, applied himself, and availed himself of the supports in the SAC, the SCO finds that prior to Parents' request for an evaluation in February 2015, the School District did not have reason to suspect that Student might be a child with a disability.
28. The SCO notes that in addition to the RTI interventions available to Student, in February 24, 2015, Student was given the option of enrolling in a "Topics of Algebra 2" class, which is a small class that provides assistance in reviewing math skills and concepts, as well as time for homework. This class would have supplemented the math support Student received in the SAC. Student told Counselor that if enrolled, he would not attend, so Student was not placed in the class.⁵²
29. On February 27, 2015, Parents requested that the School District determine whether Student was eligible for an IEP.⁵³ Special Education Director responded by commencing the special education evaluation process, and provided Parents with a copy of their procedural safeguards and with a request for consent to evaluate.⁵⁴ The evaluation was completed and a properly constituted meeting was convened to determine eligibility on April 16, 2015.⁵⁵
30. The evaluation ("School District Evaluation") was coordinated by Special Education Teacher. Special Education Teacher is the head of the special education department at High School and is trained and licensed as a special education teacher.⁵⁶
31. The purpose of the evaluation was to determine whether Student qualified as an eligible student with a disability under either the Other Health Impaired (OHI) category, based upon Student's ADHD diagnosis, or Specific Learning Disabled category, based upon Student's difficulties with math. The evaluation included consideration of parent interviews, student interviews, specific testing in math (including a review of Student's historical testing data), student observation, and teacher interviews.⁵⁷ The School District Evaluation's report is extensive and detailed, and provides a comprehensive explanation of the evaluation and its findings.⁵⁸
32. In assessing Student's attentional/executive function issues, Special Education Teacher observed Student in Algebra 2 class on two occasions, each for approximately 35 minutes. In each observation, Special Education Teacher recorded detailed data in 45 second intervals regarding whether Student was on task or off task, and took similar

⁵² Interview with Counselor; Ex. 5, p. 117.

⁵³ Ex. 5, p. 1.

⁵⁴ Ex. 5, pp. 1 and 36.

⁵⁵ Ex. 5.

⁵⁶ Interview with Special Education Teacher.

⁵⁷ School District Evaluation at Ex. 5, p. 111-120.

⁵⁸ *Id.*

data from a typical peer in the classroom.⁵⁹ In the first observation, Student was on task 91% of the time and in the second, 81% of the time.⁶⁰ Student was able to focus and attend to task, and was able to access the academic material being presented. Special Education Teacher also spoke with Student's teachers regarding his attentional abilities/issues, and all reported that Special Education Teacher's observations were consistent with what they were seeing; all reported that Student was able to attend and participate when he showed up.⁶¹

33. Special Education Teacher credibly explained that based upon her training and experience, students with attentional problems who required special education and related services, as opposed to general education accommodations or instructional supports, tend to have an extremely hard time focusing on instruction or class work, require constant redirection from the teacher, need academic content and instruction to be presented in a different format in order to access it, and are usually hard pressed to stay on task even 50% of the time. Student, however, did not exhibit any of the behaviors or tendencies that would tend to indicate a need for special education and related services; rather, his behaviors demonstrated that he was able to stay on task and pay attention similar to the other students in class.⁶²

34. As part of evaluating Student's executive function skills, teachers and Parents completed the Behavior Rating Inventory of Executive Function ("BRIEF"), which assesses the underlying skills necessary to plan, start, and monitor work completion.⁶³ Both teachers and Parents reported that Student has difficulty initiating a task, planning and completing tasks, and staying organized. Student refused to complete the BRIEF.⁶⁴

35. The consensus among all the educators who worked with Student was that he had academic challenges, but was nonetheless able to pay attention and be successful in school. His problematic grades largely flowed from his attendance and his failure to do or turn in homework or show up for "make up" testing sessions.⁶⁵ He had supports in place to help him with organization and task management, including the SAC, but he was frequently absent or tardy from that class (as well as others), and thus did not fully access or take advantage of the supports that were available to him.

36. In determining whether Student had a specific learning disability in math, the evaluation included a review of Private Evaluation, Student's historical performance

⁵⁹ Ex. 5, pp. 88-105.

⁶⁰ Ex. 5, pp. 88 – 105.

⁶¹ Interview with Special Education Teacher.

⁶² Interview with Special Education Teacher.

⁶³ Interview with Special Education Teacher.

⁶⁴ Interviews with Special Education Teacher and Counselor; *see also* School District Evaluation.

⁶⁵ Interviews with Special Education Teacher, Interventionist, Algebra Teacher, and Counselor; *see also* School District Evaluation.

on TCAP testing (Colorado's state-wide standards-based assessments) and Scantron testing (district-wide assessments used to pin-point academic concerns and grade-level performance in math and reading), Student's scores on two math subtests of the Woodcock-Johnson Tests of Cognitive Abilities, and interviews with Algebra Teacher and Interventionist.

37. With respect to new testing, Student was extremely reluctant to participate. Student refused to take an updated version of the Scantron test, which would have been used to compare to his previous scores on that test, stating that he "was 18 years old and didn't have to take a test if he didn't want to."⁶⁶ Student also refused to meet with Special Education Teacher or School Psychologist.⁶⁷ Student stated that he simply wanted to graduate and that the support provided by Interventionist was enough.⁶⁸
38. Interventionist was able to persuade Student to take two of the Woodcock-Johnson math subtests, in Math Calculation and Applied Problems.⁶⁹
39. Student's performance on math testing, including on Private Evaluation and his historical performance on TCAP and Scantron testing, has been sporadic over the years and did not reveal significant skill deficits in math; Special Education Teacher described his historical performance as "up and down."⁷⁰ Private Evaluation reported low average scores, whereas on the Scantron, Student performed well and made growth from 6th through 8th grades. His TCAP scores varied over time. Special Education Teacher interviewed Student's RTI teacher from 8th grade, who reported that Student received help with time management and organization, but that he participated in general education math and did adequately. While Student struggled with calculation on the Woodcock-Johnson math subtest, calculation a skill that can be accommodated with a calculator and does not in and of itself demonstrate a need for special education.⁷¹
40. Against the inconclusive backdrop of the math assessments, the observations of Algebra Teacher - which are consistent with the reports and observations of all of Student's other teachers - supports the team's conclusion that Student did not qualify as a child with a specific learning disability in math. Algebra Teacher is the head of the math department at High School, and has experience teaching both general education and special education students. Algebra Teacher observed that Student did not demonstrate any difficulty with paying attention in class, staying on task, or being unable to understand the academic content. Based upon her training and experience, Algebra Teacher did not believe that Student required special education in order to

⁶⁶ Interviews with Special Education Teacher and Interventionist; *see also* Ex. 5, pp. 111-120.

⁶⁷ Interviews with Special Education Teacher and School Psychologist; Ex. 5, p. 113.

⁶⁸ Interview with Interventionist; Ex. 5, p. 113.

⁶⁹ Interview with Interventionist; Ex. 5, p. 113.

⁷⁰ Interview with Special Education Teacher.

⁷¹ Interview with Special Education Teacher.

benefit from or be successful in math. Rather, Algebra Teacher credibly described Student's academic struggles in math as being related to missing class and completing and handing in assignments.⁷²

41. In addition to numerous tardies and absences, Student would also leave class to take extensive breaks. While part of Student's accommodations included being able to take breaks in class, Algebra Teacher felt that Student essentially took advantage of this allowance and took breaks that were longer and more frequent than appropriate, often being gone for 15 to 25 minutes of class. Algebra 2 is a difficult subject, and is sequential in its presentation and understanding, meaning that every new skill builds on skills that were learned before. Thus, the more Student was out of class, the more content he missed, and the harder it was for him to catch up. Algebra Teacher also reported that even when he was in class, Student did not participate much or ask many questions, and that lack of engagement on his part limited his progress.⁷³
42. Nonetheless, when Student came to class, participated, and applied himself, Algebra Teacher noted that he was able to understand the content. Algebra Teacher has experience working with students who have learning disabilities in math and who require special education as a result. In her experience, Student did not exhibit difficulties indicating need for specialized instruction. Student did not have any inability to achieve when he applied himself - "when he did the work, he understood the concepts and was able to demonstrate that understanding on tests." This is consistent with Interventionist's experience with Student in learning math concepts - when he came to class and applied himself, he was able to access the academic content.⁷⁴
43. At the April 16 meeting, the eligibility determination was made by a "multi-disciplinary team" ("M-Team"), including Special Education Teacher, Special Education Director, Algebra Teacher, Creative Writing Teacher, Spanish Teacher, Civics and U.S. History Teacher, Private Tutor, Social Worker, High School Principal, School Psychologist, Interventionist, Counselor, and Parents.⁷⁵ There is no allegation that the M-Team was not properly constituted or that Parents were denied meaningful participation in the eligibility determination process.
44. The M-Team extensively discussed School District Evaluation, Private Evaluation, the Parents' concerns, and Student's academic performance, abilities, and grades.⁷⁶ The Team reviewed Colorado's eligibility criteria for OHI (which would be the applicable disability category for a student with ADHD) and Specific Learning Disability and went

⁷² Interview with Algebra Teacher.

⁷³ Interview with Algebra Teacher.

⁷⁴ Interview with Algebra Teacher.

⁷⁵ Ex. 5, p. 40.

⁷⁶ Interviews with Special Education Teacher, Counselor, School Psychologist, Algebra Teacher; Ex. 5,

through the checklists for those categories to determine whether Student qualified as a child with a disability under IDEA/ECEA.⁷⁷

45. Based upon all the information considered, as detailed above, the M-Team determined that Student did not meet the criteria under either the OHI or SLD categories. The team did determine that Student was eligible for general education accommodations under Section 504, and continued to provide him with instructional supports and interventions accordingly.⁷⁸
46. Leading up to the end of the school year, Interventionist and Algebra Teacher stated that with graduation approaching, Student began to “buckle down” and focus on his schoolwork. Student also worked privately with a tutor paid for by Parents; Mother reported that the tutor worked with Student on homework completion and to keep him on task with his assignments.⁷⁹ Student’s attendance and assignment completion improved, and he was able to earn grades and credits sufficient to graduate with a regular high school diploma.⁸⁰

CONCLUSIONS OF LAW

A. Allegation One: the School District/AU did not violate its “child find” obligations prior to February 27, 2015

1. Under the Individuals with Disabilities Education Act and the ECEA, AUs are required to identify, locate and evaluate all children with disabilities “who are in need of special education and related services.” 34 C.F.R. § 300.111; ECEA Rule 4.02. This “child find” obligation includes identifying students “who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade.” 34 C.F.R. § 300.111(c)(1). If a school district has reason to suspect that a student may be a child with a disability in need of special education, then the school district must refer the student for an evaluation to make that eligibility determination. *Id.*
2. In order to be eligible under any category, a child must have one of the 13 qualifying impairments, *and*, “by reason thereof, need[] special education and related services.” 34 C.F.R. § 300.8. Thus, it is not enough that a child has one the qualifying disabilities - the child must also require “specially designed instruction ... to meet the unique needs of the child” as a result of that disability. *Id.*; *see also*, 34 C.F.R. § 300.39. Thus, a suspicion that a child is an eligible child with a disability would be based on a

⁷⁷ Ex. 5, pp. 107-109; Interviews with Special Education Teacher and Interventionist.

⁷⁸ Ex. 5, p. 120.

⁷⁹ Interview with Mother.

⁸⁰ Interviews with Interventionist, Algebra Teacher, and Mother.

suspicion that a child has a qualifying disability and that the child needs special education as a result of that disability.

3. In this case, the SCO concludes that though Student had had academic struggles and benefitted from general education supports to assist him with organization, task management, and math concepts, the record demonstrates that the School District/AU did not have reason to suspect that Student may be a child with a disability and in need of special education. Student came to High School with a history of receiving general education instructional supports to assist him with, *inter alia*, organization, task management, and assignment completion, but that fact does not constitute a basis for suspecting that a child may be disabled. Private Evaluation indicated that Student met DSM criteria for ADHD and a specific learning disability in math, but a DSM diagnosis, without a corresponding showing that the child requires special education and related services, do not establish a basis for suspecting an educational disability. Indeed, Private Evaluation did not recommend special education for Student; it recommended exactly the types of general education supports that the School District provided.
4. Further, Student's struggles in maintaining good grades did not suggest that he might be disabled, given that the record demonstrates that his academic struggles flowed from a high number of absences, tardies, and the failure to turn in homework or take make-up tests. When Student took advantage of the supports in the SAC and applied himself, he demonstrated an ability to pay attention in class and to understand the academic content, including in math.
5. Accordingly, the SCO finds no violation by the School District with respect to the IDEA's child find requirements.

B. The School District's Evaluation of Student and subsequent eligibility determination met the IDEA's requirements and is supported by the record.

6. Parents also allege that the School District erred in evaluating Student and determining that he was not an eligible child with a disability under IDEA. The SCO disagrees.
7. The IDEA has specific procedural requirements relating to how school districts are to evaluate students to determine whether they are eligible students with disabilities. Specifically, the school district must:
 - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability;

- b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability;
- c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- d. Ensure that assessments and other evaluation materials are selected and administered without racial or cultural bias, are provided in the child's native language, are valid and reliable, and are administered by trained and knowledgeable personnel;
- e. Select assessments relevant to specific areas of educational need;
- f. Assess the child in all areas of suspected disability;
- g. Make an eligibility determination by a group of qualified professionals and the child's parents.

34 C.F.R. §§ 300.304 - 300.306.

- 8. The School District Evaluation was thorough and comprehensive, and included consideration of a variety of assessment tools, extensive information related to Student's performance over the years on standardized tests, his RTI accommodations over the years, the input of teachers and other staff who worked and interacted with him, Private Evaluation, academic work product, and information provided by Parents. Assessments were appropriate to evaluate Student in the areas of suspected disability, and were administered by individuals who were trained and knowledgeable.
- 9. The only specific challenge made by the Parents related to the sufficiency of the School District Evaluation is that the School District "only gave [Student] 2 of the math subtests from a formal assessment (WC-J III) that has available 4 math subtests and a Broad Math score."⁸¹ The SCO finds that, with all of the other information about Student's math performance and abilities, the administration of two subtests was adequate. The SCO also notes that Student refused to participate in any more testing than the two math subtests administered; accordingly even assuming that there were some deficiency in the School District's administration of the Woodcock-Johnson math subtests, that deficiency was not due to the School District's lack of diligence in conducting a comprehensive evaluation.
- 10. Accordingly, the SCO finds that the School District Evaluation met the requirements of the IDEA. 34 C.F.R. § 300.304.
- 11. Student's eligibility determination, on April 16, 2015, also complied with IDEA. The M-Team was a group of qualified professionals and Student's parents. See 34 C.F.R. § 300.306(a)(1). In addition to Student's general education teachers, the M-Team included Special Education Teacher, Interventionist, and Counselor, who are all

⁸¹ Complaint, p. 5.

certified special educators, and School Psychologist. Parents have raised no issue related to the qualifications or experience of these individuals, nor does the SCO find any.

12. Further, as required by the IDEA, the M-Team, in interpreting the evaluation data, drew “upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behaviors, and ensure that information obtained from all these sources is documented and carefully considered.” 34 C.F.R. § 300.306(c). The M-Team considered the relevant information, all of which was documented, and using the eligibility criteria checklists for OHI and SLD, determined that Student did not qualify as a child with a disability under IDEA.
13. Parents have made no allegation, and the record does not demonstrate, that Parents’ concerns were not heard and considered, that the M-Team failed to discuss or give appropriate consideration to any of the information presented, or that the M-Team’s consideration of Student’s eligibility was in any way improper. Further, the record supports the M-Team’s conclusion that Student’s academic difficulties and low grades were not evidence of an inability to understand or apply academic content, or as the result of attention problems, but rather flowed from missing academic content and instructional support because of numerous absences and tardies, and from the failure to turn in assignments.
14. As such, the SCO has no basis for determining that the School District’s eligibility determination was incorrect. The SCO finds no violation of IDEA with respect to the School District’s evaluation of Student or its determination that he is not an eligible child with a disability.
15. Because the SCO finds no violations, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 20th day of July, 2015.

Wendy A. Jacobs
State Complaints Officer

APPENDIX

Complaint, including Private Evaluation
Response

Exhibit 1: Enrollment forms and related emails

Exhibit 2: Private School transcripts

Exhibit 3: List of School District individuals

Exhibit 4: RTI Plan

Exhibit 5: School District evaluation and related documents

Reply, including emails between School District and Parents

Exhibit 6: Attendance records (requested by SCO)