

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	
[PARENT], on behalf of her son, [STUDENT]; Complainant, vs. BOULDER VALLEY SCHOOL DISTRICT; Respondent.	▲ COURT USE ONLY ▲
	CASE NUMBER: EA 20150027
DECISION	

This decision follows a hearing per the Individuals with Disabilities Education Act (“IDEA”) as described in 20 U.S.C. § 1415 and 34 C.F.R. § 300 and also per the Exceptional Children’s Educational Act (“ECEA”) as described in Section 22-20-101, C.R.S. and 1 CCR 301-8. A hearing was held November 2 and 9, 2015 at the Office of Administrative Courts (“OAC”) before Matthew E. Norwood, Administrative Law Judge (“ALJ”). Kathleen Sullivan, Esq. appeared on behalf of the Respondent (“School District”). The Complainant, the mother of the child in question, spoke for herself. The child will be referred to as “the Student.”

Summary and Procedural Background

The Student is [age] and suffers from traumatic brain injury (“TBI”). His condition causes him to act out verbally and physically. After the student had been asked to leave two schools in Colorado, the student’s mother and the School District identified a special school in [State 1] where he could be educated. The School District agreed to pay for this education as part of his individualized education program (“IEP”). But after a semester, the Student’s mother had the Student return to Colorado. She would like him educated here in the state. Neither party has identified a place where this can be done. The School District asserts that the [State 1] school, or another school in [City], [State 2], is the appropriate place for the student. The ALJ finds and concludes that the School District’s offer of schooling in [State 1] or [State 2] is the offer of a free appropriate public education (“FAPE”). No violation of the IDEA or ECEA has been established.

A number of prehearing motions have been filed in this case. Following the Complainant’s initial July 28, 2015 complaint, ALJ Tanya Light granted the School District’s motion regarding insufficiency of the complaint. On September 8, 2015, ALJ Light ordered the Complainant to file an amended complaint by September 11, 2015,

which she did. Both the original and the amended complaint will be discussed in the findings of fact below.

On October 5, 2015 the Complainant filed a motion for summary judgment. On October 16, 2015 the School District filed a motion to dismiss. These motions were too close to the hearing to be resolved before then and by the decision deadline. The ALJ has instead resolved the matter on the merits.

Findings of Fact

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

1. The Student was born prematurely in [Month] [Year]. After discharge from the intensive care unit he developed brain abscesses. He has experienced volume loss in his left cerebral hemisphere. Exhibit 6, pp. 54-55.¹

2. He suffers from epileptic seizures which are controlled by medication. Early on in his development there were no speech/language development concerns, and speech and language skills are an area of strength for him. He suffers from hemiparesis (weakness) on the right side of his body. He also has asthma and food allergies.

3. In 2011 he experienced allergic fungal sinusitis, requiring prolonged hospitalization and multiple sinus surgeries.

4. The Student likes bowling and he sings in the church choir. He does not require supervision at the bowling alley. On one occasion, he bowled a 300, a perfect score. He has always been interested in the weather and would like to have a career in this area. He is also very interested in and knowledgeable about crickets and grasshoppers.

5. The Student struggles greatly with self-regulation. He becomes anxious in new situations or in transitions and will often curse, threaten and throw things.

6. At the end of sixth grade, the Student began to have behavioral problems at school. The School District paid for an out-of-district placement at the “[Private School #1]” for seventh grade. He attended [Middle School] in the School District for three days in eighth grade before he was suspended for a behavioral incident. After a period of months he transitioned to [High School] with a modified curriculum.

7. At [High School] the Student worked with special educator [Special Educator]. [Special Educator] was sometimes able to redirect the Student when he became upset. Other times, she was not.

8. For ninth grade there was a change in the Student’s one-on-one aide, which had been [Special Educator]. The Student’s mother preferred [Special Educator]. He also began to be hospitalized for his sinusitis. He transferred to [Autism Center] (“[Autism Center]”) in [City], Colorado for that school year. The Student does not suffer

¹ The School District’s exhibits have page numbering with the prefix “BVSD.” This prefix and any initial zeroes will be omitted from any reference by page number.

from autism, however. [Autism Center] is not a School District school and the School District paid approximately \$80,000 for his attendance there.

9. An IEP is defined at 34 C.F.R. § 300.22. The Student's "IEP team," including his mother, met on June 18, 2013. An IEP team is described at 34 C.F.R. § 300.23. Exhibit 2 is a document created at that meeting that memorialized the Student's school of attendance as [Autism Center]. Exhibit 2, p. 3 identifies the Student's disability as TBI.

10. At the meeting, the team agreed to have the Student attend [Autism Center] over the summer, which he did. His stay at [Autism Center] was extended to October 2013. In addition to paying for [Autism Center], the School District also agreed to pay for an analyst, occupational therapy, speech therapy, mental health services and day treatment. Exhibit 3, p. 23.

11. [Autism Center] developed a behavior intervention plan ("BIP") for the Student. Exhibit 4.

12. On August 15, 2013, the Student engaged in physical aggression, verbal threats and property destruction at [Autism Center]. Exhibit 4, pp. 41-51.

13. Sometime after October 7, 2013, pediatric neuropsychologist [Pediatric Neuropsychologist], Psy. D., authored an "Independent Educational Evaluation" of the Student. Exhibit 6. The Student was referred to [Pediatric Neuropsychologist] at the request of his mother. The ALJ has based many of his above findings as to the Student's medical and educational history on [Pediatric Neuropsychologist]'s report.

14. By the time of [Pediatric Neuropsychologist]'s evaluation, [Autism Center] had determined that it would no longer permit the Student to attend. His last day of attendance there was October 18, 2013.

15. As part of [Pediatric Neuropsychologist]'s evaluation, the Student was administered the Wechsler IQ test. He scored a full scale IQ of 61, which is "extremely low." When the Student was [age], he received a full scale IQ score of 49 on the test [].

16. In November 2013, the Student enrolled in [Private School #2] in [City], Colorado. [Private School #2] is also a private school and the School District paid for the Student's enrollment there. The Student's mother helped select [Private School #2].

17. The Student's IEP team met again November 14, 2013. The Student's mother attended by telephone. Exhibit 10 is the document created at that meeting. TBI is again identified as the disability in question. At that meeting the IEP team planned to have the Student continue at [Private School #2].

18. On November 15, 2013 the Student did not want to attend [Private School #2] and so missed the bus. He also let out the dog so that his mother would be too busy and could not take him to school. Nevertheless, the Student's mother drove him to [Private School #2]. Once there, he threw a pipe and a rock at his mother's car and bent the windshield wiper. He hit a staff member in the hand, jamming her fingers and bending a finger back. The Student's mother grabbed him, but he managed to kick the

staff member in her thigh. The Student ultimately got back in the car and did not attend school that day.

19. On November 18, 2013, [Private School #2] staff told the Student's mother that it was not equipped to handle violent students. She was told not to bring the Student to school if he was upset and that the police would be called if there was another incident.

20. On November 19, 2013, the following day, the Student again arrived angry to school. School staff tried to de-escalate the Student using a behavior plan they had for him. Their efforts were unsuccessful. He threw another student's backpack and also threw pumpkins set up as holiday decoration. He threatened to damage property and to kill the head of the school.

21. On November 20, 2013 [Private School #2] staff determined they could no longer have the Student attend and he was dismissed from the school. In making this decision they relied upon the fact that they could not calm him down using the behavioral plan. The Student had apparently attended [Private School #2] the prior year and the school staff had had problems calming the Student that year as well. Exhibit 12, p. 90.

22. [Secondary Services Director] is the Director of Secondary Special Education for the School District.

23. On December 2, 2013, the Student's mother emailed [Secondary Services Director] information about TBI and the Cherry Creek School District. As reflected in exhibit 15, pp. 98-100, that school district has a "TBI team." According to the exhibit, the team can "provide consultation and information to building teams who service TBI students." Exhibit 15, p. 99.

24. [Secondary Services Director] checked with Cherry Creek to see if they could educate the Student, but they would not, because he was not one of their students.

25. [Secondary Services Director] also checked with an organization[s] [] and [] in Benton, Arkansas. Either these locations would not take the Student or were unsuitable for him.

26. The Student's mother then learned about a facility called "[NeuroRehabilitation Center]" in [City], [State 1] and liked it. She emailed [Secondary Services Director] about it. Exhibit 15, p. 105.

27. [NeuroRehabilitation Center] is a high school approved by the [State 1] Department of Education. Exhibit 15, p. 135. It charges approximately \$155,000 for a year of residential instruction. Exhibit 15, p. 128.

28. [Secondary Services Director] also learned about an "[State 2 Private School]" in [City], [State 2]. Exhibit 15, p. 144. It charges approximately \$200,000 for a year of residential instruction. Exhibit 15, p. 161. For reasons that are not clear, [Secondary Services Director] understood that [State 2 Private School] was, in fact, less expensive. Exhibit 15, p. 174.

29. On December 24, 2013 the Student's mother emailed [Director of Special Education], the School District's Director of Special Education, and [Secondary Services Director]. She said that she had pursued all appropriate programs in Colorado and those facilities had said they could not serve the Student. Exhibit 15, p. 167.

30. On January 2, 2014, the Student's mother emailed [Director of Special Education] and [Secondary Services Director] objecting to the fact that the School District school board would have to approve schooling like that at [NeuroRehabilitation Center] or the [State 2 Private School] at its next January 14, 2014 meeting. Exhibit 15, p. 172. [Secondary Services Director] emailed back that the School District would provide reimbursement for any interim services she obtained as well as "compensatory services." Exhibit 15, p. 174.

31. On January 6, 2014 the Student's mother emailed a notice she had discovered that the [State 2] Department of Elementary and Secondary Education had put the [State 2 Private School] on "Probationary Approval" status. Exhibit 15, p. 176. The Student's mother was concerned that the [State 2 Private School] used inappropriate physical restraints. *Id.*

32. On January 16, 2014 the Student's IEP team met. The Student's mother participated by telephone. The team created the document at exhibit 16. The document provides at p. 229 that a residential facility designed to provide instruction with students with TBI is the least restrictive environment ("LRE") for the Student. At p. 230, [NeuroRehabilitation Center] is identified as the appropriate placement. Exhibit 20 is the agreement between the School District and [NeuroRehabilitation Center] to provide residential services for the Student.

33. [NeuroRehabilitation Center] was a special private school with the ability to teach students such as the Student with TBI. The School District's agreement to educate the Student at [NeuroRehabilitation Center] provided him with a FAPE.

34. The School District paid to fly the Student to [NeuroRehabilitation Center] and to also fly the Student's mother to have her stay a night. Exhibit 21, p. 240. On January 22, 2014 the Student's mother emailed [Secondary Services Director] that [NeuroRehabilitation Center] was an "amazing school." Exhibit 21, p. 244.

35. Over the months of March to May 2014, the Student engaged in multiple physical and verbal acts of aggression at [NeuroRehabilitation Center]. Exhibit 22, p. 262. These included throwing objects, breaking a car window and punching and kicking staff. In March of 2014, he visited his mother in Colorado and was aggressive toward her at home. Exhibit 22, p. 268. He visited her again the following month in [City], [State 1], near [NeuroRehabilitation Center].

36. At the same time, the Student was proceeding well academically. Exhibit 22, pp. 266-267.

37. A neuropsychological evaluation was performed at [NeuroRehabilitation Center], which documents further some of the Student's behavioral problems. Exhibit 25.

38. When the Student turned 18 in [Month] 2014 he became eligible for what the Student's mother refers to as the "comprehensive waiver" in Colorado. Exhibit 26,

p. 294. The ALJ understands this to be Medicaid benefits under the home and community based services for persons with intellectual and developmental disabilities at part 4 of article 6 of title 25.5 of the C.R.S.

39. As of April 2014, both the Student and his mother wanted him to return to Colorado. Exhibit 30, p. 322. The Student's mother was hoping that he could return to [Private School #2]. Exhibit 26, p. 304.

40. In early June 2014 personnel at [NeuroRehabilitation Center] moved the Student from the cabin where he had been staying to the "Main House." This apparently was occasioned by some emergency construction at the cabin. This upset the Student's mother. Exhibit 33, pp. 351-356.

41. Later in June, the Student's mother sent an angry email to [a staff member] at [NeuroRehabilitation Center]. Exhibit 33, pp. 357-359. The nature of the underlying dispute is not entirely clear, but appears to relate to the Student's legal ability to sign documents and whether or not the Student's mother participated in "parent training."

42. Exhibit 33, pp. 360-364 is an email chain involving [Secondary Services Director], the Student's mother and [NeuroRehabilitation Center] personnel. As best as can be determined, there was some conflict between the Student and a staff person on a trip to an allergist. The Student somehow interfered with the staff person buying gas and the staff person had threatened to take the Student's ipod away. The Student may also have been upset about the staff person smoking cigarettes. The nurse at the allergist called the Student's mother and said that a new staff person was threatening and intimidating.

43. [NeuroRehabilitation Center] agreed that the staff person should not have dealt with the ipod the way he did, but determined that there was no abuse or neglect. The Student's mother appeared to agree that there was no "trauma." Exhibit 33, p. 383.

44. As of June 18, 2014, the Student was scheduled to return to Colorado June 24. Exhibit 33, pp. 363-364. The Student did come home on that date.

45. The Student's mother emailed [Secondary Services Director] on July 14, 2014 that the Student would not be returning to [NeuroRehabilitation Center] because it was not his "LRE." Exhibit 35, p. 368. "LRE" concerns the extent to which a disabled student is educated with non-disabled students. 34 C.F.R. § 300.114. The distance from home has no bearing on "LRE."

46. [Secondary Services Director] emailed back that same day that the Student's placement would be an IEP team decision of which she was a part. He also wrote that [NeuroRehabilitation Center] would continue to be his school until the IEP team decided differently. Exhibit 35, p. 373.

47. On July 24, 2014 the Student's mother notified the School District of the Student's new address at an apartment in Boulder. Exhibit 35, p. 377.

48. The Student's IEP team, which included [NeuroRehabilitation Center] personnel, met July 31, 2014 to discuss the Student's IEP and to prepare a new IEP document. At that meeting the Student's mother stated that the Student was unsafe at

[NeuroRehabilitation Center]. She was also upset that [NeuroRehabilitation Center] would not pay for the Student to fly back to Boulder. Exhibit 38, p. 412. Both the School District representatives and the [NeuroRehabilitation Center] representatives believed that [NeuroRehabilitation Center] was the right placement for the Student and that no school in Colorado would take him. The IEP team, with the Student's mother dissenting, agreed to maintain the Student's placement at [NeuroRehabilitation Center]. The IEP team created a document setting this out. Exhibits 38 and B.

49. The School District's offer to continue educating the Student at [NeuroRehabilitation Center] gave him and his mother the opportunity for a FAPE.

50. The ALJ specifically finds that the Student's mother's concerns about his safety at [NeuroRehabilitation Center] were not supported. Whether consciously or not, she identified these concerns as a basis to have the Student back home with her in Colorado. In making this finding of fact, the ALJ relies on the rebuttal to the Student's mother's points at Exhibit 35, p. 419 by [Director of Education], the Director of Education at [NeuroRehabilitation Center]. The ALJ also relies on [NeuroRehabilitation Center]'s internal investigation that determined that there was nothing inappropriate in the incident at the doctor's office reported by the nurse. Exhibit 41, p. 424.

51. The School District has not been able to identify a school in Colorado that would agree to educate the Student in Colorado.

52. The Student's mother has not presented any substantive evidence from any school in Colorado that would be willing to educate her son.

53. On August 18, 2014 the Student's mother emailed [Secondary Services Director]. In that email the Student's mother memorialized a statement she had made earlier to [Secondary Services Director] that she requested that the School District pay her in cash what the School District was willing to pay [NeuroRehabilitation Center] for the Student's education. She stated that she would then be responsible for his education. Exhibit 39, p. 421.

54. Over the summer and until April 2015 at the latest, the Student continued to live at the apartment in Boulder with two live-in caregivers provided by the [Agency] (not to be confused with "[Autism Center]") through the comprehensive waiver. Exhibit 42 documents a number of the Student's behavioral incidents with the caregivers over the summer. He pulled his mother's hair and threw a coffee cup in the car in which he was riding. Exhibit 42, p. 425. He knocked over a television. Exhibit 42, p. 426.

55. On August 19, 2014 the Student attended "[Boulder School]" for that day only. Exhibit 42, p. 427. The nature of this school is not disclosed by the evidence, but appears to be part of "day program services" under the comprehensive waiver. On that day the Student cursed at the special education teacher, tore up flowers and was trying to break a tree branch.

56. The Student threatened to shoot his caregiver. Exhibit 42, p. 428. The Student broke his retainer and damaged a ceiling fan. Exhibit 42, p. 429.

57. On October 1, 2014 the Student's mother emailed [Director of Special Education] and [Secondary Services Director] an article she had found that the governor of [State 1] had ordered that no new residents be admitted at [NeuroRehabilitation

Center]. Exhibit 49, p. 459. The attachment describing the order appears at exhibit E. Exhibit E contains only allegations by a disability rights group which [NeuroRehabilitation Center] disputed. There is no finding by any state agency of any wrongdoing by [NeuroRehabilitation Center] in exhibit E.

58. The Student's mother learned of the information reported in exhibit E in October 2014. It played no role in her decision to remove the Student in June.

59. [Secondary Services Director] investigated the basis for the [State 1] governor's action. He determined that there was no threat to the Student based on the issues identified by [State 1] officials.

60. [Director of Special Education] emailed the Student's mother October 2, 2014. Exhibit 49, p. 459. [Director of Special Education] indicated that the School District would be willing to consider the [State 2 Private School] as an alternative. [Director of Special Education]'s email indicated that the School District regarded the Student as no longer enrolled in the School District and that he would have to re-enroll. *Id.*

61. The School District continued to pay [NeuroRehabilitation Center]'s fees over the summer and through September 2014 to maintain a place for him. Exhibit pp. 473-480.

62. In a notice dated October 22, 2014, the School District let the Student and his mother know of a conference on November 10, 2014 to discuss his education. The School District viewed this as a conference only, not a meeting to develop a new IEP.

63. On November 6, 2014, the Student's mother emailed [Secondary Services Director] in response. Exhibit 49, pp. 466-467. She challenged the fact that there was no general education teacher scheduled to be at the conference. The School District's position was that no general education teacher was necessary since the Student had not been recently educated with general education peers.

64. The Student's mother brought a number of supporters to the November 10 meeting.

65. In mid-November 2014, [Secondary Services Director] made inquiries of [State 2] educational authorities to see the status of [State 2 Private School]. [A staff member] of the [State 2] Department of Education wrote back that the [State 2 Private School] was removed from "probationary approval" in September 2012 and placed on "full approval." It was reapproved October 1, 2014. Exhibit 49, pp. 464-465.

66. On November 16, 2014, [Director of Special Education] sent an email to the Student's mother apparently in response to an email of hers dated November 10. Exhibit 52, pp. 483-484. The ALJ has been unable to find a November 10 email from the Student's mother in evidence. [Director of Special Education]'s email set out the history of the Student's placements, and how it had evolved from regular school campus, separate out of district day schools to out of state residential placement. He wrote that residential services were required because there was no program offering the needed educational services in Colorado.

67. [Director of Special Education] went on to state that the Student's mother had requested re-evaluation and another IEP meeting after bringing the Student back from [NeuroRehabilitation Center]. (The ALJ is unaware of any documentation in evidence of such a request.) According to [Director of Special Education], this request was denied because the current evaluation and IEP had accurate services and goals. He wrote that at the November 10, 2014 "IEP" (not a "conference"), [State 2 Private School] was offered and regular school campus placement was denied as inadequate.

68. On March 30, 2015 the School District received a request for records from the St. Vrain Valley School District, [High School in Longmont]. On April 21, 2015, the Student's mother sent an email to the St. Vrain Valley School District to dis-enroll the Student. Exhibit 53.

69. On April 28, 2015, the Student began staying during the week at the [Regional Center] ("[Regional Center]"), in [City], Colorado as a benefit under the comprehensive waiver. This is in the Jeffco School District. On the weekends he would return to his apartment in Boulder.

70. On one occasion Jeffco officials attempted to visit with him at [Regional Center]. The Student became upset and tore branches off of a tree.

71. In a July 8, 2015 email, the Student's mother notified [Secondary Services Director] and a Jeffco official that she intended to enroll the Student in a private school in Colorado at public expense. She did not identify the private school. Exhibit 55, p. 490. The following day, the Student's mother stated that the Student was ready to receive five hours per day of educational services at "[Regional Center]," presumably the [Regional Center].

72. The Student's mother filed a due process complaint dated July 28, 2015. In it she lists 17 alleged violations by the School District. In a September 11, 2015 "Response to Insufficiency Claims," she listed eight complaints. The ALJ will take these in order. He will summarize the complaints in italics and then discuss them:

a. *The School District failed to identify a disability in exhibit 38 (also exhibit B).* (July 28 complaint, no. 1). It is true that no box is checked off in the area of "primary disability." However the parties were always clear that the Student's disability was TBI. This was reflected in other documentation. Technical procedural deviations do not render an IEP invalid. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

b. *The School District failed to conduct assessments/evaluations in relation to the July 31, 2014 IEP, exhibits 38 and B.* (July 28 complaint, no. 2). There is insufficient evidence that new assessment/evaluations were required. [NeuroRehabilitation Center] had been monitoring the Student's progress. Exhibit 34. The Student was proceeding well academically. Exhibit 22, pp. 266-267.

c. *The School District failed to conduct assessments/evaluations in relation to the November 2014 IEP meeting.* (July 28 complaint, no. 3). This was not an IEP meeting in the eyes of the School District. In any case, there was insufficient evidence that new assessment/evaluations were required.

d. *The July 2014 IEP document failed to address all of the Student's needs and failed to offer the Student a meaningful educational benefit.* (July 28 complaint, no. 4, September 11 response, no. 2). There is insufficient evidence to support this allegation. [NeuroRehabilitation Center] was a specialized (and expensive) school trained in dealing with brain injury. Exhibit 34 shows that it was instructing and monitoring the Student in a wide variety of areas.

e. *The School District failed to create a new IEP or modify the July 2014 IEP in November 2014.* (July 28 complaint, no. 5). There is insufficient evidence that the July IEP, which anticipated schooling at [NeuroRehabilitation Center], required any modification.

f. *The School District failed to include a general education teacher at the July 2014 IEP team meeting.* (July 28 complaint, no. 6). A regular education teacher is to be part of the IEP team only if the child is, or may be, participating in the regular education environment. 34 C.F.R. § 300.21(a)(2). This was not the case with the Student. See, *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115 (9th Cir. 2003).

g. *The School District failed to include a general education teacher at the November 2014 IEP team meeting.* (July 28 complaint, no. 7). Again, a regular education teacher was not required.

h. *The School District denied the Student FAPE by predetermining the Student's placement in both the July 2014 and November 2014 IEP meetings.* (July 28 complaint, no. 8). "Predetermination" is a procedural violation and a denial of FAPE when a school district has predetermined a child's placement and does not permit a parent to participate meaningfully. *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604 (6th Cir. 2006). The Student's mother has failed to prove predetermination on the School District's part. [NeuroRehabilitation Center] was originally her choice for placement. There is insufficient evidence that the School District was aware of any other school that could educate the Student with his disability and related behavioral issues. There is insufficient evidence that the Student's mother presented any viable alternative to [NeuroRehabilitation Center].

i. *The School District failed to respond to the parent's notice of intent to enroll the Student in a private school in Colorado at public expense.* (July 28 complaint, no. 9). There is insufficient evidence to support this allegation. Specifically, there is insufficient evidence that the Student's mother proposed any specific school that would agree to take the Student.

j. *The School District failed to respond to the Student's own statement in July 2014 that he wanted to attend a school closer to home.* (July 28 complaint, no. 10). The ALJ has been unable to find this statement in the July IEP document referenced. Exhibits 38 and B. In any case, the School District was not opposed to educating the Student closer to home. It was simply unaware of a facility that would educate him.

k. *The School District failed to include the Student's mother in decisions as a member of an IEP team.* (July 28 complaint, no. 11). That the School

District did not agree with the mother is not the same thing as failing to include her. The School District was diligent in responding to the mother's emails and did include her in IEP team meetings. The School District determined that [NeuroRehabilitation Center] was the proper placement. The Student's mother did not present any viable alternative to this placement.

l. *The School District failed to review each of the Student's goals, as a team, during the July 2014 IEP meeting.* (July 28 complaint, no. 12). Exhibit 38, pp. 395-406 contains detailed goals and short term objectives. At that meeting the Student's mother stated that the majority of the goals had been met and that the Student should be sent back to Colorado. Exhibit 38, p. 387. The ALJ finds that this allegation is unproven.

m. *The School District "denied [the Student] a FAPE by not amending, modifying or drafting any prior written notices regarding the decisions made during the November 2014 IEP meeting."* (July 28 complaint, no. 13, September 11 response, no. 4). The ALJ does not really understand this allegation. The School District's position is that the November 2014 meeting was a "conference," not a full-blown IEP team meeting. Twenty USC § 1415(b)(3)(B) requires prior written notice to a parent when a school district refuses to initiate or change, "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child." Whether it was a conference or an IEP meeting, the notices at exhibit 51 substantially complied with the notice requirements at 20 USC § 1415(c)(1) and 34 C.F.R. § 300.322(b).

n. *The School District denied the Student a FAPE by only offering [NeuroRehabilitation Center] or the [State 2 Private School].* (July 28 complaint, no. 14, September 11 response, no. 1, 3, 6 and 7). This is the fundamental complaint. This case is unusual in that a typical dynamic in an IDEA dispute concerns a parent that wants to educate a student at an expensive private school, and a school district resisting this. *See, for example, Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008).

In this case the School District acquiesced to the specialized out of state school. There is therefore no real dispute that a FAPE was provided. The Student's mother does not really challenge the academic program at [NeuroRehabilitation Center]. The ALJ finds that her safety concerns are unfounded and, in reality, a rationalization to have her son back with her in Colorado. This is an understandable emotion from a parent. This wish is evidenced in April 2014 at Exhibit 30, p. 322. This was before the incident at the allergist and before the action by the [State 1] governor. But to the extent that [NeuroRehabilitation Center] was concerning, the School District offered the [State 2 Private School] instead.

The School District had worked through various possible placements over time and had come to believe that only [NeuroRehabilitation Center] or [State 2 Private School] could educate the Student with his behavioral issues. The record very clearly supports this determination. Both [Autism Center] and [Private School #2] had rejected the Student because of his behavior. The Student's one day at [Boulder School] demonstrates that his behavioral issues continued into the summer of 2014.

On the other hand, the Student's mother proposed no alternative; it was her position that the School District should simply find some school like [NeuroRehabilitation Center] in Colorado. The evidence fails to establish that such a school exists. There is also no reason to believe that the School District would refuse to pay for the Student's attendance, if it could find such a school. The School District had shown its willingness to pay the very expensive tuition [NeuroRehabilitation Center] required.

o. *The School District implemented a significant change of the Student's placement without convening an IEP meeting in July 2014.* (July 28 complaint, no. 15). There was no such change of placement, at least not implemented by the School District. The School District wanted to maintain the Student at [NeuroRehabilitation Center]. The Student's mother removed him from that location.

p. *Private school in Colorado is appropriate, rather than out-of-state.* (July 28 complaint, no. 16). This may be the case, but the School District has not found and the Student's mother has not identified such a school in Colorado. The two private schools in Colorado, [Autism Center] and [Private School #2] refused to serve him in light of his behavior.

q. *Community based residential services are appropriate in Colorado.* (July 28 complaint, no. 17). This may also be true, but there is insufficient evidence that such services are available.

73. In her September 11, 2015 response, the Student's mother identifies "Accelerated School" as a location for her son. No evidence was presented, however, about Accelerated Schools.

74. At all pertinent times the School District offered a FAPE to the Student. The School District's IEP substantially met procedural requirements. The Student's July 2014 IEP document setting out education at [NeuroRehabilitation Center] was reasonably calculated to enable the Student to receive educational benefits.

Conclusions of Law

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

1. A FAPE is available to all children with disabilities between the ages of three and 21. 20 U.S.C. § 1412(a)(1)(A).

2. The burden of proof in an administrative hearing challenging an individualized education program is properly placed upon the Student's mother, the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005).

3. The School District argues that it is no longer responsible for the Student now that he is living, at least most of the time, at [Regional Center] in Jefferson County. Whatever the significance of this fact, the School District was responsible for his education before then. Had it denied a FAPE during that period, the ALJ would have discretion to grant equitable relief. 20 USC § 1415(i)(2)(C)(iii). Compensatory education can be awarded even to students who have aged out. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712 (3d Cir. 2010).

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

5. The ALJ concludes that no violation of the IDEA or ECEA has been established.

6. Any party aggrieved by the findings and decision of the ALJ has the right to bring a civil action consistent with the requirements set forth in 34 C.F.R. § 300.516.

DONE AND SIGNED

November 17, 2015

MATTHEW E. NORWOOD
Administrative Law Judge

Exhibits admitted:

For the School District: Exhibits 1-6, 8-22, 24-31, 33-35, 37-42 and 44-55.

For the Complainant: Exhibits A-I.