STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	
[FATHER] and **[MOTHER],** Complainants, vs. **WELD COUNTY SCHOOL DISTRICT 6,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **EA 2016-0003**

DECISION

Complainants, on behalf of their son, [Student] ("[Student]"), filed a due process complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.,* as implemented by federal regulation 34 CFR § 300.510 and state regulation 1 Colo. Code Regs. 301-8 § 6.02(7.5). Hearing was held on April 13 through 15, 2016, before Administrative Law Judge ("ALJ") David S. Cheval at the Office of Administrative Courts ("OAC") in Denver. Igor Raykin, Esq. represented Complainants. Elizabeth Friel, Esq. and Meghan Pound, Esq. represented Weld County School District 6. The hearing was conducted in courtroom two. Susan Bretschneider transcribed the hearing.

The following exhibits were admitted, without objection: Complainant's Exhibits: B, C, E, F, G, H, I, L, S (at 4, 17, 19, 33, 37, 44, 72, 79, 80, 81 & 101), T (at 2, 3, 61, 62, 63, 76, 80, 96, 98, 112, 113, 143, 144, 146, 149, 153, 170, 186, 192, 193, 195, 199, 201, 211, 280), U (at 1, 62, 63, 68, 86, 89 & 144), V (at 4, 13 & 27), W (at 14), Y (at 14, 31, 32 & 59) and DD. District's Exhibits: 1, 3, 4, 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20 (at 1, 4, 5, 6, 8, 14, 27, 28, 29, 31, 33, 35, 36, 38 - 43), 22 & 23.

The following exhibits were offered but not admitted: Complainants Exhibits: K and S at 83. District Exhibit 21.

Preliminary Matter

During a prehearing conference held on March 29, 2016, the parties agreed that the District's threat assessment process and the conclusions drawn by [Student]'s threat assessment team are valid. Evidence of the threat assessment process and conclusions drawn may be offered at hearing but not challenged by the Complainants.

Findings of Fact

1. [Student] is an [age] student who resides in Weld County School District 6 ("District").

2. [Student] was identified as a student with a serious emotional disability ("SED").

3. On October 28, 2013, an Individualized Education Program ("IEP") meeting was convened to establish [Student]'s IEP. Ex. 3.

4. [Student] was enrolled at [High School 1] at the time the October 28, 2013 IEP was developed. *Id*. at 1.

5. [High School 1] provides an online curriculum with teacher support that can be accessed at home or at the [High School 1] building in the District.

6. The October 28, 2013 IEP indicated that "[Student] is performing in the proficient and advanced areas in all academic areas as measured on the CSAP/TCAP standardized assessments." *Id*. at 3.

7. When addressing "Student Needs and Impact of Disability," the October 28, 2013 IEP indicated the following:

> [Student]'s difficulties to regulate his emotions and manage his anxiety often results in oppositional and defiant responses with adults and peers that can be threatening and explosive. These behaviors impact his ability to access his educational environment without additional accommodations and modifications and a behavior intervention plan to teach prosocial behaviors. *Id*. at 4.

8. The October 28, 2013 IEP included 30 minutes per month in indirect services. Specifically, the IEP included, the following:

> A School Psychologist with a relationship with [Student] will check in with teachers, parents, and [Student] to consult with behavioral strategies and progress in using emotional coping strategies learned in therapy for a total of 30 minutes per month. *Id*. at 8.

9. The October 28, 2013 IEP indicated that [Student] was to be in the general education class "at least 80% of the time." *Id*.

10. In conjunction with the October 28, 2013 IEP, a Behavioral Intervention Plan ("BIP") was also developed. *Id*. at 10-12.

11. On November 29, 2013, [Psychologist 1] completed a psychological evaluation of [Student].

12. [Psychologist 1] made the following DSM 5 diagnoses as part of the evaluation: Major Depressive Disorder, recurrent, with mixed anxious and depressive features; Social Anxiety Disorder; and, Post-Traumatic Stress Disorder. Ex. 4 at 10.

13. [Student] is not currently taking any medications to treat his symptoms.

14. [Psychologist 1] recommended that [Student] continue with weekly individual therapy focusing on "Cognitive-Behavioral Therapy and Dialectical Behavior Therapy to re-metabolize unhealthy thinking patterns, and to provide effective anger reduction and management strategies." *Id*.

15. On January 14, 2014, [Student] was involved in an incident with his girlfriend at school. [Student] and his girlfriend had an argument and a teacher observed [Student] using inappropriate language, defiant behavior toward the teacher and aggressive behavior toward [Student]'s girlfriend. *See* Ex. 5 at 1.

16. Because [Student] was on an IEP at the time, a manifestation determination was completed.

17. The team determined that the behavior [Student] exhibited on January 14, 2014 "was caused by or had a direct and substantial relationship to [[Student]'s] disability." *Id*. at 3.

18. [Student] enrolled at [High School 2] ("[High School 2]") at the start of the 2014-15 school year.

19. On October 20, 2014, [Student]'s IEP team met to review/update his IEP. Ex. 6.

20. The October 20, 2014 IEP indicated that [Student] was a "social high schooler" who played football, wrestled and ran track. The IEP indicated that [Student] gets along with other students and respects his teachers. He was described as "a great student" by teachers and he was "successful academically and socially in class." *Id*. at 4.

21. When addressing "Student Needs and Impact of Disability," the October 20, 2014 IEP included the same language as the October 28, 2013 IEP, with the following addition: "He has not exhibited any of the listed behaviors this semester." *Id*. at 5.

22. The October 20, 2014 IEP included 30 minutes *per year* in indirect special education related services. Specifically, [Student] had "access to the school psychologist as needed to fulfill his self advocacy goal." *Id*. at 9.

23. The October 20, 2014 IEP indicated that [Student] was to be in the general education class "at least 80% of the time." *Id*. However, the IEP also stated that [Student] would be placed in the general education environment 100% of the time.

24. On January, 23 2015, [Student] was hospitalized after attempting suicide by taking an overdose on medication.

25. [Student] was discharged from the hospital on January 28, 2015 and he returned to [High School 2] in February, 2015.

26. Upon discharge from the hospital, [Student] developed a safety plan. Ex. 7.

27. [School Counselor] is a school counselor at [High School 2].

28. As a school counselor, [School Counselor] provides students with academic, career and social/emotional supports.

29. [School Counselor] is [Student]'s counselor.

30. [School Counselor] and other staff at [High School 2] were aware of the hospitalization and reason for the hospitalization.

31. Upon his return to [High School 2], [School Counselor] had a "re-entry meeting" with [Student]. During the meeting [School Counselor] and [Student] reviewed the safety plan to make sure it was appropriate in the school setting.

32. The "Action Plan" in the safety plan indicated that [Student] will talk to a teacher, administrator or counselor when triggered. *Id*. at 3.

33. After [Student] returned to [High School 2], there was no change in [Student]'s IEP, including the 30 minutes per year [Student] was provided to consult with the school psychologist.

34. On May 14, 2015, [Student] met with [School Counselor] and told her that he was upset about his grade in chemistry. [Student] claimed that "his low grade" was his teacher's fault because she would not help him. Ex. 10 at 12.

35. [Chemistry Teacher] was [Student]'s chemistry teacher during the spring 2014-15 semester.

36. During the discussion with [School Counselor] on May 14, 2015, [Student] "became increasingly agitated" and used curse words during the discussion. *Id*. During the conversation, [Student] said "something to the effect of [[Chemistry Teacher]] better watch out because I'm going to lose it.'" *Id*.

37. [Assistant Principal] is currently an Assistant Principal at [High School 2] and has been in that position for the past five years.

38. [Assistant Principal] has over 15 years experience working in education and has worked as a classroom teacher and dean of students.

39. [Assistant Principal] is not a special education teacher. However, she describes her knowledge of special education as "medium high."

40. [Assistant Principal] is familiar with the IEP process and specifically with [Student]'s IEP.

41. [School Counselor] and [Assistant Principal] met with [Student] later in the day on May 14, 2015. During this conversation, [Student] described his feelings about [Chemistry Teacher] to [Assistant Principal]. In [School Counselor]'s opinion, [Student] "appeared just as agitated and worked up as [he] had earlier." *Id*.

42. [School Counselor] received a follow-up email from [Student] in which [School Counselor] "gathered he was feeling better and hopeful about his Chemistry grade." *Id*.

43. On May 18, 2015, [Student] was disrupting his chemistry class and being disrespectful to [Chemistry Teacher].

44. [Student] refused to leave the classroom and asked [Chemistry Teacher] to call [Assistant Principal] to the classroom.

45. Both [Assistant Principal] and [School Counselor] went to [Chemistry Teacher]'s classroom after [Assistant Principal] received the call from [Chemistry Teacher].[1]

46. [Assistant Principal] went to [Chemistry Teacher]'s classroom to, in [Assistant Principal]'s words, "support a student" ([Student]).

47. When [Assistant Principal] arrived at [Chemistry Teacher]'s classroom, [Student] was highly agitated. [Assistant Principal] convinced [Student] to leave the classroom. When [Student] left the classroom, according to [School Counselor], he "slammed the classroom door open and then punched the walls in the hallway." *Id*.

48. According to [Assistant Principal], [Student] punched the walls "repeatedly."

49. [Assistant Principal], [School Counselor] and [Student] went to the main office to discuss the situation. During the discussion, [Student] stated that [Chemistry Teacher] "called me out in front of everyone." [Student] said on several occasions that "[[Chemistry Teacher]] can't disrespect me like that" and "I have a right to be in there. … I have a right to my education."

50. [Assistant Principal] described [Student] as having his fists clenched, breathing very hard as he looked angry, agitated and upset when he was in her office.

51. [Student] refused to follow any suggestions at de-escalating his agitation and

1 [School Counselor] wrote a detailed report of the May 18, 2015 incident and events leading up to the incident. *See* Ex. 10 at 12-14.

he walked out of the office. He walked down the hallway punching the walls and lockers. [School Counselor] and [Assistant Principal] followed [Student] to make sure he and others were safe.

52. [Student]'s mother, [Mother], was working as a para-educator at [High School 2] on May 18, 2015. After being informed of the incident, [Mother] came out of her classroom and attempted to calm [Student] down.

53. [School Counselor] recorded this interaction, in part, as follows:

> [Student] appeared to become more worked up as he spoke with his mom and [Assistant Principal]. [[Student]] eventually said, "She [[Chemistry Teacher]] better not come near me or I'll punch her in the face." Ex. 10 at 13.

54. [Psychologist 2] is the Lead School District Psychologist for the District and the in-house school psychologist at [High School 2].

55. [Psychologist 2] is qualified to render an opinion on psychology based on her training and experience. *See* Ex. 23 ([Psychologist 2] Resume).

56. [Psychologist 2] knew [Student] and had knowledge of his IEP on May 18, 2015.

57. [Psychologist 2] contacted staff shortly after the incident occurred. [Psychologist 2] recorded, in part, the following observations that were made by school staff on May 18, 2015:

> The incident was disruptive and [Assistant Principal] was called to the classroom. As [[Student]] left the classroom [Student] slammed the door and punched the wall in the hallway. [Student] threatened to punch [Chemistry Teacher] in the face and left [School Counselor]'s office and began punching lockers and walls. Despite intervention with multiple staff members [Student] continued to escalate. He refused to follow staff directives to stay in a safe place, or to come back to the office when asked by staff. During his interactions with various staff that day [Student] was noted to put his feet on the assistant principal's desk with his arms crossed and rock in his chair and continued to give a time limit to answering questions. He made the following statements: "I don't have to do anything", "I have a free pass", "I'm above the rules", "no one is going to stop me", "I don't respect authority" and "I am never o.k.". During his interactions that day other staff members felt intimidated and threatened by [Student]'s "posturing", "looks"' and comments. Ex. 10 at 11. *See* Ex. T at 3 ([Chemistry Teacher]'s statement).

58. [Student] described the incident with [Chemistry Teacher] as "a little tiff."

59. [Student] denies slamming the wall.

60. [Student] contends that he was given permission to punch the walls.

61. [Student] denies most of the behaviors [Assistant Principal] contends she witnessed following the incident in [Chemistry Teacher]'s classroom.

62. [Student] was previously suspended for three days on September 19, 2013.

63. When asked about the September 2013 suspension, [Student] testified, as

follows: “I honestly don’t remember that.”

64. [Student] was suspended for three days on October 30, 2013.

65. When asked about the October 2013 suspension, [Student] testified, as follows: “I don’t remember any behavioral issues that year.”

66. [Student] was suspended for five days on January 15, 2014.

67. When asked about the January 2014 suspension, [Student] testified, as follows: “I don’t remember.”

68. Following the incident at [High School 2], [Student] was suspended for three days, starting on May 18, 2015.

69. Notice of the suspension was recorded in Infinite Campus. Ex. F 2. The incident detail was listed, as follows: “The student made threats and displayed intimidating behavior.” *Id*.

70. The last day of school was May 20, 2015.

71. [Student]’s IEP did not include a provision for extended school year services.

72. After being informed of the suspension, [Student] sent the following e-mail to [Assistant Principal]:

> I’ll be taking my finals tomorrow like I should be. You may NOT suspend me without cause or I will take it to the big wigs. You’re disregarding my education because YOUR teachers don’t know how to behave. According to the school board a suspension must be activated same day before school ends. It was not, but hey you’ve already let us down once….

73. [Student] was allowed back in the building to take his final exams with [Assistant Principal].

74. Under District policy, when a student threatens a teacher, student or staff, a threat assessment is completed to determine whether the student who made the threat is a threat to self or others. *See* Colo. Rev. Stat. § 24-10-106.3 (Claire Davis School Safety Act).

75. Both [Student] and his mother were notified that a threat assessment was going to be completed.

76. [Student]’s threat assessment team consisted of fifteen [High School 2] staff members.

77. The threat assessment team met on May 22, 2015 at [High School 2]. During the meeting a “Full Team Threat Assessment Protocol” was completed. *See* Ex. 10 & Ex. 20 at 42.

78. [Director of Safety] is the Director of Safety and Security for the District.

79. [Director of Safety] retired from the [City], Colorado Police Department as a Sergeant after 25 years in law enforcement.

80. [Director of Safety] is unfamiliar with the IEP process or special education in general.

81. [Director of Safety] was unaware that [Student] had an IEP.

82. [Principal] is the Principal at [High School 2].

83. [Principal] worked as a classroom teacher (4 years), dean of students (1 year) and Assistant Principal (7 years) prior to becoming the Principal at [High School 2] three years ago.

84. [Principal] has what she describes as "practical knowledge" of special education and the IEP process.

85. Over the years, [Principal] has been the member of "many"' IEP teams.

86. Both [Director of Safety] and [Psychologist 2] were members of [Student]'s threat assessment team.

87. The initial data for the threat assessment team to consider consisted of post incident interviews conducted by [School Counselor], [Assistant Principal] and [Psychologist 2]. *See* Ex 10 at 1.

88. After completing the threat assessment, the full team found that [Student] raised a "[m]edium degree of concern" with respect to harming himself or others. Ex. 10 at 6.

89. The District Threat Assessment form describes a medium threat as follows:

> A threat which could be carried out, although it may not appear entirely realistic. The team has moderate, ongoing concerns about the student's motivation to carry out the threat warranting district consultation and/or request for external support resources in addition to school-based interventions. *Id*. at 7.

90. Following the completion of the threat assessment team meeting, [Principal] drafted a letter that outlined the incident and the team's conclusions. The letter included, the following:

> The [threat assessment] team recommends and requires that [Student] engage in services provided by [Mental Health Service Provider 1] or a licensed therapist of your choice. … The team agreed that [Student] fully engage within the mental health services during the summer of 2015 in order to be considered for fall enrollment at [High School 2]. … After engaging in services another assessment meeting will take place in August (prior to the start of school) to re-evaluate his progress with [Mental Health Service Provider 1] services. At this re-evaluation meetings (sic) [Student] must provide [Mental Health Service Provider 1] documentation of progress or sign off on the appropriate paperwork for [Mental Health Service Provider 1] to speak to [High School 2] about his progress. Ex. 10 at 17.

91. [Mental Health Service Provider 1] ("[Mental Health Service Provider 1]") was listed as the mental health service provider at the request of [Mother].

92. The letter was later revised and all references to [Mental Health Service Provider 1] were removed. The revised letter included a recommendation that "[Student] engage in services provided by a licensed therapist of [his] choice." Ex. 10 at 18.

93. [Director of Safety] opined that the threat assessment team "felt strongly that counseling was necessary" prior to allowing [Student] to return to school.

94. [Director of Safety] stated that "the threat assessment team does not determine placement in an IEP."

95. [Director of Safety] explained that threat assessment team recommendations are binding on non-special education students. However, for students, like [Student], with an IEP, the IEP team "can trump" any threat assessment team recommendation when deciding placement.

96. [Director of Safety] explained that the threat assessment team considers a number of factors when completing an assessment, including lack of remorse, lack of accountability and prior threats of violence.

97. The Complainants do not challenge the District's threat assessment process or the results and conclusions reached by [Student]'s threat assessment team.

98. Sometime in early June, [Principal] met with [Student] and his mother to discuss counseling and whether [Mental Health Service Provider 1] "would be a match."

99. During the meeting, [Student] became agitated; he took the car keys from his mother's purse and left the meeting.

100. [Principal] described [Student] as exhibiting aggressive behaviors during meetings.

101. On June 8, 2015, [Student] sent the following e-mail to [Assistant Principal]:

> I need answers and I need some now. Who the hell do you think you are threatening to take away school from me. I need to know whether I'm staying at this ghetto ran school so I can bring your athletic program up or if you're going to boot me out and I sue the shit out of you. Do I continue going to weights or not. I need answers now because then I can actually plan. I'm not waiting until august for yall to tell me what my future is. It's illegal to blackmail a minor just an FYI.
>
> Reply is expected unless you are going to pass it off like usual as an administrative team.
>
> And I'll come in tomorrow and ask if I don't get a response because I NEED answers. I'm sick of responsible adults. Ex. 20 at 4.

102. After receiving the e-mail, [Assistant Principal] was concerned that [Student] would come to the school the following day. [Assistant Principal] decided to stay home on June 9, 2015.

103. [Assistant Principal] forwarded the e-mail to [Principal] who, in turn, sent the e-mail to [Director of Safety] to get his advice on how to respond.

104. [Director of Safety] provided the following response:

> This is a pretty standard [Student] response. I would respond only to address the weights issue and nothing else. I am out tomorrow. If he should come in, I would summon [the [City], Colorado Police Department] just to keep everybody safe. I am around Wednesday. Ex. T at 61.

105. On, or about, June 8, 2015, [Principal] was notified that [Student] cancelled his intake appointment at [Mental Health Service Provider 1] (scheduled for June 10, 2015) because "[Student] refuses to go and doesn't believe he needs counseling." Ex. T at 76. [Principal] sought guidance from [Director of Safety] on how to proceed.

106. On June 9, 2015, [Director of Safety] advised [Principal], in part, as follows:

> We couldn't actually expel if he doesn't go to counseling, but I think we need to tell her that right now. I would let her know that the threat assessment done on May 21 strongly recommended [Mental Health Service Provider 1] counseling. I think they need to know pretty firmly that no status change between now and the first day of school could result in [Student] beginning the school year on homebound instruction. Ex. T at 80.

107. [Director of Safety] testified that the threat assessment team considered homebound instruction as an alternative to allowing [Student] to return to school if he didn't comply with the requirement that he actively engage in counseling over the summer. [Director of Safety] stated that homebound "was merely a recommendation" for the IEP team to consider when it convened prior to the start of school.

108. [Director of Safety] also stated that "a number of people at the school are physically afraid of [Student]."

109. On June 10, 2015, [Mother] sent, in part, the following e-mail to members of the JROTC program at [High School 2]:

> We were told that [Student] won't be allowed back to [High School 2] if he doesn't go to counseling during the summer. [Student] doesn't feel he needs counseling at this point and won't go. So far as [Principal] is concerned, he goes or he can't return to school! This evening we met with a recruiter from the Marines ([Recruiter]) and were told that the Marines would not even consider him because he had a suicide attempt. [Student] is devastated, he said he is giving up, he won't be allowed back to school, so he won't be able to play football, and since he can't get into the Marines he said I guess that's it for JROTC! …
>
> Ex. 20 at 5 & 6.

110. After receiving the e-mail from [Mother], one of the recipients of the e-mail, [JROTC Instructor], forwarded the e-mail to [Assistant Principal] and [Principal]. [JROTC Instructor]'s e-mail also included, in part, the following:

> I wanted to forward this to you before acting on anything since I believe there are serious red flags here that seem to indicate [Student]'s increased likelihood of hurting himself…and maybe others.

111. The threat assessment team met on July 31, 2015 to discuss [Student]'s refusal to participate in counseling. The team left the condition of counseling in place and discussed the possibility of homebound instruction if [Student] did not actively engage in counseling before the start of the 2015-16 school year.

112. [Student] was allowed to participate on the football team over the summer.

113. The threat assessment team believed that [Student] would benefit from participation in football.

114. [Director of Safety] believed that [Student] would be closely supervised while participating in football due, in part, to the high ratio of coaches to players at practice and games. In addition, [Student] had the support of the football coach.

115. The threat assessment team was hopeful that [Student] would fully engage in counseling over the summer and his participation in football during the school would not

be an issue.

116. [Licensed Professional Counselor 1] is a Licensed Professional Counselor and is currently in private practice and employed at [Mental Health Service Provider 2] as a crisis therapist.

117. [Licensed Professional Counselor 1] started working with [Student] on August 11, 2015 and he conducted a mental health assessment of [Student] on August 11 and 12, 2015.

118. A release of information was signed allowing [Licensed Professional Counselor 1] to provide [Psychologist 2] information related to [Student]'s treatment "including information contained in treatment records." Ex. 11 at 2.

119. On August 12, 2015, [Licensed Professional Counselor 1] submitted a letter to [Psychologist 2] informing her that a mental health evaluation was completed. [Licensed Professional Counselor 1] notified [Psychologist 2], as follows: "Based on client's self report, collateral information gained from his mother, and results from the evaluation, [Student] does not appear to be at risk of harm to self or others at this time." Ex. 11at 1.

120. [Licensed Professional Counselor 1] subsequently learned from [Psychologist 2] the details of [Student]'s behavior that led to his suspension from school. It does not appear as though [Student] fully disclosed the details of the May 18, 2015 incident to [Licensed Professional Counselor 1].

121. On August 14, 2015, the threat assessment team met to consider the letter from [Licensed Professional Counselor 1]. After considering the letter, the team left the condition of counseling in place and discussed the possibility of homebound instruction if [Student] did not actively engage in counseling before the start of the 2015-16 school year.

122. [School Counselor] stated that [Student] was disrespectful during the meeting. He and his mother were making disparaging comments about people in the room during the meeting.

123. On August 19, 2015, [Student]'s IEP team met to develop [Student]'s IEP for the 2015-16 school year.

124. August 19, 2015 was the first day of the 2015-16 school year. Freshman orientation was held on the 19th and all students were scheduled to report on August 20, 2015.

125. [Director of Special Education] is the Director of Special Education for the District.

126. [Director of Special Education] is qualified to render an opinion on special education matters based on his training and experience. *See* Ex. 22 ([Director of Special Education] Resume).

127. [Director of Special Education] knew that [Student] was involved in a threat assessment and was a student with a disability who had an IEP.

128. There are 2,236 students in the District with IEPs.

129. [Student] was the first student [Director of Special Education] was aware of who was found to be a threat by a threat assessment team and who also had an IEP.

130. Prior to the August 19, 2015 IEP team meeting, [Director of Special Education] sought guidance "from legal" to ensure that the District was following the proper procedures with [Student].

131. [Director of Special Education] was provided with, and reviewed, a copy of a state complaint decision from the Colorado Department of Education that addressed the same issue. Ex. 19.

132. The following people were members if [Student]'s IEP team on August 19, 2015:

1. [Student]
2. [Special Education Teacher 1] – Special Education Teacher/Provider
3. [Special Education Teacher 2] – Special Education Teacher
4. [Assistant Principal] – Assistant Principal
5. [Mother] – Mother
6. [Psychologist 2] – School Psychologist
7. [Director of Special Education] – Director of Special Education for the District

133. During the August 19, 2015 IEP meeting, the team considered, among other things, the following:

a. A confidential social/emotional report that was completed by [Psychologist 2] on August 18, 2015. Ex. 13 at 5-13 (this portion of Ex. 13 is filed under seal at the request of the Complainants).

b. A Functional Behavioral Assessment ("FBA") that was completed by [Psychologist 2] in August 2015.[2]

c. A Behavior Intervention Plan ("BIP"), dated 8/19/15.

d. The letter from [Licensed Professional Counselor 1] and information from follow-up discussions with [Licensed Professional Counselor 1].

e. The recommendation from the threat assessment team that [Student] be placed on homebound instruction until he actively engages in counseling, with a 45 day review.

134. [Director of Special Education] stated that the IEP team considered the letter from [Licensed Professional Counselor 1] at the August 19, 2015 IEP meeting.

135. [Director of Special Education] stated that the team considered having a para-professional shadow [Student] while he was at school. This option was "instantly rejected by [[Student]'s] family."

136. During the meeting [Psychologist 2] informed the IEP team that she discussed the letter with [Licensed Professional Counselor 1] prior to the IEP meeting and [Licensed Professional Counselor 1] no longer supported the conclusion he reached in the letter.

137. [Psychologist 2] did not complete a formal functional behavioral assessment of [Student] during the 2014-15 school year.

138. [Psychologist 2] opined that where, as here, the function of [Student]'s behaviors is obvious, there is no need to complete a formal assessment.

139. [Psychologist 2] stated that she "had lots of data" and "frequent communication with [Mother]" regarding [Student] and his behaviors.

2 The Functional Behavioral Assessment is embedded in the Behavior Intervention Plan.

140. When compiling the Social/Emotional Evaluation, [Psychologist 2] recorded behavioral observations and had [Student] complete a Behavior Assessment Scale for Children ("BASC") – Self-Report of Personality.

141. In summary, the IEP team noted, the following: "Behaviorally, [Student] has had some incidents since transferring to [High School 2]. There continue to be concerns around defiance, difficulty with authority, and safety concerns." Ex. 13 at 4.

142. The IEP team proposed the following change in services on August 19, 2015:

> The changes made to present levels reflect the recent social emotional evaluation completed by [Psychologist 2]. The team discussed the report and there continue to be concerns about [Student]'s ability to maintain calm in the public school setting. The threat assessment team made a recommendation due to medium to high levels of concern that [Student] receive his instruction in home bound placement at this time.
>
> …
>
> Service change due to the school's threat assessment team's concern for safety, services will be delivered through home bound instruction.
>
> The changes made to the FBA, BIP and Crisis Plan reflect recent information from the threat assessment team and social emotional evaluation, which show [Student]'s behavior does have the potential to produce harm.

143. In [Director of Special Education]'s opinion, homebound instruction "made sense." [Director of Special Education] believed that homebound "would be a temporary intervention" that would allow [Student] to follow the instruction from his classes, including the following same curriculum, and getting the same assignments and tests as his peers in the classroom. [Director of Special Education] believed that this intervention would allow [Student] "to seamlessly return to class."

144. [Assistant Principal], [Psychologist 2] and [Director of Special Education] all testified that the IEP team considered the threat assessment team's recommendation regarding homebound instruction and all agreed that the decision to deliver services through homebound instruction was made by the IEP team on August 19, 2015.

145. [Assistant Principal] and [Psychologist 2] stated that the IEP team considered alternates to homebound instruction including [High School 1] and Edgenuity (an online curriculum).

146. According to [Psychologist 2], [Mother] rejected any online instruction option.

147. [Assistant Principal] believed at the time that homebound instruction was better than online because she believed [Student] would eventually return to the school and homebound instruction follows the same curriculum, schedule and pace of learning as the in-school classes [Student] was registered to take.

148. Under District policy a student on homebound instruction is not allowed to participate in extracurricular activities. *See* Ex. T at 280.

149. The threat assessment determined that [Student] could continue to participate in football with a safety plan in place.

150. [Student] also asked to attend homecoming activities. That request was denied.

151. [Director of Safety] explained that the ratio of supervision at the homecoming dance ranges from 3 to 10 adults for 200 students.

152. [Assistant Principal] developed a safety plan to allow [Student] to continue playing football. Ex. 10 at 15-16.

153. [Assistant Principal] stated that [Student] "was having trouble with multiple teachers."

154. [Student] was removed from another class during the 2014-15 school due to conflict with a teacher.

155. This class transfer was never documented in [Student]'s disciplinary record.

156. The threat assessment team met on September 2, 2015 to consider updated information from [Student] and to discuss [Student]'s participation in counseling. [Licensed Professional Counselor 1] attended the meeting.

157. [Licensed Professional Counselor 1] informed the team that he did not have a complete understanding of [Student] at the time he wrote the letter to [Psychologist 2] on August 12, 2015 and he could no longer support the position he took in the letter regarding [Student]'s risk to self or others.

158. [Licensed Professional Counselor 1] did not render an opinion as to whether [Student] was a risk of harm to self or others.

159. During the September 2, 2015 threat assessment meeting, [Licensed Professional Counselor 1], in his words, "expressed surprise and concern about the tenor of [an e-mail sent by [Student] to school staff]."

160. [Student] terminated his relationship with [Licensed Professional Counselor 1] after the September 2, 2015 threat assessment meeting.

161. Following the September 2, 2015 threat assessment meeting, the team continued to recommend continued homebound instruction if [Student] did not actively engage in counseling.

162. [Licensed Professional Counselor 2] is a Licensed Professional Counselor and is currently employed by [Mental Health Service Provider 1].

163. [Licensed Professional Counselor 2] first met with [Student] at an intake meeting on September 14, 2015. The purpose of the intake meeting was to develop treatment goals.

164. [Licensed Professional Counselor 2] met with [Student] a total of eleven sessions. The sessions lasted between 30 and 50 minutes in length.

165. [Licensed Professional Counselor 2] had a release allowing him to provide information to [School Counselor] regarding [Student]'s progress in treatment.

166. [Licensed Professional Counselor 2] reported the following regarding [Student]'s participation in the sessions: (1) [Student] arrived to all scheduled sessions on time; (2) [Student] was calm and respectful during the sessions; (3) [Licensed Professional Counselor 2] never felt threatened during the sessions; and, (4) [Licensed Professional Counselor 2] "didn't know [Student] well enough to judge whether he is a threat or not."

167. According to [Licensed Professional Counselor 2], the counseling was

eventually discontinued because “it wasn’t progressing.”

168. On September 30, 2015, an emergency IEP meeting was held at [Mother]’s request. [Mother] participated in the meeting.

169. The following persons were in attendance at the September 30, 2015 IEP meeting: [Assistant Principal], [JROTC Instructor], [Psychologist 2], [Mother] and [Special Education Teacher 1].

170. The IEP team determined that [Student] would continue to receive education services through homebound instruction.

171. The September 30, 2015 IEP reflected the following services: Psychological Services: 30 minutes per year; Special Education Services: 600 minutes weekly of direct services from a special education teacher. Ex. 14 at 11.

172. The services delivery statement in the September 30, 2015 IEP included the following narrative:

> Based on the recommendations of the Threat Assessment team, the IEP team recommends that [Student] receive *up to* 10 hours a week of homebound instruction during this interim period until the threat assessment reconvenes and updates the recommendation. The IEP team will reconvene afterwards to update the IEP as appropriate. *Id*. at 11 (emphasis added).

173. [Director of Special Education] explained that it was never the intent of the IEP team to require [Student] to receive instruction from a special education teacher. He explained that the electronic form used to draft IEP’s did not have “general education teacher” in the drop down under the “service provider role” on the form.

174. During the prior school year, [Student] received all instruction in a general education setting from general education teachers.

175. On October 15, 2015, an emergency threat assessment team meeting was held at [Mother]’s request. During the meeting, the team considered information from [Licensed Professional Counselor 2] through [School Counselor]. At that time, [Student] and [Licensed Professional Counselor 2] had met three times after the initial intake meetings. [School Counselor] relayed [Licensed Professional Counselor 2]’s opinion that he didn’t know [Student] well enough to render an opinion regarding [Student]’s safety to self and others. *See* Ex. 15 at 2 (recap of information received from [Licensed Professional Counselor 2]).

176. Following the October 15, 2015 threat assessment meeting, the team continued to recommend continued homebound instruction if [Student] did not actively engage in counseling.

177. The IEP team met on October 21, 2015 to consider the information relayed by [Licensed Professional Counselor 2] and the most recent recommendation of the threat assessment team. [Student] and [Mother] participated in the meeting.

178. Following the meeting, “[t]he IEP team agreed to support the Threat Assessment Team’s decision.” Ex. 15 at 1.

179. Sometime in November, [Student] requested to participate on the wrestling team. The threat assessment team reviewed the request and the request was denied. [Principal] informed [Student] and his mother of the decision on November 13, 2015. *See* Ex. Y at 14.

180. [Licensed Professional Counselor 3] is the Director of Youth and Family Services at [Mental Health Service Provider 1].

181. [Licensed Professional Counselor 3] is a Licensed Professional Counselor and has worked at [Mental Health Service Provider 1] for 11 years (the past five years as Director).

182. On December 2, 2015, [Licensed Professional Counselor 3] met with [Licensed Professional Counselor 2] and [Student].

183. On December 16, 2015, the threat assessment team met prior to the winter break at [Mother]'s request.

184. [Licensed Professional Counselor 3] attended the December 16, 2015 threat assessment team meeting.

185. [Licensed Professional Counselor 3] reported that [Licensed Professional Counselor 2] and [Student] "made minimal progress on treatment plan goals."

186. When asked to explain why there was no progress in [Student]'s case, [Licensed Professional Counselor 3] stated that "[[Student]] did not participate in treatment. He attended but did not engage."

187. Following the December 16, 2015 threat assessment meeting, the team continued to recommend continued homebound instruction if [Student] did not actively engage in counseling.

188. In [Licensed Professional Counselor 3]'s opinion, continuing treatment would not change the outcome.

189. When asked, [Licensed Professional Counselor 3] stated that she has never encountered such resistance to treatment as that exhibited by [Student].

190. [Mental Health Service Provider 1] has a contract with the District and receives approximately $200,000.00 per year in compensation from the District.

191. [Mental Health Service Provider 1]'s total annual budget is approximately 26 million dollars.

192. [Director of Student Support Services] is the District Executive Director of Student Support Services and Director of District High Schools.

193. [Director of Student Support Services] is not actively involved in special education.

194. [Director of Student Support Services] confirmed that all placement decisions for special education students are made by the IEP team and no one else has the authority to determine placement of students who have an IEP.

195. [Director of Student Support Services] testified that it was the threat assessment team that placed [Student] on homebound instruction.

196. [Homebound Instructor] was [Student]'s homebound instructor during the fall semester of the 2015-16 school year.

197. [Homebound Instructor] is not a special education teacher.

198. [Homebound Instructor] did not provide homebound instruction for 10 hours in any week she worked with [Student]. *See* Ex. DD.

199. [Student] completed all coursework necessary to graduate with a diploma by the end of the fall term in December 2015.

200. [Student] earned close to his highest semester GPA while receiving instruction through homebound instruction. *See* Ex. 1.

201. [Student] enrolled at [Community College] ("[Community College]") under a concurrent enrollment through [High School 2]. *See* Ex. 18.

202. Starting in January 2016, [Student] is receiving education services at [Community College] and is no longer receiving homebound instruction.

203. The District is paying for [Student]'s tuition, books and fees at [Community College].

204. [Student] is allowed full access to the [Community College] campus.

205. There is no safety plan in place while [Student] is on the [Community College] campus.

206. There are no recorded instances of discipline involving [Student] since May 28, 2015.

207. On January 7, 2016, [Student]'s IEP team met to discuss the latest recommendation from the threat assessment team.

208. [Director of Special Education], [Psychologist 2], [Special Education Teacher 1], [Assistant Principal] and [Mother] participated in the meeting.

209. At the meeting, the IEP team discussed a request from [Student] to participate in track and field. The team made the following decision:

> In regards to extracurricular activities, the threat assessment team decided [Student] cannot access track at [High School 2] at this time; however, he can participate in both graduation practice and the graduation ceremony. According to the Threat Assessment team, the goal for [Student] to engage in therapeutic services has not been met. Ex. 16 at 9.

210. The District later offered to allow [Student] to participate in track and field if he agreed to a safety plan that included line of sight supervision. [Student] declined this offer.

211. During the January 7, 2016 IEP meeting, the team discussed the most recent recommendation from the threat assessment team and [Student]'s concurrent enrollment.

212. The IEP team proposed no changes to the IEP and reached the following conclusion: "The [IEP] team agreed based on the Threat Assessment Team's decision there are no amendments to make [to the IEP] at this time." Ex. 16 at 9.

213. [Director of Special Education] stated that the IEP team could override any recommendation received from the threat assessment team or any other outside recommendation from any source.

214. [Student] showed up at [High School 2] for a basketball game in January, 2016. [Psychologist 2] expressed concern stating, "I worry that [[Student]] is escalating and not able to stop perseverating on being at [High School 2]." Ex. 20 at 36. *See also* Ex. 20 at 39 & 40 (e-mail from the District's Chief Academic Officer to [Mother] discussing District concerns and reminding her that [Student] is not allowed on campus).

215. [Psychologist 2]'s opined that, as late as January 2016, she had "grave concerns" that [Student] may act out in a violent way. [Psychologist 2] stated that this

opinion was based on the behaviors [Student] exhibited and his continued defiance.

216. [Principal], [Assistant Principal], [Psychologist 2] and [Director of Special Education] all testified that all placement decisions in this case were made by the IEP team and not the threat assessment team.

Applicable Law, Discussion and Conclusions of Law

Burden of Proof

The IDEA does not explicitly assign the burden of proof, however, *Schaffer v. Weast*, 546 U.S. 49, 58 (2005) places the burden of persuasion "where it usually falls, upon the party seeking relief." *See also, Thompson R2-J Sch. Dist. v. Luke P.,* 540 F.3d 1143, 1148 (10th Cir. 2008) ("The burden of proof . . . rests with the party claiming a deficiency in the school district's efforts.") Complainants therefore bear the burden of proof in this matter.

The Complainants raise nine claims for relief in their due process complaint. The claims will be addressed *seriatim*.

First Claim for Relief: Denial of FAPE

The IDEA provides that one of its purposes is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, a local school district is required to develop, implement, and revise each IEP calculated to meet an eligible student's specific educational needs. 20 U.S.C. § 1414(d). *See* 34 C.F.R. § 300.17 (definition of FAPE). *See also* 34 C.F.R. §§ 300.101 & .102 (FAPE requirements). A school district satisfies the requirement for FAPE when, through the IEP, it provides a disabled student with a "basic floor of opportunity" that consists of access to specialized instruction and related services that are individually designed to provide educational benefit to the student. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

The Complainants contend that [Student] was denied FAPE because he "was functionally kicked out of school" when he was placed on homebound instruction by the IEP team in August, 2015. Compl. at 8. In addition, the Complainants contend that [Student] did not receive 600 minutes per week of special education services that were listed in the September 30, 2015 IEP. *Id*. First, it should be noted that during the 2014-15 school year, [Student] received no special education instruction. In fact, the only special education related service found in the 2014-15 IEP was 30 minutes per year of indirect service with the school psychologist. When the IEP team decided to accept the recommendation of the threat assessment team and move [Student] to homebound instruction, a requirement of "up to" 10 hours per week of special education instruction was included in the revised IEP. As [Director of Special Education] explained, the inclusion of a special education teacher in the service delivery section of the IEP was due to the fact that the drop down on the electronic form did not include "general education teacher" as a choice. Based on the record, [Student] has never received special education instruction and it is clear from his grades and progress throughout his high school career that he didn't need special education instruction to meet his individual academic goals. Finally, the record also shows that [Student] was a successful high school student. He completed all course requirements necessary to graduate with a diploma in December 2015. He earned close to his highest GPA during the fall semester of the 2015-16 school year, while on homebound instruction, and he is currently enrolled at [Community College], where he is apparently doing well

academically.

Under the IDEA, the District was required to develop an IEP calculated to meet [Student]'s specific educational needs. The ALJ finds that [Student]'s IEP(s) met this standard. Testimony from a number of District staff showed that [Student]'s IEP team considered evaluations and data from a number of sources (including [Student] and his mother) when determining the necessary services and methods to deliver services. It is clear that [Student] was succeeding academically when receiving homebound instruction; thus, his IEP clearly met the requirements of FAPE. The ALJ finds that District provided [Student] with a free appropriate public education that was designed to meet his individual needs.

Second Claim for Relief: Failure to Provide Nonacademic Services

34 C.F.R. § 300.107, states, as follows:

> The State must ensure the following:
>
> (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
>
> (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

The Complainants contend that when [Student] was denied access to [High School 2] he was not allowed to participate in nonacademic extracurricular activities. It is true that [Student] was not allowed to wrestle, run track or participate in homecoming activities. The threat assessment team reviewed [Student]'s requests to participate in extracurricular activities and made recommendations to the principal and IEP team. [Student] was, however, allowed to participate in football during the summer/fall of 2015, with a safety plan in place. The District, believing that [Student] would engage in counseling, allowed [Student] to continue to play football after he was placed on homebound because the IEP team members believed that homebound instruction would be a temporary intervention. Over time, it became clear that [Student] refused to actively engage in counseling and both the threat assessment and IEP teams became increasingly concerned about [Student]'s behaviors. The IEP team considered the recommendations of the threat assessment team and denied the request to wrestle, attend homecoming and participate in track. The ALJ finds that these decisions are well supported by the evidence in the record.

Third Claim for Relief: Least Restrictive Environment

The IDEA requires that, to the maximum extent appropriate, children with disabilities be educated in the "least restrictive environment." 20 U.S.C. § 1412(a)(5). This means that disabled students must be educated "[t]o the maximum extent

appropriate ... with children who are not disabled" in a "regular educational environment." 20 U.S.C. § 1412(a)(5)(A). Disabled students may be removed from the regular classroom setting only "when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id*; 34 CFR § 300.114(a)(2)(ii). *See generally* 34 C.F.R. §§ 300.114 - 300.120. "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. v. Nebo School Dist*., 379 F.3d 966, 976 (10th Cir. 2004)(citing *Murray v. Montrose County Sch. Dist.*, 51 F.3d 921, 926 (10th Cir. 1995)).

When addressing whether [Student] was placed in the least restrictive environment, the following factors may be considered:

> (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services;
>
> (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom;
>
> (3) the child's overall educational experience in regular education, including non-academic benefits; and
>
> (4) the effect on the regular classroom of the disabled child's presence in that classroom.
>
> *L.B. v. Nebo School Dist*. at 976 (citing *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989)

[Student] was placed on homebound instruction by the IEP team following the August 19, 2015 IEP meeting. The Complainants contend that homebound is not the least restrictive environment and that by placing [Student] on homebound instruction, he was effectively expelled. Testimony from members of the IEP team shows that the IEP team did consider several placements on the continuum before deciding on homebound instruction. Those options included, providing a para-professional to shadow [Student] in the general education setting, [High School 1 (which provides online instruction in a District building) and Edgenuity (a fully online curriculum). [Student] and his mother rejected all of these options. Importantly, the IEP team believed from the beginning that homebound instruction would be a temporary intervention which would allow [Student] to have assignments and tests that his peers were getting in the classroom. As [Director of Special Education] pointed out, homebound was the best choice under the circumstances and would allow [Student] to seamlessly transition back to the classroom. Given the level of concern expressed by members of the IEP team, in particular [Psychologist 2]'s statement that she had "grave concerns" that [Student] may act out in a violent way, requiring homebound instruction was appropriate. Considering the facts of this case and applying the *L.B. v. Nebo School Dist*./*Daniel R.R.* factors, the ALJ finds that homebound instruction was the least restrictive environment for [Student] during the 2015-16 school year.

Fourth Claim for Relief: Improper Placement

The IDEA requires that the parents be part of the team that creates the IEP and

determines the educational placement of the child and the location where services will be provided. 20 U.S.C. § 1414(d)(1). In addition, 20 U.S.C. § 1414(e) requires the District to "ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement." "'Educational placement', as used in the IDEA, means educational program--not the particular institution where that program is implemented." *White v. Ascension Parish School Bd.*, 343 F.3d 373, 379 (5th Cir. 2003)(citing *Sherri A.D. v. Kirby*, 975 F.2d 193 (5th Cir. 1992) ("educational placement" not a place, but a program of services); *Weil v. Board of Elem. & Secondary Educ.*, 931 F.2d 1069 (5th Cir. 1991) (transfer of child to another school was not a change in "educational placement"). *See* 34 CFR § 300.115.

The Complaints contend that [Student]'s placement in homebound instruction "was made by the threat assessment team rather than the IEP team" and "there is no evidence that the threat assessment team ever consulted evaluation data that the IEP team had produced." Compl. at 9. As discussed above, the facts clearly show that all placement decisions were made by the IEP team. The IEP team did adopt the recommendation of the threat assessment team and that decision was fully warranted under the circumstances. The Complaints position is that parents must be involved in determining "educational placement." As *White* holds, "educational placement" means the educational program, not location. [Student] and his mother were involved in the discussions regarding educational placement. While the IDEA does not require parents to be involved in selecting the location where the services are delivered, in this case, both [Student] and his mother were active participants with both the threat assessment team and the IEP team meetings and their voices were heard. The selection of homebound instruction was made after the IEP team, including [Student] and his mother, discussed possible options. Thus, no violation of the IDEA occurred with respect to the placement decision made by the IEP team.

Fifth Claim for Relief: Lack of Parental Participation in the Development of an IEP and Placement Decision

The Complainants contend that they were provided with inadequate notice of IEP meetings. There is no dispute that [Student]'s parents retained the right under the IDEA to fully participate in the development of [Student]'s IEP(s), including placement decisions. *See* 34 C.F.R. § 300.501(b)(parent participation in meetings) & 34 C.F.R. § 300.322(a)(placement decisions "made by a group of persons, *including the parents" (emphasis added)*. The Complainants again suggest that [Student]'s parents were not provided a meaningful opportunity to participate in the development of [Student]'s IEP or placement decision. Essentially, the Complainants suggest that because the Prior Notice & Consent for Reevaluation for the August 19 IEP meeting did not suggest a possible change in placement, the parents were unable to participate in the placement decision. The Prior Notice stated the following reason for the meeting:

> Based on a review of existing information, additional evaluation data are needed to determine if your child continues to be eligible for special education services or to determine your child's educational needs. 300.305(d)(i) Supporting reason:
>
> The team needs additional information to determine [Student]'s current strength's and needs. Ex. 13 at 1.

As noted above, under the IDEA, the District is required to develop, implement, and revise each IEP calculated to meet an eligible student's specific educational needs,

including placement decisions. In addition, the District is required to review [Student]'s IEP "at least annually." 34 C.F.R. § 300.324(c). Clearly, [Student] and his mother knew that placement for the 2015-16 school year was going to be discussed. Many of the e-mails sent back and forth between [Student], his mother, and school officials over the summer discussed [Student]'s placement for the upcoming year. Both [Student] and his mother were present at the August 19, 2015 IEP meeting and they received proper prior written notice of the meeting and they fully participated in the meeting. The fact that they disagree with the decision to adopt the recommendation of the threat assessment team to place [Student] in homebound instruction does not show that they were denied an opportunity to participate in the decision or that they receive improper notice. Even if the notice was defective, the ALJ finds that finds that any procedural error with respect to notice was harmless.

Sixth Claim for Relief: Failure to Properly Development, Review and Revision of the IEP

34 C.F.R. § 300.324, states, in part, as follows:

> (a) Development of IEP -
>
> (1) General. In developing each child's IEP, the IEP Team must consider-
>
> (i) The strengths of the child;
> (ii) The concerns of the parents for enhancing the education of their child;
> (iii) The results of the initial or most recent evaluation of the child; and
> (iv) The academic, developmental, and functional needs of the child. …
>
> (b) Review and revision of IEPs -
>
> (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-
>
> (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
>
> (ii) Revises the IEP, as appropriate, to address-
>
> (A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;
> (B) The results of any reevaluation conducted under §300.303;
> (C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);
> (D) The child's anticipated needs; or
> (E) Other matters.

Here, the Complainants contend that, when developing [Student]'s IEP, the IEP team "was making decisions based on information from 2013, even though it had access to evaluation data from 2015." Compl. at 10. In this claim for relief, the Complainants again assert that the decision to place [Student] in homebound instruction was made by the threat assessment team and not the IEP team. *Id*. at 11. [Principal],

[Assistant Principal], [Psychologist 2] and [Director of Special Education] all testified that all placement decisions in this case were made by the IEP team after considering the recommendation of the threat assessment team. The ALJ agrees, and continues to find that the decision to place [Student] in homebound instruction was made solely by the IEP team. With respect to the allegation that the IEP team relied on outdated data when making placement decisions, the record clearly proves the contrary. Throughout the process the IEP team considered up to date information from a variety of sources, including, but not limited to, input from the threat assessment team; input from [Student]'s therapists; an updated functional behavioral assessment, a recent (8/18/2015) social/emotional report that included the results of a BASC; and, input from [Student] and his mother. As a result, the IEP team complied with the provisions of the IEP when developing and revising [Student]'s IEP.

Seventh Claim for Relief: Failure to Provide Proper Prior Written Notice

In this claim for relief, the Complainants essentially assert the same claim as that asserted in the fifth claim regarding Parental Participation in the Development of the IEP, Placement Decision and Notice for the August 19 IEP meeting. The ALJ finds that the District complied with the Notice requirements in the IDEA by notifying the Complainants prior to the meeting of the purpose of the meeting. The Notice clearly refers to a reevaluation and a reevaluation necessarily includes a discussion of placement. While the District could have made it clear in the Notice that the IEP team was going to specifically address placement at the August 19, 2015 meeting, the parents had reason to know that [Student]'s behaviors and placement would be addressed at the meeting. Assuming *arguendo* there was a procedural violation of the IDEA, the ALJ finds any procedural error was harmless because the parents were well aware of [Student]'s suspension and the recommendation by the treat assessment team to place [Student] on homebound instruction prior to the August 19, 2015 IEP meeting. [Mother] and [Student] participated in a threat assessment meeting on August 14, 2015 and participated in discussions about placement at the IEP meeting.

Eighth Claim for Relief: Discipline Procedures & Removal

The Complainants next contend that [Student] was *de facto* expelled by the District. Compl. at 11. The Complainants essentially assert that moving [Student] to homebound instruction amounts to a disciplinary change of placement. The ALJ disagrees. While it is true that [Student] was suspended for three days at the end of the 2014-15 school year, he was not expelled or subject to discipline when school started in August, 2015. The Complainants contend that [Student] was placed on homebound in May 2015. The record supports a finding that [Student] was not placed in homebound instruction until the IEP team made that decision on August 19, 2015. Here, District staff, including the threat assessment team, determined that [Student] was a threat to self or others. [Student] refused to engage in counseling. The IEP team considered data from multiple sources on August 19, 2015, including the recommendation of the threat assessment team, the opinion of the school psychologist and other staff regarding [Student]'s behaviors and attitude toward staff. The IEP team's decision to place [Student] on homebound instruction was not a disciplinary action. The IEP team believed that [Student] posed a threat to students and staff at [High School 2]. It would have been irresponsible for the IEP team to ignore the recommendation and the related input recommending homebound instruction.

Ninth Claim for Relief: Predetermination

Predetermination amounts "to a procedural violation of the IDEA." *Deal v.*

Hamilton County Bd. of Education, 392 F.3d 840, 857 (6th Cir. 2004). *See Nack v. Orange City School Dist.*, 454 F.3d 604 (6th Cir. 2006). It can cause substantive harm, and therefore deprive a child of a FAPE, where parents are "effectively deprived" of "meaningful participation in the IEP process." *Deal*, 392 F.3d at 857. "Participation must be more than mere form; it must be *meaningful.*" *Nack*, 454 F.3d at 610 (quoting *Deal*, 392 F.3d at 857)(emphasis in original). The IDEA "prohibits a completed IEP from being presented at the IEP Team meeting or being otherwise forced on the parents, but states that school evaluators may prepare reports and come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *Nack*, 337 F.3d at 610 (quoting *N.L. ex rel. Mrs. C v. Knox County Sch.*, 315 F.3d 688, 694 (6th Cir. 2003)).

The Complainants again assert that the decision to place [Student] in homebound instruction was made by the threat assessment team and not the IEP team. The ALJ once again disagrees. As stated above, all placement decisions were made by the IEP team and not the threat assessment team. The IEP team discussed alternative placements and all were rejected by [Student] and his mother. The ALJ finds that the IEP team independently made the placement decision based on the facts and circumstances that were discussed at the August 19, 2015 IEP meeting and not before.

Decision

It is the decision of the ALJ that there were no violations of the IDEA in this case. Accordingly, judgment is entered in favor of the District as to all claims for relief and the Complainants request for attorney fees is denied. The District shall, however, reimburse the Complainants for any costs incurred for counseling services with [Licensed Professional Counselor 2] and [Licensed Professional Counselor 1] that were not already paid for by the District. The Complainants shall submit all relevant invoices to the District within 10 days of the date of this order.

Any party aggrieved by this Decision has the right to bring a civil action consistent with the requirements set forth in 34 CFR § 300.516.

Done and Signed
April 21, 2016

_____
DAVID S. CHEVAL
Administrative Law Judge