State of Colorado **Office of Administrative Courts** 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	
[Mother] on behalf of her minor child, [Student] Complainant, vs. **Colorado Springs School District 11,** Respondent.	▲ **Court Use Only** ▲ **Case Number:** **EA 2025-0011**

Agency Decision

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On February 11, 2025, the Colorado Department of Education ("CDE"), Exceptional Student Services Unit, received a Due Process Complaint filed by [Parent] ("Complainant") on behalf of her minor daughter, [Student], alleging that the Colorado Springs School District 11 ("District") violated the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482, ("IDEA"), under its implementing regulations at 34 C.F.R. § 300.511, and Colorado's Exceptional Children's Educational Act, 1 CCR 301-8, ("ECEA") by failing to provide [Student]

with a free appropriate public education ("FAPE"). On February 11, 2025, the due process complaint was forwarded to the Office of Administrative Courts ("OAC") and assigned to Administrative Law Judge ("ALJ") Michael A. Perales.

The hearing was convened in accordance with 20 U.S.C. § 1415(f), and held by Google Meet, Video in Denver, Colorado on August 25 through August 28, 2025. Complainant was represented by Conor O'Donnell, Esq., and Kaity Tuohy, Esq. of Kishinevsky & Raykin, The District was represented by Deborah Menkins, Esq., Brent Rychener, Esq. and Julie Bellville, Esq. of Brian Cave Leighton Paisner, LLP.

Stipulated Exhibits

A. Duplicative Exhibits. Many of the Parties' exhibits are identical. The Parties stipulated to the admission of the following Exhibits:

2024-2025 District School Calendar (Exhibits B and 45)

Choice Application (Exhibits F and 1)

May 20, 2024 Prior Written Notice (Exhibits H and 4)

August 20, 2024 Prior Notice of Special Education Action (Exhibits K and 7)

August 20, 2024 Email about [Student]'s enrollment (Exhibits M and 12)

February 20, 2025 Signed Consent for Initial Evaluation (Exhibits Q and 24)

May 2, 2025 IEE Approval (Exhibits DD and 28)

B. Complainant's Exhibits

Respondent stipulated to the admission of the following Exhibits provided by Complainant:

1 Exhibits 1-8

2 Exhibits 11-12

3 Exhibits 15-36

4 Exhibit 38

5 Exhibit 43

6 Exhibit 45

C. Respondent's Exhibits

Complainant stipulates to the admission of the following Exhibits provided by Respondent:

1. Exhibits A-N

2. Exhibits P-U

D. Exhibits admitted without or over objection include Exhibit 46 pp. 1 -6 (The longer final report was not admitted), Exhibit 9, Exhibit 13, Exhibit O, Exhibit 10, Exhibit 40, Exhibit 14 pp. 1 through 3 and 5. Exhibit V, Exhibit X,

Issue Presented

Whether Complainant has met her burden of proof establishing that the District failed to provide [Student] FAPE and if so, what remedies are appropriate.

Stipulated Findings of Fact

1. [Student] is six years old.
2. [Student]'s parents are [Mother] and [Father].
3. [Student] is a public-school student enrolled in Colorado Springs School District 11 (the "District" or "Respondent").

4. [Student] is a student entitled to special education pursuant to the Individuals with Disabilities Education Act ("IDEA") 20 USC § 1400 *et seq.* and the Colorado Exceptional Children's Education Act ("CECEA"), C.R.S. § 22-20-101 *et seq.*
5. [Student] was first found to be eligible for special education services on June 15, 2022, under the disability category of Speech or Language Impairment.
6. Per [Student]'s 2022 IEP, she was entitled to 240 minutes per month of speech/language services.
7. Per [Student]'s 2022 IEP, she had the following accommodations:
    a. Support for interaction with peers;
    b. Encouragement to join peers in play;
    c. Support for self-advocacy skills;
    d. Encourage verbal responses;
    e. Use of sign/pictures to facilitate communication; and
    f. Pair word with sign/pictures.
8. [Student] attended [School 1] ("[School 1]"), a public elementary school within the District, for preschool during the 2022-2023 and 2023-2024 school years.
9. On May 5, 2023, the IEP team convened to review [Student]'s IEP.
10. [Student]'s speech/language services remained the same.
11. [Student]'s accommodations remained the same.
12. [Mother] completed a Choice Enrollment Application (the "Choice Application") so that [Student] could attend [School 2] ("[School 2]") for the 2024-2025 school year.
13. [School 2] is a public elementary school in the District.
14. On February 15, 2024, the District conditionally approved [Student]'s Choice Application for [School 2].

15. On April 29, 2024, the IEP team convened to review [Student]'s IEP.
16. [Student]'s speech/language services remained the same.
17. Per her 2024 IEP, [Student]'s accommodations were:
    a. Support for interaction with peers;
    b. Encouragement to join peers in play;
    c. Support for self-advocacy skills;
    d. Encourage verbal response; and
    e. Reminders to use the bathroom.
18. On May 6, 2024, [Student]'s parents toured [School 2] accompanied by the District's staff.
19. On May 15, 2024, [Mother] accepted [Student]'s spot at [School 2].
20. On May 15, 2024, [Mother] received an email from [Staff Assistant], [School 2]'s Staff Assistant, confirming that [Mother] accepted [Student]'s spot at [School 2] for the 2024-2025 school year.
21. On May 15, 2024, [Mother] called [Staff Assistant] to ask about [Student]'s IEP.
22. [Staff Assistant] told [Mother] that [School 2]'s special education team would need to review [Student]'s IEP.
23. On May 20, 2024, [Student]'s parents met with District staff.
24. At this meeting, the District told [Student]'s parents that [School 2] did not have enough staff to provide the support and services outlined in [Student]'s IEP.
25. On May 20, 2024, [Student]'s parents received a Prior Written Notice ("PWN") stating that [Student]'s enrollment at [School 2] was declined because [School 2] "does not have enough allocated staff to provide for the needs listed on the IEP (Speech and Language Services)."
26. May 21, 2024, was the last day of school for [School 1] in the 2023-2024 school year.
27. On August 5, 2024, [Mother] called [Staff Assistant] to ask if any spots had opened for students on IEPs.

28. On another occasion in early August 2024 prior to the first day of school, [Mother] called [Staff Assistant] to ask any spots had opened for students on IEPs.
29. August 12, 2024, was the first day of school at [School 1] and [School 2] in the 2024-2024 school year.
30. [Student] was a kindergartener for the 2024-2025 school year.
31. [Student] attended [School 1] on August 12, 2024.
32. On [Student]'s second day of kindergarten, [Student] wet herself.
33. Upon [Mother]'s arrival to change [Student]'s pants, [Student] she discovered a young student outside on the playground, by himself.
34. [Mother] took the student inside.
35. On August 19, 2024, [Mother] emailed [Interim Director], the then-Special Education Facilitator and now interim Director of Special Education.
36. In her email with the subject line "IEP Withdrawal Paperwork," [Mother] stated "I have been in touch with [School 2] and I am wanting to enroll my daughter for Kindergarten but they need me to sign off on home care for her speech therapy."
37. On August 19 and 20, 2024, [Mother] and [Interim Director] corresponded over email.
38. [Interim Director] provided [Mother] with the Revocation Form.
39. On August 20, 2024, [Mother] signed and returned the Revocation Form.
40. Also on August 20, 2024, [Student]'s father submitted the In-District Transfer form for [Student] to transfer from [School 1] to [School 2].
41. On August 22, 2024, [Student] began Kindergarten at [School 2].
42. On January 27, 2025, District staff called [Mother] and informed her that the District would hold an internal special education meeting on February 10th to determine whether to put [Student] back on an IEP.

43. On February 11, 2025, the District provided [Student]'s parents with Prior Notice and Consent for Evaluation.

44. On February 20, 2025, [Student]'s parents returned the signed Prior Notice and Consent for Evaluation.

45. On April 30, 2025, [Student]'s IEP team convened to discuss the District's special education evaluation.

46. At the April 30 IEP meeting, the IEP team found [Student] eligible for special education under the disability category of Developmental Delay.

47. On April 30, 2025, [Student]'s parents requested an independent educational evaluation ("IEE"), pursuant to 34 C.F.R. § 300.502.

48. On May 2, 2025, the District granted [Student]'s parents' request for an IEE.

49. On May 7, 2025, [Mother] signed the Prior Notice and Consent for Initial Provision of Special Education and Related Services.

50. Between August 22, 2024, and May 7, 2025, [Student] did not receive any special education services.

51. [Student] currently attends [School 2] as a first grader.

52. The District currently provides [Student] with the special education services and accommodations as outlined in her April 30, 2025 IEP.

Burden of Proof

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

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

Discussion

The Requirement of a FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that provides special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). Central to the IDEA is the requirement that local school districts develop, implement, and revise an IEP calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d). To satisfy FAPE's requirement, the school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386; 137 S.Ct. 988 (2017).

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

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

> (a) (1) The State must have in effect policies and procedures to ensure that (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and

children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

In this case, Complainant asserts that the District could not condition [Mother]'s exercise of [Student]'s rights under Colorado's school choice law upon waiver of [Student]'s right to special education and could not ignore [Mother]'s subsequent requests for special education.

The court concludes as a matter of law that the District did not fail to provide FAPE to [Student] upon [Mother]'s requested transfer from [Student]'s home school [School 1] to her new school, [School 2]. It was clear from the beginning that [School 2] could not accommodate special education for [Student] but despite that, [Mother] pursued the transfer from [School 1], which was providing special education, to [School 2] which could not provide the special education needed, to the detriment of [Student]. As part of the transfer process, [Mother] specifically revoked the provision of special education, in writing.

[Interim Director] emailed Parent a PWN stating that special education services would not be provided to Student based on the executed Revocation Form. [Father], Student's father, filled out the In-District Transfer to transfer Student to [School 2] without an IEP. Parent then came to [School 2]; had [Staff Assistant] copy the 2024 IEP for Student's Kindergarten teacher, [Kindergarten Teacher]; met [Kindergarten Teacher]; discussed Student and gave [Kindergarten Teacher] the 2024 IEP. Parent told [Kindergarten Teacher] that Parent expected it would be a hard transition for Student. (Tr. 439:2-4). Student started at [School 2] on Thursday, August 22, 2024. [Kindergarten Teacher] provided Student with all the accommodations in the 2024 and 2025 IEPs. Upon starting at [School 2], [Kindergarten Teacher] administered a DIBELS

assessment, and Student performed well below benchmark. Based on the results, [Kindergarten Teacher] recommended Student for Multi-Tiered System of Supports ("MTSS") in literacy, and in the first week of September, Student started to receive interventions in the form of small group instruction (referred to as "tutoring"), four days a week for 25 minutes per day. Student was also identified as having a "Significant Reading Deficiency" and provided with a READ Plan.

Despite the initial revocation, Complainant argues that each time she asked for the provision of special education constituted a new request for special education that required the District to take action. The Court concludes that the District was justified in relying on the written revocation since Complainant chose to execute the document in order to transfer [Student] to [School 2] despite knowing that there were not enough resources at [School 2] to provide [Student] with special education for her specific needs.

When [Mother] finally emailed [School 2 Principal] at [School 2] and asked about an IEP evaluation on January 23, 2025 the school called the Parent to discuss her request for an evaluation 4 days later. A special education meeting was then scheduled for February 10, 2025. Before the meeting was held, the Due Process Complaint had been filed. On February 11, 2025, the District provided Parent with a PWN and consent for evaluation. Nine days later, the Parent signed the Evaluation Consent.

On April 30, 2025, Student's IEP team met to discuss the District's special education evaluation and the team found the Student eligible for special education under the disability category of Developmental Delay.

The record shows that the District complied with school choice law, its own policies, and the IDEA when it initially refused enrollment to Student at [School 2] on May 20, 2024 due to a lack of SLP/A staff to implement Student's IEP and when it accepted Parent's revocation of consent for Student's special education services to make Student eligible for enrollment at [School 2]. 34 C.F.R. §300.101 and 34 C.F.R. §300.17 require school districts to make a FAPE available to every eligible child residing in the state.

However, IDEA grants parental rights regarding the provision of a FAPE to their child, including the right to determine whether their child will receive special education services. 20 U.S.C. §1414(a)(1)(d). Namely, if, at any time subsequent to the initial provision of special education services, the parent of a child revokes consent in writing for the continued provision of special education services, the ***school district may not continue to provide special education services and will not be considered to be in violation of the requirement to make FAPE available*** to the child because of the failure to provide the child with further special education services. 34 C.F.R. §300.300(b)(4)(emphasis supplied).

The Complaint alleges that the District coerced Parent into signing the Revocation Form by conditioning enrollment at [School 2] on a revocation. (Compl. ¶¶50 and VII(a)). This allegation suggests that the District: (1) unlawfully denied Student's enrollment at [School 2]; and/or (2) unlawfully pressured Parent to sign the Revocation Form. As for the first claim, the District may deny the enrollment of a student if there is a lack of teaching staff within a particular program. (C.R.S.§22-36-101(3)(a); Ex. X-3; Tr. 702:20-25, 703:1). Further, the District is prohibited by law from inquiring about transferring the child's IEP or disability status until after the child has been accepted until his/her school of choice. After the child has been accepted into his/her school of choice, the IEP team at the District can convene an IEP team to determine whether that school of choice can appropriately provide the special education programming required by child's IEP. (*See* CCR 4.03(8)(b)(iv); Ex. V-4; Ex. X-2). If the school of choice lacks the appropriate teaching staff to implement the IEP, the District can rescind the conditional offer of acceptance, but it must include a specific explanation of that determination in a separate written notice. (*Id*.; Tr. 706:5-11).

Here, on May 20, 2024, the District *lawfully* denied Student's enrollment at [School 2], the school of choice, because the District: (i) did not inquire about Student's IEP or disability status prior to Student being accepted into [School 2]; (ii) convened an IEP meeting with Parent to determine if [School 2] could provide the special education programming required by Student's IEP (SF¶¶22-23); and (iii) once it determined that

[School 2] lacked SLP/A staff to implement Student's IEP, sent a PWN to Parent with a specific explanation of its determination. (*see* C.R.S. 22-36-101(3); Ex. H; Ex. V; Ex. X. Because FAPE could not be provided at [School 2] (but it could be provided at [School 1] or other District schools if Parent requested), the District could not enroll Student at [School 2] unless Parent revoked consent. The District followed the law, its policies and guidance from the Colorado Department of Education in its decisions and merely following the law does not constitute coercion.

Finally, the ALJ concludes that the Complainant had the burden to prove that the District did not provide [Student] FAPE, and she did not meet her burden of proof.

Decision

It is the decision of the ALJ to dismiss all of Complainant's claims and deny all of her requests for relief. This decision is the final decision of the independent hearing officer, pursuant to 34 CFR §§ 300.514(a) and 515(a). In accordance with 34 CFR § 300.516, either party may challenge this decision in an appropriate court of law.

Done and Signed: October 23, 2025

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts