

<p>State of Colorado</p> <p>Office of Administrative Courts</p> <p>1525 Sherman Street, 4th Floor, Denver, Colorado 80203</p>	<p style="text-align: center;">▲ Court Use Only ▲</p>
<p>[Parent] on behalf of their minor child, [Student],</p> <p>Complainant,</p> <p>vs.</p> <p>Denver Public Schools,</p> <p>Respondent.</p>	
<p>Agency Decision</p>	

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On May 15, 2025, the Colorado Department of Education, Exceptional Student Services Unit (CDE), received a Due Process Complaint filed by [Parent], on behalf of their minor child, [Student], alleging that Denver Public Schools (the District), violated the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482, (IDEA), and its implementing regulations at 34 C.F.R. § 300.511, the Colorado’s Exceptional Children’s Education Act, C.R.S. § 22-10-101 and the accompanying administrative rules 1 CCR § 301-8 (CECA), by failing to timely identify

[Student] as a child with a disability pursuant to IDEA. The Due Process Complaint further alleges that because of this, the District failed to provide [Student] with a free appropriate public education (FAPE). On May 16, 2025, CDE referred the complaint to the Office of Administrative Courts (OAC) and assigned it to the undersigned Administrative Law Judge.

On May 27, 2025, the District filed its Response, and on May 30, 2025, the District filed a Notice of Insufficiency of Due Process Complaint (Motion), requesting the ALJ dismiss the Due Process Complaint on the grounds that it did not provide a description of the nature of the problem as required by 34 C.F.R. § 300.508(b)(5). On June 4, 2025, the ALJ denied the Motion, finding the Due Process Complaint contained “a comprehensive recitation of facts sufficient to fully understand the perceived problem and allow Respondent to defend its actions.”

A virtual hearing was convened in accordance with 20 U.S.C. § 1415(f) and held before the undersigned ALJ by Google Meet on October 1-3, 2025. The proceedings were recorded. Conor O’Donnell and Kaity Tuohy of Kishinevsky & Raykin, LLC, represented Complainant, who was present on behalf of their minor child, [Student]. Complainant’s mother [Complainant’s Mother] was also present but did not testify. Robert P. Montgomery and Daniel L. Miller of Semple, Farrington, Everall, and Case, PC, represented the District. Also present for the District were General Counsel Georgia Montoya, Leanna Gavin, and Party Representative and Special Education Senior Manager [Special Education Senior Manager].

At hearing, the ALJ admitted into evidence Stipulated Exhibits 1-4, 6, 15, 18-21, 26, 27, 35, 39, B, I, N, S, LL, and MM; the Districts’ Exhibits: II, JJ, KK, X, TT, and Z; as well as Complainants whole Exhibits: 7, 13, 14, 16, 22-24, 36 and 37; and partial Exhibits 25/pp. 3-8; 31/pp. 5-6, 9-15, 18-22, 65; 32/pp. 1-11, 14-48; 34/pp. 1-5, and 7-11; 38/pp. 3-5, 19, 24-28, 32-34, 50-55, 58, 78, 89, 91-99, 109, 119, 124-126, 128, 139, 145, 148-151. The District objected to the admission of Exhibits 36 and 37.¹ Complainant testified. [Clinical Counselor], LPCC, who

¹ The basis of the objection was the District’s belief that they had not been offered at hearing. Complainant’s and the ALJ’s notes differed on this issue.

provided counseling for [Student] also testified on behalf of [Student]. Witnesses for the District were [Lead Special Education Instructor], Lead Special Education Instructor; [School Psychologist], [School] School Psychologist; [Co-Principal], Lead Partner and Co-Principal; [Fourth Grade Teacher 2], [Student]'s Fourth Grade teacher; and [Psychologist], psychologist, who participated in [Student]'s IEP.

Issues Presented

The ALJ must determine whether Complainant has established by a preponderance of evidence that the District violated their Child Find obligation by failing to identify [Student] as a child who might have a disability either when they were informed that [Student] had been diagnosed with ADHD on January 24, 2022 or by November 10, 2023. The ALJ must also determine whether this procedural violation resulted in a substantive denial of FAPE to [Student], and, if so, whether [Student] is entitled to compensatory special education for educational harm dating back to April 2022.

Findings of Fact

Based on the evidence in the record, the ALJ finds the following:

1. [Student] was 10 years old and at the time of the hearing, and a fifth grader at [School], which is within the District. [Student] has been a student at [School] since the 2021-2022 school year, when [Student] was a first grader.
2. On January 24, 2022, [Student] was diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD). A copy of the diagnosis was provided to [School]. [Student] qualified for services pursuant to Section 504 of the Rehabilitation Act of 1973 from February 9, 2022, to the end of the Spring 2025 semester. Services were delivered through an individualized 504 Plan.

3. [Parent] is [Student]'s parent. [Parent] requested a special education evaluation on April 11, 2025. On July 21, 2025, a multi-disciplinary team including [Parent] identified [Student] as a child with a disability entitled to special education as defined in the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400 *et seq.* and the Colorado Exceptional Children's Education Act (CECEA), C.R.S. § 22-20-101 *et seq.* and finalized [Student]'s IEP.²

4. [Parent] briefly is a Board Certified Behavior Analyst (BCBA) with thirteen (13) years of experience developing behavior plans for students with disabilities. They sign their emails with the following signature block, which includes professional education and certification: "M.Ed., BCBA, CTSS, BCASE Neurodiversity-Affirming, Trauma-Informed Board Certified Behavior Analyst Board Certified Advocate in Special Education."

5. [Student] struggled with the transition from the hybrid COVID model of school to full days in person when [Student] began attending [School]. Issues included impulse control, staying on task, and unsafe physical interactions with peers. These behaviors motivated the diagnosis of ADHD and the creation of a 504 Plan for [Student]. *See, e.g.,* Exhibit 31, pp. 5-6, 9, 13-15, 18.

6. Subsequent to the development of [Student]'s 504 Plan, when the District sought additional supports for [Student], they suggested that [Student] work with [School]'s psychology intern to conduct a functional behavior assessment (FBA). [Parent] refused consent because they associated an FBA with special education. Exhibit 31, p. 19 and [Parent] Testimony.

7. [Student]'s 504 Plan included accommodations to address difficulties with transitions and focus. Despite the 504 Plan, [Student] continued to struggle with behavioral issues throughout First Grade. These struggles included impulsivity, especially during unstructured portions of the school day. [Parent] and [Co-Principal] Testimony.

² The Parties stipulated to the facts contained in Paragraphs 1-3.

8. [Student] started Second Grade in August 2022, in [Second Grade Teacher]'s class, with the same 504 Plan. [Student]'s continuing behavioral issues in Second Grade included unsafe physical behaviors towards other students and staff. Exhibit 21, pp. 8-9 and Exhibit 38, p. 51.

9. In December 2022, the District added a behavior plan to [Student]'s 504 Plan. The behavior plan consisted of a "strike system" which provided that [Student] be removed from the classroom when [Student] harmed another student or school staff or after three reminders to stop inappropriate physical or verbal interactions went unheeded. Exhibit 24.

10. When the District proposed adding a safety plan in April 2023, [Parent] opposed the idea unless conducted by a school psychologist or a BCBA. Exhibit 32, p. 11. In the emails regarding this issue, [Parent] mentioned the possibility of a "full special education evaluation," if [Student]'s behaviors continued to increase and the District was unable to implement existing accommodations or add them to [Student]'s 504 Plan. Exhibit 32, pp. 13-14.³

11. When [Student] began Third Grade in August 2023, [Student] tested at a first-grade level on the District's standardized math exam. By the end of the year, possibly due to the District's creation of a special math pull-out group for [Student], [Student] had made a grade-level leap in their standardized math test scores and was at or above grade level in English. The August 2023 math scores are the only evidence before the ALJ of [Student] underperforming academically.⁴

³ This exchange occurred in the context of a dispute about whether a teacher had threatened that [Student]'s 504 Plan would not protect them from disciplinary consequences of behavior once [Student] advanced to Third Grade.

⁴ [Parent] testified that math is a non-preferred activity for [Student] because it does not come innately to [Student], as English does.

12. As part of the school and [Parent]'s efforts to assure that the 504 Plan was meeting [Student]'s needs, on September 28, 2023, [Parent] sent an email stating, "As I mentioned last year, we can go through the process of an entire IEP eval if we need to, but something in me says that this is related to the environment and not entirely all on an 8 year old boy, who (as we have mentioned multiple times) missed out on 2 incredibly important years of instruction." Ex. 33, p. 22.

13. The District did not treat this as a request for an evaluation and the context of the email exchange again suggests that [Parent] remained opposed to such an IEP for [Student]. Instead, the mention of an IEP appears to be a goad to the District to more consistently apply [Student]'s existing 504 Plan accommodations or add to them.

14. [Student]'s 504 Plan was updated in October 2023. Although initially resisted by [Parent], on November 10, 2023, a safety plan was also created for [Student].⁵ The safety plan addressed unsafe and disrespectful behavior in the restroom, halls, cafeteria, and playground. Ex. 22. The back-and-forth book and the behavior tracker developed the previous year continued to be used to help [Student] manage behaviors.

15. Due to continuing disruptive and physically aggressive behavior towards peers, [Student] was suspended at least nine times during Third Grade. [Student]'s suspensions included in class suspensions as well as removals from the classroom. [Student] also made behavioral and academic improvements as targeted interventions were implemented by [School] based on [Student]'s needs.

16. Because the lunchroom was determined to be a particularly triggering location for [Student], a plan was developed that allowed [Student] and a friend of [Student]'s choosing

⁵ The plan was apparently sometimes described as a safety plan and sometimes a behavior plan by the District. [Parent] testified that she was confused by the District's imprecise language for some of the behavioral interventions the District explored.

to eat in [School Psychologist]'s room. By the end of the school year, [Student] had transitioned back to eating in the lunchroom with peers and without problematic behaviors.

17. District witnesses, especially [School Psychologist], identified the 2023-2024 Third Grade class as generally challenging. [School Psychologist] testified that, in her professional opinion, this was due to the fact that both Third Grade teachers were new and inexperienced. [School Psychologist] also noted that many Third Graders that year exhibited atypical behaviors that did not generally continue the following year and that the District did not treat the behaviors as indicative of a need for special education for these children or [Student]. [School Psychologist] Testimony.

18. [Student] started Fourth Grade in August 2024 with teachers [Fourth Grade Teacher 1] and [Fourth Grade Teacher 2]. [Student]'s 504 Plan was updated in October 2024, removing accommodations that were no longer considered necessary. [Parent] testified that she noticed immediate significant improvement for [Student] in Fourth Grade relative to Third Grade. Exhibit 15, pp. 10-13.

19. Testimony and evidence shows that [Student]'s behaviors did significantly improve in Fourth Grade and that [Fourth Grade Teacher 1] and [Fourth Grade Teacher 2] were able to effectively implement the 504 Plan so that [Student]'s educational and social-emotional needs were met. [Fourth Grade Teacher 2] testified that he did not have concerns that [Student] was unable to access the general education curriculum.

20. However, in the spring [Student] started engaging in problematic behaviors with more frequency. In April 2025, following an incident of physical aggression toward another student, another safety plan was developed for [Student]. Exhibit 23.

21. On May 7, 2025, [Parent] informed [Student] that they and [Stepfather] would be separating. The same day, they also informed [Fourth Grade Teacher 1] and [Fourth Grade

Teacher 2] of the news, concerned that [Student] might be emotionally impacted and act out in class.

22. [Fourth Grade Teacher 2] testified that in his opinion the change in [Student]'s behavior was likely the result of non-academic stressors, including [School Psychologist] going on maternity leave and the end of [Parent] and [Stepfather]'s ([Student]'s stepfather) relationship which resulted in [Stepfather] leaving the household. [Fourth Grade Teacher 2] denied thinking that or reporting to [Parent] that [Student] showed signs of autism.

23. [Parent] testified that they did not believe that [Student] could have been impacted prior to this date. The ALJ finds that [School] staff who worked with [Student] reasonably concluded that a child of [Student]'s age and sensitivity would sense the emotional mood of the significant adults in their life even before being informed of household changes.

24. [Parent] reported that at the time of the hearing they were satisfied with [School] staff's implementation of [Student]'s July 2025 IEP. They expressed no concerns and stated that [Student] is doing well behaviorally and academically, including math.

25. Claimant's closing argument acknowledges the District satisfied its child find obligation when [Student] was identified as a child with a disability in the July 2025 IEP.

26. [Parent] testified that prior to April 2023 they believed the 504 Plan was not working only because it was not being implemented consistently and that no safety plan or other supports were needed. This testimony is consistent with emails they exchanged with District staff at the time, including the rejection of a behavior plan because they associated it with an IEP which they did not want or think [Student] needed.

27. [Parent]'s testimony consistently demonstrated their understanding of the accommodations and supports available through a 504 Plan and how those may be distinct

from and/or overlap with the special education services available when a child has been identified as a child with a disability pursuant to the IDEA.

28. Nothing in the record supports a claim that the District would or should have known that [Student] might be a child with a disability pursuant to IDEA as well as Section 504, prior to the date on which [Parent] would or should have known the same.

29. The IEP developed for [Student] contains several of the supports and accommodations that were previously part of the 504 Plan or added over time as the District worked to adjust the plan so that it met [Student]'s individualized needs. These include "if/then" statements, preferred seating, and frequent breaks.⁶ The IEP team considered but rejected the addition of academic services and goals because of the "academic body of evidence that shows that [[Student]] is on track in [] academics." Exhibit 1, p. 16 and Exhibit 15, p. 12.

30. [Lead Special Education Instructor], Special Educational Specialist, testified on behalf of the District. [Lead Special Education Instructor] performed the academic evaluations of [Student] which were included in the July 2025 IEP. She noted that she did not have any academic concerns about [Student] following testing and that she was "on the fence" about whether the evaluations justified a finding that [Student] was a child with a disability pursuant to the IDEA.

31. [School Psychologist], [School] School Psychologist, also testified on behalf of the District. [School Psychologist] has been one of [Student]'s trusted adults throughout [Student]'s time at [School]. [School Psychologist] testified that as School Psychologist she supports the mental health and well being of all students at [School], including students in the general

⁶ In fact, the only significant difference between the two is that the IEP includes mental health services, which are an available accommodation with a 504 Plan. See, e.g., the Denver Public Schools website explaining Exceptional Student Services, <https://www.dpsk12.org/o/studentequity/page/section-504>.

education population as well as students who receive mental health services as part of their IEP. She has been in this role for 10 years.

32. [School Psychologist] was part of the team that developed [Student]'s original 504 Plan. She testified that the standard 504 Plan development and review process includes evaluating whether special education services are needed. [School Psychologist] did not remember disagreement that [Student]'s equal access to education could be accomplished without special education services, i.e. all agreed that a 504 Plan could meet all [Student]'s educational needs, while keeping [Student] in the least restrictive environment.

33. [School Psychologist] testified persuasively that the District pursued appropriate remedies for [Student]'s continued struggles through Second Grade; that the increased behaviors [Student] engaged in during Third Grade were consistent with his non-disabled peers' struggles with two new and inexperienced teachers; and that he was demonstrating significant success with the modified 504 Plan supports in Fourth Grade, prior to her going on maternity leave.

34. [School Psychologist] testified that the [School] team specifically considered whether special education was necessary for [Student] during Third Grade, because this is a part of the standard 504 re-evaluation process. She persuasively testified that the team determined that [Student] did not need specialized instruction but rather additional supports and accommodations.

35. [Co-Principal], Lead Partner who principally works with kindergarten through Second Graders, Special Education and Math, also testified for the District. [Co-Principal] testified regarding the District's understanding of its Child Find obligations, as well her as understanding of the distinctions and overlap between Section 504 and the IDEA. She testified persuasively that the District considered whether [Student]'s 504 Plan provided sufficient accommodations for [Student], and determined that it could, in part, because [Student] made

expected academic progress and did not display gaps in skills or knowledge suggesting the need for special services to access the general education curriculum.

Conclusions of Law and Discussion

Burden of Proof and Motion to Dismiss

Complainant bears the burden of proof to establish that the District violated the IDEA and its implementing regulations. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 at 51 (2005); *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008) If the ALJ finds that a school district violated the IDEA, it may grant such discretionary equitable relief as it deems appropriate. *Florence Cty. Sch. Dist. Four*, 510 U.S. at 12, 15-16. Here, Complainant has the burden of proving that the District failed in its Child Find obligation and that this procedural violation resulted in a substantive denial of FAPE, in order to demonstrate that they are entitled to relief as provided for in the IDEA.

Motion to Dismiss

At the close of Complainant's case, the District moved to dismiss, pursuant to C.R.C.P. Rule 41 (b), arguing that Complainant had failed to carry the burden of persuasion.⁷ After affording the parties an opportunity to expand upon and respond to the motion, the ALJ denied the motion, finding that the Complainant had met their burden of persuasion to require the District to provide some explanation, given [Student]'s on-going behavioral issues, for their refusal to "identify and evaluate [[Student] as] reasonably suspected of having a disability . . . and in need of special education, even though [[Student] was] advancing from grade to grade."

⁷ C.R.C.P. Rule 41(b) provides that "After the plaintiff, in an action tried by the court without a jury, has completed the presentation of its evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal upon the ground that upon the facts and the law the plaintiff has shown no right to relief." The Rule also provides that the "court" may defer ruling until the end of the action. To the extent there was any doubt about the ALJ's ruling at hearing, the ALJ affirms the denial of the motion.

34 C.F.R. § 300.111(c)(1); *accord L.M.*, 478 F.3d at 313; *Taylor v. Altoona Area Sch. Dist.*, 737 F.Supp.2d 474, 484 (W.D.Pa.2010).

Notice Date and Statute of Limitations

The IDEA was created to “ensure that all children with disabilities have available to them a free appropriate public education [FAPE] 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). In order to accomplish this goal, school districts have a “Child Find” obligation “to identify and evaluate all students who are *reasonably suspected* of having a disability under the statutes [referring to the IDEA and Section 504].” *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (internal citations omitted). A Due Process Complaint alleging an IDEA/FAPE violation “must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.”⁸ 34 C.F.R. § 300.507(a)(2). However, where the Due Process Complaint is properly filed *within* the two year statute of limitations, recovery for violations that occurred *more than* two years prior to the Due Process Complaint is not barred. *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015)

Complainant urges the ALJ here to find that both that Complainant timely filed their Due Process Complaint and that the District was on notice or is otherwise liable for harm more than two years prior to the filing of their Due Process Complaint. This is only possible if the ALJ finds that 1) the District was on notice once they received [Student]’s ADHD diagnosis, but that [Parent] was not; or that 2) a triggering event occurred after May 15, 2023 that reveals an on-going violation dating back to January 2022.

ADHD Diagnosis as per se trigger

⁸ Although there are limited exceptions to the two year statute of limitations, they are not at issue here and the Complainant has not plead them. Thus, the ALJ does not address these.

The ALJ finds as a matter of law that a diagnosis of ADHS is not a *per se* trigger for a Child Find obligation. Instead, the IDEA requires an individualized, fact-intensive inquiry for each child to determine whether and when the child should have been identified as potentially disabled. The usual inquiry is further complicated when a particular student has already been identified as a student with a disability pursuant to Section 504. A school district that has identified a child as in need of Section 504 accommodations to ensure equal access to education is neither absolved of its IDEA Child Find obligations, nor on notice that the child may also be a child “who by reason of that disability” “needs special education and related services.” *Spring Branch Indep. Sch. Dist. V. O.W. by Hannah W.*, 961 F.3d. 781, 794 (5th Cir. 2020) Instead, a school district is permitted, and may even be required, to implement reasonable behavioral interventions, consistent with fulfilling its Child Find obligations, prior to pursuing a special education evaluation. *Id.* This is especially the case with a diagnosis such as ADHD, where the range of responses runs from no special services or accommodations to Section 504 accommodations to special education pursuant to IDEA.

Reasonableness of Pursuing 504 Accommodations

The evidence is clear here that the District’s pursuit of behavioral interventions prior to conducting a special education evaluation in the Spring of 2025 was reasonable in light of all the information it had about [Student]’s specific needs. *William V. as next friend of W.V. v. Copperas Cove Indep. Sch. Dist.*, 826 F. App’x 374, 380–81 (5th Cir. 2020). Among the factors that makes the District’s course of action here reasonable is the fact that [Student]’s decision-making parent, [Parent], is an experienced special education professional and rejected the possibility that [Student] could not access or benefit from the general education curriculum without special education accommodations. As evidenced by multiple emails from 2022 through the filing of the Due Process Complaint in May 2025, and their testimony at hearing, [Parent] did not want [Student] evaluated for an IEP. Instead, they believed and continuously expressed the informed opinion that if the 504 Plan were consistently implemented, this would meet [Student]’s disability and educational needs. In addition, [School] staff who were experienced in distinguishing and providing for the needs of students with IEPs and 504 Plans,

and who had known [Student] throughout his time at [School], drew the reasonable conclusion that [Student]’s 504 Plan was allowing [Student] to make appropriate educational progress. They monitored that progress and made individualized adjustments when and as necessary, and they determined that [Student]’s struggles during Third Grade were not an indication that the 504 Plan accommodations were not sufficient for [Student] to access the general education curriculum. That the District did not suspect at that point that [Student] might be a child with a disability “and in need of special education, even though [[Student] was] advancing from grade to grade” did not represent a failure of the District’s Child Find obligation, nor did it ignore a request made by [Student]’s parent. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, (3rd Cir. 2012) (internal citations omitted).

Complainant’s citation of *O.W. by Hannah* for the proposition that the diagnosis of ADHS is a *per se* Child Find trigger is easily distinguishable. O.W. had an extensive history of mental illness, and his behaviors were also not “typical of boys his age,” because, unlike [Student], O.W. “was a fifth grader who had already been moved between schools in an attempt to respond to his unique educational needs.” *O.W. by Hannah*, at 794. [Student]’s history of behaviors is more accurately analogized to D.K. in *D.K. v. Abington Sch. Dist.*, of whom the Court noted that it is unremarkable that “young children are developing at different speeds and acclimating to the school environment.” *D.K.* at 251. As [Parent] also noted, for [Student] this included the impact of an unprecedented global pandemic that prevented typical socialization and default in-person instruction for children beginning their public-school elementary education in 2019, 2020 or 2021.

Thus, the inquiry into whether the District failed in its Child Find obligation must begin after January 2022. Because no exceptions to the two-year statute of limitations are applicable here or were pled in the Due Process Complaint, in order to sustain the claim of any IDEA violation, Complainant must show that there was a trigger after May 15, 2023.

Complainant offers November 2023⁹ as a possible alternative. The November 10, 2023 date proposed in Complainant's Closing Argument is apparently based on emails from [Second Grade Teacher] in December 2022 and [Co-Principal] in September 2023.¹⁰

The ALJ notes that the email from [Second Grade Teacher] is outside the two-year statute of limitations for a Due Process Complaint. Additionally, [Second Grade Teacher] was [Student]'s Second Grade teacher and the District was still working to implement and fine-tune the 504 Plan in the fall of [Student's] Second Grade year (the first full school year with the 504 Plan in place).

Because Complainant sent an email on the same day as the [Co-Principal] email identified in Complainant's Closing, which the ALJ has already discussed, the ALJ addresses [Co-Principal's] email in that context. In September 2023, Complainant sent an email in which they purportedly requested an IEP evaluation. The ALJ finds that this was not a request for an IEP evaluation, but something more like a threat intended to provoke [School] to more fully and consistently implement the 504 Plan, in order to *avoid* an IEP evaluation. Supporting this alternative reading of the email as Complainant's continuing rejection of the need for an IEP, the ALJ notes that it also expressed Complainant's belief that [Student]'s continuing behavioral issues were "related to the environment and not entirely all on an 8 year old boy, who (as we have mentioned multiple times) missed out on 2 incredibly important years of instruction."

IEP As Evidence of Earlier Need for Special Education

Complainant's argument that because [Student] was eventually determined to be a child with a disability pursuant to IDEA in July 2025, [Student] must always have been a child with a disability pursuant to IDEA similarly fails. The Court in *D.K.* made this clear. Complainant

⁹ Some testimony at hearing concerned a possible trigger in April 2023 in a string of emails similar to those that were exchanged in September 2023. However, Complainant did not include this date in their Closing brief, it is outside the two-year statute of limitations, and, as previously noted, the ALJ does not find that this was a request by Complainant that the District conduct a special education evaluation.

¹⁰ Based on Complainant's citation of Exhibit 33, p. 20 and Exhibit 38, pp. 32-34 as support for this date.

has offered no evidence or case law to the contrary or otherwise explained how their argument here would not lead to absurd or untenable results. The District's witnesses testified that the IEP generally replicates the accommodations in [Student]'s 504 Plan. A comparison of the two confirms that this testimony is accurate. [Student]'s IEP also specifically finds that special education/academic services/goals are not necessary. The only significantly different additional accommodation – mental health services – is also available as a Section 504 accommodation. In other words, this accommodation could have been added to [Student]'s 504 Plan and apparently provided the same access to general education for [Student]. The mere fact that ADHD is one of the criteria supporting the IEP finding of Other Health Impairment does in any way not alter this conclusion.

The ALJ is not finding and does not understand the District to be suggesting that [Student] is not now a child with a disability and also in need of special education services, only that nothing in the July 2025 IEP suggests that [Student] should or could have been identified earlier. "A school's failure to diagnose a disability at the earliest possible moment is not *per se* actionable, in part because some disabilities "are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all." *A.P. ex rel. Powers v. Woodstock Bd. of Educ.*, 572 F.Supp.2d 221, 226 (D.Conn.2008). *D.K.* at 249. Thus, the claim that the District failed in its Child Find obligation by not evaluating [Student] earlier is not sustained.

Denial of FAPE

Even if the ALJ had found that the District breached its Child Find obligation, the Complainant is only entitled to a remedy for the Child Find procedural violation on a showing that this resulted in a substantive denial of FAPE. The fact that [Student] has progressed from grade to grade, generally performing academically at or above grade level, does not mean that the District had fulfilled its obligation to provide FAPE, as Complainant rightly points out. However, Complainant has the burden of demonstrating that [Student] suffered some educational harm, in order to sustain its claim for compensatory education or any other

remedy. The only evidence before the ALJ of educational harm to [Student] or that he was unable to access the general education curriculum is that at the start of Third Grade his standardized math scores were at the First-Grade level, and this apparently resulted in [Student] being removed from the challenge program. Complainant offered no evidence showing an impediment to [Student]’s right to FAPE or that [Student] was deprived of educational benefits prior to the implementation of the IEP in July 2025. Instead, the evidence at hearing clearly establishes that [School] staff attended to [Student]’s academic and social-emotional needs with individualized attentiveness and sensitivity through means other than special education, assuring that even as they were unable to eliminate behaviors associated with his ADHD, he was not deprived of FAPE.

Conclusion

Complainant asserts that the similarity between [Student]’s IEP accommodations and those in [Student]’s 504 Plan is evidence that the District should have known or suspected prior to April 2025 that [Student] might be a child with a disability pursuant to IDEA as well as a student with a disability pursuant to Section 504. On the contrary, the ALJ has found that this further supports the District’s defense that it reasonably pursued additional and/or modified 504 Plan interventions. *Durbrow v. Cobb Cnty. Sch. Dist.*, 887 F.3d 1182, 1196 (11th Cir. 2018) (“When a school district uses measures besides special education to assist struggling students, it is even less likely in breach of its child-find duty.”) The fact those who participated in the IEP determination felt it was a “close call” and the intentional omission of academic services and goals because of the “academic body of work that shows [[Student]] is on track with [] academics,” also supports the conclusion that the District did not fail in its Child Find obligation and that Complainant has not demonstrated educational harm or a failure to provide FAPE even if they did.

Order

The ALJ concludes that Complainant has not met their burden of proof to establish that

the District violated the IDEA, either by neglecting its Child Find obligation or denying FAPE to [Student]. Therefore, Complainant is not entitled to relief in the form of compensatory special education services or the financial equivalent.

This Decision is the final decision of the independent hearing officer, pursuant to 34 C.F.R. §§ 300.514(a) and 300.515(a). In accord with 34 C.F.R. § 300.516, either party may challenge this decision in an appropriate court of law, either federal or state.

Done and Signed this 5th day of December 2025.



Lilith Z. Cole

Administrative Law Judge