

State of Colorado Office of Administrative Courts 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	<p style="text-align: center;">▲ Court Use Only ▲</p>
<p>[Parent], Complainant,</p> <p>vs.</p> <p>El Paso School District 49, Respondent.</p>	
Decision	

This matter came before the undersigned Administrative Law Judge (“ALJ”) for hearing via remote teleconference on January 13, 2026. Complainant [Parent] (“Complainant”), mother of the Student, appeared on her own behalf. Respondent El Paso School District 49 (the “District”) appeared through its counsel, Mr. John Stanek. The ALJ admitted the following Hearing Exhibits into evidence: No. 5, No. 7 from Complainant’s set, and A, B, C, D, J, and N from the District’s set. The hearing was electronically recorded.

Issue Presented

Whether the implementation of the Student’s Individualized Education Program (“IEP”) violated his right to a free appropriate public education as defined in the federal Individuals with Disabilities Education Act (“IDEA”) and its Colorado counterpart, the Exceptional Childrens’ Education Act (“ECEA”).

Motion to Dismiss

At the conclusion of Complainant’s case-in-chief, counsel for the District moved for judgment pursuant to C.R.C.P. 50. However, as the ALJ was the trier of fact in this case, the motion was construed as a motion to dismiss pursuant to C.R.C.P. 41(b). *Campbell v. Commercial Credit Plan, Inc.*, 670 P.2d 813 (Colo. App. 1983); *Frontier Exploration v. Am. Nat.*, 849 P.2d 887 (Colo. App. 1992). That rule provides that “after the plaintiff, in an action

tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.” In ruling on a motion to dismiss for failure to prove a prima facie case, the proper test is whether plaintiff produced some evidence which, when taken most favorably to him, proved a claim upon which relief could be granted. *Brown v. Central City Opera House Ass’n*, 36 Colo. App. 334, 542 P.2d 86 (1975), aff’d, 191 Colo. 372, 553 P.2d 64 (1976). For the reasons set forth below, the ALJ granted the Motion to Dismiss.

Findings of Fact

1. Complainant is the mother of the Student, who’s eligibility for special education and related services is not disputed. The Student has been identified as having autism spectrum disorder and substantial hearing loss. He is non-verbal and communicates principally with sign language.
2. The Student was enrolled in the District and attended the sixth grade at [School] for the 2025-26 school year. He was educated pursuant to an IEP developed in May, 2025. Hearing Exhibit A. Complainant established that the IEP set forth appropriate services and supports based on the Student’s unique educational needs.
3. The District provided an American Sign Language (“ASL”) interpreter to assist the Student while he was on the bus to and from school.¹ A District paraprofessional aide greeted the Student when the bus arrived and accompanied the Student and the ASL interpreter to breakfast each day. While in the classroom, the Student had full-time support of the paraprofessional in addition to the special education teacher. The Student also received instruction in a “pull-out” setting from a teacher of the deaf, who knew and used ASL. Accordingly, at all times from the moment he was picked up at home, until he was dropped off in the afternoon, the Student was with at least one adult employee of the District.
4. Complainant did not express any concern to the District or its personnel at [School]

¹ Complainant established that the ASL interpreter was not available one day during the 2025-26 school year. She chose to keep him home that day rather than put him on the bus.

that the Student was not receiving all services called for in the IEP.

5. The District tracked the attendance of children using a system called Power School. Parents had the ability to “opt in” for automatic and immediate notifications from the Power School system direct to their phone or smart device. Complainant did opt in for Power School notifications.

6. During the first week of school in August, 2025, Complainant received multiple notifications that indicated that the Student was absent from class even though he had been picked up by the bus each morning. Complainant became concerned that the Student was unaccounted for at school and reached out to [Vice Principal], a vice principal at [School] responsible for special education. [Vice Principal] responded with an apology but assured Complainant that the Student was at school, safe, and accounted for. Complainant received additional notifications of the same type in September, 2025. This occurred a total of four or five times.

7. [Vice Principal] testified that she was aware of the concerns of Complainant triggered by the Power School notifications. She testified that the Student’s IEP called for him to receive services outside of the general education classrooms during certain times of the day. If he was not present when the general education teacher took roll, then the absence would be entered into Power School and result in a notification. [Vice Principal] emphasized that the notification did not mean that the Student was missing or otherwise unaccounted for at school, just that he was not present for roll call at the time it was taken.

8. [Vice Principal] and the attendance clerk at the school pledged to correct the real-time attendance record to reflect that the Student was not “absent” in the sense that he was not where he was supposed to be at the time of roll call. Complainant acknowledged that it was appropriate for the District to correct mistakes in the attendance record, but remained concerned that the notifications may indicate that the Student was not receiving the services called for in the IEP.

9. On cross-examination, Complainant testified that she expected to be able to verify in “real time” that the District was providing the Student with IEP services and supports. If a record of service delivery was created at the end of the day, she felt that she had no way to verify if it was accurate. To her, this was a way for her to participate meaningfully in the Student’s education. Complainant conceded that making a correction in the Power School

system the same day or the next day was not a problem, and that she did not ever tell the District that the Student missed receiving services because of the attendance tracking issue. Complainant was not aware of any instance when the called-for services were not provided to the Student by the District and she testified that she believed that the services were actually provided.

10. The District agreed to convene the Student's IEP team on October 9, 2025, to address the issue with attendance tracking. The team agreed that proper attendance tracking is important and necessary to ensure that Complainant could confirm that the Student was safe and receiving the educational services due under the IEP.

11. Following the above meeting, the attendance tracking problem only occurred on one other occasion when a substitute teacher took attendance during a time when the Student was out of class for IEP services.

12. [Vice Principal] established that in each case where the attendance system incorrectly reflected that the Student was absent, the record was corrected by the end of the day. She noted that the roll call is simply a "snapshot" of which children were present at the moment when attendance was taken; it did not intend to indicate that a child was lost or without appropriate adult supervision.

13. [Vice Principal] testified that there were multiple reasons why a special education student may not be in a general education classroom at the time of roll call. These reasons could include pull-out services, nursing services, counseling, or implementation of a behavior plan. On one occasion when the Student missed the attendance call, he had been picked up by Complainant earlier that day (August 5).

14. At no time was the Student's safety adversely affected by the attendance tracking or Power School notifications in use by the District. At no time were the Student's IEP services and supports withheld or denied because of these same issues. [Vice Principal] established that service providers seek out the children who are scheduled for individual instruction without regard to whether the Power School system lists them as absent or not.

15. [Special Education Teacher] testified in her capacity as the Student's special education teacher. She was familiar with the Student's IEP as the person responsible for providing his academic and related services.

16. [Special Education Teacher] established that the Student's schedule called for him

to move between locations throughout the day, whether for different class periods or for pull-out services like those received from the Deaf and Hard of Hearing teacher. She confirmed that the Student would receive services in her class even if he had been marked absent during an earlier class period. She does not use attendance records to keep track of IEP services delivered to the Student or other children.

17. [Special Education Teacher] established that the Student's day was organized around IEP services and supports more than the Power School class period schedule. The Student never missed her class due to an inaccurate attendance record and always received IEP services when he was present. She confirmed that the Student was doing well to master his IEP goals and making academic progress. She was not aware of any time when his safety had been at risk. He was with an adult at all times of his day.

18. [Director of Special Education] testified in her capacity as the District's Special Education Director. In that role, she is responsible for policies and supervision of the District's program.

19. [Director of Special Education] testified that all District schools use the same attendance system. She confirmed that attendance records are not how special education service delivery is documented. She also established that the District maintains logs of services provided to special education students, but does not have any way of tracking and informing parents in "real time" the delivery of such services to children.

20. [Director of Special Education] was made aware of Complainant's concerns regarding the Power School attendance notifications. She assured Complainant that the Student was always safe and accounted for.

Conclusions of Law

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education ("FAPE") that provides special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). Section 1401(3) defines a "child with a disability" as meaning "a child— (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this

chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.” A school district satisfies the requirement for a 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). To meet its obligations under the IDEA, the school district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County School District RE-1*, 580 U.S. 386; 137 S.Ct. 988 (2017). States are empowered to implement statutory and regulatory programs to further the goals of the federal law. *Id* at § 1407. Colorado has adopted the ECEA as well as rules for its administration here. Article 20 of Title 22, C.R.S., and 1 *Code of Colorado Regulations* (“CCR”) 301-8, respectively. The IDEA is also implemented through regulations found at 34 Code of Federal Regulations § 300, *et seq*.

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 violated its obligations under the IDEA.

Discussion

The evidence at hearing established that the Student was enrolled within the District for the 2025-26 school year. The District had a legal duty to comply with the IDEA and ECEA regarding the Student’s identification as a child with a disability, to develop an IEP that would permit him to receive appropriate benefit from his education in light of his unique

needs, and to implement the IEP safely and effectively.

Complainant agreed that the services and supports identified in the May, 2025 IEP were appropriate for him. Thus, there is no dispute here that the development of the IEP and the contents of it were in compliance with the law and reasonably calculated to confer educational benefit on the Student with due consideration for his unique needs.

What remains to be determined is whether the District appropriately implemented the IEP. The record established that the Student received all of the services and supports due to him under the May, 2025 IEP. He made progress toward his IEP goals and academic standards. He was safe at all times and attended by an adult with the ability to communicate with him using ASL. The sole issues raised by Complainant were that notifications of absences through the Power School system undermined her confidence in the District's ability to keep him safe and verify that appropriate services were delivered. However, the undisputed evidence established that the Power School system was not used for tracking IEP service delivery and/or progress. It reflected roll call that was taken in the general education classrooms without consideration for whether the Student had been pulled out for IEP services at the time. Thus, while the notifications were undoubtedly concerning for Complainant, they did not evidence a failure to keep him safe or on track at school. In fact, the Student was supervised constantly by a responsible adult from the time he got on the bus, until the time he got home. To the extent that that the notifications were indicators of a problem with the overall attendance system as it related to children with IEPs, this was addressed by the District with Complainant directly and in the context of a supplemental IEP meeting in October, 2025. Through these actions, Complainant was informed of the cause of the problem, and the District prevented the recurrence of inappropriate attendance notifications thereafter. The ALJ finds and concludes that the District took reasonable and adequate steps to remedy the issue such that the Student did not suffer any educational harm.

A second issue raised by Complainant was that the attendance notifications eroded her confidence that services were being provided to the Student as called for in his IEP. In this regard, the evidence established that the Power School system did not represent any form of documentation for IEP services. That was done separately and did not reflect any gap or other failure to provide the Student with appropriate supports. The fact that the

District corrected the attendance system errors within one or two days was conceded by Complainant to be proper and thus not a substantial reason for doubt. With respect to her desire to have a real time confirmation of the delivery of IEP services as that occurred, this was not a function of the Power School system. Moreover, as noted by the ALJ during discussion of the Motion to Dismiss, such real time monitoring is not a requirement of the IDEA nor a feature of any system encountered in more than twenty years of hearing special education due process complaints.

For the foregoing reasons, the ALJ finds and concludes that Complainant failed to prove that she was entitled to relief for the claimed failure to deliver FAPE to the Student. The District implemented the IEP safely and effectively, notwithstanding the problems with attendance tracking on four or five occasions. The Student received the services agreed upon by the IEP team and received educational benefit in accordance with his unique needs. The Motion to Dismiss is therefore granted.

Decision

The ALJ concludes that the Complainant did not meet her burden of establishing that the District is responsible for a deprivation of FAPE to the Student in the implementation of the IEP during the 2025-26 school year. Accordingly, Complainant is not entitled to any relief on the issues raised by her Due Process Complaint herein.

This Decision is the final decision except that any party has the right to bring a civil action in an appropriate court of law, either federal or state, pursuant to 34 C.F.R. 300.516.

Done and Signed this 2nd day of March, 2026.



KEITH J. KIRCHUBEL
Administrative Law Judge

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