

<b>STATE OF COLORADO</b> <b>OFFICE OF ADMINISTRATIVE COURTS</b> 1525 Sherman Street, 4 <sup>th</sup> Floor, Denver, Colorado 80203	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>[MOTHER] and [FATHER], on behalf of [STUDENT],</b>  Complainant,</p> <p>vs.</p> <p><b>MT. EVANS BOCES,</b>  Respondent.</p>	
<b>AGENCY DECISION</b>	

On February 25, 2015, the Colorado Department of Education (“CDE”), Exceptional Student Services Unit, received a due process complaint filed by [Mother] and [Father] on behalf of their minor daughter, [Student], alleging that Mt. Evans BOCES (“Respondent” or “BOCES”) 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 the Colorado’s Exceptional Children’s Educational Act (“ECEA”), 1 CCR 301-8., by failing to provide her with a free appropriate public education (“FAPE”). Specifically, the parents allege that BOCES failed to move [Student] from a third grade reading level to a college-ready reading level prior to graduation; modified the standards required for [Student] to graduate by substituting required classes with “dumbed-down” credit recovery courses; and failed to provide the transition services necessary to prepare [Student] for college and her career goal of becoming a surgeon. The parents request that [Student] remain eligible for special education services through the age of 21, and that the ALJ order an independent educational evaluation (“IEE”) in order to provide [Student] appropriate transition services going forward.

The due process complaint was forwarded to the Office of Administrative Courts (“OAC”) and assigned to Administrative Law Judge (“ALJ”) Tanya T. Light for an impartial due process hearing. Prior to hearing, ALJ Laura A. Broniak issued a procedural order granting Respondent’s Motion to Dismiss Claims Barred by Statute, holding that pursuant to 20 U.S.C. §1415(f)(3)(C), 34 C.F.R. §300.511(e), any claims pre-dating February 25, 2013 were outside the statute of limitations and barred. Complainant filed a Motion for Reconsideration, which the undersigned denied. ALJ Broniak granted a Motion to Join Complaints, joining case number EA 2015-005 (the Parents’ due process complaint) and EA 2015-0012 (BOCES’ due process complaint

asserting that there is no need for an IEE, filed on April 2, 2015). The hearing was convened in accordance with 20 U.S.C. § 1415(f), and held in Denver, Colorado on May 1, 4, and 5, 2015 at the OAC.

Derry Dale Sadler, Esq. represented Complainants, and Meghan E. Pound, Esq. and Alyssa C. Burghardt, Esq. represented Respondent. [Executive Director] was served as BOCES' advisory witness. "BOCES" stands for "board of cooperative services." § 22-5-103(2), C.R.S. At hearing, the ALJ admitted into evidence Complainants' exhibits A, B, K, L (pages 390 and 391), M (admitted as including draft IEP and papers related to the draft IEP), N (pages 443, 444, and 445), P pages 499 through 502), R, T (pages 599, 600, 603, 604, 605, and 607), U, BB (pages 731, 732, 740, 741, and 742), II, JJ (with attorney-client privileged information redacted), and KK, and BOCES' exhibits 1, 2, 3 (pages 5-10), 4, 5, 6, 7, 8, 9, 10, 12, and 13. The proceedings were recorded in Courtroom 2.

### **ISSUES PRESENTED**

Whether BOCES failed to provide [Student] with FAPE as required by the IDEA, and therefore should be required to provide [Student] special education services until she turns 21; and whether BOCES must provide for an IEE for [Student].

### **FINDINGS OF FACT**

#### **[Student]**

1. [Student] is an 18 year-old high school senior at [High School], who is scheduled to graduate on May 29, 2015. She lives with her parents within the boundaries of the [District] ("District").
2. Mt. Evans BOCES is the local educational agency ("LEA") responsible for providing special education services for IDEA-eligible students attending school in the District.
3. [Student] has attended school in the District beginning in the 2006-2007 school year, except for the first quarter of the 2011-2012 school year when she was home-schooled.
4. [Student]'s mother suffers from a serious, terminal illness. Due in large part to witnessing her mother's health struggles, [Student] for many years has had the goal of becoming a surgeon.
5. [Student] has always worked very hard in school, consistently demonstrating motivation, drive, maturity, and the ability to advocate for herself. Furthermore, she has strong auditory processing skills, and the perseverance and resilience to use those skills to compensate to the extent possible for her areas of struggle.

6. [Student] has been diagnosed with dyslexia, which is a medical diagnosis. For purposes of special education and related services under the IDEA, [Student] has been identified as having a specific learning disability (“SLD”) in reading.

7. Students with an SLD in reading have challenges reading at grade level.

8. [Student] has below average cognitive functioning. In 2007, [Executive Director], who was the District’s School Psychologist at the time, administered the Wechsler Intelligence Scale for Children (“WISC”), which is an intelligence quotient (“IQ”) test for children ages 6 through 16. In 2014, at the age of 17, [Student] was given the Stanford Binet IQ test. Her IQ scores were consistent across time, showing low average and borderline cognitive abilities.

9. [Student]’s overall nonverbal IQ score on the Stanford Binet was 79, which is at the top of the borderline range. Her verbal IQ was 73, with a full scale IQ of 75.

10. Absent occurrences such as traumatic brain injuries, IQs are generally stable over time, and do not tend to change over one, five, and even ten years.

11. [Student] has severe vision problems.

[Student]’s IEPs within the Relevant Statute of Limitations Period

The March 2013 IEP

12. [Student] has received an individualized education program (“IEP”) every year since she began at the District in 2006.

13. At hearing, the parties stipulated to the facts that 1) the Parents attended [Student]’s IEP meetings every year from 2006 to the present, with the exception of the March 2014 IEP meeting, and 2) the Parents received notice of procedural safeguards informing them of their rights.

14. [Mother] testified that because of her illness stress causes her to become confused. She further testified that she was stressed and confused at [Student]’s IEP meetings.

15. [Student]’s March 12, 2013 IEP meeting was an annual review held when she was in tenth grade. [Special Education Teacher], [High School] special education teacher, was [Student]’s case manager and drafted the IEP. [Student] and her mother also attended, as well as several other required members of the IEP team. [Student] was 16 and in the tenth grade at the time of this meeting.

16. Relevant comments in the IEP included the following:

- a. “[[Student]] is demonstrating more independent learning skills.”
- b. “[[Student]] is very interested in becoming a surgeon, but her academic skills and STAR test scores seem to indicate this is an unreachable goal.”

17. Under “[d]escribe the age appropriate transition assessment process used to develop the post-school goals,” the following information is included:

- a. "[[Student]] is scheduled to meet with [College Counselor], the [High School] college counselor to complete an interest inventory and research careers in the medical field. [College Counselor] will also teach [[Student]] how to research colleges and vocational programs that offer majors in health careers."
  - b. "[Special Education Teacher] will work with [[Student]] to improve her reading skills to include: decoding, fluency, and word recognition."
18. Under "Measurable Post-School Goals," [Special Education Teacher] wrote:
  - a. "after earning her diploma, [[Student]] will attend college or trade school to train to work in the health care industry"
  - b. "[[Student]] will take and pass the core and elective courses required to earn her diploma so that she can go to college or trade school. She will use Read Naturally to improve her decoding, fluency, and word recognition skills."
19. [Student]'s measurable goals identified on this IEP included the following:
  - a. "Writing Mechanics. In order to be successful in a health career, [[Student]] will independently write a 5-7 sentence paragraph using correct capitalization, punctuation, spelling and subject verb agreement by earning a 70% or better on written assignments."
  - b. "Reading Comprehension. In order to attend a health care program, [[Student]] will improve her reading fluency from a 3.0 grade level to a 5.0 grade level as measured by STAR testing results."
20. The IEP called for 7 ½ hours per week of special education services with [Special Education Teacher] in the least restrictive environment ("LRE").
21. The IEP listed accommodations necessary for [Student] to access the general education curriculum, including extra time for tests and class work, shortened writing assignments, frequent checks for understanding, and repetition of pertinent information due to memory issues.
22. Finally, the IEP indicated, and it is found as fact, that [Student] was exhibiting more independent learning skills and reading more on her own.
23. The March 2013 IEP demonstrated, and it is found as fact, that appropriate accommodations were identified to enable [Student] to access the general education curriculum in order to make effective progress. The credible testimony at hearing by [Student]'s general and special education teachers established that the accommodations identified were used with [Student].
24. The transition services identified for [Student] in the March 2013 IEP met

IDEA's substantive requirements. The IEP included appropriate, measurable, post-secondary goals based on age-appropriate transition assessments related to [Student]'s training, education, and employment.

25. The March 2013 IEP demonstrated, and it is found as fact, that [Student] received some educational benefit in the 2012-2013 school year, and that the District provided FAPE to her during that year.

26. None of the members of [Student]'s March 2013 IEP meeting ignored or failed to appropriately address [Student]'s reading and math issues.

#### The March 2014 IEP

27. [Student]'s eleventh grade IEP meeting was held on March 7, 2014. [Special Education Teacher] and [Student] attended, and [Student]'s parents were invited but unable to attend.

28. Comments and goals in this IEP included the following:

- a. [Student] would attend a post-secondary program to study health sciences.
- b. [Student] would take and pass the core and elective courses required to earn her diploma.
- c. [Student] has been working more independently.
- d. She would continue to take fluency tests to help improve her reading skills
- e. She would take English 12 in credit recovery.
- f. She would take Consumer Math in credit recovery.
- g. She would meet with the Division of Vocational Rehabilitation services in the fall of 2014.
- h. Measurable goals included independently writing a 5-7 sentence paragraph using correct capitalization, punctuation, spelling, and subject/verb agreement, and earning 80% or better on written assignments.
- i. Other measurable goals included improving her reading fluency from a 3.0 grade level to a 7.0 grade level as measured by STAR testing, and using in sentences all word from the "Dolch sight word list" with 90% accuracy.
- j. [Student]'s special education services in the least restrictive environment were increased from 7 ½ hours per week to 11 ¼ hours per week.

29. Accommodations for [Student] identified in this IEP included extra time for class work and tests, shortened writing assignments, using books on tape, and using a tape recorder to tape lectures.

30. After the IEP meeting, [Special Education Teacher] met with [Student]'s mother on April 15, 2014 in order to receive her input. [Mother] suggested changes to the IEP, and those changes were made by [Special Education Teacher].

31. After the IEP meeting, [Special Education Teacher] followed up by calling the Colorado Division of Vocational Rehabilitation ("DVR") to begin the process of connecting [Student] to their services.

32. The March 2014 IEP demonstrated, and it is found as fact, that appropriate accommodations were identified to enable [Student] to access the general education curriculum in order to make effective progress. The credible testimony at hearing by [Student]'s general and special education teachers established that the accommodations identified were used with [Student].

33. The transition services identified for [Student] in the March 2014 IEP met IDEA's substantive requirements. This IEP included appropriate, measurable, post-secondary goals based on age-appropriate transition assessments related to [Student]'s training, education, and employment.

34. The March 2014 IEP indicated, and it is found as fact, that [Student] received some educational benefit in the 2013-2014 school year, and that the District provided FAPE to her during that year.

35. None of the members of [Student]'s March 2014 IEP meeting ignored or failed to appropriately address [Student]'s reading and math issues.

#### Fall of 2014 Reassessment of [Student]

36. [Executive Director] became the Executive Director of the Mt. Evans BOCES at the beginning of the 2013-2014 school year and currently works in that capacity. In this position she oversees special education services for [District] and two other school districts. [Executive Director] has a Ph.D. in Clinical Psychology, is licensed as a psychologist in Colorado, and specialized in school psychology during her education. Prior to becoming the Executive Director of the BOCES, [Executive Director] was employed by the [District] as the District Psychologist for many years.

37. At hearing [Executive Director] was endorsed as an expert witness in psychology and special education services.

38. Sometime in 2014, [Executive Director] became aware that [Student]'s parents had significant concerns regarding [Student]'s IEP and academic functioning. Therefore, in the fall of 2014, the District agreed to conduct a re-evaluation of [Student]. She was evaluated academically through the WIAT and the Comprehensive Test of Phonological Process ("CTOPP") tests, and cognitively through the Stanford Binet. The [Parents] agreed to the testing, and the results were contained in a report dated November 15, 2014.

39. [Math Specialist], a local math specialist, was contracted by the District to review [Student]'s WIAT scores and make recommendations for the next semester. [Math Specialist] believed, and it is found as fact, that she had enough information from

the WIAT to determine what [Student]'s strengths and weaknesses were. She recommended that [Student] take a consumer math class and pre-algebra.

40. [Special Education Teacher 2], a special education teacher, administered the CTOPP test to [Student]. She testified that [Student]'s scores indicated she has difficulties connecting spoken and written language. [Student] had three composite scores on the CTOPP in the average range, and one in the below average range.

41. Literacy specialist [Literacy Specialist] conducted a record review and made recommendations regarding [Student]'s literacy skills; specifically, that she receive one-on-one reading remediation with a reading remediation specialist beginning in January of 2015. She recommended the sessions last 90 minutes three times per week. She gave the District the names of two reading remediation specialists that she recommended, and one of the specialists was [Reading Remediation Specialist].

42. The WIAT and CTOPP tests comprehensively tested [Student] on all aspects of her reading abilities. Credible testimony by [Math Specialist] and [Special Education Teacher 2] established that these tests are the best tests that exist to test reading, and that there are no other tests that exist that are better.

43. [Psychologist] tested [Student]'s cognitive functioning through administration of the Stanford Binet. [Psychologist] has a Ph.D. in educational psychology, is a licensed psychologist in Colorado, and has administered this test numerous times. She is [District]'s school psychologist.

44. As stated above, [Student]'s scores on the Stanford Binet indicated her cognitive functioning was in the low average and borderline ranges.

45. [Special Education Teacher] reviewed the results of [Student]'s evaluation. She credibly testified, and it is found as fact, that the testing was comprehensive and nothing was missing.

#### November 2014 IEP

46. An IEP reevaluation meeting was held on November 20, 2014 after receiving the results of [Student]'s evaluation. The [Parents] were present, as well as their attorney, the District's attorney, [Special Education Teacher], and the rest of the required IEP team members.

47. Goals and comments on this IEP included:

- a. Improve basic reading skills and consumer math skills.
- b. Receive the credits necessary to earning a diploma in order to graduate and go into a health care field.
- c. Special education would provide academic support based on her needs.
- d. Attend a post-secondary program to study a health care related field.
- e. That [Student] would receive specialized literacy instruction three

sessions per week at 90 minutes per session starting in January 2015.

- f. The [High School] counselor would provide guidance in post-secondary healthcare program exploration and continued access to College in Colorado.

48. Measurable goals on the IEP included the following:

- a. "In order to access the curriculum in a health program, [Student] will improve her basic reading skills as evidenced by increased scaled scores in the following areas of the CTOPP assessment: Elision, Phoneme Isolation, and Non-Word Repetition."
- b. "Math: In order to be successful in a job, [Student] will improve her understanding of money problems relative to a job situation – counting change, identifying discounts, and computing tax with 60% accuracy."

49. The IEP indicated that [Student] had independently completed the Ansell-Casey Life Skills Assessment and Transition Assessment Student Interview on November 7, 2014, as well as the Career Maturity Inventory. She also completed the Pathfinder curriculum, which helps students explore career and educational paths.

50. The IEP identified accommodations necessary for [Student] to access the general education curriculum to make effective progress.

51. [College Counselor] is the post-graduate advisor at [High School]. [College Counselor] met with [Student] in accordance with her IEP, and had her complete an "interest profile" in which students identify their strong personality traits and careers that match their interests.

52. [College Counselor] taught [Student] how to research careers in the medical field through a program entitled "College in Colorado." [College Counselor] is not a required member of [Student]'s IEP team.

53. [Special Education Teacher] contacted Red Rocks Community College about their CNA program requirements and accommodations they could make for [Student]. She also contacted Warren Technical high school and DVR. [Special Education Teacher] spoke with a DVR counselor who informed her that the DVR counselor had called the [Parents] to begin the process of exploring services for [Student], but had not heard back from them.

54. Neither [Special Education Teacher] nor [College Counselor] are legally required to take [Student] on visits to college campuses, or perform services concerning her post-secondary educational career in addition to the services they provided her.

55. The Mt. Evans BOCES contracted with [Reading Remediation Specialist] in December of 2014 to provide one-on-one reading services to [Student] beginning on January 7, 2015.



56. [Reading Remediation Specialist] has been a private reading specialist for 22 years and came highly recommended. She is a specialist in reading remediation.

57. [Student] received one-on-one reading services from [Reading Remediation Specialist] on Mondays, Wednesdays, and Fridays, for 90 minutes per session.

58. [Reading Remediation Specialist] sent monthly progress reports on [Student] to the District, and in her January 2015 report, she wrote “[Student] has made solid, steady progress in the nine literacy instruction classes she attended in January.”

59. [Reading Remediation Specialist] testified that [Student] progressed at a good rate. She further testified that [Student] could read at college level to some degree, although it would be very difficult for her and very tiring.

60. The November 2014 IEP demonstrated, and it is found as fact, that appropriate accommodations were identified to enable [Student] to access the general education curriculum in order to make effective progress. The credible testimony at hearing by [Student]’s general and special education teachers established that the accommodations identified were used with [Student].

61. The transition services identified for [Student] in the November 2014 IEP met IDEA’s substantive requirements. This IEP included appropriate, measurable, post-secondary goals based on age-appropriate transition assessments related to [Student]’s training, education, and employment.

62. The November 2014 IEP indicated, and it is found as fact, that [Student] received some educational benefit in the 2014-2015 school year, and that the District provided FAPE to her during that year.

63. None of the members of [Student]’s November 2014 IEP meeting ignored or failed to appropriately address [Student]’s reading and math issues.

#### Colorado Academic Standards and Credit Recovery Classes

64. In Colorado there are only two routes to complete high school: general education diplomas and certificates of participation. General education diplomas are awarded to students who complete classes in accordance with Colorado Academic Standards (“CAS”). CAS are the expectations of what students should know and be able to do academically at the end of each grade.

65. Certificates of participation are given to students who have significant needs and cannot meet the CAS. Certificates of participation are given to students at age 21 because the students have aged out of high school.

61. In order for a student to be on the certification of participation track, the student must test two or more standard deviations below normal in both IQ and adaptive functioning. Two standard deviations below normal in IQ would be an IQ below 70. Adaptive functioning refers to the student’s ability for self-care, such as bathing, grooming, and toileting.

62. [Student] is required to be educated in accordance with CAS and on the diploma track because she does not meet the requirements for the certificate of participation track. Her IQ is above 70 and she has no adaptive functioning issues.

63. Because [Student] is on the diploma track, she will be given a high school graduation diploma if she earns all of the credits required to graduate. The school board sets the credit requirements for graduation.

64. [Executive Director] explained the difference between accommodations and modifications, as those terms are used on IEPs. Accommodations are the alternative ways in which material is either given or accessed by a special education student. Significantly, accommodations do not change the content of the curriculum, just how it is presented or accessed. Modifications, on the other hand, are when the curriculum itself is actually altered.

65. Only students who are on the certificate of participation track may receive modifications. [Student]'s IEPs never contained modifications because she never qualified for the certificate of participation track. Therefore, [Student]'s curriculum met the CAS in every academic area. Her curriculum was never "dumbed down."

66. Credit recovery is a general education program that meets the CAS. It is therefore not a "dumbed down" curriculum. Students who take credit recovery classes receive the same curriculum as the non-credit recovery classes, but the course is self-paced, more specific, and omits some ancillary information.

67. Credits from credit recovery classes count towards a diploma.

68. Both special education students and general education students take credit recovery classes.

69. As of the third quarter of the 2014-2015 school year, [Student] had earned enough credits to graduate and receive her high school diploma.

70. [Social Studies Teacher] teaches general education social studies, economics, government, and history classes. [Student] was one of his students in the general education population, and [Social Studies Teacher] credibly testified that she performed as well as anyone else in his class and that he did not modify his curriculum for her. He shortened his tests in accordance with [Student]'s IEP accommodations, but other than that the content of the curriculum was the same as for the general education students. [Student] received a grade of C in his class, and [Social Studies Teacher] credibly testified that she earned that grade.

71. [Student] continues to have significant difficulties with reading, and may not be at a college reading level. However, [Student] made some progress in reading at [High School]. She also has made some progress in her writing and in learning the general education classes' content.

72. [Student] and her parents continue to be frustrated by what they perceive was BOCES' failure to create and implement specific plans to move [Student] from a third grade reading level to a college-ready reading level, and by the District's perceived

failure to design and implement transition services for [Student] that would enable her to pursue her dream of becoming a surgeon.

73. Red Rocks Community College and Arapahoe Community College are open enrollment community colleges, which means they accept any student who graduates from high school with a high school diploma. Both these schools have educational programs that would allow [Student] to pursue a career in a health care field.

## **DISCUSSION**

### **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 (10<sup>th</sup> 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 Mt. Evans BOCES violated its obligations under IDEA by failing to provide [Student] with FAPE and by failing to provide an appropriate IEE.

### **The Requirement of FAPE**

The purpose of the IDEA 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. 20 U.S.C. § 1400(d)(1)(A). 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 school district is not required to maximize the potential of the disabled child, but must provide “some educational benefit.” *Id.* at 199-200. “Some progress” toward the student’s educational goals is all the IDEA requires. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d at 1150-52.

It is determined that a school district has provided a disabled student with FAPE when demonstrable evidence from the student’s educational records establishes that the student made some measureable progress on the goals and objectives in his or her IEP. *Id.* Progress such as “achievement of passing marks” and “advancement from grade to grade” can be sufficient to demonstrate that the requisite educational benefit has been conferred. *Rowley* at 207, n. 28.

Here, the credible testimony at hearing, as well as [Student]’s educational records, established that [Student] made some measurable progress on the goals and objectives identified in her IEP and received educational benefit. [Special Education Teacher] credibly testified that beginning with [Student]’s March 2013 IEP, [Student] demonstrated increasingly independent learning skills. These skills continued to improve over the next two years, with [Student] progressing in her ability to read tests

on her own to a greater degree. [Reading Remediation Specialist] wrote in her January 2015 report that “[Student] has made solid, steady progress in the nine literacy instruction classes she attended in January,” and she testified that [Student]’s reading progressed at a good rate. [Student] advanced from tenth to twelfth grade and passed the classes required to receive a high school diploma.

Moreover, each of the IEPs provided appropriate, measurable academic goals, such as [Student] being able to write a 5-7 sentence paragraph correctly and 70% or better on written assignments. The accommodations listed in [Student]’s IEPs allowed her to successfully access general education classes, as evidenced by her grades in [Social Studies Teacher]’s classes, and her passing of the credit recovery classes. The credit recovery classes, contrary to the Complainant’s belief, were not “dumbed down” classes. They met the Colorado Academic Standards and were taken by both special education and general education students. The evidence established that [Student] took and passed the same core content of all graduating seniors with no modifications whatsoever. Rather, she received appropriate accommodations in order to successfully access that curriculum.

Finally, BOCES provided [Student] more than “some” educational benefit when they hired a one-on-one literacy specialist to work with her three times per week, 90 minutes per session. The IDEA does not require BOCES to provide that level of intensive remediation – BOCES went above and beyond what it was required to do in order to help [Student] with her reading difficulties.

For all of the reasons explained above, Mt. Evans BOCES provided [Student] FAPE in accordance with the IDEA. Therefore Complainant is not eligible for any additional special education services from Mt. Evans BOCES.

#### Transition Services

“Transition services” are defined as a “coordinated set of activities . . . designed to be within a results-oriented process that is focused on improving the academic and functional achievements of a child with a disability to facilitate the child’s movement from school to post-school activities.” 20 U.S.C. § 1401(a)(34); 34 C.F.R. § 300.43(a)(1). Transition services are “based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.” 34 C.F.R. §300.43(a)(2). Significantly, the IDEA does not guarantee outcomes and an IEP does not have to provide the best conceivable education. *Rowley*, 458 U.S. at 206-7. In the context of an IEP’s transition services, this means that there is no requirement in the IDEA that transition services include ensuring a student’s acceptance into college or even ensuring readiness to attend a four year college.

In this case, [College Counselor] met with [Student] and taught her how to use the “College in Colorado” program and gave her career interest tests. [Special Education Teacher] reached out to local Community Colleges on [Student]’s behalf, and contacted the Colorado Division of Vocational Rehabilitation Services for [Student]. [Student]’s IEP team wrote realistic post-secondary goals and set a course of study necessary to help [Student] obtain a high school diploma, which is what she needed in

order to prepare for a career in health care, her chosen field. In line with those post-secondary goals, [Student] has earned all of the credits necessary to graduate and receive her diploma, and then begin a post-secondary program in health care. The fact that the program she is accepted into may not be her ideal choice is unfortunately not a problem the IDEA was designed to solve.

Mt. Evans BOCES provided appropriate transition services in accordance with the IDEA. Therefore Complainant is not eligible for any additional transition services from Mt. Evans BOCES.

#### Independent Educational Evaluation

An educational evaluation is appropriate if it includes “a variety of assessment tools and strategies designed to gather relevant functional, developmental, and academic information about the child,” and is “sufficiently comprehensive to identify all of the child’s special education and related service needs.” 20 U.S.C. §1414(b)(2); 34 C.F.R. § 300.304(b)(1) & (c)(6). An evaluation may be deemed appropriate unless the parents can “identify particular omissions on the . . . evaluation and then show how these omission prevented the [LEA] from developing an adequate program of specialized instruction.” *Judith S.*, 1998 WL 409416, at \*6.

Complainant and her parents had the burden of proving that the evaluation of [Student] contained identifiable omissions. They failed to meet that burden because they failed to present any expert testimony or evidence whatsoever demonstrating that the testing done on [Student] did not meet the legal requirements of the IDEA. [Parents] and [Student] are not experts in testing, and their opinions and testimony concerning their beliefs about the adequacy of the evaluation that was performed on [Student] fails to meet their burden of proof. In contrast, even though BOCES did not have the burden of proof, it presented a significant amount of credible evidence and expert testimony establishing that [Student] was fully and sufficiently tested in the areas that she needed to be tested in, and that no better tests exist than those that were used.

Complainant is not entitled to an IEE at public expense.

#### **DECISION**

Complainant’s complaint is dismissed. Complainant’s request for an IEE is denied.

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, either federal or state.

Hearing recorded by:

Nicholas A. Francis  
Agren-Blando Court Reporting & Video, Inc.  
216 16<sup>th</sup> Street, Suite 600  
Denver, CO 80202

(303) 296-0017

**DONE AND SIGNED**  
May 20, 2015

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TANYA T. LIGHT  
Administrative Law Judge