

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Individuals with Disabilities Education Act (IDEA)

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**State-Level Complaint 2017:531  
Poudre School District**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on December 11, 2017, by the parent of a child not yet identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

1. Failing to identify Student as a child with a disability from December of 2016 to present;
2. Failing to properly determine eligibility in May of 2017; and
3. Failing to appropriately respond to Parent's request for a special education evaluation in October of 2017.

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

## FINDINGS OF FACT

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

1. At all times relevant to the Complaint, Student was between sixteen and seventeen years old. From December 11, 2016 to February 10, 2017, Student resided within the District's boundaries.<sup>4</sup> At all other times relevant to this Complaint, Student resided at Regional Youth Services Center, a secure facility that provides detention and custody treatment services. The Regional Youth Services Center is operated by the Colorado Department of Human Services, Division of Youth Services (DYS).
2. Student has not yet been identified as eligible for special education and related services under IDEA. For this reason, Parent filed a Complaint alleging that the District has failed to identify Student as IDEA eligible beginning in the fall of 2014.<sup>5</sup> Because the SCO does not have jurisdiction to investigate any alleged violations of IDEA that occurred more than one year prior to the filing of the Complaint, this investigation is limited to whether the District failed to identify Student as IDEA eligible beginning on December 11, 2016.<sup>6</sup> Student's educational history prior to this date is included as relevant background information to evaluate whether the District had sufficient information to suspect that Student may have a disability and be in need of special education in December of 2016.
3. Student's entire high school career has been marked with concerns in the areas of attendance, discipline, and poor academic achievement. Student first transferred to the District as a freshman in November of 2014 with existing concerns about attendance. Based on these concerns, the District placed Student in a study skills class to provide additional academic support and address attendance.<sup>7</sup> This class is characterized as a multi-tiered system of supports (MTSS) tier two intervention.<sup>8</sup> Student did not regularly attend this, or any other class, during his freshman year. Specifically, Student had 417 unexcused absences from class, and 98 excused absences from class for disciplinary reasons, resulting in Student attending approximately 35% of his classes. The disciplinary excusals were related to truancy, willful disobedience, drug use, and property destruction.<sup>9</sup>

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>4</sup> Correspondence with Parent's Attorney.

<sup>5</sup> Complaint, pp. 1-2.

<sup>6</sup> 34 CFR § 300.153 (c) and Colorado's state-level complaint procedures. This restriction applies even if the alleged violation is continuing or the complainant is requesting compensatory services. *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-18 (OSERS 2013).

<sup>7</sup> Exhibit 3, p. 3.

<sup>8</sup> Interview with Special Education Case Manager and Special Education Director.

<sup>9</sup> Interviews with Special Education Case Manager and School Psychologist.

4. Student's attendance and disciplinary troubles persisted throughout his sophomore year. During the 2015-16 school year, Student had 457 unexcused absences from class and 71 excused absences from class for disciplinary reasons, resulting in Student attending approximately 25% of his classes. Between February and December of 2015, Student had eight disciplinary infractions that included threatening a staff member, disruptive behavior, willful disobedience, refusal to comply with directives, profanity, violation of drug policy, inappropriate use of a computer, providing false information, and damage to school property.<sup>10</sup> Student withdrew from High School on March 31, 2016.<sup>11</sup>

5. Student re-enrolled in High School for the 2016-17 school year and continued to struggle with attendance. Between August 17 and October 6 of 2016, Student had 108 unexcused absences from class, resulting in Student attending approximately 44% of his classes. Student withdrew on October 6, 2016 to "transfer to another school within the District." Following his withdrawal, however, Student never transferred to another high school.<sup>12</sup>

6. Consistent with the attendance history described above, teachers have reported a "general concern for [Student's] lack of attendance" and engagement. When Student did attend class, teachers reported that he was "often withdrawn and disinterested in what was occurring in class." For example, Student would "sit at the back of the class and listen to music or watch videos on his laptop, ignoring the instruction given in class." When asked to turn off his music or otherwise comply with class expectations, Student would either ignore the request, or if pressed, would become verbally aggressive, put his head down on his desk, or walk out of class.<sup>13</sup>

7. Special Education Case Manager's experience in teaching Student was also consistent with the concerns and observations about attendance and lack of engagement raised by other teachers. Special Education Case Manager is an experienced special education teacher with expertise in the area of serious emotional disability (SED). During Student's sophomore year, Special Education Case Manager co-taught Student's history class and recalled that Student would often sit at the back of the class and listen to music on his headphones rather than pay attention to instruction. Of the various strategies employed by Special Education Case Manager, the most effective was to "give Student his space" and allow him to leave one of his ear-buds in. On days that Student chose to engage in class, he demonstrated that he was capable of understanding class instruction, completing assignments, and performing at grade-

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<sup>10</sup> Exhibit 3, p. 4.

<sup>11</sup> Exhibit 4, p. 3. There is some dispute as to whether the District unenrolled Student without parental request. Because Parent did not respond to requests for an interview, however, there is no credible evidence to rebut the District's assertion that Parent withdrew Student.

<sup>12</sup> *Id.*

<sup>13</sup> Exhibit 3, p. 3; Interview with Special Education Case Manager.

level. Special Education Case Manager had not observed behavior, social interactions with peers, or academic performance that raised concerns that Student may have a disability.<sup>14</sup>

8. To address Student's lack of attendance, the District's Administration contacted Parent about concerns, regularly discussed Student at weekly problem-solving team meetings, offered Student counseling services, including mental health and substance abuse counseling, and enrolled Student in co-taught classes for all core subjects.<sup>15</sup> Student declined to participate in any of the offered counseling, and other efforts to engage Parent and Student were unsuccessful.<sup>16</sup> As noted above, Student withdrew in October of 2016 and has not attended any school within the District since that time.

### **Initial Evaluation**

9. On February 10, 2017, four months after being withdrawn from High School, Student was detained at Regional Youth Services Center for alleged criminal misconduct. As a consequence, Student began attending educational classes at Regional Youth Services Center, an educational setting where attendance was not optional.<sup>17</sup>

10. On April 4, 2017, Parent contacted the Principal of Regional Youth Services Center to request that Student be evaluated for special education.<sup>18</sup> The referral was then forwarded to the District.<sup>19</sup> When asked about her specific concerns, Parent informed School Psychologist that she wanted the District to help her son. With the exception of Student's involvement with the juvenile justice system, Parent did not express any specific areas of concern.<sup>20</sup> Parent did, however, provide copies of Student's mental health records in May of 2017 as part of the evaluation.<sup>21</sup>

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<sup>14</sup> Interview with Special Education Case Manager.

<sup>15</sup> In general, the District does not support filing truancy petitions to address attendance because such legal action is not effective or consistent with the District's pro-active and community-based approach. Interviews with Special Education Director, School Psychologist, Special Education Case Manager, and General Counsel.

<sup>16</sup> *Id.* The SCO was unable to verify the District's efforts to engage because Parent did not respond to requests for an interview. Moreover, the SCO's jurisdictional authority began December 11, 2016, two months after Student withdrew from School and never returned. The timing of this Complaint, combined with the inability to interview Parent, impeded a closer investigation into the District's responsiveness to Student's truancy.

<sup>17</sup> Correspondence with Parent's Attorneys.

<sup>18</sup> Complaint, p. 2; Exhibit A, p. 1.

<sup>19</sup> At the time of this referral, Student had not yet been committed to DYS. Because Parent resided within the District, the referral was appropriately sent to the District.

<sup>20</sup> Interviews with School Psychologist and Special Education Case Manager.

<sup>21</sup> Exhibit 3, p. 22; Interview with School Psychologist.

11. On or around May 12, 2017, the District requested parental consent to evaluate Student in the areas of general intelligence, academic performance, social emotional status, behavioral functioning, and health.<sup>22</sup> Parent signed consent on May 15, 2017.<sup>23</sup>

12. Although no written documentation, including the consent for evaluation form, eligibility determination checklist, or prior written notice, indicated what disability category was under consideration, the SCO finds that Student was primarily being evaluated for eligibility as a student with SED.<sup>24</sup>

13. The formal assessments conducted by School Psychologist are summarized as follows:<sup>25</sup>

- The Wechsler Adult Intelligence Scale (WIAS-IV) was conducted to evaluate general intelligence, including cognitive and intellectual abilities. The results of this assessment indicated that Student functioned in the average range in verbal comprehension, perceptual reasoning, and processing speed and above average in working memory. Student's overall full scale intelligence score was in the middle of an average range.
- The Wechsler Individual Achievement Test (WIAT-III) was conducted to evaluate academic functioning. Overall, the results of this assessment indicated that Student performed in the average range for reading, low to below average in math, and below average in writing. Specifically, reading comprehension was significantly above average while fluency in multiplication and writing (sentence composition) were below average.
- The Behavior Assessment System for Children (BASC-3) was conducted to evaluate social, emotional, and behavioral functioning. The overall results of this assessment, which included reports from Parent, Student, and Teacher, indicated concerns in the areas of conduct and attitude toward school. Conduct problems are generally defined as the "tendency to engage in antisocial or rule-breaking behavior."<sup>26</sup> Regarding conduct, the Teacher Report indicated this was an at-risk area of concern while the Parent Report indicated the area was of "clinically significant" concern. The Student Report indicated that attitude toward school was of clinically significant concern. Attitude toward school is generally defined as "feelings of alienation, hostility, and dissatisfaction with school."<sup>27</sup> The results did not indicate any other areas of concern in social, emotional, or behavioral functioning.

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<sup>22</sup> Exhibit 3, p. 5.

<sup>23</sup> Exhibit 3, p. 7.

<sup>24</sup> Interviews with School Psychologist and Special Education Case Manager. In addition, the District's Response indicated that the category considered by the MDT was SED. Response, p. 7.

<sup>25</sup> Exhibit 3, pp. 10-21.

<sup>26</sup> Pearson's Clinical Scale Definitions, available at <https://www.pearsonclinical.ca/content/dam/school/global/clinical/canada/programs/basc/16-BASC3-WhitePaper.pdf>; Interview with School Psychologist.

<sup>27</sup> *Id.*

- The Test of Word Reading Efficiency (TOWRE-2) was conducted to evaluate word recognition and phonemic decoding. The results of this assessment indicated that Student performed in the average range for sight word reading and phonemic decoding.

14. In addition to formal assessments, School Psychologist conducted a file review and interviewed Student, Parent, and a current teacher at Regional Youth Service Center.<sup>28</sup> The file review, which included academic performance, attendance records, and disciplinary history between 2014 and 2017, indicated significant concerns in the areas of attendance and discipline, as more fully described in Findings 4-8 above. As part of this review, Special Education Case Manager also interviewed several of Student's former teachers at High School. The information provided by other teachers was consistent with the records and Special Education Case Manager's personal experience with Student concerning lack of attendance and engagement in class.

15. School Psychologist also reviewed the private treatment/progress notes from Student's therapists at Community Counseling Center that were provided by Parent as part of the evaluation. Summarizing the review of Student's mental health records, School Psychologist only noted that Student was diagnosed with post-traumatic stress disorder (PTSD) and had received therapy.<sup>29</sup> In reviewing these same mental health records, the SCO supplements the summary statement made in the evaluation report about Student's treatment for trauma with the details described in Findings of Fact # 16 & 17 below.

16. Student has a significant history of abuse, neglect, and trauma. The specific characteristics or symptoms of PTSD historically expressed by Student have included hypervigilance, nightmares, hiding, irritability, anger, and feelings of estrangement from others."<sup>30</sup> Between the ages of six and twelve, Student received counseling at Community Counseling Center to address concerns that included inappropriate boundaries, defiance, tantrum behavior, and inability to express emotions.

17. Although he was successfully discharged from treatment at various times, Student would engage in treatment when symptoms or struggles related to PTSD resurfaced. For example, Student's primary care-giver repeatedly brought Student back to Community Counseling Center for therapy when Student would begin to exhibit concerning or disruptive behavior at school or at home. Student received therapeutic services for PTSD from Community Counseling Center each year between 2006 and 2013, even though he was successfully discharged in 2006, 2011, 2012 and 2013.<sup>31</sup>

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<sup>28</sup> Interview with School Psychologist and Special Education Case Manager.

<sup>29</sup> Exhibit 3, p. 11. PTSD is a disorder that develops in some people who have experienced a shocking, scary, or dangerous event. National Institute of Mental Health, at <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>.

<sup>30</sup> Exhibit 3, p. 62.

<sup>31</sup> Exhibit 3, pp. 25-217.

18. There is no evidence that the District was aware of Student's PTSD diagnosis and/or previous mental health treatment prior to this evaluation. First, the records were not provided until after parental request for evaluation in May of 2017. Additionally, Parent had not identified any social/emotional concerns, such as depression, anxiety, or behavior, when completing enrollment paperwork or expressed any specific areas of concern when requesting the evaluation.<sup>32</sup> School Psychologist did not interview or speak with therapists at Community Counseling Center to discuss Student's history of PTSD as part of the evaluation. In his professional opinion, interviews with prior treatment providers were not necessary because Student had not been in therapy for five years and current assessment results i.e., the BASC-3, did not indicate concerns in the area of social-emotional functioning.<sup>33</sup>

19. Finally, School Psychologist interviewed Student, Parent, and a Teacher at Regional Youth Services Center. Consistent with the results of the BASC, the interviews with Parent, Student, and Teacher did not raise concerns in the area of social-emotional functioning. All three reported that Student was doing very well at Regional Youth Services Center.<sup>34</sup> For example, Teacher reported that there were no concerns with Student's academic performance in class and that he was receiving A's and B's. In addition, there were no reports of behavioral or disciplinary problems in class. Notably, Student had established positive relationships with peers and teachers while at Regional Youth Services Center and had been selected by his peers to represent their concerns to leadership.<sup>35</sup>

20. School Psychologist did not conduct an FBA or observe Student in the classroom as part of the evaluation because observation was not feasible due to the secure nature of the educational setting at Regional Youth Services Center. According to School Psychologist, the combination of the BASC-3, file review, and informal interviews were sufficient to identify whether areas of concern, i.e., truancy, discipline, and substance abuse, indicated an emotional disability, such as depression or anxiety.<sup>36</sup> School Psychologist stated that he would have conducted further evaluation, including observation, had assessment results raised concerns.<sup>37</sup>

21. With the exception of the file review, the evaluation report and prior written notice did not describe these other informal assessments. Because the witnesses were credible and offered detailed statements that were consistent with the existing record, the SCO finds that

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<sup>32</sup> Exhibit 3, pp. 16-17.

<sup>33</sup> Interview with School Psychologist.

<sup>34</sup> Interview with School Psychologist; Exhibit 7, p. 3; Exhibit 3, pp. 14-15.

<sup>35</sup> Interviews with School Psychologist and Parent's Attorney.

<sup>36</sup> During interviews, School Psychologist and Special Education Director credibly described the importance of carefully evaluating students who exhibit characteristics commonly associated with conduct problems or social maladjustment, such as truancy and substance abuse, because these characteristics are also associated with SED. Notably, a District staff member who also sits on CDE's SED task force routinely trains on the implications of trauma and social maladjustment in determining SED eligibility. Interview with School Psychologist and Special Education Director.

<sup>37</sup> Interview with School Psychologist and Special Education Director.

the informal assessments described above were included in the District's evaluation of Student and considered at the eligibility meeting.

### **Eligibility Determination**

22. On May 24, 2017, the District convened a multidisciplinary team (MDT), including Parent, to determine Student's eligibility for special education.

23. At the eligibility meeting, the MDT concluded that the evaluation was sufficiently comprehensive and determined that "[Student's] academic abilities, and social, emotional, and behavioral functioning indicate he can benefit from general education alone and that specialized instruction is not required."<sup>38</sup> The MDT further determined that any deficits in the area of math and writing were the result of missed instruction. As explained by School Psychologist, Student's below average scores in math fluency and writing are in function areas that are affected by practicing the specific skills being evaluated, indicating that the deficits noted were more likely related to lack of instruction than disability.<sup>39</sup> To further support their conclusion, the MDT noted that Student was maintaining a 3.7 GPA at Regional Youth Services Center where he received consistent instruction since February of 2017. The MDT also concluded that Student's prior attendance and disciplinary problems in High School were the result of conduct problems indicative of social maladjustment alone because the evaluation results did not indicate a disability-related reason for truancy, such as an emotional disability.<sup>40</sup>

24. Parent actively participated in the eligibility meeting and did not express concerns or disagreement with the evaluation report at the meeting.<sup>41</sup> According to the prior written notice, Parent reported that Student was doing well at the Regional Youth Services Center because he was in a structured environment and was sober for the first time in years. Attributing Student's attendance and discipline problems in High School to substance abuse, Parent was reportedly not surprised by the assessment results or the determination that Student was found ineligible for special education.<sup>42</sup>

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<sup>38</sup> Exhibit 3, p. 14.

<sup>39</sup> Interviews with School Psychologist, Special Education Director, and Special Education Case Manager.

<sup>40</sup> Exhibit 3, pp. 14-15; Response at page 7; Exhibit 7, p. 3 (Transcript from Regional Youth Services Center).

<sup>41</sup> Interviews with Special Education Case Manager and School Psychologist.

<sup>42</sup> Exhibit 3, p. 14. The SCO was not able to verify the District's characterization of Parent's response to the eligibility determination because Parent did not make herself available for an interview. Parent's Attorney expressed frustration that the District did not copy him on notice of the eligibility meeting when it knew that he was involved. Had he been given notice of the meeting, Parent's Attorney stated that he would have attended and expressed disagreement with the evaluation and determination. Parent, however, did receive the notice of meeting and could have invited her attorney to attend.

### **Parental Request for Evaluation in October of 2017**

25. On October 5, 2017, Student was adjudicated and committed to the custody of DYS.<sup>43</sup> For purposes of ECEA, DYS is a state-operated program. ECEA Rule 2.49.

26. On October 20, 2017, Parent again requested that the District evaluate Student for special education.<sup>44</sup> As a basis for her request, Parent noted “big differences in his scores that look like a learning disability,” requiring “more testing in math, reading, and behavior.”<sup>45</sup>

27. On October 25, Special Education Case Manager informed Parent that he would present her request to the “Special Education Team” and get back to her about additional testing.<sup>46</sup>

28. On October 27, Special Education Case Manager informed Parent that the District would conduct another evaluation, as requested, and sent Parent a corresponding request for consent form.<sup>47</sup> Despite follow-up requests from Special Education Case Manager in November and December of 2017, Parent did not return the consent form.<sup>48</sup>

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact above, the SCO enters the following CONCLUSIONS OF LAW:

**Conclusion to Allegation One:** The District did not fail to identify Student as a child with a disability because it lacked information sufficient to suspect that Student’s attendance and academic performance issues were related to a disability, prior to Parent’s request for evaluation.

Parent alleges that the District failed to identify Student as IDEA eligible in December of 2016. Under IDEA, a public agency must develop and implement procedures for locating, identifying, and evaluating all children who may have a disability and be in need of special education and related services. 20 U.S.C. 1412(a)(3); ECEA Rule 4.02(1)(a). This is an affirmative obligation commonly referred to as Child Find.

In this case, the dominant characteristic or condition impairing Student’s ability to learn was lack of attendance and engagement in class, a persistent concern recognized by the District throughout Student’s high school career. Truancy alone, however, is seldom sufficient to trigger

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<sup>43</sup> Correspondence from Parent’s Attorneys.

<sup>44</sup> At this time, Student had been adjudicated. Although the District must be invited to participate in a special education evaluation, the responsibility to evaluate was that of DYS. ECEA Rule 8.04(1)(a).

<sup>45</sup> Exhibit 5, p. 15.

<sup>46</sup> Exhibit F.

<sup>47</sup> Exhibit 2, pp. 14-15.

<sup>48</sup> Response; Exhibit 2, pp.14-22; Interviews with Special Education Case Manager and Parent’s Attorney.

a school district's Child Find obligation. Rather, there must be sufficient information to suspect that the truancy is related to a disability and a need for special education and related services.

In considering what kind of information may link truancy to a suspected disability, courts have determined that a school district's knowledge that a student has also experienced numerous behavioral referrals, attempted suicide, psychiatric hospitalizations, and/or has been diagnosed or treated for mental health conditions such as bi-polar disorder or depression, is sufficient to trigger Child Find, i.e., the obligation to request parental consent to evaluate. *N.G. v. District of Columbia*, 556 F.Supp.2d, 11 (D.D.C. 2008)(concluding combined knowledge of poor attendance, failing grades, and diagnosis of major clinical severe depression sufficient to trigger Child Find); *Department of Education, State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Hawaii 2001)(concluding absences, numerous behavioral referrals, and failing grades sufficient to trigger Child Find); *Broward County Sch. Dist.*, 61 IDELR 65 (OCR 2013)(concluding poor attendance combined with knowledge that students were being treated for bi-polar disorder sufficient to trigger Child Find).

Although Student had a history of excessive absences and numerous disciplinary referrals, the SCO concludes that the District did not have information sufficient to suspect that these concerns were disability related. First, there was no evidence that the District was aware of Student's history of trauma or PTSD diagnosis prior to Parent providing mental health records in May of 2017 as part of a special education evaluation. In addition, Student's teachers consistently reported that Student was able to understand instruction, perform at grade-level, and demonstrated appropriate social interaction with others when he chose to do so. If Parent had shared that Student had been diagnosed with PTSD and had received mental health counseling, or the District was otherwise aware of Student's history of trauma, the SCO may have concluded that the District had an obligation to request an evaluation to determine whether the truancy and conduct issues were disability related.

**Conclusion to Allegation Two:** Although the District's eligibility determination was consistent with the evaluation results and other Student-specific data in the record, information obtained from all sources was not documented in the eligibility determination, resulting in a procedural violation.

Parent alleges that the District failed to properly determine Student's eligibility under IDEA. To resolve a state complaint that challenges a school district's eligibility determination, the SCO must first determine whether the school district followed the relevant procedures and standards required for making the determination, and if so, whether the resulting determination is consistent with and supported by child-specific facts, i.e., evaluation data and other data in the record. *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-6 (OSERS 2013).

Accordingly, the SCO first considers whether the District conducted an evaluation sufficiently comprehensive to determine eligibility. To be eligible under the category of SED a

student must have emotional or social functioning which prevents her from receiving reasonable educational benefit from general education. ECEA Rule 2.08(3)(a). Specifically, the student must exhibit one or more of four identified characteristics over a long period of time and to a marked degree, such as the inability to build or maintain interpersonal relationships that significantly interferes with social development, and/or a tendency to develop physical symptoms or fears associated with personal or school problems. ECEA Rule 2.08(3)(a)(ii) and (iv).

Relevant to the facts in this case, Colorado has adopted the “social maladjustment exclusion” to SED eligibility. ECEA Rule 2.08(3)(d). Applying this exclusion, a student who only exhibits social maladjustment is not IDEA eligible. A student who has an SED and exhibits social maladjustment, however, would be entitled to special education and related services, provided that all other criteria are met. Although social maladjustment is not defined in IDEA or ECEA, it is generally viewed as “a diagnostic category whose primary feature is that of conduct problems in which maladjusted students choose not to conform to socially acceptable rules and norms.” See *CDE Social Maladjustment Topic Brief*.<sup>49</sup> Behaviors associated with social maladjustment include truancy, substance abuse, struggles with authority, and lack of engagement in school work. *Id.*

Complicating the application of this exclusion is the reality that students with SED and social maladjustment demonstrate many of the same characteristics. Further complicating the analysis here is the reality that students exposed to trauma also share characteristics with social maladjustment and SED.<sup>50</sup> For instance, substance abuse and truancy are common characteristics or symptoms of trauma, social maladjustment, and SED. *Id.* Evaluations must therefore include a variety of assessment tools and draw upon information from multiple sources to determine eligibility, rather than rely exclusively on assessments intended to distinguish between SED and social maladjustment. 34 C.F.R. §§ 300.304 (b)(1) and 300.306 (c); See generally Amanda L. Sullivan & Shana S. Sadeh, *Differentiating Social Maladjustment from Emotional Disturbance: An Analysis of Case Law*, 43 SCH. PSYCHOL. REV. 450, 467 (2014). Toward that end, “it is more effective to evaluate the evidence of criteria for an SED, recognizing that some degree of social maladjustment typically exists within children with an SED,” than to focus on differentiating between social maladjustment and SED. See *CDE Guidelines for Determining Eligibility for Special Education for Students with Serious Emotional Disability*.<sup>51</sup> It is critical then that evaluations include data from multiple sources, particularly parent and student interviews, input from mental health providers, and observations, to determine eligibility. *Id.*; Sullivan & Sadeh, *supra* at 466-70.

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<sup>49</sup> Topic Brief is available at [http://www.cde.state.co.us/cdesped/topicbrief\\_sed\\_socialmaladjustment](http://www.cde.state.co.us/cdesped/topicbrief_sed_socialmaladjustment).

<sup>50</sup> The National Child Traumatic Stress Network’s Psychological and Behavioral Impact of Trauma: High School Students available at [http://www.nctsn.org/sites/default/files/assets/pdfs/ctte\\_highschool.pdf](http://www.nctsn.org/sites/default/files/assets/pdfs/ctte_highschool.pdf)

<sup>51</sup> CDE Guidelines for Determining Eligibility for Special Education for Students with Serious Emotional Disability, available at [http://www.cde.state.co.us/cdesped/sed\\_guidelines\\_2017-12-13](http://www.cde.state.co.us/cdesped/sed_guidelines_2017-12-13).

In this case, the District conducted a comprehensive evaluation using multiple methods and sources of information, including a variety of formal assessments, an extensive file review, and informal interviews with Parent, Student, and former and current teachers. Given the report from Teacher at Regional Youth Services Center that Student presented no behavioral, social/emotional, or academic concerns in class, the absence of observation data was reasonable and did not compromise the comprehensiveness of the evaluation.

Although the evaluation was sufficiently comprehensive to determine eligibility, the District failed to ensure that information obtained from informal interviews was documented in the eligibility determination, a violation of 34 C.F.R. § 300.306 (c)(ii). IDEA's procedures for determining eligibility specifically require that information obtained from all evaluation sources be documented and carefully considered. *Id.* In this case, the evaluation report, eligibility determination, and prior written notice all failed to document and describe the informal assessments conducted by School Psychologist and Special Education Case Manager, specifically the informal interviews with Parent, Student, and teachers. Based on the credibility of School Psychologist and Special Education Case Manager and the consistency of their statements with other data in the record, the SCO found that these informal assessments were part of the evaluation and considered by the eligibility team in May of 2017. Had the SCO found that the informal assessments were not conducted as part of the evaluation, the District's evaluation likely would not have been considered sufficiently comprehensive, resulting in a substantive violation of IDEA. To comply with IDEA's procedural requirements, and to avoid a possible substantive violation, school districts should carefully document all assessments, including informal interviews, conducted as part of an evaluation.

The SCO next considers whether the eligibility determination was consistent with Student-specific data in the record. Here, the eligibility determination was complicated by Student's excessive absences. Rather than excuse a school district's IDEA obligations, truancy may heighten them. In a similar case involving a student with chronic truancy, the SCO concluded that the eligibility team ignored evidence of deficits in social emotional functioning by focusing exclusively on student's truancy/missed instruction when determining eligibility. *Boulder Valley Sch. Dist.*, 69 IDELR 22 (CO SEA 2016). In *Boulder Valley Sch. Dist.*, the results of the BASC2 revealed clinically significant concerns in the areas of internalizing problems, somatization, withdrawal, and anxiety that were consistent between all raters. *Id.* These concerns were consistent with informal interviews and observations, indicating that student's truancy and the inability to develop and maintain relationships was disability-related and interfered with her ability to access her education. *Id.* Because the eligibility determination was not consistent with student-specific data in the record, the SCO concluded that it violated IDEA.

In this case, Student's truancy and substance abuse could have similarly indicated disability and a need for special education. Student-specific data, however, was consistent with a determination that Student is not IDEA eligible. First, the results of the BASC-3 did not indicate any concerns in social-emotional functioning, such as anxiety or depression. Instead, the results indicated concerns in the area of conduct and attitude toward school, areas

indicative of social maladjustment alone. Consistent with the results of the BASC-3, Student's teachers reported that Student was able to understand instruction and completed assignments at grade-level when he chose to do so. Moreover, Student had demonstrated the ability to build and maintain positive relationships with peers and teachers. Finally, assessment results and academic performance at Regional Youth Services Center indicated that the few noted deficits in cognitive and academic functioning were more likely related to missed instruction. Based on these facts, the SCO concludes that the eligibility determination was consistent with Student-specific data and did not violate IDEA.

**Conclusion to Allegation Three:** The District appropriately responded to Parent's request for a special education evaluation in October of 2017.

A parent of a child may initiate a special education referral by requesting an evaluation. 34 CFR § 300.301 (b); ECEA Rule 4.02 (3)(a)(ii). Once a parent requests evaluation, the school district has two choices: agree to evaluate the child and obtain parental consent to conduct the evaluation or deny the request to evaluate and provide parent with written notice explaining its decision. In this case, Parent requested a special education evaluation on October 20, 2017. On October 27, 2017, the District agreed to conduct an evaluation and requested parental consent to do so. Despite multiple reminders in November and December, Parent failed to provide written consent. Consequently, the SCO concludes that the District appropriately responded to Parent's request for evaluation.

#### **REMEDIES:**

The SCO concludes that the District has violated the following IDEA requirement:

- a) Documentation of eligibility determination at 34 CFR § 300.306(c)(ii).

To remedy these violations, the District is ordered to take the following actions:

- 1) **By March 1, 2018**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
  - a) Submission of guidance/statement approved by CDE regarding the documentation of eligibility requirement at 34 CFR § 300.306(c)(ii). This guidance must be developed with input from School Psychologist and be consistent with this Decision. The guidance must be submitted to CDE for approval no later than **March 15, 2018**. CDE will revise the guidance, if appropriate.

- b) The CDE approved guidance must be shared with all District staff responsible for preparing evaluation and eligibility reports, including school psychologists, special education coordinators, and special education case managers, no later than **April 2, 2018**.
- c) Evidence that this has occurred must be documented (i.e., signed assurances from all currently employed District special education coordinators and case managers that they have received and understand the approved guidance) and provided to CDE no later than **May 31, 2018**.

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 5<sup>th</sup> day of February, 2018.

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Candace Hawkins, Esq.  
State Complaints Officer

## **Appendix**

### **Complaint, pages 1-4.**

Exhibit A: Special Education Referral.

Exhibit B: Evaluation Report.

Exhibit C: Grade Report.

Exhibit D: Evaluation Summary.

Exhibit E: Prior Written Notice dated May 2017.

Exhibit F: Email Correspondence.

### **Response, pages 1-8.**

Exhibit 1: Disciplinary history from January 2016 to present.

Exhibit 2: Requests for parental consent to evaluate from December 2016 to present.

Exhibit 3: Evaluation/assessment reports from January 2016 to present.

Exhibit 4: Attendance records from January 2016 to present.

Exhibit 5: All Prior written notices issued from January 2016 to present.

Exhibit 6: All notices of meeting issued from April 2016 to present.

Exhibit 7: Grade reports issued for the 2015-16, 2016-17, and 2017-18 school years.

Exhibit 8: District policies relevant to identification, evaluation, and eligibility.

Exhibit 9: Correspondence.

Exhibit 10: Contact information for witnesses.

Exhibit 11: Police records.

### **Parent chose not to submit a Reply.**

#### **Interviews with:**

- Parent's Legal Counsel. Although the SCO requested an interview with Parent, she did not make herself available.
- Special Education Director
- Special Education Case Manager
- School Psychologist
- District Director of Risk Management and Records
- District General Counsel