

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

State Complaint 2012: 509
Arapahoe 5, Cherry Creek School District

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed with the Colorado Department of Education (CDE) on September 27, 2012 by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))² and to protect the anonymity of the parents and their child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

- [Mother], Mother of Child, (“Mother” or “Parents”);
- [Father], Father of Child, (“Father” or “Parents”);
- [Student], Child of Parents, (“Student”);
- [Former School] (“Former School”);
- [Advocate], ARC of Aurora Advocate (“Advocate”);
- Arapahoe 5, Cherry Creek School District (“District”);
- [Special Education Director], District Executive Director of Student Achievement Services, (“Special Education Director”);
- [Director of Secondary Special Education], Director of Secondary Special Education (“Director of Secondary Special Education”)
- [District Coordinator], District Special Education Coordinator (“District Coordinator”);
- [District SLP Coordinator], District Speech Language Pathologist Coordinator (“District SLP Coordinator”);

¹ 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.*

² FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent’s access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

- [Counsel], Esq., District’s Legal Counsel (“Counsel”);
- [School] (“School”);
- [High School] (“High School”);
- [Principal], School Principal (“Principal”);
- [Assistant Principal], School Assistant Principal (“Assistant Principal”);
- [Dean], Dean of Eighth Grade Students (“Dean”);
- [Case Manager], Student’s Case Manager (“Case Manager”);
- [Counselor], School Counselor/Academic Advisor (“Counselor”);
- [SLP], Director, Speech-Language Pathologist (“SLP”);
- [OT], Occupational Therapist (“OT”);
- [Social Worker], School Social Worker (“Social Worker”);
- [School Psychologist], School Psychologist (“School Psychologist”);
- [Former School Psychologist], Former School Psychologist (“Former School Psychologist”);
- [School Nurse], School Nurse (“School Nurse”);
- [Special Education Teacher], Special Education Teacher (“Special Education Teacher”);
- [GT Coordinator], Gifted Education Coordinator (“GT Coordinator”);
- [Social Studies Teacher], Social Studies Teacher (“Social Studies Teacher”);
- [Science Teacher], Science Teacher (“Science Teacher”);
- [Art Teacher], Art Teacher (“Art Teacher”);
- [P.E. Teacher], P.E. Teacher (“P.E. Teacher”);
- [Algebra Teacher], Math Teacher (“Algebra Teacher”);
- [Reading Teacher], Reading Teacher (“Reading Teacher”);
- [Writing Teacher], Writing Teacher (“Writing Teacher”);
- [JFK Psychologist], Private Psychology Post-doctoral Fellow at JFK (“JFK Psychologist”);
- University of Colorado School of Medicine, JFK Partners, Autism and Developmental Disabilities Clinic (“JFK”); and
- JFK Evaluation, consisting of Psychological, Occupational Therapy and Speech-Language Evaluations (“JFK ‘Psychological,’ ‘OT’ or ‘S-L’ Evaluation”); and
- [JFK SLP], SLP at JFK who conducted the JFK S-L Evaluation (“JFK SLP”).³

A Complaint, signed by both Parents, was received on September 27, 2012. After carefully reviewing the Complaint and speaking with Mother on September 28, 2012, the State Complaints Officer (SCO) determined that the Complaint identified five allegations and several underlying claims subject to the jurisdiction of the state-level complaint process and its

³ The following employees were no longer working for the District at time of the investigation: Former School Psychologist; Art Teacher; P.E. Teacher and Principal.

implementing regulations at 34 CFR §§ 300.151 through 300.153.⁴ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.⁵

The overriding issue and, therefore, the scope of the investigation identified by the SCO is:

Whether the District committed procedural violations of the IDEA and, if so, whether the procedural violations denied Student a free appropriate public education (FAPE).

The SCO conducted a telephone interview with Mother on September 28, 2012.

On October 15, 2012, the District timely supplied a Response to the Complaint.

On October 24, 2012, the SCO conducted face-to-face interviews with: Special Education Director; District Coordinator; and SLP.

On October 24, 2012, Parents timely supplied a Reply.

On October 25, 2012, the SCO conducted face-to-face interviews with: School Psychologist; Counselor; Case Manager; Social Worker; and Assistant Principal.

On October 26, 2012 the SCO added two additional claims (i.e., claims 1(aa) and 2(cc)) that Parents' alleged for the first time in their Reply. On October 26, 2012, the SCO emailed the parties an Order re Additional Claims and Extension of Decision Timeline. The Order identified the two new claims and directed the District to supply a Supplemental Response to the new claims by 12:00 p.m. on November 2, 2012. Due to exceptional circumstances (i.e., new related claims, voluminous documentation and the extensive number of allegations and claims) the Decision timeline was extended to Monday, December 17, 2012.

On October 29, 2012 the SCO sent the parties an Amended Order re Additional Claims and Extension of Decision Timeline. At Counsel's request, due to the District's fall break, the Amended Order enlarged the Supplemental Response timeline to Friday, November 9, 2012 by 3:00 p.m. The Order regarding the extended Decision timeline was not amended.

On November 5, 2012, the SCO conducted a face to face interview with Mother.

⁴ 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).

⁵ The remainder of Parents' Complaint allegations (i.e., allegations concerning: an interim IEP; SLP's communications and conduct; 504 Plan claim; Student's gifted status; and bullying and harassment) were rejected as being matters not providing protections under the IDEA and therefore outside the SCO's jurisdiction.

On November 7, 2012, the District timely filed a Supplemental Response.

On November 14, 2012, Parents timely filed a Supplemental Reply.

On November 19, 2012, the SCO conducted a brief telephone interview with Mother.

On November 19, 2012, the SCO conducted face to face interviews with: Writing Teacher, Social Studies Teacher, Science Teacher, Math Teacher, Reading Teacher, Assistant Principal, Social Worker, District SLP Coordinator, Counselor and SLP.

On November 20, 2012, the SCO conducted a telephone interview with Advocate.

On November 27, 2012, the SCO conducted a telephone interview with Principal.

On November 27, 2012 the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

Parent's 15 page Complaint and two additional claims (i.e., 1(aa) and 2(cc)) are summarized as follows:

- Allegation #1:** The District committed procedural violations in conjunction with Parents' October 7, 2011 request for an initial evaluation of Student. Specifically, the District:
- a. Refused to initiate an evaluation until Student had a formal medical diagnosis of autism suggesting the need for special education services;
 - aa. Failed to initiate a child find evaluation despite receiving sufficient notice to suspect that Student might have a disability and need special education. Specifically, during a meeting on October 7, 2011, the District was notified that Kaiser had referred Student to JFK for Asperger's testing. Additionally, during the meeting, Parents raised concerns about Student's academic and social struggles.⁶
 - b. Failed to supply Parents with prior written notice of its refusal to evaluate Student;
 - c. Failed to supply Parents with a consent to evaluate form until November 18, 2011;
 - d. Failed to conduct a Determination of Eligibility ("Eligibility") meeting until January 13, 2012, three months after Parent's October 7, 2011 request for an initial evaluation; and

⁶ Claims (1)(aa) and (2)(cc) were raised for the first time in Parents' Reply. Because both claims were related to claims raised in the Complaint the SCO added the claims and directed the District to supply a written Supplemental Response as to each allegation. The Decision timeline was extended from November 26, 2012 to December 17, 2012 to supply sufficient time for a Response, Reply and investigation of the new allegations.

- e. Failed to supply Parents with the Procedural Safeguards Notice on October 7, 2011.⁷

Allegation #2: The District committed procedural violations in conjunction with the March 5, 2012 IEP. Specifically:

- a. The IEP team failed to consider the Private Psychological and S-L Evaluations, particularly recommendations concerning Student's pragmatic language skill needs;
- b. SLP failed to administer the Clinical Evaluation of Language Fundamental – (CELF-4) according to test protocols;
- c. SLP failed to accurately report the CELF-4 results to the IEP team;
- cc. Parents were not notified of the IEP changes until August 21, 2012.
- d. SLP's evaluation relied on a single measure or assessment (i.e., the CELF-4) as the sole criterion for determining Student's pragmatic language skills and needs;
- e. In conducting her evaluation, SLP failed to obtain information about Student from the parents;
- f. The IEP team improperly determined that, given Student's needs, speech-language services would not be included in the IEP;
- g. The IEP team improperly determined that, given Student's needs, academic supports and goals were unnecessary;
- h. The IEP team's composition should have included a school psychologist rather than a social worker;
- i. Social Worker's evaluation failed to identify Student's needs associated with behavioral issues (i.e., pencil tapping, fidgeting, not answering questions, not turning in classroom assignments and homework which required extensive writing or collaboration); and
- j. The District failed to supply Parents with a copy of the finalized IEP until they signed a consent form.

Allegation #3: The District failed to allow Parents to inspect and review educational records of the child in a timely manner. Specifically the District:

- a. Failed to timely respond to Parents' January 13, 2012 request to supply copies of the responses and test protocols for the CELF-4 that had been administered by SLP.

Allegation #4: The services supplied by Social Worker in conjunction with the March 5, 2012 IEP failed to meet Student's needs.

⁷ On October 10, 2012, the SCO realized that the Procedural Safeguards Notice claim had been erroneously omitted from the list of allegations and claims previously supplied to District. The SCO emailed Special Education Director the same day and requested that the District add and respond to that claim in conjunction with its October 17, 2012 Response.

Allegation #5: The District failed to reconvene the IEP team on or after April 20, 2012 when Parents presented discrepancies concerning the SLP's Communications Report and the results of the CELF-4.

Parent's Proposed Remedies: The District supply training to all School staff to ensure that procedural violations do not recur; supply training to all School staff on Autism Spectrum Disorders; and supply Student with compensatory services sufficient to remedy violations which resulted in a denial FAPE.

THE DISTRICT'S RESPONSE

The District's 14 page Response and five page Supplemental Response (for claims 1(aa) and 2(cc)) are summarized as follows:

Allegation #1: The District denied that it committed procedural violations in conjunction with Parent's request for an initial evaluation of Student. Specifically, the District:

- a. Denied the claim. Denied that Parent requested that Student be evaluated during the October 7, 2011 meeting. Denied that any District staff communicated to Parent that a medical autism diagnosis was a prerequisite to an evaluation during the meeting. During a telephone call to Assistant Principal on November 8, 2011 Parent first requested (orally) that School initiate an assessment process for an IDEA eligibility determination. On or about November 18, 2011 Parent made a written request via an undated letter to Assistant Principal for testing. On the same date, during the meeting requested by Parent, written consent for an initial evaluation was supplied by Parent.
- aa. Denied the claim. On October 7, 2012, neither District nor School staff had any suspicion that Student had a disability and was in need of special education services. The "melt downs" Parents reported experiencing at home had not been observed by District or School staff. Student had satisfactory to above average grades in all but one class and had made some friends at School. Parents' mention on October 7, 2012 of a referral to test Student for possible Asperger's Syndrome did not trigger the District's child find obligations.
- b. Denied the claim. The November 18, 2011 Permission for Eligibility Determination form supplied Parents with prior written notice of the District's proposal to evaluate Student.
- c. Denied the claim. The consent form was supplied to Parent on November 18, 2011, the same day that Parent made a written request for an evaluation.
- d. Denied the claim. Parent's November 18, 2011 written consent triggered the 60 day timeline. The evaluation and review were completed January 10, 2012 and the Eligibility meeting was conducted on January 13, 2012 and therefore, within the 60 day timeline.

- e. Denied the claim. Parents were supplied with a copy of the Procedural Safeguards Notice on November 18, 2011 as indicated in the consent form.

Allegation #2: The District committed procedural violations in conjunction with the March 5, 2012 IEP.

- a. Denied the claim. The JFK Evaluation (consisting of the S-L, Psychology and OT Evaluations) that Parents supplied was reviewed by members of the IEP team during the initial evaluation process and referenced in reports throughout the IEP. Recommendations in the JFK Evaluation were the basis of the pragmatic/social/communication goals and objectives as well as the 30 minutes per week of direct, 1:1 services provided by Social Worker. The IEP Team discussed and concluded that Student did not want to participate in a social group setting. Therefore the team elected to begin with the 1:1 pragmatic goal per the recommendation in the Private S-L Evaluation.
- b. Neither admitted nor denied the claim. SLP administered the CELF-4, a non-standardized test, to Student and some of [Student's] teachers as part of the initial evaluation process. The rating forms were completed based on the observations and opinions held by each rater at the time completed. SLP reported the CELF-4 results in the IEP to reflect the range in scores collected.
- c. Admitted the claim. Subsequent to finalization of the IEP and in conjunction with Parent's review of Student's records, the CELF-4 scores reported by SLP were determined to be inaccurate. When the errors were discovered, they were corrected by the District on June 7, 2012 by including in the IEP a Revised Communication Report dated May 31, 2012.
- cc. Denied the claim. Subsequent to Parents' request, SLP amended her Communications Report on May 31, 2012 to correct the mathematic errors to the CELF-4 scores. Case Manager added the May 31, 2012 revised Communications Report to Student's IEP on June 7, 2012. This was an amendment of Student's education record to correct mathematical errors in the CELF-4 scores and was not a formal revision of the IEP requiring immediate distribution to Parents. Furthermore, it was anticipated that there might be additional amendments to the IEP (i.e., Parent might seek additional corrections to the Communications Report and an IEE was to be conducted) and, therefore, Parents were not supplied with a copy of the amended IEP when the revised Communications Report was inserted in the IEP. During an August 21, 2012 IEP meeting, Parents were supplied with a copy of the revised IEP, including final corrections to the SLP's [Communication] Report as well as information concerning the S-L IEE.
- d. Denied the claim. The SLP relied upon a body of evidence (e.g., the JFK Evaluation, the results of the Screening Test of Adolescent Language (STAL) the CELF-4 Pragmatic Profile responses, SLP observations, interview of Student, grades and CSAP scores).

- e. Admitted that SLP did not offer Parent the opportunity to complete the CELF-4 or obtain Parents' input. SLP, in her professional judgment, determined that further parental input was unnecessary given the recent detailed parental input noted in the Private Evaluation.
- f. Denied the claim. The IEP team reviewed the Private Evaluation as well as all of the District staff reports provided during the January 13, 2012 IEP Team meeting and determined that Student did not qualify for speech language services. The Team crafted two IEP goals to address conversational and communication needs of the Student as referenced in the Private Evaluation.
- g. Denied the claim. The IEP Team reviewed all of the Private Evaluations and District staff reports during the eligibility meeting and determined that Student did not need an academic goal since [Student] tested "proficient" or "above average." The Team determined that it was appropriate to include accommodations in the IEP to assist Student with organization and completion of homework assignments.
- h. Denied the claim. Consistent with § 300.322(5), Social Worker was able to interpret the instructional implications of evaluation results. Furthermore, on or after October 7, 2011, Parent had informed Assistant Principal that School Psychologist was to have no further involvement with Student. Instead, Parent agreed that Social Worker would provide any mental health services required for Student.
- i. Denied the claim. Social Worker's evaluation focused on a social and emotional evaluation of Student as was her responsibility. The IEP Team reviewed the JFK OT Evaluation which properly addressed concerns about Student's physical tapping and fidgeting behaviors. The IEP Team also reviewed Special Education Teacher's Educational Report which addressed issues concerning Student's dislike of writing and homework completion. Furthermore, Student attended the IEP meeting and reported that [Student] had stopped the pencil tapping and/or preferred to self-monitor this behavior.
- j. Denied the claim. The IEP was prepared contemporaneous with the IEP Team's discussions and was essentially finalized during the March 5, 2012 IEP team meeting. After the meeting, SLP Coordinator communicated with Mother to ensure that the IEP contained all of Parents' IEP corrections and/or additions. Subsequent to the meeting, District Coordinator carefully reviewed the IEP to ensure that it was concise and complete. On March 6, 2012 Case Manager emailed Parents a Consent for Services form and a Notice of Parental Rights to complete the process prior to "locking down" the IEP.⁸ Parents signed the consent form on March 6, 2012. The IEP was made available to Parents on March 7, 2012 and picked-up on March 8, 2012.

⁸ The IEP software, including IEP and associated forms such as the consent/placement and prior written notice forms are all in one electronic IEP file. After the forms are signed and the IEP is finalized, the IEP is locked down. The term "locked down" means that only certain District staff have the ability to enter the electronic IEP to make changes to the document.

Allegation #3: The District denied that it failed to allow Parents to inspect and review educational records of the child in a timely manner. Specifically the District:

- a. Denied that Parents' requested to review the CELF-4 raw data and test protocols on January 13, 2012. In a Saturday, March 17, 2012 email to Assistant Principal, Mother requested to review the CELF-4 raw data and test protocols. On the same date, Assistant Principal forwarded the request to SLP. Spring break occurred the week of March 26 through 30, 2012. Email exchanges evidence the fact that the CELF-4 records were made available for Mother to review at the School on April 9, 2012. Mother insisted on being supplied copies of the CELF-4 records which occurred on April 10, 2012.

Allegation #4: The District denied that services supplied by Social Worker in conjunction with the March 5, 2012 IEP failed to meet Student's needs. Social Worker was available to supply 30 minutes of direct services to Student at School each week but had difficulty getting Student to attend the sessions.

Allegation #5: The District denied the claim. The District met with Parent and had numerous communications regarding discrepancies in the Communications Report. The District agreed to make corrections to the Communications Report which was accomplished on or about June 7, 2012. (This constituted an agreement between the District and Parents and, therefore, reconvening of the IEP team was unnecessary.) Parents then requested an IEE which was conducted in July 2012. Subsequent to completion of the IEE, the parties agreed to convene an IEP reevaluation meeting which occurred on or about September 13, 2012. On the same date, Parents' comments and corrections to any and all reports were entered into the IEP and locked down at that time.

PARENTS' REPLY

Parents' 17 page Reply and four page Supplemental Reply (for claims 1(aa) and 2(cc)) are summarized as follows:

Allegation #1:

Claim a: Parents reiterated the claim.

Claim aa: Parents reiterated the claim.

Claims b through f: Parents reiterated the claims.

Allegation #2:

Claims a through b: Parents reiterated the claims.

Claim c: Parents reiterated the claim. Parents agreed that the CELF-4 score corrections occurred sometime between April 20th and August 21st, 2012.

Claim cc: Parents agreed that they had not been supplied with a copy of the corrected IEP until August 21, 2012.

Claims d through j: Parents reiterated the claims.

Allegations #3 through 4: Parents reiterated the claims.

Allegation #5: Parents agreed that clerical changes to the IEP (i.e., a revised Communication Report) were made on June 7, 2012 but reiterated that the corrected IEP was not supplied to them until August 21, 2012.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁹ the SCO makes the following FINDINGS:

Factual Background:

1. At all times relevant to the Complaint, Student, [age] years of age, was a resident of the District. There is no dispute that Student is presently eligible for special education and related services.
2. Prior to moving to Colorado, Parents and their children, including Student, had lived in [State 1] and later [State 2]. Between first grade and sometime during the sixth grade, Student had an IEP and was identified as having a speech-language (S-L) impairment. [Student] had received 30 minutes per week of S-L services to address fluency, sentence formation, narrative writing, paraphrasing, voice inflection, eye contact and pragmatic skills. A triennial evaluation conducted in March 2009 determined that, due to [Student's] progress, Student no longer qualified for S-L services. Consequently, the IEP was discontinued on March 20, 2009. This information is determined to be credible since it was contained in the education records supplied by Parents when Student was enrolled at School.¹⁰
3. Between 2006 and 2010, while residing in [State 2], Student attended Former School which was comprised of approximately 22 students per grade level in each class (i.e., a school population of well under 100 students). Beginning in second grade, Student took Math classes taught to students at the next grade level.¹¹
4. During the summer of 2010 Parents and their children moved to Colorado and began residing in District. In August 2010, Student was enrolled at School for the 2010-2011 school

⁹ Appendix A, attached and incorporated by reference, details the entire Record.

¹⁰ Interviews of Mother and SLP, Exhibit K, pg. 13. Conversely, during interviews, Mother stated that the [State 2] IEP had been discontinued by Parents due to dissatisfaction with the services.

¹¹ Interview of Mother.

year. At the time of Student's enrollment, School had a student population in excess of 1,000 students.¹²

5. In conjunction with Student's enrollment, Parents met with Counselor and requested that Student be placed in Advancement via Individualized Determination ("AVID"). Counselor reviewed Student's profile with Parents and explained that AVID was really geared towards students needing to improve their study skills. Given Student's profile, Counselor recommended that Student be enrolled in an honors class or an advanced Math class rather than AVID.¹³

6. During a three month period in 7th grade, Student was bullied on the school bus and during Band. The bullying consisted of a couple of students not allowing Student a seat on the bus or to sit with [Student's] group in Band. Parent also alleged that some students had called Student gay. The Dean had addressed the reported bullying incidents by disciplining the students who had done the bullying.¹⁴

7. During the 7th grade (i.e., the 2010-2011 school year), Parents reported to Counselor that Student was struggling to make friends. To address this concern, Counselor conferred with Former School Psychologist and arranged to have Student attend "lunch-bunch," a small group of students new to the School, that met once a week during the lunch period. The "lunch-bunch" group was run by Former School Psychologist and focused on social skills. Parents agreed and, as a result, Student attended the group on a weekly basis for approximately six to eight weeks.¹⁵

8. Student's grades at School during the 7th grade were average to above average in all subjects. Student received a "B" in advanced Math (i.e., Algebra I) in each quarter of the 7th grade.

Allegation #1: The District committed procedural violations in conjunction with Parents' October 7, 2011 request for an initial evaluation of Student.

9. On or about October 3, 2011, Student reported to Parents that a couple of students had bumped Student and thrown a ball hard at [Student] during a P.E. class. On October 4, 2011, Mother emailed School Psychologist and P.E. Teacher to report the incident. In the email, Mother alluded to Student as having Asperger's, depression and social anxiety.¹⁶ As a

¹² Interview of Counselor.

¹³ Id. AVID is a program that meets throughout the school year and provides select students who are not performing up to their potential with study tools and skills.

¹⁴ Interviews of Mother and Counselor, Complaint, pg. 2 and Response, pg. 1.

¹⁵ Id. Former School Psychologist went on maternity leave prior to the end of the 2010-2011 school year.

¹⁶ Exhibit S.

result of the email, School Psychologist arranged an October 7, 2011 meeting with Parents, Counselor, Dean and herself.¹⁷

10. On October 7, 2011, in advance of the meeting, Father emailed School Psychologist advising of the matters Parents wished to discuss in the meeting (i.e., Student's past GT programming, current academic performance and programming, bullying incidents in 7th grade, and bullying incidents in 8th grade – primarily in [] class). Father noted that on October 7, 2011 Kaiser Permanente had referred Student to JFK for "further diagnosis and treatment for Asperger's."¹⁸ In his email, Father indicated that Parents wanted information on the availability of School programs for children with Asperger's and wanted to know whether the teachers knew how to work with this student population. Father's email made no request for an initial evaluation. The email made no mention of any behaviors that Student was exhibiting or that Student was exhibiting behaviors at home that alarmed Parents.¹⁹

11. **The October 7, 2011 meeting.** The meeting was attended by: Parents, School Psychologist, Counselor and Dean. There is no dispute that, during the meeting, the parties discussed Student's I.Q. testing in first grade, a bullying incident that Student had experienced in P.E. class, Student's present academic performance – particularly in Algebra, the District's procedures for GT programming, the AVID program, the AIM program (a program for students who maintain a 3.5 grade point average and are proficient in either Reading or Writing), and behavioral difficulties Mother was experiencing with Student at home (i.e., issues concerning Student's compliance and completion of homework). The parties also agree that during the meeting Parents reported that a Kaiser Permanente ("Kaiser") therapist suspected Student might have autism. Mother also reported that she had been searching the internet and believed Student was exhibiting symptoms of Asperger's. Consequently, Kaiser had referred Parents to JFK for an evaluation of Student. Parents were in the process of scheduling the evaluation through JFK when the October 7, 2011 meeting occurred. At the time of the meeting, Student had not been diagnosed with Asperger's.²⁰

12. Parents claim that they requested an initial evaluation during the meeting but that School Psychologist and Counselor told them that until Student was diagnosed with Asperger's an initial evaluation could not be implemented.²¹ The District denied this claim.²² In their Reply, Parents raised a new claim, arguing that District had sufficient information on October 7, 2012 (e.g., Parents' October 4th and October 7th emails, bullying incidents in 7th and 8th grade, Student's difficulty making friends in 7th grade and as well as the JFK referral) to suspect

¹⁷ Interviews of Mother and School Psychologist.

¹⁸ During an interview, Mother admitted to SCO that at the time of the October 7, 2011 meeting, Student had not been diagnosed as having Asperger's.

¹⁹ Exhibit T.

²⁰ Interviews of Mother, School Psychologist and Counselor.

²¹ Interview of Mother and Complaint, pgs. 1-2.

²² Interview of School Psychologist and Counselor and Response, pgs. 1-4.

Student might have a disability, thus triggering the District's child find obligations.²³ The District also denied this claim.²⁴

13. At the time of the October 7, 2011 meeting, Student was receiving grades ranging from "C" to "A" in all of [Student's] classes except for Algebra II where [Student] was receiving a "D." The Record does not indicate that Student had ever had a School disciplinary referral for any reason.²⁵

14. At the time of the October 7, 2011 meeting, Parents were in the process of scheduling an appointment at JFK to have Student evaluated for autism. During the October 7, 2011 meeting, Parent's asked what the School would do if JFK diagnosed Student with Asperger's - would [Student] become a special education student and, if so, what would the School provide to [Student]. Counselor explained that even if the JFK evaluation determined that Student had Asperger's, the School would still need to follow specific procedures to determine whether Student was in need of special education and related services as a result of the diagnosis. Counselor explained the District's Response to Intervention (RtI) process to Parents, including use of a problem solving team (PST) questionnaire to identify a student's problem areas. At Mother's request, Counselor agreed to supply a PST questionnaire to all of Student's teachers and then supply the completed questionnaires to Parents for forwarding to JFK. The meeting participants also agreed to meet again once the JFK evaluation had been completed.²⁶ Given the credible evidence in the Record,²⁷ the SCO finds that Parents did not request an initial evaluation on October 7, 2012 and the District did not tell Parents that, before an initial evaluation could or would be conducted, Student would need to have a formal medical diagnosis of autism.

15. During the October 7, 2012 meeting, School Psychologist commented that she had not observed Student to exhibit symptoms commonly associated with Asperger's (e.g., little or no eye contact, repetitive activities, difficulties with change to routines, poor social interactions with peers, etc.).²⁸ Immediately after the meeting, Mother told Assistant Principal that School Psychologist was to have no further contact or involvement with Student. Mother did not explain the reason for her directive.²⁹

²³ Interview of Mother and Reply, pgs. 1-2. Parents' Reply also mischaracterized the District's Response as stating that Counselor and School Psychologist had "suggested a Problem Solving Team (PST) *in lieu of an IEP* until an official diagnosis was made." The SCO finds that the District made no such statement or inference in its Response.

²⁴ Supplemental Response, pgs. 1-3.

²⁵ Exhibit JJ, pg. 1.

²⁶ Interviews of Mother, School Psychologist and Counselor.

²⁷ Id., and Exhibit A.

²⁸ Interviews of Mother, School Psychologist and Counselor.

²⁹ Interviews of School Psychologist and Assistant Principal.

16. On November 3, 2011, shortly after Parents' meeting with JFK staff, Mother emailed Principal and Counselor reporting that, as a result of the JFK Evaluation, Student had been diagnosed with Asperger's, anxiety and dysthymic disorder (i.e., depressed mood).³⁰ Mother inquired about a meeting to discuss Student and [Student's] academic needs. The email made no request for an initial evaluation. On the same date Principal replied, advising Mother that she had forwarded the email to Assistant Principal who would contact Mother to schedule a meeting.³¹

17. On some date between November 3, 2011 and November 8, 2011 Parents enlisted the services of Advocate.

18. The parties agree that Mother orally requested an initial evaluation on November 8, 2011 during a telephone conversation with Assistant Principal. The parties also agree that, thereafter, Parents made a written request for an evaluation in an undated letter to Assistant Principal. In their Complaint, Parents characterized the undated letter as having been delivered in early in November while claiming in their Reply a date of November 9, 2011. Conversely, the District claimed the letter was presented on November 18, 2011 in conjunction with a meeting that had been scheduled at School. In the undated letter, Mother noted:

Thank you so much for returning my call on November 8, 2011 . . . I have been advised to put my request for an IEP in writing. However, I understood that you put things into motion as of our conversation and my verbal request for an IEP at that time (November 8th). We should expect testing to begin soon at the school as part of that process.³²

Mother supplied the written request at the suggestion of Advocate.³³ During the November 18, 2011 meeting, Assistant Principal recorded notes on the bottom half of the undated letter.³⁴ Given the credible evidence in the Record, the SCO finds that Parents orally requested an initial evaluation on November 8, 2011, the undated letter constitutes Parents' first written request for an initial evaluation, and the letter was delivered to Assistant Principal at the beginning of the November 18, 2011 meeting.

19. **The November 18, 2011 meeting.** A meeting was held on November 18, 2011. The meeting was attended by Mother, Advocate, Assistant Principal, Counselor, Social Worker, SLP, Reading Teacher, Algebra Teacher, Science Teacher and Art Teacher. During the meeting the following matters were discussed: the JFK testing and diagnosis; Mother's concerns about Student's failure to complete homework; [Student's] falling grades; parameters of the initial

³⁰ The District did not receive formal written notice of the JFK diagnosis until November 28, 2011 when Mother supplied the JFK Psychology and OT Evaluations to Assistant Principal and SLP.

³¹ Interview of Principal and Exhibit 3.

³² Exhibit A.

³³ Interview of Mother.

³⁴ Interview of Assistant Principal and Exhibit A.

evaluation; classroom accommodations that could be implemented immediately; and behaviors Student was exhibiting at home (e.g., meltdown behaviors, curling up in a fetal position, angry outbursts, walking around in circles while holding a blanket and repeatedly reciting lines from movies).³⁵

20. Although Parents orally requested an initial evaluation on November 8, 2011, given the number of School staff that attended the November 18, 2011 meeting as well as the number of topics discussed, the SCO finds that the District did not cause unreasonable delay in conducting the meeting on November 18, 2011.

21. During the November 18, 2011 meeting it was agreed that some classroom accommodations (e.g., breaking down assignments, visual cues, Student showing [Student's] work, Student making daily progress reports to Reading Teacher, etc.) would be implemented immediately while the initial evaluation process moved forward.³⁶

22. Because Parents had not yet received the written JFK Evaluation, SLP obtained Mother's written release on November 18, 2011 to obtain the JFK Evaluation directly from JFK.³⁷ In conjunction with the meeting, Mother also signed a consent form for the District to conduct an initial evaluation. During the meeting three boxes on the form were checked as requiring further assessment: social/emotional, physical and communications. (On November 21, 2011, Mother instructed SLP to also check the "educational" box on the consent form due to her concerns that Student might have a learning disability).³⁸ It was neither unreasonable nor untimely to obtain Parents' written consent on November 18, 2011, since, until the meeting was held, the District did not know which of several types of assessments should be checked on the form and initiated in conjunction with an initial evaluation.

23. During the meeting, it was discussed and determined that Social Worker would be responsible for conducting the social/emotional evaluation (i.e., assessing how Student managed feeling, interacted with others, and adapted to different environments) and writing that report. It was determined that SLP would be responsible for conducting the communications evaluation (i.e., assessing how Student listened, understood language, and expressed [him/herself]) and writing that report. It was also determined that OT would conduct the physical/motor evaluation (i.e., gross and fine motor skills).³⁹

24. Mother was supplied with a Procedural Safeguards Notice in conjunction with her execution of the consent for initial evaluation form.⁴⁰

³⁵ Interviews of Mother and SLP.

³⁶ Interview of Assistant Principal and Exhibit W.

³⁷ Interview of SLP.

³⁸ Interviews of Mother and SLP and Exhibit C, pgs. 1-2.

³⁹ Interviews of SLP and Social Worker and Exhibit B.

⁴⁰ Id. and Exhibit C, pg. 1.

25. Subsequent to the meeting, Assistant Principal sent an email to all of Student's teachers. The email summarized the matters discussed in the meeting and listed several accommodations that were to be implemented in Student's classes immediately "to see if [Student] responds" to the tier one and tier two interventions.⁴¹

26. On November 29, 2011 Mother supplied the JFK Psychology and OT Evaluations to Assistant Principal and SLP. It was on this date that the District received formal notice of Student's Asperger's diagnosis.⁴²

27. On November 29, 2011, SLP drafted an expanded list of accommodations based on the recommendations gleaned from the JFK Psychology and OT Evaluations. The list of 18 accommodations was vetted by Mother and District Coordinator before it was distributed to Student's teachers on November 29, 2011. These accommodations were implemented immediately while the initial evaluation was being completed.⁴³ In their Complaint, Parents characterized this list of accommodations as an "interim IEP."⁴⁴ The SCO finds that neither the list supplied to the teachers nor any District communications ever characterized the list of accommodations as an "interim IEP."⁴⁵

28. Given the credible information in the Record, the SCO specifically finds that:

- Prior to the October 7, 2011 meeting, Student had been referred to JFK for an evaluation as a result of a Kaiser therapist's suspicions that Student might have Asperger's;
- At the time of the October 7, 2011 meeting, Student had not been diagnosed with Asperger's;
- Parents did not request an initial evaluation at any time prior to or during the meeting;
- Parents were not told that, before an initial evaluation could be initiated, Student would need to have a formal medical diagnosis for autism or Asperger's;
- The School's Rtl and special education eligibility processes were explained to Parents during the meeting;
- On October 7, 2011, a timeline for the JFK evaluation was discussed;
- Once the JFK evaluation was complete, the meeting participants agreed to reconvene to review the results of the JFK Evaluation;

⁴¹ Interview of Assistant Principal and Exhibit X.

⁴² Interview of Mother and Exhibit 9.

⁴³ Interviews of Mother, SLP, Assistant Principal and District Coordinator and Exhibit 5.

⁴⁴ Complaint, pg. 3.

⁴⁵ Interviews of SLP, Assistant Principal and District Coordinator.

- The District's child find duties were not triggered by Parents' October 4th and 7th emails nor by what District knew about Student as a result of the October 7, 2011 meeting;
- Immediately after the October 7, 2011 meeting, Counselor emailed all of Student's teachers, briefly describing the meeting and requesting that the teachers fill out and return the attached PST questionnaire;
- Parents were copied on the email which made no mention of them requesting an initial evaluation;
- Four teachers (i.e., Social Studies Teacher, Reading Teacher, Science Teacher, and Art Teacher) completed and returned the PST questionnaires to Counselor;
- None of the teachers who completed the PST questionnaire noted any behaviors or conduct that would suggest that Student should be referred for an initial special education evaluation; and
- None of the teachers who completed the PST questionnaire requested that Student be referred for an initial special education evaluation.⁴⁶

Allegation #2: The District committed procedural violations in conjunction with the March 5, 2012 (IEP).

29. **January 13, 2012 Eligibility Meeting and 1st IEP Meeting.** An Eligibility Determination meeting was conducted on January 13, 2012. During this three hour meeting, the first of three IEP meetings was also conducted immediately after the Eligibility meeting.⁴⁷ Participants that attended both meetings were: Parents, Advocate, Case Manager, SLP (Special Education Designee), OT, Special Education Teacher, Algebra Teacher, Social Worker, District Coordinator, SLP Coordinator and GT Coordinator. ("Eligibility Team")⁴⁸

30. In conjunction with the meeting, the following reports were presented and discussed: SLP's Communication Report, Special Education Teacher's Educational Report, Case Manager's Transition Report, School Nurse's Physical/Health Report, OT's Physical/Motor Report, and Social Worker's Social/Emotional Report.⁴⁹ In conjunction with writing their reports, OT, Social Worker and SLP reviewed the JFK Evaluation. The Eligibility Team and or the IEP Team also reviewed and discussed the JFK Evaluation, classroom observations, Student's educational record and Parents' concerns. A copy of the JFK Evaluation was also attached as an addendum to the IEP.⁵⁰

⁴⁶ Interviews of Mother, School Psychologist, Counselor, Assistant Principal, Social Studies Teacher, Reading Teacher, Science Teacher and Art Teacher, Exhibits S through U and #s 1, 50 and 63, pgs. 1-4.

⁴⁷ Interview of Mother and District Coordinator.

⁴⁸ Interview of SLP and Exhibit K, pg. 6.

⁴⁹ Interviews of Mother, SLP, Social Worker and District Coordinator, Exhibit K, pgs. 12-22.

⁵⁰ Exhibit K, pgs. 3, 13, 19 and 21.

31. The Eligibility Team determined that Student had a physical disability (autism) which prevented [Student] from receiving reasonable educational benefits from general education. The Eligibility Team also determined that Student's physical disability interfered with [Student's] social interactions and relationships as well as [Student's] cognitive processing.⁵¹

32. In addition to the January 13, 2012 IEP meeting, two more lengthy IEP meetings were conducted on February 10, 2012 and March 5, 2012 when the IEP was finalized. The February 10, 2012 IEP meeting participants were: Parents, Student, SLP (as District designee), Reading Teacher, Social Studies Teacher Algebra Teacher, Assistant Principal, Social Worker, District Coordinator, District SLP Coordinator and a representative from High School that Student would attend during the 2012-2013 school year. The March 5, 2012 meeting participants were: Parents, Advocate, Case Manager, District Coordinator (as District designee), SLP, Social Worker, District SLP Coordinator and a representative from High School that Student would attend during the 2012-2013 school year. Parents actively participated in all of the IEP meetings.⁵²

33. **SLP's Communication Report.** SLP's Communication Report included Student's current grades, a brief summary of the JFK S-L Evaluation (i.e., Pragmatics, Receptive and Expressive Language) as well as the Clinical Evaluation of Language Fundamentals -4 (CELF-4) Pragmatic Profile scores. Additionally, in conjunction with formulating her report, SLP reviewed the JFK Evaluation, interviewed Student, conferred with teachers concerning their observations of Student, conducted her own observations of Student, reviewed Student's Standardized test scores from [State 2] and 7th grade and administered the Screening Test of Adolescent Language (STAL). Student received a perfect score on the STAL which measures vocabulary, auditory memory span, language processing (cause-effect explanation) and proverb explanation (verbal paraphrasing).⁵³

34. The Pragmatics Profile is one of several subtests that comprise the CELF-4. It is designed to provide a quick profile of a student's overall pragmatic skill development including verbal and non-verbal social communication skills and aspects of language use. The profile consists of a 52-item questionnaire of speech intentions that are typically expected skills for social and school interactions in mainstream classrooms. The raw scores are based on each respondent's observations and ratings of the student's skill levels, based on a rating scale of: 1 (never), 2 (sometimes), 3 (often), 4 (always), not observed (NO) or not appropriate (NA). The

⁵¹ Id, pgs. 9-10.

⁵² Interview of Mother, District Coordinator, Social Worker, SLP and District SLP Coordinator and Exhibit K, pgs. 7-8.

⁵³ Interview of SLP and Exhibits 24-25, EE and II. The results of the STAL were not noted in the Communications Report but a copy of the notes she recorded during administration of the STAL were supplied to the SCO and also noted in Exhibits 24-25.

raw score of each respondent is determined by adding the total number of scores for each category (i.e., 1-4).⁵⁴

35. According to her report, SLP administered the Pragmatics Profile to four teachers and Student. Student's criterion score was reported to be >142. SLP reported that three teachers scored Student's pragmatic skills over 142 while the fourth teacher scored Student's pragmatic skills at 135. SLP also reported that Student rated [him/herself] as having a score of 150.⁵⁵

36. In reviewing the Pragmatics Profile raw scores subsequent to finalization of the IEP, Mother discovered that many of the scores reported in the Communications Report were erroneous. In an April 10, 2012 email to Case Manager, SLP, District Coordinator, Assistant Principal, Advocate and Father, Mother noted that the raw data the District had supplied her did not comport with the teacher's scores listed in SLP's Communications Report.⁵⁶ In their Complaint, Parents intimated that SLP had intentionally recorded the erroneous scores.⁵⁷ SLP could not explain how the reporting of erroneous raw scores occurred except to point out that she was using a new software program for the first time and kept losing and having to re-enter portions of the report narrative.⁵⁸ The District did not deny that the raw scores were inaccurate and, as a result of a meeting held with Mother on April 20, 2012, the District had SLP correct the inaccurate scores.⁵⁹ On May 31, 2012, SLP supplied District SLP Coordinator with a Revised Communication Report with the correct teacher raw scores (i.e., 93, 104, 135 and 172) and Student's raw score (i.e., 179).⁶⁰ The SCO finds that:

- The SLP failed to accurately report to CELF-4 Pragmatic Profile raw scores to the IEP team;
- SLP did not intentionally record inaccurate raw scores for the teachers or Student;
- The inaccurate raw scores were corrected in SLP's May 31, 2012 Revised Communication Report;
- June 6, 2012 was the District's last day of school;
- The revised report was entered into Student's electronic IEP by District SLP Coordinator on June, 7, 2012; and
- Parents were not notified of these changes to the IEP until August 21, 2012.⁶¹

37. In her revised report, SLP noted that the Pragmatic Profile was a "non-standardized [CELF-4] subtest" and also added the following additional information:

⁵⁴ Exhibit DD, pg. 17.

⁵⁵ Exhibit K, pg. 13.

⁵⁶ Interview of Mother and Exhibit 25, pgs. 2-3.

⁵⁷ Complaint, pg. 9.

⁵⁸ Interview of SLP.

⁵⁹ Interview of District Coordinator and Response, pg. 14.

⁶⁰ Interview of SLP and District SLP Coordinator and Response, pg. 9.

⁶¹ Interview of District SLP Coordinator, Exhibit O.

[Student] rated [Student's] communication abilities in context at 179 which indicates adequate communication skills. *It is important to see how a child views [Student's] own skills, then compare that to how others view those same skills.* Four teachers rated Student's pragmatic skills at 93, 104, 135 and 172. This range [of teacher scores] indicates [Student's] teachers view [Student's] pragmatic skills are [sic] inadequate to appropriate for [Student's] age level . . . All teachers had "Not Observed" behaviors, however, they reported that they think that [Student] could complete the skills but had not directly observed [Student] doing so . . . However, [Student's] pragmatic language skills are in the average to inadequate range.⁶²

38. Parents alleged that in having Student complete the questionnaire, SLP had not administered the Pragmatics Profile according to test protocols. According to the Pragmatics Profile instructions, the questionnaire is to be completed by "a parent, teacher *or someone familiar with student.*" The format makes no mention of the appropriateness or inappropriateness of the questionnaire being completed by a student.⁶³ Although the May 31, 2012 Revised Communication Report noted that the Pragmatics Profile is "a non-standardized subtest," the original report did not provide this information. Additionally, in the May 31 Revised Communication Report SLP stated that she had Student complete the questionnaire for the purpose of gauging how [Student] viewed [Student's] pragmatic skills. However, the original Communications Report made no mention of SLP's reasoning for administering the questionnaire to Student.⁶⁴ The SCO concludes that the Pragmatics Profile is a non-standardized subtest of the CELF-4 and, contrary to the subtest instructions, SLP had Student complete the Pragmatics Profile questionnaire but gave no explanation in her original Communication Report as to why she administered it to Student. Nevertheless, in both the original and the Revised Communication Report Student's raw score was not included in the grouping of teacher's raw scores.⁶⁵

39. Parents also claimed that SLP had not interviewed them in formulating her Communications Report. However, as noted in paragraphs 29-30 and 32, above, both Parents attended three lengthy IEP meetings and discussed their concerns and Student's needs at length in all of those meetings.⁶⁶ Additionally, in formulating her report, SLP reviewed the JFK Evaluation, particularly the psychological and S-L evaluations both of which noted concerns Parents expressed to JFK evaluators in October and November 2012.⁶⁷

⁶² Exhibit 43, pgs. 1-2 (Emphasis added).

⁶³ Exhibit DD, pg. 17 (Emphasis added).

⁶⁴ Exhibit NN, pgs. 8-10.

⁶⁵ Exhibit 43, pgs. 2-3.

⁶⁶ Interviews of Mother, District Coordinator, SLP Coordinator and Case Manager.

⁶⁷ Interview of SLP and Exhibits 16, pg. 1, 68 and F, pgs. 8-11.

40. Parents alleged that “Speech-Language, namely pragmatic language skills, is an area of great need for [Student] and, based on [SLP’s] interpretation of the CELF-4 Pragmatic Profile respondent scores, [Student] has been denied Speech-Language services to address access needs in this area.”⁶⁸ The SCO does not agree. When asked why she thought that, given Student’s needs, speech-language services should have been included in the IEP Mother stated “what I understood was that [Student] had a communications disorder – [Student] has always struggled with expressive language and it [S-L services] is what [Student] had received in [State 2].”⁶⁹ As noted in paragraphs 30 and 33 above, the CELF-4 Pragmatic Language scores were only one piece of the body of evidence that SLP reported and that the IEP Team considered. The JFK S-L Evaluation noted in part:

Social Communication (Pragmatics): Social communication skills involves [sic] a child’s skills in using language and other communicative means (i.e., nonverbal means) to appropriately communicate with others across a variety of social contexts. Skills assessed include, communicative intents, gesture use, eye contact, reciprocity and conversations . . .

. . . Challenges with abstract language interpretation were noted, along with formal language use, which is an unusual language behavior that is not commonly seen among teenagers of [Student’s] age.

. . .

In terms of social communication, [Student] demonstrated development of some core social communication skills. With that said, the quality and frequency in which [Student] used those skills was reduced, such as in the areas of nonverbal communication (e.g., eye contact, gesture use) and conversational skills (e.g., initiation, follow up, reduced reciprocity). [Student’s] performance on the Test of Pragmatic Language -2nd Edition (TOPL-2) revealed challenges with conversational skills, such as tailoring messages to meet [Student’s] audience’s needs, perspective shifting, making abstractions, and using language appropriately for a variety of social purposes in a variety of social situations.

Overall, while receptive and expressive language abilities are areas of strength, and some strengths within [Student’s] social communication development were noted, [Student] continues to struggle with socially related forms of communication and interactions, such as understanding and interpreting social contexts and using language appropriately and pragmatically within these contexts.⁷⁰

The JFK S-L Evaluation made several recommendations, including:

⁶⁸ Complaint, pg. 9.

⁶⁹ Interview of Mother.

⁷⁰ Exhibit 16, pgs. 3 and 5-6.

- *Social skill instruction targeting specific social skills, including conversational skills, social problem solving skills, and abstract language interpretation and use through direct support from a speech-language pathologist or during individual behavioral health therapy sessions with a psychologist knowledgeable in social skill development;*
- Participation in a social skills group *after* [Student] builds up [Student's] skills in a safe 1:1 environment that promotes the practice of appropriate social communication skills;
- An IEP providing goals targeting specific social communication skills, including conversational skills, social problem solving skills, and social interaction rules (i.e., interrupting, appropriate conversational topics, reading nonverbal cues, etc.); and
- Accommodations such as chunking of information; visual supports; rephrasing of verbal directions/important parts of lectures and, when possible, giving directions in a 1:1 context.⁷¹

As noted in the italicized language above, the JFK S-L Evaluation recommended that social skill instruction be provided by a speech-language pathologist or through individual behavioral health therapy sessions with a psychologist.

41. The IEP Team considered and incorporated into the IEP many of the recommendations contained in the JFK S-L Evaluation. Consistent with the JFK S-L Evaluation and the JFK Psychology Evaluation, the finalized IEP services included 30 minutes per week of direct 1:1 services by a mental health provider. The IEP services also included 15 minutes per week of indirect services to be delivered, as needed, by Special Education Teacher, Social Worker and SLP.⁷² As previously noted in paragraph 15, above, Mother instructed that School Psychologist was to have no contact with Student subsequent to the October 7, 2011 meeting. Consistent with that instruction and Parents' agreement during an IEP meeting, the direct mental health services were supplied by Social Worker and not by School Psychologist.⁷³ OT presented her Physical/Motor Report, including information concerning her interview with Student and [Student's] sensory needs. In her report, OT noted that the School Team had identified a quiet place for [Student] to regroup. OT reviewed with Student the list of recommendations that were proposed in the JFK Evaluation. OT discussed with Student various techniques (e.g., deep breathing, movement strategies and fidgets) that might help [Student] but Student felt that the strategies would not help.⁷⁴ On February 10, 2012, the IEP Team, including Student, discussed specific school behaviors (e.g., not answering questions, pencil tapping, homework completion and executive functions) with Student at length. As to the pencil tapping, Student stated that it embarrassed [Student] to have this brought to [Student's] attention in class and that [Student] felt that [Student] had stopped the action or was able to self monitor to reduce

⁷¹ Id., pgs. 6-7 (Emphasis added).

⁷² Exhibits K, pg.37, 16, pg. 6 and 64, pg. 2.

⁷³ Interviews of SLP, Social Worker and District Coordinator.

⁷⁴ Exhibit K, pgs. 19-20.

or eliminate the pencil tapping. Consequently, the IEP Team elected not to address the pencil tapping behavior in conjunction with the IEP. Several of the JFK S-L Evaluation recommendations were incorporated into the IEP as accommodations (e.g., visual cues, extended time, directions broken down, etc.). Special Education Teacher presented her Education Report and the IEP Team discussed Student's academic strengths and needs. Many accommodations specifically addressed Parents' concerns about Student's completion of executive organization, class assignments, homework and academic supports.⁷⁵ The IEP Team developed two goals to address Student's areas of needs in understanding others' perspectives and cognitive flexibility. The IEP Team decided that Social Worker would supply the 1:1 mental health services as well as implement and track Student's progress on the goals.⁷⁶ The SCO concludes that the IEP Team considered and addressed Student's needs, including needs associated with behavioral issues (i.e., pencil tapping, fidgeting, not answering questions, etc.) to the extent deemed appropriate.

42. Social Worker has an M.A. in Social Work and is a licensed clinical Social Worker. She has received training in social skill development at both the state and national level. As a result of her extensive social skills training Social Worker has trained other professionals in supplying social skills training to students with Asperger's. In her professional career, Social Worker has also attended numerous trainings specifically on the topic of Asperger's and has been working with this student population for the last 13 years.⁷⁷

43. The SCO finds that Social Worker was well qualified to review and interpret the JFK Psychological and S-L Evaluations, to write the Social/Emotional Report, to supply the weekly direct and indirect mental health services and to implement and measure Student's progress on the IEP goals.

44. **Social Worker's Social/Emotional Report.**⁷⁸ In formulating her report, Social Worker conducted interviews of Mother and teachers, reviewed Student's grades, interviewed and observed Student on three occasions over a period of five-weeks and reviewed the JFK Psychological and S-L Evaluations. She also administered the Conners Comprehensive Behavior Rating Scale (Conners CBRS) to Student, Parents, Algebra Teacher, Reading Teacher and Social Studies Teacher. Parents filled out the questionnaire together.⁷⁹ In her report, Social Worker noted that Parents scores were rendered invalid because of the "Negative Impression Scale and Inconsistency Index were too high."⁸⁰ The report also noted that the Conners CBRS was administered to teachers after they knew that the JFK Evaluation had

⁷⁵ Interviews of Mother, District Coordinator, SLP, Social Worker and Case Manager, Exhibits 27 and K, pgs. 7, 19-20 and 36.

⁷⁶ Interviews of District Coordinator and Social Worker, Exhibit K, pgs. 34-35 and 37.

⁷⁷ Interview of Social Worker.

⁷⁸ Exhibit K, pgs. 21-22.

⁷⁹ Exhibit 53, pgs. 1-26.

⁸⁰ Exhibit K, pgs. 21-22.

diagnosed Student as having Asperger's. The Conners CBRS poses approximately 175 questions concerning various behaviors which the respondent rates (i.e., "0" = not true at all (never, seldom), "1" = just a little true (occasionally), "2" = pretty much true (often, quite a bit) or "3" = very much true (very often, very frequently)).⁸¹ It is appropriate to administer the test in conjunction with an initial evaluation and to understand the behaviors and symptoms that are problematic in the school setting.⁸² In her report, Social Worker noted areas where [Student's] teachers had stated more concerns than average were as follows:

One teacher noted elevated concerns in the areas of Hyperactivity/Impulsivity and social skills. The second teacher noted very elevated scores on the scales for Asperger's Disorder and elevated scores in social skills. A third core teacher . . . indicated very elevated scores on the scales for Asperger's Disorder and ADHD. They also noted elevated scores in the areas of Manic Episode, Generalized Anxiety disorder, Obsessive Compulsive Disorder and Autistic disorder.⁸³

The report noted "These test results should not be interpreted on their own but as part of the total body of evidence surrounding [Student]." Social Worker concluded her report by noting that Student had some relative weaknesses in social interactions in school settings and might benefit from joining a "lunch-bunch" at School that focused on learning and practicing new social skills.⁸⁴

45. The SCO finds:

- Social Worker's report included areas of concern that three teachers had observed in the classroom setting;
- Social Worker identified Student's needs (i.e., social interactions in the school setting);
- Social Worker's report was only one piece of the extensive documentation and information that the IEP Team considered in identifying Student's behavioral issues and needs and in formulating the IEP;
- As indicated in paragraph 41, above, Student attended one IEP meeting and stated [Student's] needs and preferences; and
- OT's report focused on Student's physical/motor assessment, including an interview with Student concerning [Student's] sensory, fidgeting and calming needs.⁸⁵

46. Parent also alleged that they were not supplied with the finalized IEP until they signed a consent form. The District denied this claim noting that the IEP was essentially finalized in conjunction with the third and final IEP meeting on March 5, 2012 and supplied to Parents on

⁸¹ Id., pg. 21.

⁸² Interview of Social Worker and Exhibit MM, pgs. 1-3.

⁸³ Exhibit K, pg. 21.

⁸⁴ Id., pg. 22.

⁸⁵ Exhibit K, pgs. 19-22.

March 7, 2012 after District Coordinator and Case Manager carefully reviewed the IEP for accuracy. During an interview, Case Manager agreed that, according to the email, she had requested that Parents sign the consent for services form in advance of receiving the finalized IEP. However she stated that she was rarely involved in initial IEPs or in obtaining consent for initial services.⁸⁶ Parents signed the consent for services form on March 6, 2012 and on March 8, 2012, Parents were supplied with a copy of the finalized IEP.⁸⁷ Given the credible evidence in the Record, the SCO finds:

- At the conclusion of the March 5, 2012 meeting, Parents knew what special education and related services Student would receive;
- Subsequent to the March 5, 2012 meeting District Coordinator and Case Manager carefully reviewed the IEP for accuracy;
- On March 6, 2012, Case Manger emailed Parents a consent for services form and a Procedural Safeguards Notice;⁸⁸
- In the email, Case Manager stated that “Once you sign and return the consent form, I can get you the official copy of [Student’s] IEP and services can officially begin;”⁸⁹
- Signing of the consent for services form was a condition of Parents receiving a copy of the finalized IEP; and
- Parents received a copy of the finalized IEP on March 8, 2012.

47. Between March 6, 2012 and the end of the school year on June 6, 2012, Student made progress on both of the IEP goals.⁹⁰

48. In the 8th grade, Student continued to receive average to above average grades in most of [Student’s] classes. However, throughout the 8th grade (i.e., the 2011-2012 school year) Student received a “D” in Algebra II and, during the third quarter, a “D” in Writing and in Social Studies. Both of these grades were brought up to a “C” in the 4th quarter.⁹¹

Allegation #3: The District failed to allow Parent to inspect and review Student’s educational records in a timely manner.

49. Specifically, Parents claimed that the District failed to timely respond to Parents’ January 13, 2012 request for copies of the CELF-4 raw data from the Pragmatics Profile and the test protocols.⁹² The District denied Parents requested the education records on January 13, 2012 and stated that Mother first made a request on or about March 17, 2012 in an email to

⁸⁶ Interview of Case Manager and Exhibit 28, pgs. 1-3.

⁸⁷ Exhibits 28, pgs. 1-3 and L.

⁸⁸ Exhibit 28, pgs. 1-3.

⁸⁹ Id.

⁹⁰ Interview of Social Worker and Exhibits CC, pgs. 1-2 and O.

⁹¹ Exhibit JJ, pg. 1.

⁹² September 28, 2012 Interview of Mother.

Assistant Principal. District argued that the District's spring break was the week of March 26, 2012 and the requested records were made available to Parents on April 9, 2012.⁹³ However, Advocate recalled that Parent requested the records on January 17, 2012.⁹⁴

50. Given the conflicting evidence in the Record, the SCO finds that it is more likely than not that Parents first requested a copy of the CELF-4 raw data on March 17, 2012. The SCO notes that on November 23, 2011 Mother emailed Assistant Principal an email requesting a copy of [Student's] file including "raw results of all testing . . . as they become available."⁹⁵ The SCO finds that Mother's November 23, 2011 email did not trigger a duty for the District to supply the CELF-4 raw data since, at the time of that blanket request, no such education records existed. Furthermore, throughout the 2011-2012 school year, Parents remained in very close contact with numerous District staff and, when something did or did not occur to Parents' satisfaction, Mother would promptly (often the same day) send emails to one or more District staff.⁹⁶ On Saturday, March 17, 2012, Mother emailed Assistant Principal: "Please have [SLP] make a copy of CELF testing she did with [Student]. Raw material as well as the results. [Father] and I would like to review this." Assistant Principal replied on the same date advising Parents that she had forwarded the request to SLP.⁹⁷ On Sunday, March 18, 2012, Mother emailed Case Manager stating "we had asked [SLP] to make us copies of the Teacher Responses read at our initial [January 13, 2012] IEP meeting . . . The last time we asked her for those, she said you had them. Could you make those copies for us . . ."⁹⁸ On or about April 9, 2012, District Coordinator advised Mother that she would need to sign a release and arrange a time to review the requested records at School.⁹⁹ The District was on spring break from March 25th through March 30th. On April 9, 2012, the District made the education records available to Parents. Mother then requested that she be supplied copies on April 10, 2012 so that she could review them at her leisure in private. On April 10, 2012, the District supplied Mother copies of the requested raw data but not the protocols since those are copyrighted materials.¹⁰⁰

51. The SCO finds that:

- Parents' did not request the raw data on either January 13, 2012 as Mother claimed or on January 17, 2012 as Advocate claimed;
- Parents first requested a copy of the CELF-4 Pragmatics Profile raw data on Saturday, March 17, 2012;

⁹³ Response, pg. 13 and Exhibit AA.

⁹⁴ Interview of Advocate.

⁹⁵ Exhibit 54.

⁹⁶ For example, Exhibits 3-4, 7-8, 11-13, and 28.

⁹⁷ Exhibit AA.

⁹⁸ Exhibit 22, pg. 3.

⁹⁹ Id., pg. 1.

¹⁰⁰ Statement of Counsel and Exhibits O and 22, pg. 2.

- The raw data were made available for Mother to view on Monday, April 9, 2012;
- Parents were supplied copies of the raw data on April 10, 2012; and
- Parents were not supplied with the CELF-4 protocols as that is copyrighted material.

Allegation #4: The services supplied by Social Worker in conjunction with the [March 5, 2012] IEP failed to meet Student's needs.

52. The District denied that the services supplied by Social Worker failed to meet Student's needs. The District noted that Social Worker was available to supply 30 minutes per week of direct services to Student but she had difficulty getting Student to attend the sessions.¹⁰¹

53. As indicated in paragraphs 29, 32, 39 and 41 above, the IEP goals, services and accommodations were developed during three lengthy IEP meetings by the team, including Parents. As noted in paragraph 41, above, those goals, services and accommodations met Student's needs. Consistent with Parents' consent, and as noted in paragraph 41, above, Social Worker supplied the direct and indirect mental health services, including implementation of the IEP goals. As indicated in paragraph 47, above, Student made progress on both of the IEP goals. The SCO concludes that the services supplied by Social Worker conformed with the direct and indirect mental health services listed the IEP and met Student's needs.

Allegation #5: The District failed to reconvene the IEP Team on or after April 20, 2012 when Parents presented discrepancies in the Communications Report concerning the results of the Pragmatic Profiles section of the CELF-4.

54. On April 10, 2012 Parents were supplied with copies of the raw data of the teacher responses to the Pragmatic Profile section of the CELF-4.¹⁰² On April 20, 2012 a meeting was held between Mother, District Coordinator, Assistant Principal and District SLP Coordinator. During the meeting the CELF-4 Pragmatics Profile responses reported in SLP's Communication Report were discussed and compared to the Pragmatic Profile raw data.¹⁰³ Given the credible information in the Record, the SCO finds:

¹⁰¹ Response, pg. 13-14.

¹⁰² Exhibit AA, Pg. 2. Parents requested an IEE of Student's pragmatic and expressive language on April 31, 2012. An IEE Evaluation Report was completed on or after July 30, 2012. The IEE Evaluation Report made several recommendations concerning goals and accommodations that District had already instituted through the IEP. The IEE Evaluation Report made no mention of Student needing S-L services or specify who should deliver the recommended services. Exhibits 36 and 20, pgs. 7-10.

¹⁰³ Interviews of Mother, District Coordinator, District SLP Coordinator and Assistant Principal.

- In comparing the CELF-4 Pragmatic Profile teacher responses with the scores reported in SLP's Communication Report, it was determined that the reported scores were not accurate;¹⁰⁴
- When the District learned of the erroneous scores, it did not reconvene the IEP Team or notify Parent that it agreed to correct the inaccurate raw scores;
- On May 31, 2012, SLP supplied District SLP Coordinator with a Revised Communications Report containing the corrected teacher response scores;¹⁰⁵
- June 6, 2012 was the District's last day of school;¹⁰⁶
- On June 7, 2012, 48 days after Mother requested that the inaccurate scores be corrected, District SLP Coordinator attached the revised report to Student's electronic IEP;¹⁰⁷
- SLP Coordinator did not supply Parents with a copy of the Revised Communications Report or the IEP containing the Revised Communications Report;¹⁰⁸
- On July 20, 2012, Parents met with Special Education Director and Director of Secondary Special Education to discuss the SLP's Communications Report and the erroneous response scores;
- At the time of the July 20, 2012 meeting, none of the meeting participants knew that SLP had corrected the erroneous response scores through a Revised Communications Report or that District SLP Coordinator had attached the revised report to Student's electronic IEP; and¹⁰⁹
- The District failed to supply Parents with a copy of the Revised Communications Report and amended IEP until August 21, 2012.¹¹⁰

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact (FF), the SCO enters the following CONCLUSIONS OF LAW:

Allegation #1: The District committed procedural violations in conjunction with Parents' October 7, 2011 request for an initial evaluation of Student.

55. Parents alleged that they requested an initial evaluation during an October 7, 2011 meeting but the District refused to initiate an evaluation until Student had a formal medical diagnosis of autism. Alternatively, Parents claimed that the District violated its child find

¹⁰⁴ Interviews of District Coordinator and District SLP Coordinator.

¹⁰⁵ Interviews of District SLP Coordinator and SLP

¹⁰⁶ Exhibit O.

¹⁰⁷ Interviews of SLP and District SLP Coordinator and Exhibits Y and NN, pg. 8-9.

¹⁰⁸ Interview of District SLP Coordinator.

¹⁰⁹ Interview of Special Education Director and Exhibits 44, pgs. 2-5.

¹¹⁰ Interview of District SLP Coordinator and Exhibits 44, pg. 2 and NN, pgs. 8-9.

duties when it failed to initiate an evaluation despite notice that Student had been referred for Asperger's testing and despite concerns communicated by Parents about [Student's] academic and social struggles. (FF #12).

56. Either a parent of a child or a public agency, here the District, can initiate a request for an initial evaluation to determine whether the student is a child with a disability. § 300.301(b) and Rule 4.02(3)(a)(i) - (ii). When a parent requests an evaluation the district must:

- Provide the parent written notice ("prior written notice") a reasonable time before the district either proposes to initiate an evaluation or refuses to initiate an evaluation (§ 300.503(a) and Rule 4.02(3)(b));
- Obtain the parent's informed written consent for an evaluation (§ 300.300(a) and Rule 4.02(3)(c)(ii));
- Provide the parent with a copy of the procedural safeguards notice (§ 300.504 and Rule 4.02(3)(b)); and
- Conduct the evaluation within 60 days of the date that a parent signed consent for the evaluation (§ 300.301(c)(1)(i) and Rule 4.02(3)(c)).

57. A district cannot shift its evaluation responsibilities to the parent by requiring a medical diagnosis prior to initiating an evaluation. *See M.J.C. v. Special Sch. Dist. No 1*, 2012 U.S. Dist. LEXIS 63843 (D. Minn. Mar. 30, 2012)(holding that a Minnesota school district could not use a parent's failure to submit an ADHD diagnosis from a licensed physician to justify its failure to find a student eligible for IDEA services); *See also N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202 (9th Cir. Mont. 2008)(a district cannot fulfill its duty to evaluate a child diagnosed with autism by referring the parents to a child development center).

58. Additionally, even if a parent has not requested an evaluation, the district has child find responsibilities that are triggered when it has reason to suspect that a student has a disability *and* may need special education services. § 300.111(a)(1)(i)-(ii) (Emphasis added) and Rule 4.02(2)(a). Eligibility under the IDEA is a two prong analysis. A student is not eligible for special education services unless i) he has one of the disabilities recognized under the IDEA *and*, ii) *as a result of the disability, he needs special education and related services.* § 300.8(a)(Emphasis added). *M.J.C. v. Special Sch. Dist. No 1*, 2012 U.S. Dist. LEXIS 63843 (D. Minn. Mar. 30, 2012)(districts failure to evaluate student for ADHD for eight years despite knowing about his increasingly inappropriate and violent behaviors and despite an ADHD diagnosis constituted a child find violation); *See also Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181 (9th Cir. Cal. 2010)(district's disregard of a high school students academic and emotional difficulties which included coloring with crayons at her desk, playing with dolls and urinating on herself in class, constituted a child find violation). Conversely, if a district has no reason to suspect that a student requires special education and related services, it has no duty to evaluate the child, even if it has knowledge of a disability. *See D.K. v. Abington Sch. Dist.*,

696 F.3d 233 (3d Cir. Pa. 2012)(district did not violate child find when it delayed its evaluation of a grade schooler exhibiting some academic difficulties and behavioral problems, e.g., hyperactivity, difficulty following instructions and tantruming, since these were not atypical behaviors for a student in early grade school years); *See also E.J. v. San Carlos Elem. Sch. Dist.*, 803 F. Supp.2d 1024 (N.D. Cal 2011)(district had no reason to suspect the student, who had an anxiety disorder, needed special education to receive educational benefit since student earned above-average grades with the modifications the district supplied her in general education classes). Incidents of bullying can also raise a “red flag” that either the student being bullied or the student perpetrating the bullying might be a student with a disability and in need of special education thus triggering child find duties. *See Rose Tree Media Sch. Dist.*, 111 LRP 6194 (SEA PA 12/05/10)(district that knew the student had been prescribed ADHD medications, had significant anxiety and social skills deficits and often complained of being taunted by peers violated its child find obligations when it determined that student was ineligible for special education); and *Birdville Independent Sch. Dist.*, 57 IDELR 60 (SEA TX 2011)(district’s failure to consider the depth and duration of a child’s aggressive and violent behaviors, including alleged bullying of others, resulted in an erroneous determination that student was ineligible for special education).

59. Prior to moving to Colorado, Student attended schools in [State 1] and then [State 2]. Between 1st grade and sometime during the 6th grade, Student had an IEP for a S-L impairment. In March 2009 the special education services were discontinued when it was determined that Student no longer qualified for S-L services. (FF #2). Between 2006 and 2010, Student attended Former School in [State 2] where the entire student population was under 100 students. (FF #3). In August 2010, the family moved to Colorado and Student was enrolled in 7th grade at School which had a student population in excess of 1,000 students. (FF # 4).

60. Since the 2nd grade, Student has taken Math classes taught to students at the next grade level. Given [Student’s] profile, at time of [Student’s] enrollment Counselor recommended that Student be enrolled in an honors class or advanced Math class. (FF #s 3 and 5).

61. For three months during the 7th grade, Student experienced bullying on the school bus and during Band class. The bullying consisted of a couple of students not allowing Student a seat on the bus or [Student’s] assigned seat in class. Student also reported that [Student] had been called “gay” by some students. The School’s Dean addressed the bullying by disciplining the students who had done the bullying. (FF #6). During the 7th grade Parents reported that Student was struggling to make friends. The SCO does not find Student’s difficulties surprising, given the size of School’s student population as compared with the Former School’s population. As a result, Student was included in a weekly “lunch-bunch” group run by Former School Psychologist. The group consisted of students new to the school and focused on social

skills. (FF# 7). During the 7th grade Student received average to above average grades in all of [Student's] classes including a "B" in Algebra I. (FF #8).

62. On October 4, 2011, when Student was in 8th grade, Mother emailed School Psychologist reporting that a couple of students had bumped and thrown a ball hard at Student during P.E. class. In the email, Mother described Student as having Asperger's, depression and social anxiety. As a result of the email, School Psychologist scheduled a meeting with Parents, Counselor, Dean and herself. On October 7, 2011, in advance of the meeting, Father emailed School Psychologist advising her of numerous matters that Parents wished to discuss including the bullying incident, Student's current academic performance and programming and information on services available at School for children with Asperger's. In his email, Father advised that Student had been referred to JFK for an Asperger's evaluation. Father did not request that Student be evaluated for special education services. (FF #s 9 and 10).

63. During the October 7, 2011 meeting the parties discussed several matters, including but not limited to the bullying incident in P.E. class, the referral to JFK for an Asperger's evaluation, Student's academic performance, particularly in Algebra I, and behavioral difficulties Mother was currently experiencing with Student at home (i.e., compliance and completion of homework issues). Parents were in the process of scheduling the JFK evaluation but, at time of the meeting, Student had not been diagnosed with Asperger's. (FF #s 11 and 14).

64. During the meeting Parents did not request that Student be evaluated. Nor did District staff tell Parents that, before the District would evaluate Student, [Student] would need to have a medical diagnosis for Asperger's. Parents were advised that a diagnosis did not automatically result in an IEP and there were procedures the District followed. The District staff explained the procedures normally taken including the assembly of a problem solving team, identification of areas of weakness and use of an RtI process to determine if a student was responding to accommodations. At Mother's request, subsequent to the meeting Counselor emailed Student's teachers a PST questionnaire which, after they were completed, were to be forwarded to Parents to share with JFK. (FF #s 14 and 28).

65. The District's child find duties were not triggered by Parent's October 4th and 7th emails or by what the District knew about Student as a result of the October 7, 2011 meeting. (FF # 28). At the time of the meeting, Student was receiving average to above average grades in all of [Student's] classes except for the advanced Algebra I where [Student] was receiving a "D." Nor had Student received any disciplinary referrals. (FF #13). The behaviors that Mother reported that Student was exhibiting at home (i.e. issues concerning [Student's] compliance and completion of homework) are not behaviors atypical of adolescents generally. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3d Cir. Pa. 2012). During the meeting, School Psychologist noted that she had not observed Student to exhibit any symptoms commonly associated with

Asperger's. (FF # 15). Additionally, four teachers returned the completed PST questionnaires to Counselor who forwarded them to Mother at some date on or after October 21, 2011. None of the teachers noted any behaviors or conduct that would suggest that Student should be referred for an initial evaluation and none of those teachers requested that Student be referred for an evaluation. (FF #28).

66. Because Parents did not request an initial evaluation and the District's child find duties were not triggered, it follows that, on October 7, 2011, the District had no duty to supply Parents with a Procedural Safeguards Notice or to have Parents sign a form consenting to have Student evaluated. Furthermore, because the District did not refuse a request to conduct an evaluation of Student, the District had no duty to supply Parents with Prior Written Notice explaining why an initial evaluation had been refused.

67. On November 3, 2011, Mother emailed Principal and Counselor and advised that JFK had diagnosed Student as having Asperger's, depression and anxiety disorder. Principal forwarded the email to Assistant Principal the same day to schedule a meeting with Parents. (FF #16). Mother requested an evaluation of Student on November 8, 2011 and, as a result of her request, a meeting was conducted on November 18, 2011. The meeting included Parents, Advocate, four teachers, Assistant Principal, Counselor, Social Worker and SLP. (FF #s 18 -20). Given the number of meeting participants, conducting the meeting ten days after Mother's request was not unreasonable. (FF # 19-20).

68. At the time of the November 18, 2011 meeting, Parents had not yet received JFK's written Evaluation. During the meeting, the parties discussed the general topics that the initial special education evaluation would encompass as well as staff evaluation and reporting responsibilities (e.g., SLP would do the Communications Report and Social Worker would do the Social/Emotional Report). The appropriate boxes on the form were then marked and Mother signed her consent to the evaluation. (Subsequent to the meeting, at Mother's request, SLP also marked on the consent form the "educational" box since Mother wanted Student evaluated for a specific learning disability.) Mother received a copy of the consent form as well as a copy of the Procedural Safeguards Notice. (FF #s 19, 22-24). The Parents were well informed of the evaluation process, the staff who would conduct the evaluation and the topics to be assessed during the evaluation. Additionally, the parties discussed accommodations that would be implemented immediately while the evaluation was moving forward. After the meeting, Student's teachers received an email listing several accommodations that were to be implemented immediately pending the evaluation. (FF #s 21 and 25). On November 29, 2011, when two sections of the JFK Evaluation were supplied to the District, the accommodations were expanded to include many of the JFK recommendations. The list of 18 accommodations was then supplied to all of Student's teachers. (FF # 27).

69. On January 13, 2012, an Eligibility Determination meeting was held at which time it was determined that Student had a physical disability (autism) which interfered with [Student's]

social interactions and relations as well as [Student's] cognitive processing. The meeting was held 57 days after Parents gave written consent for the District evaluation. (FF #s 24, 29 and 31).

70. Finding no procedural violations occurred, no remedies are ordered.

Allegation #2: The District committed procedural violations in conjunction with the March 5, 2012 (IEP).

71. As an initial matter, the SCO notes that four of Parents' claims concern their dissatisfaction with the IEP Team decisions concerning Student's needs and the appropriateness of the IEP services, accommodations and goals (i.e., Allegation #2, claims a, f and g, and Allegation # 4). "[T]he measure and adequacy of an IEP can only be determined as of the time it is offered to the student and not at some later date . . . Neither the [IDEA] statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of the child's placement." *O'Toole ex rel. O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692, 701-02 (10th Cir. 1998). Nor can the appropriateness of an IEP be judged by later evaluations or a later IEP. Identification of a child's needs, services and accommodations is a decision that is made by the IEP Team. While Parents are members of that team and their input must be considered, ultimately, it is the IEP Team that identifies a student's needs and determines the services and accommodations that will provide a "basic floor of opportunity." *Board of Education v. Rowley*, 458 U.S. 176, 207 (1982).

72. Lengthy IEP meetings were conducted on January 13, 2012, February 10, 2012 and March 5, 2012 when the IEP was finalized. (FF #s 29, 32 and 46). Parents actively participated in all of those meetings. (FF # 32).

73. Parents allege that the IEP Team failed to consider the JFK Psychological and S-L Evaluations, particularly recommendations concerning Students pragmatic language skills.

74. As part of an initial evaluation, the IEP Team must review existing evaluation data on the child, including:

- Evaluations and information provided by the parents of the child;
- Current classroom-based, local, or State assessments, and classroom- based observations; and
- Observations by teachers and related service providers.

Section 300.305(a)(1)(i)-(iii).

75. The Student's IEP repeatedly referenced the JFK Evaluation, including the Psychological and S-L Evaluations. During the January 13, 2012 meeting, SLP and Social Worker presented

their reports which also referenced the JFK Evaluation. The IEP Team also reviewed and discussed the JFK Evaluation and incorporated into the IEP many of the recommendations contained in that evaluation. (FF #s 30, 32 and 40-41).

76. Several of Parents' claims concerned SLP's Communication Report. Parents claimed that SLP failed to follow test protocols when she had Student take the CELF-4 Pragmatic Profile and that she failed to accurately report the scores to the IEP Team. In conducting an evaluation, the District must ensure that:

(1) Assessments and other evaluation materials used to assess a child under this part –

...

- (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
- (iv) Are administered by trained and knowledgeable personnel; and
- (v) Are administered in accordance with any instructions provided by the producer of the assessments.

Section 300.304(c)(1)(iii)-(v). The comments to the regulation provide further explanation: "[I]t is standard test administration practice to include in the evaluation report the extent to which an assessment varied from the standard conditions . . .". 71 F.R. 156, pg. 46643.

77. The Pragmatics Profile is one of several subtests that comprise the CELF-4. It is designed to give a quick profile of a student's overall pragmatic skill development, including verbal and non-verbal social communication skills and language use. According to the instructions, the Pragmatics Profile is supposed to be administered to a parent, teacher or someone familiar with student. The instructions make no mention of administering the questionnaire to a student. (FF #38). Each respondent answers the 52-item questionnaire with responses ranging from 1 (never) to 4 (always) (FF #34). SLP administered the Pragmatics Profile to Student and also four of Student's teachers. (FF #35). In her Communications Report, Student's self rating score was reported separate and apart from the teacher response scores. (FF #38). Subsequent to finalization of the IEP, Mother discovered that several of the teacher's Pragmatic Profile scores listed in SLP's report were inaccurate. As a result of Mother bringing these inaccuracies to the District's attention, on May 31, 2012, SLP submitted a Revised Communication Report with the correct scores to District SLP Coordinator. In the revised report, SLP also noted that she had administered the Pragmatic Profile to Student for the purpose of determining how Student viewed [Student's] own skills as opposed to how the teacher's viewed [Student's] skills. On June 7, 2012, District SLP Coordinator entered the revised report into Student's electronic IEP. (FF #s 36-38).

78. Administration of the Pragmatics Profile to Student was not consistent with the subtest instructions. Section 300.304(c)(iii) and (v) was violated because the original report failed to

note that the subtest was a non-standardized test and failed to explain why, despite the protocols, it had been administered to Student. However, in both the original and revised reports Student's score was reported separate and apart from the teacher scores and, as explained in the revised report, it was administered to Student for a reasonable purpose. (FF # 38).

79. Parents claimed that SLP's report evaluation relied on a single measure or assessment (i.e., the CELF-4 Pragmatics Profile scores) in determining Student's pragmatic language skills and needs. Parents also claimed that SLP failed to interview them in conjunction with her evaluation and report. The IDEA procedures are as follows:

- (1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 300.8, and the educational needs of the child, *each public agency must –*
 - (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
 - (ii) Ensure that information obtained from all of these sources is documented and carefully considered.

...

Section 300.306(c)(1)(i)-(ii)(Emphasis added). Parents' claims are not supported by the Record. In formulating her report, SLP relied on a wide range of information, as did the IEP Team, in determining Student's needs and IEP goals. (FF #s 30, 33 and 40-41). Although the reported Pragmatic Profile scores were erroneous, SLP's report contained additional relevant and reliable information including a summary of the JFK S-L Evaluation. (FF #33). SLP did not interview Parents in conjunction with her evaluation but she did review the JFK Evaluation which incorporated Parents concerns from as recently as November 2011. Additionally, Parents actively participated in all three of the IEP meetings, expressing their perspectives and concerns. (FF #s 29-30 and 41).

80. Parents claimed that they were not notified of the IEP changes (i.e., SLP's Revised Communication Report) until August 21, 2012 and the Record supports this claim. On April 20, 2012, Mother requested that the inaccuracies in the Communication Report be corrected. The Communication Report was part of the IEP. Although the Communication Report was corrected and was entered into the electronic IEP on June 7, 2012, Parents were not supplied with a copy of the amended IEP until August 21, 2012. (FF # 36). If changes are made to the IEP the District must ensure that the child's IEP Team is informed of those changes. 300.324(a)(4)(ii). Parents are members of the IEP Team. § 300.321(a)(1). Parents were not informed of changes to Student's IEP until August 21, 2012, long after the changes to the IEP occurred. This was a violation of 300.324(a)(4)(ii).

81. Parents alleged that the IEP Team improperly determined that, given Student's needs, S-L services would not be included in the IEP. Parents also alleged that the IEP Team improperly determined that, given Student's needs, academic supports and goals were unnecessary.

82. In developing an IEP, the IEP Team must consider:

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

Section 300.324(a)(i)-(iv). Additionally, as noted in paragraph 79, above, in interpreting evaluation data for the purposes of determining the educational needs of a child, a district must (i) draw upon information from a variety of sources and (ii) ensure that the information from all these sources is documented and carefully considered. Section 300.306(c)(1)(i)-(ii).

83. The IEP Team considered a wealth of information in determining Student's needs, including [Student's] S-L, social/emotional and educational needs. During each of the meetings, Parents were actively engaged and expressed their thoughts and concerns. (FF # 30 and 40-41). As is relevant to the Complaint, the IEP Team considered and discussed the SLP's Communication Report; Social Worker's Social/Emotional Report; OT's Physical/Motor Report; and Special Education Teacher's Education Report. (FF #s 23 and 41). The IEP Team also discussed the JFK Evaluation, including the OT, Psychological and S-L Evaluations. The IEP team also considered Student's input at one meeting, classroom observations and Student's educational record. (FF #s 32-33, 40-41 and 45). In formulating the IEP, the IEP Team crafted two social skill instruction goals and numerous accommodations consistent with recommendations made in the JFK S-L Evaluation. The JFK S-L Evaluation suggested that 1:1 social skill instruction be provided by either a speech-language pathologist or a psychologist. The IEP provided for 30 minutes per week of 1:1 mental health services which, with Parents full knowledge and consent, were delivered by Social Worker rather than School Psychologist. (FF #s 40-41).

84. The IEP Team did not include an academic goal but it did include many accommodations that specifically addressed Student's academic and executive functioning needs. (FF # 41). Between March 5, 2012 and the end of the school year, Student made progress on the two IEP goals. In the 3rd quarter, Student received "Ds" in Algebra II, Writing and Social Studies. However, in the 4th quarter, Student brought the Writing and Social Studies grades up to "Cs." Excluding Algebra II, Student's other 4th quarter grades were all average or above average. (FF #s 47-48). Given the well documented Record, the SCO concludes that the IEP met Student's needs.

85. Parents claim that the IEP Team composition should have included a school psychologist rather than a social worker. An IEP Team must include:

- (1) The parent of the child;
- (2) Not less than one regular education teacher of the child;
- (3) Not less than one special education provider of the child;
- (4) A representative of the district who is:
 - (i) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Knowledgeable about the availability of district resources; and
 - (iii) Knowledgeable about the availability of district resources;
- (5) An individual who can interpret the instructional implications of evaluation results;
- (6) At the discretion of the parent or agency, other individuals who have knowledge or special expertise about the child; and
- (7) Whenever appropriate, the child with a disability.

Section 300.321(a)(1)-(7). The composition of the IEP Team at each IEP meeting complied with the IDEA. (FF #s 29 and 32).

86. Parents claimed that Social Worker's evaluation failed to identify Student's behavioral needs (i.e., pencil tapping, fidgeting, not answering questions and not turning in classroom assignments and homework).

87. In the November 18, 2011 meeting, it was determined that Social Worker would assess Student's social/emotional areas (i.e., how the student manages feeling, interacts with others, and adapts to different environments) and OT would assess Student's physical/motor areas. (FF #23). In conjunction with Social/Emotional Report, Social Worker administered the Conners CBRS to three teachers who indicated elevated concerns for: social skills, generalized anxiety, hyperactivity and Asperger's Disorder. However, Social Worker noted that all of the teachers knew of Student's Asperger's diagnosis at the time they completed the Conners CBRS. The OT's Physical/Motor Report focused on Student's fidgeting and sensory issues. OT reported that Student did not feel that strategies that they discussed (e.g., deep breathing, movement or use of fidgets) would be helpful to [Student]. Student attended the February 10, 2012 IEP meeting and provided [Student's] input concerning pencil tapping, answering questions in class, etc. After considering the JFK Evaluation, the individual reports of Special Education Teacher, OT, Social Worker, SLP and School Nurse as well as Student's input, the IEP Team determined the goals and accommodations that were appropriate to address Student's needs in the initial IEP. (FF #s 40-41 and 44-45).

88. Parents allege that the District failed to supply them with a copy of the finalized IEP until they signed a form consenting to services. The District denied the claim. The SCO finds that Parents' claim is supported by the Record. The IEP was finalized on March 5, 2012 and, consistent with § 300.322(f), Parents were supplied with a copy of the IEP on March 8, 2012 after District personnel double checked the contents of the document for accuracy. (FF #46). Parents do not claim that they did not know what special education services Student would be receiving when the March 5, 2012 IEP meeting adjourned. Nor do Parents claim that the IEP they received failed to include all of the services and accommodations that were agreed to as a result of the three IEP meetings. Parents were supplied with a copy of the finalized IEP in a timely manner. Under the IDEA, if a parent fails to provide consent for the initial provision of special education and related services, the public agency is not required to convene an IEP Team meeting or develop and IEP. § 300.300(b)(3)(iii). Since the District could have requested Parents' consent for services before convening an IEP Team meeting or developing the IEP it was not a violation for the District to obtain Parents consent for services prior to supplying them with a copy of the finalized IEP.

Allegation #3: The District failed to allow Parents to inspect and review educational records of the child in a timely manner. Specifically the District: failed to timely respond to Parents' January 13, 2012 request to supply copies of the responses and test protocols for the CELF-4 that had been administered by SLP.

89. The relevant IDEA regulation provides:

Access rights. (a) Each [district] must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the [district] . . . The [district] must comply with a request *without unnecessary delay* and before any meeting regarding the IEP . . . *and in no case more than 45 days after the request is made.*

(b) The right to inspect and review education records under this section includes-

(1) The right to a response from the [district] to reasonable requests for explanations and interpretations of the records; [and]

(2) The right to request that the [district] provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records . . .

...

Section 300.613(a)-(b)(2)(Emphasis added).

90. Parents did not request the Pragmatic Profile raw data and the test protocols on January 13, 2012. Nor did Mother's November 23, 2011 blanket request for raw data as it became available in the future constitute a request contemplated by § 300.613 since, at that time, no such records existed. (FF #50). Parents first made their request on Saturday, March

17, 2012. The District was on spring break from March 25 to March 30, 2012. The raw data was made available for Mother to view on Monday, April 10, 2012. At Mother's request, on Tuesday, April 11, 2012 the District supplied Mother with copies of the Pragmatic Profile raw data. Parents were not supplied with the test protocols since that information is copyrighted. (FF #s 50-51). The records were made available to Parents within 23 days of their request. Given the fact that the request was made on a Saturday and the District was on spring break the week of March 25th, the SCO concludes that the education records were made available without unnecessary delay. § 300.613(a)-(b)(2),

Allegation #4: The services supplied by Social Worker in conjunction with the March 5, 2012 IEP failed to meet Student's needs.

91. Student's IEP goals, services and accommodations were developed by the IEP Team during three lengthy IEP meetings. Parents attended and actively participated in all of those IEP meetings. (FF #s 29 and 32). The IEP Team determined the services and accommodations as well as the goals appropriate to Student's needs. (FF #s 40-41). Social Worker was well qualified to supply Student's direct and indirect mental health services and did deliver those services. (FF #s 41-43). Between March 5, 2012 and June 6, 2012, Student made progress on each of the goals and also brought [Student's] grades up in at least two classes. (FF #s 47-48). The direct and indirect services that Social Worker supplied met Student's needs and were consistent with § 300.324(a)(i)-(iv).

Allegation #5: The District failed to reconvene the IEP team on or after April 20, 2012 when Parents presented discrepancies concerning the CELF-4 Pragmatic Profile responses in SLP's Communications Report.

92. A parent who believes that information in the education records maintained or used by the district is inaccurate or misleading may request the district to amend the information. Upon receipt of the parent's request, the district must either:

- Amend the information in accordance with the request *within a reasonable period of time*; or
- Inform the parent of its refusal and advise the parent's of the right to a hearing on the matter.

Section 300.618(a)-(c) (Emphasis added). Neither the IDEA regulations nor the comments to the regulations define what is a "reasonable period of time." However, a separate IDEA regulation provides that, when a parent requests to inspect their child's education records, the district must do so "without unnecessary delay . . . and in no case more than 45 days after the request." § 300.613(a) (Emphasis added). Here, it took the District 48 days to amend the erroneous information in the Communication Report which was a part of Student's IEP. (FF #s 36 and 54). Given the amount of amendments actually made to the report, it was

unreasonable for the District to take 48 days to correct the education record (i.e., from April 20, 2012 until June 7, 2012 when the Revised Communication Report which was attached to the IEP).(FF #s 36 and 37). The SCO concludes that District did not amend the Communication Report and attach it to the IEP within a reasonable period of time and this was a violation of § 300.618(b). Furthermore, Parents were not notified that IEP had been amended until August 21, 2012. (FF #36). Section 300.618 is silent as to whether, upon amending the IEP, the district must supply parents with a copy of the amended IEP. However, given the credible information in the Record, on July 20, 2012, neither Parents nor the Special Education Director knew that the IEP had been amended on June 7, 2012. (FF #54). This fact supports the conclusion that Parents should have been supplied with a copy of the amended IEP on June 7, 2012. Furthermore, the IDEA provides that, if, after the annual IEP Team meeting, it is determined that amendments or changes to the IEP are needed *the district and parents may agree to develop a written document to amend or modify the child's current IEP; or, alternatively, the District must reconvene an IEP Team meeting.* § 300.324(a)(4)(i) (Emphasis added). Here, the District did neither. (FF #54). This was a violation of § 300.324(a)(4)(i).

93. Under the IDEA and the ECEA, Colorado's corresponding rules, students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA 1 CCR 301-8, 2220-R-1.00 *et seq.*)¹¹¹

94. The IDEA defines a FAPE to mean special education and related services that:

- a) Are provided at public expense, under public supervision and direction, and without charge;
- b) Meet the standards of the [Colorado Department of Education];
- c) Include an appropriate preschool, elementary school, or secondary school education; and
- d) Are provided in conformity with an IEP that meets the requirements of

Section 300.17(a)-(d).

95. In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of the IEP. *Garcia v. Board of Educ.*, 520 F.3d 1116, 1125 (10th Cir. 2008). Next, the court looks at whether the special education services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

96. Applying the reasoning of *Garcia* to each of the procedural violations discussed above:

¹¹¹ Only the IDEA regulations and corresponding ECEA rules are cited in this Decision.

- i) The District violated § 300.304(c)(iii) and (v) when SLP administered the Pragmatic Profile questionnaire to Student but failed to explain in the Communication Report the extent to which the subtest varied from standard conditions. However, Student's score was reported separate and apart from the teacher's scores and not part of the array of teacher scores. Additionally, although the Pragmatic Profile scores were erroneous, consistent with § 300.304(b)(1), it was but one assessment tool used by SLP or considered by the IEP Team in determining Student's needs, goals and accommodations. (FF #s 33 and 41). Importantly, the IEP Team also considered the JFK Evaluation and incorporated many of its recommendations, including recommendation concerning social communication (i.e., pragmatics) into Student's IEP. (FF #41). Consequently, although a technical violation of § 300.304(c)(iii) and (v), because Student's scores were not included in the grouping of the reported teacher scores, no harm resulted. Because no harm resulted, Student was not denied a FAPE.
- ii) Parents are members of the IEP Team. § 300.321(a)(1). Consequently, the District violated § 300.324(a)(4)(ii) when they failed to notify Parents of the IEP changes until August 21, 2012. However, because the IEP was amended on the day following the last day of school and Student's services and accommodations were not changed, this technical violation did not deny Student a FAPE. (FF #36).
- iii) The District violated §§ 300.618(b) when it failed to notify Parents of its agreement to amend the inaccurate scores until August 21, 2012 or to correct the erroneous scores for 48 days. The District also violated § 300.324(a)(4)(i) when it failed to either communicate to Parents its agreement to amend the IEP or convene an IEP Team meeting for the purpose of making the requested changes. However, the procedural violations did not change Student's services or accommodations. Despite the procedural violations, the IEP was reasonably calculated to enable Student to receive educational benefits. Consequently, the violations did not result in Student being denied a FAPE.

There being no denial of FAPE, no compensatory services are ordered.

REMEDIES

The District has violated the following IDEA requirements:

- Section 300.304(c)(iii) and (v);
- Section 300.618 (b)-(c); and
- Section § 300.324(a)(4)(i)-(ii).

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

1) Develop and implement a Corrective Action Plan (CAP) according to the dates listed below:

No later than January 25, 2013, the District shall submit to the Department a Corrective Action Plan (CAP) that addresses each and every violation noted in this Decision. Furthermore, the CAP must also include specific information on **how District and School level staff hired subsequent to March 15, 2013** will receive the mandatory training described below. The CAP must, at a minimum, provide for the following:

- a. **By February 22, 2013**, submission of all revised District written policies, procedures, forms, notices and website information, consistent with the IDEA and this Decision.
- b. **By January 25, 2013**, submission of the name and title of all proposed trainers and a complete copy of all proposed written training materials consistent with the IDEA and this Decision. (NOTE: CDE stands ready, willing and able to supply technical assistance in the form of trainers and training materials for each of the mandated trainings described below.)
- c. **By March 15, 2013**, conduct training concerning the IDEA regulations that were violated and, at a minimum, training on the proper procedures for administering an assessment and reporting accurate and reliable scores; and the proper procedures for amending or correcting an education record, including amendment or correction of an IEP.

The District's training *shall include* all of the following staff: All District level staff including but not limited to: the Executive Director of Student Achievement Services, Secondary and Elementary Special Education Directors, all Special Education Coordinators and Assistant Coordinators and all School staff and providers who are or may be responsible for administering assessments to a student in conjunction with an IEP evaluation.

- d. **By March 22, 2012**, submission of evidence that such training has occurred (i.e., complete copies of training schedule(s), agenda(s), curriculum/training materials, the name and title of each trainer, and legible attendee sign-in sheets which lists each attendee's printed name and job title).

Please submit the CAP and all other documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit

Attn.: Joyce Thiessen-Barrett, Senior Consultant
1560 Broadway, Suite 1175
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above will adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department.

The enclosed sample template provides suggested formats for the CAP and includes sections for "improvement activities" and "evidence of implementation of change."

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 C.F.R. § 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 17th day of December, 2012.

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A

Parent's 09/27/2012 Complaint, pages 1 through 16.

- Exhibit 1: 10/7/2011 emails re: meeting
- Exhibit 2: 10/21/2011 email from Parent re Student
- Exhibit 3: 11/3/2011 emails re: Student's diagnosis
- Exhibit 4: 11/30/2011 emails re: Student's Tuesday
- Exhibit 5: 11/29/2011 Student accommodations
- Exhibit 6: 11/29/2011 emails re: Student
- Exhibit 7: 12/16/2011 email re: math homework for Student
- Exhibit 8: 12/16/2011 email from Parent re: Student and math homework
- Exhibit 9: 11/29/2011 string emails re: JFK [Psych and OT] Evaluations
- Exhibit 10: 12/20/2011 string email re: JFK [S-L] Evaluation
- Exhibit 11: 01/6/2012 string emails re: What happened yesterday?
- Exhibit 12: 01/16/2012 emails re: More challenges!
- Exhibit 13: 01/14/2012 string emails re: strengths and needs
- Exhibit 14: 01/19/2012 string emails re: social skills group – spring 2012
- Exhibit 15: 12/19/2011 string emails re: Student
- Exhibit 16: 10/20/2011 JFK S-L evaluation (supplied to P 12/19/11)
- Exhibit 17: SLP Communication Report
- Exhibit 18: Private SLPs for IEE
- Exhibit 19: 03/07/2012 emails re: direct service time for Student
- Exhibit 20: 07/30/2012 S-L IEE
- Exhibit 21: Student's Pragmatics Profile responses
- Exhibit 22: 03/18/2012 string emails re: copies of Teacher responses
- Exhibit 23: 04/10/2012 Authorization for Disclosure form to disclose S/L Evaluation
- Exhibit 24: Body of Evidence done in conjunction with S-L Report
- Exhibit 25: 03/18/2012 string emails re: copies of Pragmatics Profile Teacher responses
- Exhibit 26: 01/13/2012 Initial Evaluation Reports (i.e., Communications, Physical/Motor, Social/Emotional)
- Exhibit 27: 03/04/2012 string emails re: draft IEP
- Exhibit 28: 03/08/2012 string emails re: consent and parent rights
- Exhibit 29: 03/06/2012 email re: consent and parent rights
- Exhibit 30: Student's 01/10/2012 present level of educational needs
- Exhibit 31: District IEE Endorsement & Qualification Requirements
- Exhibit 32: Three Core Deficits of Asperger's Syndrome
- Exhibit 33: 10/20/2011 JFK Psychology Evaluation
- Exhibit 33: 10/20/2011 Excerpt from Winner's Assessment of Social Skills . . .
- Exhibit 34: Excerpts from "Defining components of social cognition"
- Exhibit 35: 04/13/2012 letter to School Administration requesting IEE
- Exhibit 36: 05/02/2012 email re: [District's] IEE S-L assessment forms & info.

- Exhibit 37: 01/2012 CDE "Access Skills" in Colorado Content Standards
- Exhibit 38: 08/2011 CDE "Autism Program Quality Indicators"
- Exhibit 39: 05/11/2012 Advocate's "District Level Complaint"
- Exhibit 40: 05/17/2012 string emails re: letter of 5/11/2012
- Exhibit 41: 07/21/2012 email re: correcting the record
- Exhibit 42: 07/23/2012 email re: records correction requested
- Exhibit 43: 05/31/2012 Revised Communication Report
- Exhibit 44: 7/21/2012 string emails re: correcting the record & 9/4/2012 Parent's FERPA response to Communication Report
- Exhibit 45: 09/13/2012 IEP
- Exhibit 46: 09/13/2012 Reevaluation Reports (i.e., Cognitive, Communications, Educational, Transition, Physical/Health, Physical/Motor and Social/Emotional)
- Exhibit 47: 05/29/2012 string emails re: "[Student]"
- Exhibit 48: 05/06/2012 emails re: consent & parental rights
- Exhibit 49: 03/21/2012 string emails re: [Student] is texting to come home & Student's grade history

Parents' 10/24/2012 Reply, pages 1 through 17.

Parents' 11/14/2-12 Supplemental Reply, pages 1 through 3.

Parent's Additional Documentation:

- Exhibit 50: 11/28/2011 string emails re: testing
- Exhibit 51: 03/16/2012 string emails re: consent and Parents rights (duplicate)
- Exhibit 52: 05/31/2012 Revised Communication Report and CELF Responses
- Exhibit 53: 01/06/2012 Conners CBRS Responses
- Exhibit 54: 11/23/2011 email re: [Student]
- Exhibit 55: 01/10/2012 string emails re: reports
- Exhibit 56: 01/11/2012 string emails re: documentation prior to initial IEP
- Exhibit 57: 03/22/2012 string emails re: [Student's] Therapy
- Exhibit 58: 04/02/2012 string emails re: communication
- Exhibit 59: 04/04/2012 email re: issues to talk about in regards to reading and our meeting
- Exhibit 60: 04/11/2012 string emails re: home hospital teacher.
- Exhibit 61: 06/01/2012 string emails re: CH Research
- Exhibit 62: 09/04/2012 Parents' Response to Revised Communication Report (duplicate)

Additional Information per SCO's Request:

- Exhibit 63: Four teacher responses to PST Questionnaires 10/7/11 to 10/21/2012
- Exhibit 64: 12/20/2011 string emails re: [Student] – complete copies of email exchanges
- Exhibit 65: Mother's recollection of strengths and needs omitted (penciled items) from list
- Exhibit 66: 03/16/2011 AT Initial Evaluation
- Exhibit 67: Student's GT Identification from [State 1]
- Exhibit 68: 10/15/2011 Family Questionnaire Parents supplied to JFK

Exhibit 69: 01/21/2010 OSEP Memorandum re RTI

District's 10/15/2012 Response, pages 1 through 14.

District's 10/15/2012 Response to Request for Documentation, pages 1 through 5.

District's 11/07/2012 Supplemental Response to Additional Claims #1(AA) and 2(CC), pgs. 1-5.

Exhibit A: Undated Parents' written request for initial evaluation

Exhibit B: 11/18/2012 Permission for Eligibility Determination and 11/21/2011 string emails re [Student] evaluation

Exhibit C: Duplicate of Exhibit B

Exhibit D: 01/03/2012 Notice of [01/13/2012] Eligibility Meeting

Exhibit E: 01/13/2012 Eligibility Meeting Participants sign in sheet

Exhibit F: JFK Evaluation, consisting of S-L Evaluation, Psychology Evaluation and OT Evaluation.

Exhibit G: 01/13/2012 Eligibility Determination

Exhibit H: 01/13/2012 Prior Written Notice

Exhibit I: Blank

Exhibit J: 02/10/2012 IEP Meeting Participants sign in sheet

Exhibit K: 03/06/2012 finalized IEP

Exhibit L: 03/06/2012 Parent's Agreement for Initial Placement

Exhibit M: 01/13/2012 Prior Written Notice

Exhibit N: Student's 2011-2012 Attendance Records

Exhibit O: District 2011-2012 School Calendar

Exhibit P: District Staff Contact Information

Exhibit Q: District's Policies re: Child Find and Parent Eval. Requests

Exhibit R: District Policies & Procedures re: IEPs

Exhibit S: 10/4/2011 email re: Bullying in PE

Exhibit T: 10/07/2011 email re: [Student] Conference 1p.m. today.

Exhibit U: 10/17/2011 string emails re: meeting

Exhibit V: 11/08/211 string emails re: [Student's] diagnosis

Exhibit W: 11/18/2011 Hand written notes of [Assistant Principal]

Exhibit X: 11/18/2011 email re: student interventions

Exhibit Y: 06/07/2012 Print-out of District SLP Coordinator's electronic entry of 05/31/2012 revised Communication Report

Exhibit Z: 03/23/2012 string emails re: IEP delivery to Parents

Exhibit AA: 04/09/2012 string emails re: Parents' request for test protocol records

Exhibit BB: 04/09/2012 string emails re: Social Worker's services

Additional Information per SCO's Request:

Exhibit CC: Social Worker's Progress notes

Exhibit DD: CELF-4 Protocols (not supplied to Parents)

Exhibit EE: CELF-4 Responses

Exhibit FF: Conners CBRS Responses

Exhibit GG: District's Policies & Procedures re: Release of Student Records

Exhibit HH: Screening Test of Adolescent Language (STAL) Protocol (not supplied to Parents)

Exhibit II: 11/30/2011 STAL Notes

Exhibit JJ: Student's 7th & 8th grade grades

Exhibit KK: 02/12/2012 (draft) IEP

Exhibit LL: Blank PST form

Exhibit MM: Conners CBRS Protocol

Exhibit NN: Updated 2012 IEP showing 05/31/2012 Revised Communication Report and Parents' 09/04/2012 Response to the Revised Communication Report

Interviews with:

-Mother on 09/28/2012 , 11/05/2012 and 11/19/2012

-Special Education Director, District Coordinator and SLP on 10/24/2012

-School Psychologist, Counselor, Case Manager, Social Worker, Assistant Principal on 10/25/2012

-Writing Teacher, History Teacher, Science Teacher, Math Teacher, Reading Teacher, Social Worker, SLP Coordinator, Counselor, Assistant Principal and SLP on 11/19/2012

-Advocate on 11/20/2012

-Principal on 11/27/2012