

<b>STATE OF COLORADO</b> <b>OFFICE OF ADMINISTRATIVE COURTS</b> 1525 Sherman Street, 4 <sup>th</sup> Floor, Denver, Colorado 80203	
<b>JEFFERSON COUNTY SCHOOL DISTRICT R-1;</b>  Complainant,  vs.  <b>[PARENT], parent of [STUDENT];</b>  Respondent.	▲ <b>COURT USE ONLY</b> ▲
	<b>CASE NUMBER:</b>  <b>EA 20150034</b>
<b>DECISION</b>	

This decision follows a hearing per the Individuals with Disabilities Education Act (“IDEA”) as described in 20 U.S.C. § 1415 and 34 C.F.R. § 300 and also per the Exceptional Children’s Educational Act (“ECEA”) as described in Section 22-20-101, C.R.S. and 1 CCR 301-8. The hearing was held December 16, 2015 at the Office of Administrative Courts (“OAC”) before Matthew E. Norwood, Administrative Law Judge (“ALJ”). Alyssa C. Burghardt, Esq., and Elizabeth R. Friel, Esq., appeared on behalf of the Complainant (the “School District” or “Jeffco”). No one appeared for the Respondent (“Parent” or “mother”). The child will be referred to as “the Student.” Barbara J. Castillo of Agren-Blando Court Reporting & Video, Inc. was the court reporter.

### Summary

The Student is [age] and is disabled from a traumatic brain injury (“TBI”). The School District seeks to have him evaluated for the purpose of developing for him an individualized education program (“IEP”). The Student currently lives at the [Regional Center] (“[Regional Center]”), a residential center. The Student’s mother believes that the Student should be placed in a regular high school. She will not consent to having her son evaluated at the [Regional Center]. Although it is probably unlikely that the School District will agree to place him in a regular high school, it has not yet made that determination. It seeks an order to have the Student evaluated despite the Parent’s refusal to consent. The ALJ so orders.

### Findings of Fact

Based on the evidence presented at the hearing, the ALJ makes the following findings of fact:

1. The Student lives at the [Regional Center] within the School District. His mother lives within the Boulder Valley School District (“Boulder Valley”).

2. The ALJ issued a decision in an earlier case brought by the mother against Boulder Valley, case no. EA 20150027. In that dispute, the mother made a number of complaints against Boulder Valley concerning its decision to send the Student to a specialized school in [State 1]. Hearing was held November 2 and 9, 2015 in that case. The ALJ determined that Boulder Valley had not violated the IDEA or the ECEA in that case. The ALJ’s decision is exhibit I in this case. The ALJ made a number of findings in EA 20150027 that are germane to this current case. He makes them again here:

a. The Student was born prematurely in [Month] 1996. After discharge from the intensive care unit he developed brain abscesses. He has experienced volume loss in his left cerebral hemisphere.

b. He suffers from epileptic seizures which are controlled by medication. Early on in his development there were no speech/language development concerns, and speech and language skills are an area of strength for him. He suffers from hemiparesis (weakness) on the right side of his body. He also has asthma and food allergies.

c. The Student struggles greatly with self-regulation. He becomes anxious in new situations or in transitions and will often curse, threaten and throw things.

d. At the end of sixth grade, the Student began to have behavioral problems at school. Boulder Valley paid for an out-of-district placement at the “[Private School #1]” for seventh grade. He attended [Middle School] in the Boulder Valley School District for three days in eighth grade before he was suspended for a behavioral incident. After a period of months he transitioned to [High School] with a modified curriculum.

e. At [High School], the Student worked with special educator [Special Educator]. [Special Educator] was sometimes able to redirect the Student when he became upset. Other times, she was not.

f. For ninth grade the Student began to be hospitalized for sinusitis. He transferred to [Autism Center] (“[Autism Center]”) in [City], Colorado for that school year. [Autism Center] is a private school. The Student attended [Autism Center] over the summer and on until October 2013.

g. [Autism Center] developed a behavior intervention plan (“BIP”) for the Student.

h. On August 15, 2013, the Student engaged in physical aggression, verbal threats and property destruction at [Autism Center].

i. Sometime after October 7, 2013, pediatric neuropsychologist [Pediatric Neuropsychologist], Psy. D., authored an “Independent Educational Evaluation” of the Student. Exhibit J.

j. By the time of [Pediatric Neuropsychologist]’s evaluation, [Autism Center] had determined that it would no longer permit the Student to attend. His last day of attendance there was October 18, 2013.

k. As part of [Pediatric Neuropsychologist]’s evaluation, the Student was administered the Wechsler IQ test. He scored a full scale IQ of 61, which is “extremely low.” When the Student was 15, he received a full scale IQ score of 49 on the test [ ].

l. In November 2013, the Student enrolled in [Private School #2] in [City], Colorado. [Private School #2] is a private school.

m. On November 15, 2013 the Student threw a pipe and a rock at his mother’s car and bent the windshield wiper. He hit a [Private School #2] staff member in the hand, jamming her fingers and bending a finger back. He also kicked the staff member. Exhibit K.

n. On November 19, 2013, [Private School #2] staff tried to de-escalate the Student using a behavior plan they had for him. Their efforts were unsuccessful. He threw another student’s backpack and also threw pumpkins set up as a holiday decoration. He threatened to damage property and to kill the head of the school.

o. On November 20, 2013, [Private School #2] dismissed the Student from the school.

p. The Student’s mother then learned about a facility called “[NeuroRehabilitation Center]” in [City], [State 1]. [NeuroRehabilitation Center] is a high school approved by the [State 1] Department of Education. It charges approximately \$155,000 for a year of residential instruction.

q. On January 16, 2014 the Student’s IEP team met. The Student’s mother participated by telephone. The team created an IEP document identifying [NeuroRehabilitation Center] as the Student’s placement. The Student was then educated at [NeuroRehabilitation Center].

r. Over the months of March to May 2014, the Student engaged in multiple physical and verbal acts of aggression at [NeuroRehabilitation Center]. These included throwing objects, breaking a car window and punching and kicking staff. In March of 2014, he visited his mother in Colorado and was aggressive toward her at home.

s. When the Student turned 18 in [Month] 2014 he became eligible for what the Student’s mother refers to as the “comprehensive waiver” in Colorado. The ALJ understands this to be Medicaid benefits under the home and community based

services for persons with intellectual and developmental disabilities at part 4 of article 6 of title 25.5 of the C.R.S.

t. As of April 2014, both the Student and his mother wanted him to return to Colorado. The Student's mother was hoping that he could return to [Private School #2].

u. In June 2014, there was some conflict between the Student and a staff person on a trip to an allergist. The Student somehow interfered with the staff person buying gas and the staff person had threatened to take the Student's ipod away. The Student may also have been upset about the staff person smoking cigarettes. The nurse at the allergist called the Student's mother and said that a new staff person was threatening and intimidating.

v. [NeuroRehabilitation Center] agreed that the staff person should not have dealt with the ipod the way he did, but determined that there was no abuse or neglect. The Student returned to Colorado that month.

w. In July 2014 the Student's mother emailed Boulder Valley that the Student would no longer be attending [NeuroRehabilitation Center].

x. [Secondary Services Director], the Boulder Valley Director of Secondary Special Education, emailed back that same day that the Student's placement would be an IEP team decision of which she was a part. He also wrote that [NeuroRehabilitation Center] would continue to be his school until the IEP team decided differently.

y. As of July 2014 the Student was living at an apartment in [City] with caregivers.

z. The Student's IEP team, which included [NeuroRehabilitation Center] personnel, met July 31, 2014 to discuss the Student's IEP and to prepare a new IEP document. At that meeting the Student's mother stated that the Student was unsafe at [NeuroRehabilitation Center]. Both the Boulder Valley representatives and the [NeuroRehabilitation Center] representatives believed that [NeuroRehabilitation Center] was the right placement for the Student and that no school in Colorado would take him. The IEP team, with the Student's mother dissenting, agreed to maintain the Student's placement at [NeuroRehabilitation Center]. The IEP team created a document setting this out. Exhibit P.

aa. The Student's mother's concerns about his safety at [NeuroRehabilitation Center] were not supported.

bb. Boulder Valley was not able to identify a school in Colorado that would agree to educate the Student in Colorado.

cc. Over the summer and until April 2015 at the latest, the Student continued to live at the apartment in [City] with two live-in caregivers provided by [Agency] (not to be confused with "[Autism Center]") through the comprehensive waiver. Exhibits I and Q.

dd. That summer the Student pulled his mother's hair and threw a coffee cup in the car in which he was riding. He knocked over a television. The Student threatened to shoot his caregiver. The Student broke his retainer and damaged a ceiling fan. Exhibits I and Q.

ee. On August 19, 2014 the Student attended "[Boulder School]" for that day only. Exhibit Q, p. 3 of 11. The nature of this school is not disclosed by the evidence, but appears to be part of "day program services" under the comprehensive waiver. On that day the Student cursed at the special education teacher, tore up flowers and was trying to break a tree branch.

ff. Boulder Valley held what it termed a "conference" and not an IEP team meeting with the mother November 10, 2014 to discuss his education.

gg. On April 28, 2015, the Student began staying during the week at [Regional Center], as a benefit under the comprehensive waiver. On the weekends he would return to his apartment in [City].

3. In May of 2015 the Student was enrolled in Jeffco. [Special Education Director] is the Director of Special Education for Jeffco. On May 28, 2015 the Student's mother consented to evaluation of the Student. Exhibit A.

4. On July 24, 2015 [Special Education Director] emailed the Parent to update her on the schedule for evaluations. Exhibit B, p. 1 of 15. The Parent emailed back saying, among other things, that she wanted the evaluation done at an "educational setting." By this she meant at a high school. The School District was opposed to this. The Parent wrote in her email that she revoked her consent for evaluation. Exhibit B, p. 1 of 15.

5. [Special Education Director] emailed the Parent July 30, 2015. In that email she listed in six bullet points the areas she wished to evaluate the Student. Exhibit B, pp. 3-5 of 15. She wrote that she had spoken with [Staff Member] at [Regional Center]. [Special Education Director] understood from that discussion that the evaluations could be conducted at the day program setting at [Regional Center]. [Special Education Director] further indicated that Jeffco would want to talk with the Student's providers working with him in his residential and adult day programs.

6. On July 31, 2015 the Parent emailed back saying, in part, that she objected to any assessments being conducted in the day program setting, rather than an "educational setting." Exhibit B, p. 12 of 15. The Parent proposed evaluation at a private school or "private provider." Exhibit B, p. 13 of 15. She did not identify any such private school or provider.

7. The School District then prepared a new consent form and prior written notice and consent for initial evaluation form dated August 25, 2015. Exhibit C. The Parent signed the form but made many written interlineations and conditions. One of her conditions was that the School District pay for residential/day treatment services. What she meant by this is not really clear from the record. She objected to the prior

written notice and consent for initial evaluation form being called “initial.” She thought it should be called a “reevaluation.”

8. The Student currently attends [Learning Center] in [City], Colorado. On August 28, 2015 [Occupational Therapist], an occupational therapist for Jeffco and others from Jeffco went to [Learning Center] to observe the Student. The Student had been told that he would have visitors. He left the classroom and went outside. He began tearing limbs from a tree and made a pile of tree limbs about waist high. Multiple persons attempted to calm him down, but could not do so. [Occupational Therapist] and the other Jeffco employees ultimately left. For [Occupational Therapist] this was a bad sign. She regards herself and her Jeffco colleagues as strong professionals, yet they could not calm him. Nor could the people with whom he was familiar.

9. As of September 21, 2015 the Parent would not consent to having the Student evaluated at [Regional Center]. [Special Education Director] sent the Parent an email memorializing this fact on that date. Exhibit F.

10. In an email the following day, the Parent reiterated that she would not permit the School District to talk to [Regional Center] staff. Exhibit G, p. 2 of 2.

11. As can be seen from all of the above, the Student can be volatile and has significant difficulty in new situations. For any evaluation of him to produce useful information, it must be performed in a familiar setting. [Regional Center] is that setting. There is no high school setting with which the Student is familiar. Also, a high school will not have the trained personnel to de-escalate the Student if he has an outburst.

12. So that there will be no confusion in carrying out the order to override the absence of consent, the ALJ has asked the School District to submit a proposed order. The School District did so December 22, 2015. This proposed order provides specificity as to what evaluations are sought. The ALJ has reviewed the proposed order and finds that its terms are reasonable and properly focused on the Student’s disability and potential educational needs.

### **Conclusions of Law**

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

#### *Procedural Background*

1. Over time, the Parent has filed a number of motions in this case. The ALJ will discuss these here.

2. On November 6, 2015 the Parent filed a “Motion to Compel and Intervene.” The motion sought to have the School District provide copies of evaluations it conducted. It also sought to have the ALJ or the State Department of Education intervene to “follow the provisions of IDEA, including stay-put provisions.” The Parent apparently served the School District with a “motion to stay put,” but that motion does not appear in the OAC’s electronic records for this case and apparently was not filed

with it. The Parent apparently sought to have the Student “stay put” in a Jeffco high school.

3. On November 9, 2015 the School District filed a response to the motion to stay put. This was the date of the second day of hearing in the Boulder Valley case. As argued by Jeffco, “stay put” is designed to preserve the status quo, to keep the child in the then-current educational placement. 20 U.S.C. § 1415(j). The last agreed upon IEP with Boulder Valley was to have the Student attend [NeuroRehabilitation Center] in [State 1]. At the time of the motion for stay put, the Student was at [Regional Center].

4. On November 16, 2015 the School District responded to the motion to compel and intervene. It stated that it would produce the records sought by December 4, 2015.

5. On November 20, 2015, the ALJ issued a procedural order. He noted that mediation in the Jeffco case was ongoing. He ordered that if matters were left unresolved by mediation, they would be discussed at a December 7, 2015 setting conference. At that December 7 prehearing conference, the ALJ indicated that he would resolve the motion to stay put in this decision. The ALJ now denies the motion. A motion to stay put simply does not make sense under the facts of this case. Other than [Regional Center], there is no place to return the Student to. The Parent continues to object to [NeuroRehabilitation Center] as inappropriate. In any case, the motion is beyond the scope of this hearing. This hearing is for the limited purpose of determining whether the School District can perform the evaluations it seeks.

6. On December 9, 2015 the Parent filed a motion to dismiss. The motion contained a wide variety of complaints against the School District. The motion also argued that because the Parent had filed a complaint against Jeffco with the Civil Rights Commission, that the ALJ lacked jurisdiction. This is not the case. The Parent also moved in the alternative that the ALJ order an independent educational evaluation. The motion was filed four business days prior to the hearing. The ALJ denies the motion. Again, these issues are beyond the limited scope of this case.

7. On December 11, 2015 the School District moved to have [Secondary Services Director] of from Boulder Valley called as a telephone witness. The Parent objected to telephone testimony of the witness. The School District did not call [Secondary Services Director] as a witness at the hearing either by telephone or in person, and the ALJ need not resolve this dispute.

8. Also on December 11, 2015 the Parent moved the ALJ to issue subpoenas to a number of individuals to have them attend the hearing. First of these was [Staff Member] of the “Office of Community Access and Independence,” apparently the oversight agency for [Regional Center]. Second was [Regional Center Director], Director of [Regional Center]. Third, [Secondary Services Director], with a requirement that he bring the Student’s records with Boulder. Fourth, [Regional Center Employee], apparently an employee at [Regional Center]. The Parent also filed on December 11, 2015 a motion for sequestration of the witnesses “from all pre and post hearings.” The ALJ took no action on these motions as they were filed so close to the hearing. The

parties had had a telephone conference on December 9, 2015 and the Appellant mentioned none of these requests. As stated, the Parent did not attend the hearing, and the ALJ could not hear why these persons' attendance at the hearing was necessary. Nothing in the motions disclosed this, and the subpoenas appeared to be oppressive and burdensome to the individuals in question. The motions were not considered at the hearing.

9. In a motion received December 16, 2015, the day of the hearing, the Parent moved to continue the hearing for various reasons, including the fact that her subpoena requests had not been immediately granted. She also stated that snow had made travel dangerous from Boulder, where she lives, to Denver. There had indeed been heavy snow in Boulder on the morning of Tuesday, December 15, but the roads were not dangerous on the morning of December 16 and were also passable the prior evening. The ALJ polled others in the courtroom and none described dangerous driving conditions from various parts of the metro area.

10. On December 22, 2015 the School District provided the proposed order described above. On the following day, the Parent submitted a response in opposition.

#### *Decision*

11. If a parent refuses consent for an initial evaluation, a local education agency ("LEA") may file a complaint to override the parent's refusal. 20 U.S.C. § 1412(a)(1)(D)(ii)(I) and 34 C.F.R. §§ 300.300(a)(3) (for initial evaluation) and (c)(1)(ii) (for reevaluation).

12. School districts are required to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child;" to ensure that the "child is assessed in all areas related to the suspected disability;" and to ensure that the "evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs." 34 C.F.R. §§ 300.304(b)(1), (c)(4) and (c)(6).

13. The evaluations sought by the School District are reasonable and properly focused on the Student's disability and potential educational needs. The ALJ therefore orders the following:

1. The School District is ordered to evaluate the Student's academic, motor, communication, and social-emotional skills and needs using accredited evaluators of its choosing.

2. The specific assessments and other evaluation tools to be used by each School District evaluator will be determined by that evaluator based on his/her review of records, observations, and/or administration of preliminary assessments. The assessments and evaluation tools to be used include, but are not limited to, the following:

- a. *Academics:* The Woodcock Johnson-III (“WJ-III”) and the Test of Written Language-4 (“TOWL-4”) will be administered in a quiet space at [Regional Center].
  - b. *Motor Functioning:* A School District occupational therapist will observe the Student’s fine motor needs while the WJ-III and TOWL are administered.
  - c. *Communication:* The Clinical Evaluation of Language Fundamentals-5 and a Communication Observation Rating Scale will be administered at [Regional Center]. Based on the outcome of these assessments, the Peabody Picture Vocabulary Test and the Expressive One Word Picture Vocabulary Test may be administered in the discretion of the School District. Additionally, a School District speech language pathologist will interview the Student’s speech language pathologist at [Regional Center], conduct a student interview with the Student, and observe the Student at [Regional Center].
  - d. *Social/Emotional:* The Behavior Assessment System for Children (“BASC”) will be administered by a School District school psychologist, and a Functional Behavior Assessment (“FBA”) will be conducted by a School District Board Certified Behavior Analyst (“BCBA”) at [Regional Center]. Based on the outcome of these assessments, an executive functioning assessment such as the Behavior Rating Inventory of Executive Functioning (“BRIEF”), the Motivational Assessment Scale, and the Verbal Behavior Milestones Assessment and Placement Program (“VB-MAPP”) may be administered in the discretion of the School District. Additionally, both the School District school psychologist and BCBA may conduct observations of the Student in his residential and day programs at [Regional Center], confer with the Student’s service providers at [Regional Center], and review [Regional Center] records related to the Student’s behaviors and/or any treatment or interventions provided to address the Student’s behaviors and/or social/emotional needs at [Regional Center].
3. The Parent shall not interfere with the Student’s availability for the assessments listed above, and the Parent shall complete all parent questionnaires/forms requested by School District evaluators and otherwise cooperate in the School District’s evaluation of the Student.

4. The [Regional Center] is authorized to release to the School District the following information and records related to the Student. To the extent that any of the information or records listed below are covered by the Health Insurance Portability and Accountability Act (“HIPAA”), this order hereby authorizes the disclosure of any information or records covered by HIPAA, including records related to behavioral health services and psychiatric care, in accordance with 45 C.F.R. § 164.512(e)(1)(i).

a. [Regional Center] is hereby authorized to release to the School District any and all documents, reports, evaluations, and other records related to: the Student’s residential and day programming at [Regional Center], the Student’s receipt of physical, occupational, and speech/language therapy at [Regional Center], any treatment or interventions provided by [Regional Center] to address the Student’s behaviors and/or social/emotional needs, including any treatment, therapy, or other support provided by psychiatrists, psychologists, social workers, counselors or other mental health professionals at [Regional Center], and any other documents or records related to the Student’s current motor, communication, behavioral, and/or social/emotional functioning.

b. So that the School District can confer with relevant service providers, [Regional Center] is hereby authorized to release a list, by name and position, of the Student’s providers in his day and residential programs at [Regional Center], including, but not limited to, all case managers, coordinators, teachers, counselors, special service providers (e.g., speech, occupational therapy, physical therapy, mental health and other special service providers), aides and paraprofessionals.

c. [Regional Center] administrators and employees are hereby authorized to exchange verbal and written communication with the School District related to the Student’s residential and day programming at [Regional Center], the Student’s receipt of physical, occupational, and speech/language therapy at [Regional Center], treatment, therapy, interventions, and other support provided by [Regional Center] to address the Student’s behaviors and/or social/emotional needs, and the Student’s current motor, communication, behavioral, and/or social/emotional functioning.

d. [Regional Center] is hereby authorized to allow School District evaluators access to the Student's residential and day programs at [Regional Center] for the purpose of administering assessments, interviewing, and observing the Student.

5. In the event that [Regional Center] or its operating state agency requires authorization forms in addition to this order, the Parent is hereby ordered to sign any and all authorization for release of information and other forms necessary to allow the School District to review [Regional Center] records, interview [Regional Center] staff, conduct assessments at [Regional Center], and otherwise complete the evaluation described in this order.

**DONE AND SIGNED**

December 29, 2015

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MATTHEW E. NORWOOD  
Administrative Law Judge

Exhibits admitted:

For the School District: Exhibits A-R (in the exhibit notebook) and exhibit B. to the School District's December 8, 2015 motion for telephonic status conference (in the electronic record).

For the Complainant: Exhibit A to the School District's December 8, 2015 motion for telephonic status conference (in the electronic record).