STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
[Parent], **Complainant,** vs. **MOUNTAIN BOCES,** **Respondent.**	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **EA 2012-0017**

AGENCY DECISION

On October 17, 2012, the Colorado Department of Education, Exceptional Student Services Unit, received a due process complaint filed by [Parent] ("Complainant"), who is the mother of [Student], a minor. Complainant on behalf of [Student], alleges that the Mountain BOCES[1] has failed to comply with its child find obligations in violation of the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(f), its implementing regulations at 34 C.F.R. § 300.511, and Colorado's Exceptional Children's Educational Act (ECEA), 1 CCR 301-8. The complaint was forwarded to the Office of Administrative Courts and assigned to Administrative Law Judge (ALJ) Laura A. Broniak for an impartial due process hearing. Hearing was held in Eagle, Colorado on March 4-6, 2013.[2] Complainant represented herself and the interests of [Student]. The Mountain BOCES was represented by Catherine Tallerico, Esq. At hearing, the ALJ admitted into evidence Complainants' exhibits 1, 2, 5 p. 4 (email dated 4/25/12), 7 p. 2-3, 43, 49, 50, 53, and 161 p. 3 (top e-mail) and the Mountain BOCES's exhibits A-C, D2, E-G, I, N, O, R-U, X and Y. The proceedings were digitally recorded.

ISSUES PRESENTED FOR DETERMINATION

The Complainant's complaint alleges that the Eagle County School District ("District") failed to timely evaluate [Student] despite the Complainant's repeated requests. She asserts that as result of such failure [Student] was denied speech/language services for a period of approximately seven months. Complainant requested the following relief: monetary compensatory services for seven months of

[1] The Complainant did not name the Eagle County School District as a party although it is primarily the conduct of the District at issue in this case.

[2] The hearing was originally scheduled for January 10 and 11, 2013. At the request of the Complainant, on December 24, 2012, the hearing was vacated. On January 10, 2013, the parties selected March 4-6, 2013 as the new hearing dates and the decision deadline was extended to March 26, 2013.

missed speech to include mileage compensation; compensatory services for seven months of missed educational/academic time or equivalent monetary compensation; and for the school district to waive the October 1 start date for kindergarten given that [Student] barely missed the cutoff time. Although the Complainant did not specifically identify a denial of a free and appropriate public education ("FAPE") as an issue for hearing, it is implied that if the District or Mountain BOCES violated its child find obligations, a denial of FAPE would have occurred. As such, the ALJ construes the Complainant's complaint to allege that [Student] was denied FAPE as a result of alleged child find violations.

The Complainant also intended to introduce evidence at hearing concerning systemic non-compliance with IDEA on the part of the District and Mountain BOCES. The ALJ prohibited such evidence because the Complainant did not make these allegations in her complaint filed with the Colorado Department of Education and the Respondent objected to trying this issue. *See* 34 C.F.R. §300.511(b).

Thus, the issues presented for determination are whether the Respondent Mountain BOCES, which is the Administrative Unit ("AU"), through the District's actions or omissions, violated its child find obligation thereby denying [Student] FAPE. [Parent] proposes that if the ALJ determines the violation has occurred, [Student] should be entitled to compensatory services, namely speech and language therapy, to be provided by the therapist or provider of her choice.

OUTSTANDING MOTIONS

The ALJ disposed of the following motions at the time of the hearing:

The Respondent's Motion to Quash Subpoenas for Production of Documents was GRANTED.

The Respondent's Motion to Exclude [ ]'s testimony and evaluation was GRANTED.

The Complainant's Motion to Compel Witnesses in the Order and Manner Complainant Prepared was rendered MOOT.

FINDINGS OF FACT:

Based on the evidence in the record, the ALJ finds as fact:

1. At all times relevant to these proceedings, [Student] resided within the District which is a member of the Mountain BOCES.

2. In the fall of 2010, [Student] was [age] years old ([date of birth]). [Student] was not enrolled in any educational placement, whether private or public, within the

District or Mountain BOCES. Instead, [Student] was staying at home during the daytime with [Student's] father, [Father].

3. Complainant had taken [Student] to see a pediatrician in mid-October 2010. The pediatrician had documented [Student]'s speech issues in the medical treatment notes.

4. Sometime in the fall of 2010, Complainant raised her concerns regarding [Student]'s speech articulation with [Pre-school Director], who was, at that time, the Pre-school Director at [Elementary School]. [Elementary School] is a school within the District and [Student]'s brothers also attend that school.

5. The Complainant did not provide a copy of the pediatrician's report to [Pre-school Director] or any other District administrator or staff member in the fall of 2010.

6. [Pre-school Director] did not believe Complainant displayed any urgency regarding her desire to have [Student] evaluated at that time. [Pre-school Director] characterized Complainant's inquiry as raising "concerns" about [Student]'s speech problems rather than a request for a special education evaluation. [Pre-school Director] recalled the Complainant also having concerns about [Student] entering school after just turning [age] years old. Nevertheless, [Pre-school Director] provided Complainant with the name and number of the District's Child Find Coordinator, [Child Find Coordinator]. [Pre-school Director] recalled providing [Child Find Coordinator]'s business card to Complainant sometime prior to Thanksgiving in 2010.

7. The Complainant had also raised concerns about [Student]'s speech with [Former Child Find Coordinator]. [Former Child Find Coordinator] recalled providing Complainant with [Child Find Coordinator]'s contact information in late November or early December 2010. Also in late November or early December 2010, [Former Child Find Coordinator] contacted [Child Find Coordinator] to alert her that Complainant would be contacting her.

8. At that time, Complainant believed that [Former Child Find Coordinator] was the District's Child Find Coordinator because Complainant had worked with [Former Child Find Coordinator] regarding her [other child]'s entrance into the District's early childhood education program. [Former Child Find Coordinator], however, had transitioned out of the position of Child Find Coordinator in late 2009 and had referred the Complainant to [Child Find Coordinator]. Given that two District staff members referred the Complainant to [Child Find Coordinator], it was unreasonable for the Complainant to continue believing [Former Child Find Coordinator] was the Child Find Coordinator.

9. The District has different policies pertaining to compliance with Child Find for children of different ages. If a child is under the age of 5 and not enrolled in any of the District's educational placements, and a parent raises a concern about the child with

any member of the District's staff, the staff refers the parent to the District's Child Find Coordinator.

10. Not all members of the District's staff are qualified to make referrals for a special education evaluation especially for children not enrolled in school. That decision is left to the Child Find Coordinator. [Director of Special Education] is the Respondent's Director of Special Education. She explained that having a single entry point for children who are not enrolled in the district is important to maintain consistency. Moreover, Heidi McCaslin, who is the State of Colorado Child Find Coordinator, confirmed in an e-mail message to the Complainant, that the practice of referring a parent to a child find coordinator was not uncommon.

11. The Complainant disagrees that either [Former Child Find Coordinator] or [Pre-school Director] provided [Child Find Coordinator]'s contact information to her in November 2010. Complainant believes she did not receive it until late December 2010 or January 2011.

12. The Complainant contacted [Child Find Coordinator] on January 24, 2011 and left a message. [Child Find Coordinator] called Complainant back the following day on January 25, 2011 and left her a message. In the message, [Child Find Coordinator] provided the Complainant with her cell phone number so that Complainant could reach [Child Find Coordinator] if she were out of her office. On February 2, 2011, [Child Find Coordinator] documented that she had not heard back from Complainant.

13. On February 11, 2011, Complainant left a voicemail message for [Child Find Coordinator]. Complainant was upset in the message because [Child Find Coordinator] had not attempted to call her back. [Child Find Coordinator] testified that she typically waited for some period of time (though she did not specify the duration) before attempting to call a parent back. [Child Find Coordinator]'s notations seemed to indicate she did not agree with Complainant's belief that it was [Child Find Coordinator]'s responsibility to attempt to call a parent again.

14. [Child Find Coordinator] called Complainant on February 14, 2011 and scheduled a screening for February 16, 2011. [Child Find Coordinator] never intended for the appointment to be anything other than an initial screening to determine if [Student] should be referred for additional evaluations.

15. [Father] brought [Student] in for the screening appointment on February 16, 2011. [Child Find Coordinator] explained the process to [Father] and presented him with a form entitled "Consent for Screening/Evaluation" which [Father] signed. This permission or consent form does not grant permission to evaluate for eligibility for special education services. This form merely granted consent to [Child Find Coordinator] to perform some basic screenings or evaluations in the areas of communication, development, physical/vision/hearing, and social/emotional.

16. Apparently, Complainant believed that a special education evaluation rather than a screening would occur during the February 16, 2011 appointment. However, she was not present for the screening appointment nor did she explain why she held that belief especially given her prior experience with special education evaluations pertaining to her [other child].

17. On February 16, 2011, [Child Find Coordinator] administered the Ages and Stages Questionnaire ("ASQ") as well as an Articulation Screener to [Student]. She referred [Student] for a special education evaluation based on the results of these screening tools and submitted the screening paperwork to [Elementary School].

18. [Elementary School] received the paperwork over the winter break and scheduled the referral meeting for March 17, 2011.

19. On March 17, 2011, [Father] attended a meeting with District representatives and decided to proceed with a special education evaluation. He signed the Prior Notice and Consent for Evaluation and a Special Education Referral Review and Evaluation Plan.

20. The District conducted the following evaluations concerning [Student]: Goldman-Fristoe Test of Articulation, 2nd Ed.("GFTA-2"), Preschool Language Scales, 4th Ed. (PLS-4), and Transdisciplinary Play-Based Evaluation ("TPBA").

21. The Initial Eligibility Meeting with the Individualized Education Program ("IEP") team occurred on May 5, 2011. Complainant attended the meeting. The Team discussed the evaluations and reached consensus finding that [Student] was eligible for special education due to a speech/language impairment.

22. Complainant signed the Consent for Provision of Special Education and Related Services on May 5, 2011.

23. Complainant was provided notice of her procedural safeguards during that meeting.

24. An IEP was developed for [Student] on May 5, 2011.

25. The IEP contained present levels of academic achievement as well as appropriate annual measurable goals.

26. [Student] was placed at [Elementary School] Preschool and services began in May 2011.

27. Complainant agreed that she is not challenging the 2011 IEP itself procedurally or substantively.

28. Complainant did not complain to any District administrators or staff during the IEP process that the District had failed to comply with its child find obligations regarding [Student]. The Complainant did not raise any concerns regarding the District's alleged failure to comply with its child find obligations as they pertained to [Student] until the District denied [Student] early access to kindergarten, which was in the spring of 2012.

29. The Complainant asserts that once she raised concerns about [Student]'s speech with the [Elementary School] staff, she should have been immediately provided with a consent to evaluate [Student] for special education services.

30. Complainant testified that she is almost certain she asked for an evaluation of [Student] in the fall of 2010, yet she was not sure if she specifically used the term "evaluation."

31. The Complainant has characterized her conversations with the staff at Brush Creek as "begging for months" to have [Student] evaluated. The District employees disagree with Complainant's characterization. Both [Pre-school Director] and [Former Child Find Coordinator] believed Complainant displayed no sense of urgency in obtaining an evaluation for [Student] and rather raised "concerns" with [Student]'s speech. They also both testified that the Complainant had reservations about enrolling [Student] into preschool at such a young age. The credible and persuasive evidence does not demonstrate that Complainant begged for months to have [Student] evaluated or to have [Student] evaluated at all.

32. None of the witnesses, including the Complainant, could identify a specific date on which the Complainant inquired about having concerns with [Student]'s speech, whether [Student] should be evaluated, screened or anything pertaining to Child Find, special education or enrollment in pre-school. They all agreed that the inquiry occurred "sometime in the fall of 2010." This supports the District staff's testimony that the Complainant made casual references to concerns with [Student]'s speech rather than demands for a special education evaluation.

33. The testimony consistently established that the Complainant never provided a copy of [Student]'s pediatrician recommendations to any member of the District staff until much later in the process. The Complainant was initially insistent that she provided the pediatrician's notes to District staff in October 2010. She later recanted and admitted that she may not have provided the medical notes to any member of the District's staff until much later.

34. The ALJ finds that the Complainant's inquires to the [Elementary School] staff or administration in the fall of 2010 did not constitute a request for an evaluation that would then require that the staff immediately provide the Complainant with a consent to evaluate for eligibility for special education services. Rather, the evidence shows that the Complainant made casual inquires concerning [Student] in late fall 2010 and that the District staff followed the District's policies by referring the Complainant to the Child Find Coordinator. The concept of the Child Find Coordinator and screening procedures

is consistent with the ECEA Rules. As such, neither the District nor the Mountain BOCES violated its child find obligations under IDEA.

DISCUSSION

The IDEA was enacted to ensure that all children with disabilities have access to "a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). A free appropriate public education ("FAPE") is defined as "special education and related services . . . provided in conformity with an individualized education program." 20 U.S.C. § 1401(9). Under the IDEA, a complainant has the burden of proving by a preponderance of the evidence that the District failed to provide the student with a FAPE. *Thompson R2-J Sch. Dist. V. Luke*, 540 F.3d 1143, 1148 (10th Cir. 2008).

In this case, the Complainant has the burden of proving that the Mountain BOCES violated its child find obligations which the Complainant alleges resulted in a failure to provide FAPE to [Student].

The IDEA, and its implementing regulations regarding child find found at 34 C.F.R. § 300.111, provide, in pertinent part:

> (a) General (1) The State must have in effect policies and procedures to ensure that—
> (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
> (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
>
> . . .
>
> (c) Other children in child find. Child find also must include-
> (1) Children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade;
> . . .

In order to comply with 34 C.F.R. § 300.111, Colorado has adopted the ECEA and its implementing Rules found at 1 CCR 301-8, §4.02[3]. Section 4.02(1)(a) requires the AU to develop and implement procedures for locating, identifying and evaluating all children ages birth to 21 who may have a disability and are eligible for early intervention services (birth through age 2) or special educations services (ages 3 to 21).

In this case, the District adopted a procedure for children zero through five who are not enrolled in the District, which may include a Child Find screening process pursuant to ECEA Rule § 4.02(2)(c). The ECEA Rules state that a Child Find screening is different and separate from an evaluation for special education. The screening process is used to identify children who may need more in-depth evaluation in order to determine the need for special education and related services. *See* ECEA Rules §§4.02(2)(c)(iii) and 4.02(2)(c)(v). The screening procedure is clearly distinguished from the special education referral process and is not part of special education. ECEA Rule § 4.02(3).

The Complainant asserts that once she gave the District some notice that [Student] had speech articulation issues, the District staff should have immediately referred [Student] for a special education evaluation. Under the facts of this case, the ALJ disagrees that the IDEA or the ECEA requires such action on the part of the District or the Mountain BOCES. The IDEA merely requires the states to create policies and procedures, and Colorado has complied with that requirement by virtue of the ECEA and its implementing regulations. ECEA then requires the AU or the districts to implement procedures to comply with its child find obligations. As found, the District's policy is to refer non-enrolled children between the ages of birth through five to the Child Find Coordinator. The District complied with this policy when its staff repeatedly referred the Complainant to the Child Find Coordinator. Although the Complainant is dissatisfied with this procedure, the ALJ is not persuaded that it violates the IDEA, ECEA or their implementing regulations. To the contrary, the ECEA Rules and the Colorado Department of Education permit the use of a child find coordinator and screening procedures.

CONCLUSIONS OF LAW

1. A hearing officer's determination of whether a student received a FAPE must be based on substantive grounds. 34 C.F.R. 300.513 (a)(1). In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies – (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or (iii) caused deprivation of educational benefit. 34 CFR 300.513 (a)(2)(i) – (iii).

2. The AU, through the District, timely referred the Complainant to the Child Find Coordinator [Child Find Coordinator] consistent with its procedures. Once the

[3] The ECEA rules will be referred to herein by section number only.

Complainant contacted [Child Find Coordinator], she scheduled a screening and screened [Student]. [Father] signed the initial consent to evaluate for special education on March 17, 2011. The evaluations were conducted by the District within the 60 day time frame. The IEP was developed within this same time frame. [Student] was placed at the [Elementary School] Preschool in May 2011. As such, the Respondent did not fail to evaluate or place [Student] nor did it fail to comply with its child find obligations.

3. The ALJ concludes that neither the Respondent nor the District committed any violation of IDEA or ECEA, whether procedural or substantive, that denied a FAPE to [Student].

DECISION

The ALJ concludes that Complainant has not met her burden of establishing the District or the Mountain BOCES failed to comply with their child find obligations or that [Student] was denied a FAPE.

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

DATED AND SIGNED
March 26, 2013

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LAURA A. BRONIAK
Administrative Law Judge