

State of Colorado Office of Administrative Courts 1525 Sherman Street, 4th Floor, Denver, Colorado 80203	<p style="text-align: center;">▲ Court Use Only ▲</p>
<p>[Parent], on behalf of her minor child, [Student], Complainant,</p> <p>vs.</p> <p>Denver Public Schools Respondent.</p>	
<p style="text-align: center;">Agency Decision</p>	

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An evidentiary hearing in this matter was convened via Google Meet before the undersigned Administrative Law Judge (“ALJ”) on May 28, May 30, and June 2, 2025. [Parent] (“Complainant” or “Parent”) appeared pro se, on behalf of her child, [Student] (“Student”). Denver Public Schools (“District”) appeared through its counsel, Robert Montgomery, Esq and Megan Brooks, Esq. At hearing, the ALJ admitted into evidence the following stipulated exhibits: Complainant’s exhibits 3 and 7 and the District’s exhibits A, EE and I. The ALJ also admitted into the evidence Complainant’s exhibits 2, 4, 5 and 13, and District exhibits B-F, H, I, K-L, N, Q, S-V, X-Z, BB, EE and II.

Issue for Determination

At the start of the hearing, the ALJ confirmed the issues for hearing. The parties agreed the issues for hearing are whether the District correctly determined Student did not qualify for special education under the Individuals with Disabilities Act (“IDEA”) in September 2024 and March 2025.

To the extent Parent has offered evidence or raised issues not in her due process complaint and outside of the agreed upon as issues at hearing, such evidence and issues are not considered not addressed by the ALJ.

Findings of Fact

Background

1. Student is thirteen years old. Student was diagnosed with Autism Spectrum Disorder (“ASD”) in 2018. At the time of the diagnosis, Student had prior diagnoses of Mixed Receptive Expressive Language Disorder and Pragmatic Language Disorder and was receiving special education services under the classification of Developmental Delay, with a secondary classification of Speech/Language Impairment. *Ex. 3, p. 5; Parent Testimony*. Student has been on an Individualized Education Plan (“IEP”) since preschool. *Parent Testimony*.

2023 Evaluation and IEP

2. Student began attending [School] (“[School]”), a District school, as a sixth grader in the 2023-2024 school year. In the 2023-2024 school year Student was determined to be eligible for special education under the primary disability category of ASD. *Ex. B*.

3. In his September 2023 reevaluation, Student scored a “2” in Pragmatic Language (mild impairment), a “1” in Receptive Language (within normal limits) and a “3” in Expressive Language on the Colorado Communication Rating Scales (“CCRS”) *Ex. A, p.*

1. The CCRS “are tools designed to enable Speech-Language Pathologists (SLPs) to document assessment findings according to the intensity of those findings and to make a determination of eligibility for a Speech or Language Impairment (SLI) in collaboration with the IEP team.” *Ex. I, p. 1*. The CCRS was developed by the Colorado Department of Education to compile data regarding different areas of assessed communication into a score. *[School SLP] Testimony*. The CCRS is not a separate assessment. *Id.*

4. As part of the 2023 reevaluation, speech language pathologist [Speech Language Pathologist] conducted the Comprehensive Assessment of Spoken Language, 2nd Edition (“CASL-2”). Student scored in the average range for receptive vocabulary and in the deficient range for sentence expression and nonliteral language. *Ex. A, pp. 2-3.* [School SLP], [School]’s speech language pathologist, conducted the Pragmatic Language Skills Inventory (“PLSI”), which involved two teachers rating Student. Overall, one teacher rated Student in the 21st percentile, and the other rated Student in the 25th percentile. *Id. at p. 4.* [School SLP] also conducted observations of Student in his STEM class and during lunch. *Id. at pp. 5-6.*

5. Student’s special education teacher at the time, [Previous Special Education Teacher], evaluated Student for the academic performance assessments. Student’s scores on the following assessments were as follows, in relevant part:

- i-Ready - 516 (Grade 3 level).
- Wechsler Individual Achievement Test – 4th Edition. (“WIAT-4”) - low average in reading, and average in written expression and mathematics.
- Star Reading Test – 12th percentile.
- IXL Math - overall 460.
- Access Score – overall score of “expanding.”
- Colorado Measure for Academic Standards (“CMAS”) – “approached expectations” in English Language Arts and Math.

Id. at pp. 6-11.

6. [School]’s licensed clinical social worker, [Social Worker], evaluated Student for the social and emotional assessments including, among other things, conducting the Behavior Assessment System for Children, 3rd edition (“BASC-3”) and the Social Responsiveness Scale, 2nd edition (“SRS-2”). The BASC-3 includes a self-report from the student, and reports from a teacher, and a parent. Student’s self-report in the area of attitude to teachers, social stress, interpersonal relations, and self-reliance fell in the “at-risk” range. His self-report score fell in the “clinically significant” range in the category of relations with parents *Id. at pp. 12-13.* Per Parent’s report, Student scored in the at-risk range in adaptability, social skills and leadership. *Id. at pp. 13-14.* Student’s scores per

the teacher report were all in the “within normal limits” range. *Id.* The SRS-2 is a measure of symptoms associated with Autism. Student fell within the “mild” range in social awareness and social cognition on Parent’s report, as well as in the mild range in social cognition and social communication on the teacher’s report. *Id. at p. 16.*

7. It was determined that, at the time, Student’s ASD affected his ability to access grade-level reading comprehension work without supports, small-group instruction to practice skills, and accommodations. *Ex. C, p. 7.* Student’s lack of proficiency in utilizing healthy coping skills to help him navigate and resolve social conflict affected his school performance, causing him to lose study time to behaviors and distractions caused by conflicts that he had with others. *Id.* Student’s IEP set forth three annual goals in the areas of reading, communication and social/emotional wellness. *Id. at pp. 8-10.*

8. Under the IEP, Student received specialized instruction in literacy both inside and outside of the general classroom focusing on reading, comprehension, making inferences and paragraph writing. *Id. at pp. 12-13.* Student also received specialized instruction in speech/language by a speech language pathologist, as well as support of a social worker for his social/emotional and communication needs. *Id.*

2023-2024 School Year Performance

9. Student’s IEP Progress Reports reflect Student made progress with respect to each of his IEP goals throughout the 2023-2024 school year. *Ex. D.* Student’s report card shows Student met or exceeded expectations in all classes in each quarter of the 2023-2024 school year, with the exception of a “2” quarter four in Digital Story Telling class. *Ex. X, [Principal]Testimony.*

10. [Principal], Principal at [School], credibly testified at hearing. [Principal] testified that Student has shown substantial growth while at [School]. She testified that, in June 2024, the District identified Student as a potential gifted and talented learner based on his ACCESS scores. See *Ex. E.* ACCESS is a nationally-normed test for language development. [Principal] testified that, from 2022-2023 to 2023-2024, Student’s scores showed growth in the 90th percentile as compared to typical growth in the 50th percentile. [Principal] testified that Student participated in a gifted and talented elective course in the 2024-2025 school year focused on advanced reading and sociology. See *Ex. Z.*

[Principal] further testified that Student's report card and test scores demonstrate Student is making progress and participating in classes.

11. Student's special education teacher, [Special Education Teacher], credibly testified at hearing. [Special Education Teacher] testified that Student has made progress since the 2023-2024 school year, as evidenced by his progress report and academic assessments.

12. Parent testified at hearing. She testified to her belief that Student's reported 2023-2024 grades and progress are false and inaccurate, based on Student's prior performance, deficits and needs. Parent alleges that the progress reflected in Student's grades, assessment scores and teacher reports were created by the school team due to improper influence and are suspicious and false. Parent testified to her distrust with [School].

September 2024 Evaluation

13. Student credibly testified at hearing. Student testified that he does not like middle school because he feels he did not receive a lot of help in the classroom and he gets distracted easily. Student testified that his most challenging class is Language Arts. Student testified to his belief that his teacher does not check in with him after instructions.

14. In the Spring of 2024 Parent requested reevaluation of Student. Parent requested reevaluation due to concerns she had with Student's social functioning, academics, and accommodations.

15. The District and Parent agreed to conduct the evaluation at the beginning of the 2024-2025 school year.

16. In August 2024, [Special Education Teacher] corresponded with Parent to identify the requested areas of evaluation. *Ex. EE*. Parent signed consent to evaluate Student in the areas of communicative status, academic performance, social and emotional status, and health. *Ex. F*.

17. [School SLP] conducted the communicative status assessments for the September 2024 evaluation. [School SLP] reviewed Student's 2023 evaluation report, including the results of the CASL-2 and PLSI performed in 2023. [School SLP] noted that the 2023 CASL-2 scores indicated Student's receptive vocabulary fell within the average range, but sentence expression and nonliteral scores fell below the average range. *Ex. I*,

pp. 3. She noted that Student was rated in the 21st and 25th percentiles by raters of the 2023 PSLI, indicating many strengths in his pragmatic language with some areas of deficit, although overall falling within the average range when compared to same-age peers. *Id.*

18. [School SLP] administered the Clinical Evaluation of Language Fundamentals (“CELF-5”) assessment to evaluate Student’s expressive and receptive language skills across eight subtests. *Ex. I, p. 3.* Student scored in the low average range in the receptive language index and the language structure index, in the below average range on the word classes subtest, and in the low average range on the recalling sentences subtest. *Id. at p. 4.* [School SLP] concluded that, overall, Student’s expressive and receptive language fell within the average range for his age. *Id.* [School SLP] noted that, compared to monolingual speakers, Student’s scores fell within the expected range for most language skills, with two skills falling slightly below the expected range. *Id. at p. 6.*

19. [School SLP] credibly testified at hearing. [School SLP] has known Student since he was in the fifth grade and served as Student’s speech language pathologist at [School] while he was on an IEP. She explained that she performed a records review for the September 2024 evaluation because the data was relatively recent and still relevant due to being one year from the date of the prior PLSI. [School SLP] testified that she conducted the CELF-5 assessment to get a more comprehensive picture of Student’s expressive and receptive language, as the CASL-2 assessment conducted the year prior was conducted by a teletherapist and done so virtually. [School SLP] testified that she used Student’s raw scores on the CELF-5 due to Student’s bilingual status to obtain a more culturally-responsive and accurate picture, as the CELF-5 is normed on monolingual English speakers.

20. [Special Education Teacher] and her supervisor, [Supervisor], conducted the academic performance assessments for the September 2024 evaluation. The academic performance assessments and Student’s scores were follows, in relevant part:

- i-Ready – Student scored in the 27th percentile, which is the low average range.
- IXL –Student scored in the 55th percentile, placing Student in the average range.

- Star Reading - Student scored in the 30th percentile, placing him in the low average range.
- CMAS- Student scored a 3 “approaching expectations” in English Language Arts and a 4 “met expectations” in Math.
- Baseline Writing -3.75 out of 5, placing Student in the average range.
- WIAT-4 - Student scored in the average range for total achievement, reading, written expression and mathematics. A subtest for written expression scored low average range.

Id. at pp. 6-13.

21. [Special Education Teacher] also reviewed teacher reports as a part of her evaluation. [Special Education Teacher] noted [7th Grade Language Arts Teacher], Student’s 7th grade Language Arts teacher, mentioned Student likes to contribute in class when the content is interesting to him, but does struggle with sitting in his seat and can be a little fidgety at times. *Id. at p. 10.* Student’s 6th grade Language Arts teacher, [6th Grade Language Arts Teacher], reported that the prior year Student grew his overall writing two grade levels and that she has made a binder full of resources for him that worked really well. *Id.* Student’s 7th grade Math teacher, [7th Grade Math Teacher], reported that Student was a very active member of class who does best with clear directions and positive re-enforcements. *Id. at pp. 10-11.* [6th Grade Math Teacher], Student’s 6th grade Math teacher, reported that the main thing Student struggled with was working with a group and does well with routine and structure. *Id. at p. 11.*

22. [Social Worker] conducted the social and emotional assessments, including the BASC-3, the SRS-2, the Screen for Child Anxiety-Related Disorders (“SCARED”), Center for Epidemiological Studies Depression Scale for Children (“CES-DC”), and informal evaluations. On the BASC-3, Student’s self-report score in the area of interpersonal relations fell in the at-risk range, while his scores for attitude to school and self-reliance fell in the clinically significant range. *Id. at p. 14.* Per the teacher’s report, Student fell in the at-risk range in the areas of hyperactivity, aggression, withdrawal, adaptability, social skills, leadership and functional communication, and in the clinically significant range for conduct problems. *Id. at p. 15.* On Parent’s report, student scored in the at-risk range for

adaptability and leadership. *Id.* On the SRS-2, Parent scored Student in the mild range for communication and restricted and repetitive behaviors, while the teacher scored Student in the mild range for social awareness. [Social Worker] observed Student in his math class, noting Student appeared attentive, engaged, quick to raise his hand, and focused on the teacher; and at recess, noting Student ran past everyone to go inside without waiting his turn and became argumentative. *Id.*

September 2024 Eligibility Determination

23. On September 29, 2024, the District held a meeting to discuss the evaluation and determine Student's eligibility for special education. The multidisciplinary team included the following individuals: [Social Worker]; [Previous Special Education Teacher]; Parent; [School SLP]; [Special Education Teacher 2], Special Education Teacher; [Principal]; [Special Education Teacher]; [7th Grade Language Arts Teacher], General Education Teacher; and [Supervisor]. *Ex. L.*

24. At the meeting, the team discussed the data from the 2024 evaluation and went through the disability eligibility checklists. As to the first question, whether "the evaluation is sufficiently comprehensive to appropriately identify all of the child's special education and related services needs, whether or not commonly linked to the disability category", the team agreed the evaluation was sufficiently comprehensive. *Ex. H.* The next question to be considered was whether "the child can receive reasonable educational benefit from general education alone. Each of the District team members determined Student could receive reasonable educational benefit from general education alone." *Ex. H, Testimony of [Special Education Teacher].* The members of the school team all agreed Student could receive reasonable educational benefit from general education alone. Parent disagreed and offered her input. *Testimony of Parent, [Special Education Teacher], [Principal], [School SLP] and [Social Worker].* Although the eligibility determination could have ended after the team determined Student can receive reasonable educational benefit from general education alone, based on the Parent's concern, the team further discussed the eligibility criteria under the classifications of ASD, Specific Learning Disability ("SLD") and Speech or Language Impairment ("SLI"). *Testimony of [School SLP] and [Special Education Teacher].*

25. The team determined Student was not eligible under the ASD category. In order to be eligible under the ASD category, the ASD must prevent the child from receiving educational benefit from general education as evidenced by at least one characteristic in the following three areas: (1) the child displays significant difficulties or differences or both in interacting with or understanding people and events; (2) the child displays significant difficulties or differences which extend beyond speech and language to other aspects of social communication, both receptively and expressively); and (3) the child seeks consistency in environmental events to the point of exhibiting significant rigidity in routines and displays marked distress over changes in the routine, and/or has a significantly persistent preoccupation with or attachment to objects or topics. *Ex. H, pp. 1-2.* The team determined that Student met the first criteria, but did not meet the second two criteria. *Id.*

26. [School SLP] testified that “significant” as referenced in the second criteria means significantly below average/two standard deviations below the mean. She explained that Student’s scores on the communicative assessments, as well as observations, do not indicate Student requires specialized education. Student fell within normal limits across all communication areas per the CCRS. Student’s receptive and expressive language scores fell within the average and low average range on the CELF-5 assessment. Student fell within the average range on the PLSI, noting Student demonstrates solid pragmatic language at school.

27. [Social Worker] credibly testified at hearing. She testified that “significant” as referenced in the third criteria means having a large impact on the student. [Social Worker] testified that Student’s SRS scores place Student in the normal, mild and moderate range. [Social Worker] testified that, to the extent Student is noted to have hyperactivity or do well with routine, his scores and observations do not demonstrate that changes in his routine result in any significant impact on Student in the classroom requiring special education.

28. [School SLP] and [Social Worker] credibly testified that Student’s communicative assessment scores and observations do not demonstrate a large impact in this area necessitating specialized instruction.

29. To the extent Student exhibited any behavioral problems at school, such behavioral problems were occasional and not uncommon of a boy of Student’s same age.

Testimony of [School SLP], [Special Education Teacher], [Social Worker]. Furthermore, such noted behavioral issues were not severe and pervasive, and did not prevent Student from accessing the general education curriculum without specialized instructions. *Id.* [Social Worker] credibly testified she has not observed any significant issues with Student in terms of routine.

30. To qualify under the classification of SLD, the following two criteria must be met: (1) the child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibit significant academic skill deficit(s) in one or more of the areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards, and (2) the child does not make sufficient progress to meet age or state-approved grade-level standards in the area(s) identified when using a process based on the child's response to scientific, research-based intervention.

31. The team considered Student's academic testing and progress among the body of evidence. [Special Education Teacher] credibly testified that scores in the 12th percentile or lower would be considered a significant academic skill deficit. Student scores were well above the 12th percentile. Student scored in the average range for reading, writing and math on the WIAT-4 and in the 27th percentile on the i-Ready. Student's i-Ready, IXL and CMAS scores also showed progression, as well as his grades and progress reports. *Testimony of [Principal] and [Special Education Teacher].* The team thus determined Student did not have any areas in which he met both criteria, and thus did not meet the eligibility requirements for a SLD.

32. To be eligible under the SLI classification, there must be evidence of dysfunction in one or more areas that prevents the child from receiving reasonable benefit from general education as evidenced by one or more criteria, detailed in Exhibit H. The team again considered the CELF-5 and PLSI scores, which were all within the low average to average range and showed no dysfunction in receptive/expressive language or significant deficits in applicable areas. [School SLP] *Testimony.* Accordingly the team determined Student did not meet any of the criteria to be eligible under SLI.

33. Team members then signed an attendance sheet indicating their presence at the meeting and their agreement or disagreement with the team decision. Parent signed the sheet, but only to indicate her attendance and not her agreement with the determination.

34. Parent believes the decision of the District team members was pre-determined, as they all agreed Student had made significant progress and no longer qualified for special education services. Parent testified that she shared her concerns at the September 2024 meeting and felt that the team did not listen to her concerns nor consider her opinion.

35. The District offered Student a plan under Section 504 of the Rehabilitation Act that included accommodations for social-emotional support and checks for understanding. *Ex. N., Testimony of [Principal]*.

Independent Educational Evaluation

36. Parent subsequently requested an independent educational evaluation (“IEE”), which the District provided. *Testimony of [Principal] and Parent*. Parent chose licensed psychologist, [Psychologist], Ph.D. to perform the IEE. *Ex. 3*. [Psychologist] administered a variety of assessments to Student at her office on December 4, 2024 and February 3 and 12, 2025. *Ex. 3, p. 1*. [Psychologist] also conducted clinical interviews with Parent, [School SLP], [7th Grade Language Arts Teacher], and [Tutor], Student’s tutor at []. *Id.* Parent completed a background history questionnaire. [Psychologist] issued a report (“IEE Report”) dated February 15, 2025. *Id.*

37. [Psychologist] performed the following procedures/assessments:

- WIAT-4
- SRS-2
- BASC-3
- Wechsler Intelligence Scale for Children – 5th Edition (“WISC-V”) – a measure aimed at evaluation various aspects of intellectual function.
- Woodcock Johnson Tests of Achievement – 4th Edition (“WJ-IV”) - a measure aimed at evaluation several academic areas including reading, written language and mathematics.

- Oral Language Composite Integrated Visual & Auditory 2 Continuous Performance Test (“IVA-2”) – evaluates visual and auditory attention and response control functioning.
- Autism Diagnostic Observation Schedule – 2nd Edition (“ADOS-2”) – assessment of behaviors relevant to ASD, including communication, reciprocal social interaction and imaginative use of materials.
- Behavior Rating Inventory of Executive Function – 2nd Edition (“BRIEF-2”) – evaluates executive functioning and emotional and behavioral self-regulation.

Ex. 3.

38. On the WISC-V, Student scored in the “extremely low” range for visual spatial index and the “very low” range for working memory index. *Ex. 3*, pp. 11-12. On the WJ-IV, Student scored in the low average range for reading, and in the low average range for subtests letter-word identification and passage comprehension. *Id. at pp. 12-13, 24.* [Psychologist] noted that, overall, Student may have slightly more difficulty in his same-age peers in reading. *Id. at p. 12.* On the WIAT-4, Student scored “very low” in the listening comprehension category, including “extremely low” in subtest for receptive vocabulary and “low average” in subtest oral discourse comprehension. Student scored in the average range for oral expression, but low average in subtest expressive vocabulary and very low in subtest sentence repetition. *Id. at pp. 13-14, 24-25.* [Psychologist] noted,

In sum [Student] is displaying deficits in his expressive and receptive vocabulary. While he is able to think of information rapidly, he is likely to have trouble with the finding and expressing of correct information. Additionally, [Student] displayed very poor memory for language. Repeating information he had heard was very challenging for him. This suggests that [Student] is more likely to forget information or mishear instructions.

Id. at p. 14.

39. Student scored in the average to above average range on the IVA-2. *Id.* [Psychologist] noted that, overall, Student’s scores were reflective of mild difficulties in stamina, but no trouble with focus or sustained attention. She noted his profile was

flagged for moderate fine motor activity. *Id.* On the ADOS-2, [Psychologist] noted Student displayed generally appropriate language abilities, but a notably flat tone of voice, little reciprocal conversations, avoidant eye contact, restricted social response. *Id. at p. 15.*

40. On the SRS-2, Parent reported scores in the mild range for social communication and social motivation, and in the moderate range for social cognition. *Id. at pp. 16, 26.* Per the teacher responses, Student scored within the normal range in all categories. *Id.* [Psychologist] noted that these results meant that symptoms present at home, such as trouble interpreting and responding to social cues and possibly being more socially withdrawn, are not prevalent in the school setting. *Id. at p. 16.*

41. The BRIEF-2 included tests completed by Student, Parent and [7th Grade Language Arts Teacher]. Student's self-report did not yield any elevated scores. Parent's responses "yielded Mildly Elevated scores for Inhibit (impulse control) and Shift (flexibility, adaptability). Her profile was also flagged for Potentially Clinically Elevated scores for Emotional Control (emotion regulation). Similarly, [7th Grade Language Arts Teacher's] responses yielded Mildly Elevated scores for Emotional Control (emotion regulation), and Clinically Elevated scores for Shift (flexibility, adaptability)." *Id.* [Psychologist] noted that it appeared that, "across environments, emotion regulation, flexibility, adaptability, and transitions are [Student's] most prominent areas of concern. He does not, however, present with troubles in organization, planning, memory, or task completion." *Id.*

42. On the BASC-3, Student's self-report scored in the "at-risk" range on subtests Attitude to School and Relations with Parents, and in the "clinically significant" range in subtests Interpersonal Relations and Self-Reliance. *Id. at pp. 16-17, 28-30.* Per Parent's responses, Student fell in the at-risk range in the Behavioral Symptoms Index, as well as in the subtests of Hyperactivity, Attention Problems, Atypicality and Withdrawal, Adaptability, Social Skills, and Functional Communication. *Id.* [7th Grade Language Arts Teacher's] responses placed Student in the at-risk range in the Hyperactivity subtest. *Id.* [Psychologist] noted,

[7th Grade Language Arts Teacher's] responses yielded At-Risk scores for Hyperactivity, suggesting that in the classroom [Student] may have trouble with self control, or present as restless or impulsive. There were no Clinically Elevated scores based upon her reports, but in her comments she

did note that [Student] has difficulty following through on support services, despite having a strength in advocating for them, and waiting for help (e.g. follows her around the classroom asking questions, rather than remaining at his desk).

Id. at p. 17.

43. In her interview with [School SLP], [Psychologist] noted, in relevant part, [School SLP] stated Student can sometimes have difficulty completing his work and following through with tasks and sometimes needs support in getting started with things and following through with tasks. [School SLP] further acknowledged Student had difficulties socially “here and there”. *Id. at p. 8.*

March 2025 Determination of Eligibility

44. The multidisciplinary team met over the course of four days in March 2025 to review the IEE results and reconsider if Student was eligible for special education. The participants were [Psychologist], Parent, Student’s father [Father], [Social Worker], [Previous Special Education Teacher], [SLP 2], Speech Language Pathologist, [Director Designee], Special Education Director Designee, [School SLP], [Principal], [School Psychologist], School Psychologist, [Special Education Teacher] and [7th Grade Language Arts Teacher].

45. The team discussed [Psychologist]’s IEE findings and opinions and again heard input of Student’s parents. [Psychologist] did not hold herself out to have any training or knowledge in speech language and deferred to [School SLP]’s expertise as a speech language pathologist.

46. The team considered the first two eligibility questions of whether the evaluation was sufficiently comprehensive, and whether the student can receive reasonable educational benefit from general education alone. The team again agreed the evaluation was sufficiently comprehensive.

47. Parent and [Father] testified that, when the time came for [Special Education Teacher] to answer whether she believed student could receive reasonable educational benefit from general education alone, [Special Education Teacher] initially responded, “No” but then changed her answer pursuant to [Previous Special Education Teacher]

telling her the answer was “Yes.” [Special Education Teacher] credibly testified that she did not change her answer. She credibly testified that she began answering “No, I do not think that student needs specialized instruction...” but was interrupted and unable to complete her sentence. [Special Education Teacher] credibly testified that her opinion then and now remains that Student can receive reasonable educational benefit from general education alone.

48. Members of the school team all agreed Student could receive reasonable educational benefit from general education alone and thus determined Student did not qualify for special education. Parent and [Father] disagreed and continued to voice their concerns and disagreement. As the team reached an impasse, to move the eligibility process forward, [Director Designee], as the District’s director-designee, reiterated the school team’s ultimate decision that Student did not qualify for special education.

49. [Psychologist] credibly testified at hearing. [Psychologist] testified that, based on her evaluation, her overarching concerns were with Student’s social skills, understanding of social rules, norms and communication, working memory, visual spatial skills, receptive and expressive vocabulary and sentence repetition. [Psychologist] testified that on the WISC-5, Student’s verbal abilities, fluid reasoning and processing speed were in the average range, but that Student had extremely low visual spatial skills and very low working memory. [Psychologist] testified that Student’s academic achievement was relatively average, with a couple of areas in the low average range with respect to reading, but nothing to the extent that would warrant a diagnosis of a specific learning disability. She testified that Student’s reading, writing and math were not areas of concern to her.

50. [Psychologist] explained that on the oral language composite of the WIAT-4, Student fell in the extremely low range for receptive vocabulary, in the low range in oral discourse comprehension, in the low average range for expressive language, and in the very low range in the sentence repetition subtest. [Psychologist] testified that she was not able to speak to whether there were “inconsistencies” in her findings and those of the 2024 evaluation to the extent certain test results are outside of her professional scope, such as the tests conducted by a speech pathologist. [Psychologist] testified that, as to overall oral language, she has concerns regarding Student’s ability to accurately hear

instructions or complex information that is given to him auditorily, and concerns that Student's vocabulary is underdeveloped.

51. [Psychologist] clarified that the results of the IEE were not focused on making a disability determination but, rather, making clinical diagnoses that are then used within the school setting as considerations for the disability determination. She testified that Student met the criteria for ASD with respect to the clinical diagnosis. [Psychologist] agreed a child can be diagnosed with ASD but not qualify for special education.

52. [Psychologist] testified that Student displayed each of the three criteria under the ASD eligibility category. She further testified that she has concerns regarding Student's social skills as time progresses, as well as his ability to understand and follow directions in the classroom and respond to open-ended questions. [Psychologist] testified to concerns that Student's cognitive rigidity may continue to develop, and that he may have continued issues with receptive language. [Psychologist] testified that she would recommend continued support in Student's social skill development, as well as someone checking in with Student after he's received instructions in the classroom. [Psychologist] testified that it is possible Student demonstrated different levels of social skills at school versus in her clinical setting. [Psychologist] further testified that she is not a speech language pathologist and that a full understanding of student's communication and receptive/expressive language would be obtained by a comprehensive testing performed by a speech language pathologist.

53. [School SLP] credibly testified that the WIAT-4 is an academic test and not a speech language assessment and thus is not a comprehensive measure of Student's communication abilities. She explained that Student's low score on the receptive vocabulary test on the IEE's WIAT-4 is a piece within a broader consideration regarding Student's communication abilities. She testified that, while such score may mean Student struggles to understand high-level academic vocabulary in certain English settings, it does not indicate a larger deficit in communication or receptive language, nor the need for specialized instruction. [School SLP] further explained that, given Student's bilingual status, she has concerns the WIAT-4 vocabulary results are not fully representative or an accurate measure of Student's vocabulary knowledge. [School SLP] testified that she does not have any concerns for Student at school based on the WIAT-4 scores. She

explained Student may need some repeated instruction, but that such instruction is not specialized education and can be provided to any student as part of the general education curriculum without an IEP. [School SLP] further testified that there is a difference between a school and clinical setting, and the threshold for determining eligibility in a school setting, which focuses on significant deficits.

54. [School SLP] explained that her reference to Student having social difficulties “here and there” to [Psychologist] was in reference to isolated behavioral challenges and not Student’s communication skills. She testified that Student’s working memory is not the same as Student’s language memory. Accordingly, his low scores in working memory on the WISC-V do not demonstrate communication deficits, particularly considering Student did not show any deficits in language memory on the 2024 evaluation, which addresses a particular communication skill. Here, the body of evidence the team considered, including among other things the IEE, [Psychologist]’s opinions, and parent input did not demonstrate significant deficits preventing Student’s ability to receive reasonable educational benefit from general education alone.

55. [Social Worker] credibly testified that the IEE results did not indicate anything clinically significant. To the extent there were elevated scores on the BASC-3 or BRIEF-2, she testified there is no significant impact to Student seen at school. [Social Worker] testified that the IEE BASC-3 scores are consistent with the scores of her BASC-3 assessment. She explained that Teacher’s report on the IEE SR-2 showed no elevated scores or impact at school, which is consistent with the scores of her SRS-2 assessment. [Social Worker] testified that the BRIEF-2 showed Student in the moderate range emotional regulation – specifically “shift,” which relates to flexibility. She explained that at school she does not see an impact on Student in this area, nor with respect to emotional control. [Social Worker] testified that, while Student may exhibit some hyperactivity or get emotional while playing soccer, it does not significantly impact him in the classroom. She testified that, despite some occasional conflicts with other students, Student has a group of friends, engages in class and with his peers, and is able to sit in class and do his work and focus when needed. This testimony is generally consistent with testimony of other District witness and teacher observations.

56. [Social Worker] explained that some differences in [Psychologist]'s findings and observations as compared to those of the 2024 evaluation are expected, as Student may understandably present differently in a clinical setting with an adult versus at school with his peers. [Social Worker] testified that Student's scores on the IEE do not indicate a need for specialized instruction and she that can continue to provide Student support outside of special education.

57. [Special Education Teacher] credibly testified that there was nothing in the IEE that demonstrates Student needs special education. [Special Education Teacher] explained that the Eligibility Form for the March 2025 meeting does not include ASD, SLD or SLI categories because the team went through the first two eligibility questions and determined Student could receive reasonable educational benefit from general education alone. Accordingly, the team was not required to proceed on to the disability categories. [Special Education Teacher] testified her decision and the team decision was not predetermined prior to the meeting. [Special Education Teacher] testified that although the IEE identified some areas of weaknesses, the team must consider the body of evidence in making an eligibility determination. While every student has areas of weakness, the body of evidence in Student's case indicated he could receive reasonable educational benefit from general education alone.

58. Parent testified that the IEE, in conjunction with the 2023 evaluation, shows various areas of deficits which she believes demonstrates that the 2024 evaluation was insufficient and inaccurate. Parent and [Father] testified to their belief that the team did not consider the IEE nor parent input. Parent testified to perceived inconsistencies and contradictions in teacher reports. Parent testified that she believes the District team had already made their decision prior to the March 2025 meeting, without considering parent input or the IEE. Parent further testified that the team did not discuss any of the recommendations in the IEE. Parent further testified to her belief that the team erred by stopping the determination after the second eligibility question and not addressing each disability category. Parent and [Father] testified to their belief that it was [Director Designee] who actually made the final decision and not the team.

59. The court finds as fact a properly constituted multidisciplinary team determined through appropriate evaluations that Student does not need special education. Thus, the

court finds as fact the District properly determined Student was ineligible for special education in September 2024 and March 2025.

Discussion and Conclusions of Law

The burden of proof in an IDEA challenge rests with the party challenging a deficiency in the school district's efforts. *Thompson R2-J School District v. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). In this case, Parent has the burden of proving that the District failed to properly determine Student's eligibility for special education in September 2024 and March 2025.

A child with a disability is a child evaluated as having a qualifying disability who, by reason thereof, needs special education and related services. 34 C.F.R. §§ 300.8(a)(1) and 300.306(a)(1). If it is determined through an appropriate evaluation that a child has a qualifying disability but only needs a related service and not special education, the child is not considered a child with a disability under the IDEA. 34 C.F.R. § 300.8(a)(2)(i); 1 C.C.R. 301-8 § 2220-R-2.08.

Parent makes multiple assertions in support of her argument that the District failed to properly determine Student's eligibility, alleging the 2024 evaluation was invalid and based on false reports and inaccuracies, and that the IEE nor parent input was taken into consideration. There is no credible or persuasive evidence establishing Student's grades, progress reports, teacher reports and evaluations are false and/or inaccurate. Pursuant to his 2023 IEP, Student received specialized instruction and related services focused in the areas of reading, communication, and social/emotional wellness. As a result, Student progressed in each area, evidenced by Student's grades, progress reports, assessments and observations. That Student qualified for an IEP in 2023-2024 does not negate Student's subsequent progress nor mean Student continued to require special education.

The District considered whether Student had significant challenges such that he is unable to receive reasonable educational benefit from general education alone. While the 2024 evaluation and the IEE identify certain areas of weaknesses, Student fell into the low to average range in most assessments and District witnesses credibly testified there was not significant impact to Student at school such that Student could not access the general education curriculum without specialized instruction. Additionally, District

witnesses credibly testified that, to the extent Student may require additional support, such support is not special education and can be accessed by Student without an IEP.

The preponderant evidence establishes that in September 2024 the team properly considered the comprehensiveness of the evaluation, relevant data, and parent input and properly determined Student was not eligible for special education. Although Student has a medical diagnosis of ASD, a medical diagnosis alone does not qualify Student for special education under the IDEA. The child must also meet each of three required criteria to be eligible under the ASD category. The team determined Student did not meet two of criteria - displaying significant difficulties or differences extending beyond speech and language to other aspects of social communication, both receptively and expressively or seeking consistency in environmental events to the point of exhibiting significant rigidity in routines. Student's receptive and expressive language scores on the 2024 evaluation fell in the low average and average ranges, and the CCRS scores were all within normal limits, indicating Student was within the range of his same-age peers. The body of evidence also does not demonstrate Student exhibits significant rigidity in his routines and displays marked distress over changes in the routine or a significantly persistent preoccupation with or attachment to objects. The preponderant evidence does not establish Student meets the second and third criteria to qualify for special education under the ASD category.

The team also considered Student's eligibility under the SLD category. SLD "means a disorder in one or more of the basic psychological processes involved in understanding or in using language ... that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." 1 C.C.R. 301-8 § 2220-R-2.08(8)(a). A child may be determined to have [SLD], "if a body of evidence demonstrates" that: (1) "the child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) in one or more areas ... when provided with learning experiences and instruction appropriate for the child's age"; and (2) the child does not make sufficient progress to meet age or state-approved grade-level standards ... when using a process based on the child's response to ... intervention." 1 C.C.R. 301-8 § 2220-R-2.08(8)(b).

“Significant academic deficit” is considered a score below the 12th percentile. The September 2024 evaluation demonstrates Student scored above the 12th percentile in the applicable assessments. Additionally, Student has made sufficient progress, as evidenced by his progress reports, grades, and assessment scores and credibly testified to by District witnesses. Student was meeting or exceeding expectations on his report card. Accordingly, the team properly determined Student does not meet the criteria for eligibility under SLD.

A speech or language impairment is a “communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.” 34 C.F.R. § 300.8(c)(11). A speech or language impairment, “including articulation, fluency, voice, functional communication, or delayed language development” requires evidence of dysfunction in specific areas. 1 C.C.R. 301-8 § 2220-R2.08(9). The preponderant evidence demonstrates the team properly determined Student does not meet the criteria for a SLI. As credibly testified to by [School SLP] and demonstrated in the records, Student scored within low average to average range on the CELF-5 and PLSI, indicating no significant deficit or impairment in receptive or expressive language. [School SLP] further credibly testified that Student’s CCRS scores in the 2024 evaluation were all within normal limits. Accordingly, the preponderant evidence establishes Student does not meet the criteria for special education under the category of SLI.

The preponderant evidence further establishes that the team properly considered the comprehensiveness of the evaluations, relevant data, the IEE, and parent input and properly determined Student was not eligible for specialized education in March 2025. Although Parent alleges the team did not consider the input of Student’s parents, [Psychologist], or the IEE, the evidence demonstrates otherwise. The March 2025 eligibility determination meeting took place over the course of four days, at which the team addressed the IEE and received input from both [Psychologist] and Student’s parents. The team then addressed the first two eligibility questions, properly determining Student can receive reasonable educational benefit from general education alone, thus ending the eligibility determination.

While the IEE identified certain deficiencies, the IEE is to be considered amongst the body of evidence. The IEE findings do not demonstrate Student qualifies for special education. Student's scores on the academic assessments, the WJ-IV and WIAT-4 fell within the average and low-average ranges, and were well above the 12th percentile threshold to be considered a SLD. The preponderant evidence does not indicate student exhibited significant difficulties or differences in both receptive and expressive language that would qualify under the ASD or SLI categories. As credibly explained by [School SLP], the WIAT-4 is an academic assessment not specifically designed to evaluate communication skills. She credibly testified that the receptive vocabulary test on the WIAT-4 is a subtest, and that his score on such subtest does not indicate a significant deficit in communication or receptive or expressive language nor establish that Student needs specialized instruction. [Psychologist] deferred to [School SLP]'s expertise in this area. [Psychologist] also acknowledged, as credibly testified to by [School SLP], the difference between school and clinical settings and that there is a different standard for determining eligibility within a school setting.

To the extent [Psychologist] noted possible communication deficits or behavior concerns, [Principal], [Special Education Teacher], [Social Worker] and [School SLP] credibly testified that there are not significant deficits or impairments preventing Student from receiving reasonable education benefit from general education alone. Data on the SRS-2, BRIEF-2 and BASC-3 demonstrated Student is functioning within normal limits socially, emotionally, and behaviorally at school and at home. The preponderant evidence demonstrates that the District properly determined Student is not eligible for special education in March 2025.

That the 2023 evaluation and IEE demonstrated some deficits does not, in and of itself demonstrate that the 2024 evaluation was invalid or inaccurate, or that the District improperly determined Student is no longer eligible for special education. Parent input was provided and considered at both the September 2024 and March 2025 meetings. Additionally, that the school team did not ultimately agree with Parent does not mean the District did not properly consider the IEE, [Psychologist]'s opinions and findings, and parent input, nor does it mean the school team pre-determined Student's eligibility. To the contrary, the team spent four days in March 2025 discussing the IEE and addressing

[Psychologist]'s opinions and parent input. Here, the District considered the body of evidence in September 2024 and March 2025 and properly determined Student does not exhibit any significant deficits or needs such that he cannot receive reasonable educational benefit from general education alone.

Decision

For the reasons discussed above, it is the decision of the ALJ that the District properly determined Student is ineligible for special education in September 2024 and March 2025. Parent's claims and requests for relief are denied. This decision is the final decision of the independent hearing officer, pursuant to 34 CFR §§ 300.514(a) and 515(a). In accordance with 34 CFR § 300.516, either party may challenge this decision in an appropriate court of law, either federal or state.

Done and Signed: July 18, 2025

A handwritten signature in black ink, appearing to read 'Kara Cayce', written over a horizontal line.

Kara R. Cayce

Administrative Law Judge