

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

State-Level Complaint 2023:516
Boulder Valley School District RE-2

DECISION

INTRODUCTION

On February 17, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against the Boulder Valley School District RE-2 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three (3) allegations subject to the jurisdiction of the state-level complaint process under IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (“CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 17, 2022 to February 17, 2023 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to develop, review, and revise an IEP, on or about February 18, 2022, that was tailored to meet Student’s individualized needs, specifically by:
 - a. Failing to tailor the IEP to meet Student’s individualized literacy needs, in violation of 34 C.F.R. §§ 300.320 and 300.324; and

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

- b. Failing to determine Student qualified for extended school year (“ESY”) services when such services were necessary to the provision of FAPE, in violation of 34 C.F.R. §§ 300.106, 300.320, and 300.324.
2. Deprived Parents of meaningful participation in the development, review, and revision of Student’s IEP in the IEP Team meetings held on or about January 11, January 25, and February 15, 2023, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).
3. Failed to develop, review, and revise an IEP, on or about February 16, 2023, that was tailored to meet Student’s individualized needs, in violation of 34 C.F.R. §§ 300.320 and 300.324, specifically by:
 - a. Failing to consider the results of an Independent Educational Evaluation (“IEE”) conducted in or about December of 2022 while developing Student’s February 16, 2023 IEP, in violation of 34 C.F.R. § 300.502(c)(1).
 - b. Failing to include a statement of the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to Student, in violation of 34 C.F.R. § 300.320(a)(4).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student is a “delightful,” curious, and imaginative eleven-year-old, with interests in Legos, sports, and drawing. *Interviews with Case Manager, Speech Language Pathologist (“SLP”), and School Psychologist; Exhibit A*, p. 89. Student qualifies for special education and related services under the autism spectrum disorder disability category, with secondary disabilities of Other Health Impairment, Specific Learning Disability, and Speech/Language Impairment. *Exhibit A*, p. 86.
2. During the 2021-2022 academic year, Student attended fourth grade at a District elementary school (“School”). *Id.* at p. 50. On January 25, 2022, a properly constituted IEP Team met to review and revise Student’s IEP (the “2022 IEP”).³ *Id.* at p. 52; *Exhibit C*, p. 1.

B. The 2022 IEP

² The appendix, attached and incorporated by reference, details the entire Record.

³ Although the IEP Team met to review and revise the 2022 IEP on January 25, 2022, the 2022 IEP was not finalized until February 18, 2022. *Response*, pp. 6-7.

3. The 2022 IEP documented Student’s strengths, preferences, and interests, including that he is “bright” and curious, that he has relative strengths in listening comprehension skills, receptive vocabulary skills, and recall of math addition facts. *Exhibit A*, p. 53. Student enjoys playing with “figurine characters” with one or two peers and enjoys imaginative play, and he participates in several different after school activities, including sports and [other clubs] . *Id.*
4. The 2022 IEP reviewed Student’s present levels of performance, summarizing his educational history, scores on academic assessments, progress toward annual goals, and reports from teachers and service providers. *Id.* at p. 58.
5. The Student Needs and Impact of Disability section documented that Student’s deficits in basic reading, math calculation, and written expression skills impact his ability to access the general education curriculum. *Id.* at p. 59. His speech/language disability impacts his ability to clearly express his thoughts and ideas with peers and adults, and he needs to improve his articulation, fluency, and language skills. *Id.*
6. Student sometimes has trouble regulating his behaviors and emotions; using functional communication to consistently express wants, needs, and emotions; and engaging in spontaneous and reciprocal social interactions with peers to develop and maintain peer relationships. *Id.* He frequently has trouble controlling impulses (such as making loud vocalizations, displaying attempts at physical aggression toward objects or people, or leaving an assigned seat or space to wander around the room). *Id.* He also exhibits difficulty with coordination and motor planning and may become distracted in a noisy environment. *Id.*
7. The Parent/Student Input section documented Parents’ input, including their concern about Student’s literacy skills, and requested that the 2022 IEP be modified to include additional specialized pull-out reading services. *Id.* Parents also requested that the IEP Team wait until after spring break to decide whether Student qualified for ESY services. *Id.*
8. The 2022 IEP contained 14 annual goals in reading, math, writing, social emotional wellness, communication, physical motor, and “other.” *Id.* at pp. 60-68. Relevant to this investigation:
 - a. Goal No. 1 – Reading: “By January 2023, provided direct reading instruction, [Student] will increase his ‘cold read’ of reading level from a level D to a level H independently as measured by district approved classroom-based assessments (eg. BAS) [sic].”
 - i. Objective No. 1: “By January 2023, when presented with a list of (10) mixed(CVC, CCVC, CVCC, and/or CVCe word patterns [sic], [Student] will successfully and independently decode 90% of words given across 4 trials as measured by student work samples.”

- ii. Objective No. 2: “By January 2023, when presented with a list of 30 sight words(10 at a time), [sic] [Student] will independently read the words with 90 % accuracy across 4 trials as measured by student work samples.”
- b. Goal No. 2 – Reading: “By January 2023, [Student] will listen to a level M (Non-Fiction and Fiction) text (from current level J) and verbally answer comprehension questions from the text with 80% accuracy and independence, as measured by district-approved classroom-based assessments (eg. BAS) [sic].”

Id. at pp. 60-61.

9. The 2022 IEP contained 28 accommodations to help Student access the general education curriculum, including allowing Student “movement breaks,” repetition and rephrasing of concepts, shortened assignments, and positive rewards to reinforce desired behaviors (e.g., “Five-Frame Token Economy, “First/Then” board, “Point Sheet”). *Id.* at p. 69.

10. The Service Delivery provided for:

- a. 90 minutes per month of direct occupational therapy services;
- b. 15 minutes per month of indirect occupational therapy services;
- c. 240 minutes per month of direct specialized speech/language instruction;
- d. 15 minutes per month of indirect speech/language services;
- e. 900 minutes per week of direct specialized instruction (outside the general education classroom);
- f. 1,000 minutes per week of direct specialized instruction (inside the general education classroom);
- g. 15 minutes per week of indirect specialized education services;
- h. 160 minutes per month of direct psychologist/social worker services; and
- i. 45 minutes per month of indirect psychologist/social worker services.

Id. at pp. 71-72.

11. The 900 minutes of weekly instructional time outside of the general education setting was to work on basic reading, math, and written expression skills. *Id.* at p. 71.

12. The IEP Team determined it was appropriate for Student to be in the general education environment 40 to 79 percent of the time. *Id.* at p. 73.
13. The Prior Written Notice (the “PWN”) section of the 2022 IEP contained detailed information about other options considered by the IEP Team, to include Parents’ requests regarding literacy services. *Id.* at pp. 74-75. These included a request to increase Student’s pull-out reading services, and to change progress notes regarding one of Student’s annual goals in reading (Goal No. 1) from “progress made” to “insufficient progress” since Student did not achieve the goal (Parents disagreed Student made adequate progress and expressed concern that the gap between Student and his same age peers was increasing). *Id.* at p. 74.
14. The 2022 IEP indicated Parents’ request to increase pull-out reading services was rejected because he was benefiting from learning alongside his peers in the general education setting and having access to the science and social studies curriculum (at the time, Student was in the general education setting with support from the special education team for specials, lunch, recess, “Read Aloud,” “Morning Meeting,” and science/social studies classes). *Id.* Parents’ request to change the progress monitoring notes was denied because the data collected at School indicated that he was making progress toward the reading goal. *Id.*
15. The 2022 IEP was accompanied by a behavior intervention plan (“BIP”) to address Student’s behavioral needs. *Id.* at pp. 76-83.

C. Parents’ Concerns with Reading Services

Specialized Pull-out Reading Services

16. Parents’ concern is that District did not tailor the 2022 IEP to Student’s individualized needs in reading because District failed to increase specialized pull-out reading services to address Student’s slow rate of progress in reading. *Interview with Parents*. Parents requested that District reduce Student’s time in the general education setting to provide additional time for specialized reading support, but that request was rejected. *Exhibit A*, p. 74.
17. District agrees that Student’s progress in reading has been slow but when the 2022 IEP was developed, he was making progress in reading. *Response*, p. 8; *Interviews with Director of Special Education, Case Manager, SLP, and School Psychologist*. He has complex needs, and the 2022 IEP was developed to meet his academic, language, social/emotional, behavioral, and motor planning needs, not just in reading. *Response*, p. 8; *Interviews with Director of Special Education, Case Manager, SLP, and School Psychologist*. The IEP Team considered whether it would be beneficial to increase reading services at Parents’ request, but the IEP Team ultimately determined that doing so at the expense of other services or his time in the

general education environment would be detrimental to Student. *Response*, pp. 8-10; *Interviews with Director of Special Education, Case Manager, SLP, and School Psychologist*.

18. The progress monitoring data contained in the 2022 IEP indicates that, as of the development of the 2022 IEP, Student had either met or was making progress toward all annual goals, including the reading goal. *Exhibit A*, pp. 54-58. Although Parents asked for the progress notes for the reading goal to be changed to “insufficient progress”, the SCO finds that the progress notes show Student was making progress, albeit not enough to achieve the goal (i.e., the progress notes indicate Student’s reading level and scores on reading sight words had increased, but not to the level set by the goal). *Id.* at p. 54.
19. District staff reported to the SCO that the IEP Team agreed with Parents in that Student’s progress in reading has been slow but disagreed that this meant the IEP Team should increase reading services. *Interviews with School Psychologist, Case Manager, and SLP*. The IEP Team found that Student was making progress toward all his annual goals, and was showing significant improvements in some areas, such as behavior. *Id.* Student was already receiving 900 minutes of weekly direct specialized instruction outside of the general education environment to work on reading, writing, and math skills. *Id.*; *Exhibit A*, p. 72.
20. There was concern that increasing Student’s pull-out reading services at the expense of other services might negatively impact Student’s progress in other areas. *Interviews with School Psychologist, Case Manager, and SLP*. Since Student was already receiving significant pull-out reading services, there was also concern that increasing pull-out reading services might overburden Student, or negatively impact his motivation. *Interviews with School Psychologist, Case Manager, and SLP*.
21. Similarly, District members of the IEP Team were concerned that reducing Student’s time in general education to provide additional time for reading instruction would be detrimental. *Id.* Under the 2022 IEP, Student was in the general education environment during recess, lunch, specials, social studies, and science. *Id.*; *Exhibit A*, p. 73. District staff reported that, with supports, Student can access the general education curriculum, is enthusiastic to be around peers in the general education environment, and has been fostering positive relationships with peers. *Interviews with School Psychologist, Case Manager, and SLP*.
22. Staff also indicated that Student needs to work on generalization of skills, and his time in the general education environment gives him opportunities to work on language and social skills outside of the special education environment. *Id.* For instance, School Psychologist works with Student at lunch and recess to generalize social skills and work on cooperative games, sometimes utilizing peer role models. *Interview with School Psychologist*.
23. The SCO finds, in consultation with CDE Content Specialists 1 and 2, that Student has diverse and complex needs which the IEP Team needed to balance, and that the 2022 IEP provided pull-out reading services to meet Student’s needs. *Consultations with CDE Content*

Specialists 1 and 2. Although Student’s progress in reading was slow, he was nevertheless making progress toward all annual goals, including reading. *Id.* With the aid of supports, he was also accessing the general education curriculum and benefiting from having the opportunity to generalize communication and social skills with peers in that environment. *Id.* The SCO finds the IEP Team justified in its rationale that increasing reading services at the expense of other services or time in general education would be detrimental to Student’s progress. *Id.*

Reading Instruction Methodology

24. Parents raised a concern with the type of reading instruction Student was receiving under the 2022 IEP. *Interview with Parents.* Student’s annual goals in reading were developed around the benchmark assessment system (the “BAS”). *Exhibit A*, pp. 60-61. Parents are concerned that the BAS is not an assessment from a CDE-approved reading intervention, and that Case Manager was not teaching Student reading by following an approved reading intervention program “with fidelity.” *Interview with Parents.*
25. The 2022 IEP did not specify what instructional methodology or program would be used for reading intervention but contained an accommodation which required “[m]ultisensory, explicit instruction for reading concepts that involve repeated teachings.” *Exhibit A*, p. 69.
26. The SCO finds, in consultation with CDE Content Specialist 1, that the BAS is an assessment published by Fountas and Pinnell. *Consultation with CDE Content Specialist 1.* The Fountas and Pinnell reading program is neither a CDE-approved reading intervention nor an explicit, multisensory method of reading instruction. *Id.* Student requires explicit, multisensory instruction and a curriculum based on Fountas and Pinnell would not be an appropriate reading intervention for a child with Student’s individualized literacy needs. *Id.*
27. Nevertheless, although the annual reading goals in the 2022 IEP were built around the BAS, the reading intervention that Case Manager provided to Student under the 2022 IEP was an explicit, multisensory approach to reading instruction. *Interview with Case Manager.* Case Manager is trained in both Wilson and Orton Gillingham, and she incorporates elements of both programs into the specialized reading instruction she provides Student. *Id.* Although Student was assessed on the BAS to measure progress toward annual reading goals, the reading instruction student received under the 2022 IEP has always been explicit and multisensory, not based on the Fountas and Pinnell. *Id.*
28. Case Manager, SLP, and School Psychologist all reported during that the 2022 IEP’s annual goals were developed around the BAS because Parents advocated for the reading goal to be built around a formal assessment instead of the acquisition of specific reading skills. *Interviews with Case Manager, SLP, and School Psychologist.* Student entered School with an annual goal built around the BAS, so the IEP Team continued to develop the goal around the BAS, since Parents requested that the goal be tied to a formal assessment. *Id.*

29. The SCO finds, in consultation with CDE Content Specialists 1 and 2, that Wilson and Orton Gillingham are both explicit, multisensory approaches to reading instruction, and widely accepted in the educational community as research-based, peer-reviewed reading programs. *Consultations with CDE Content Specialists 1 and 2.*

D. Parents' Concern with ESY

30. In accordance with Parents' request, the IEP Team agreed to table discussions regarding ESY for the summer of 2022 until after spring break. *Exhibit A*, pp. 75, 84. Parents' concern is that District failed to determine that Student qualified for ESY services in reading when such services were necessary to the provision of FAPE. *Interview with Parents.*

31. Parents indicate Student should have qualified for ESY because of predictive factors. *See Reply*, p. 12. Student struggles with generalization of skills, and with consistently applying learned reading skills. *Id.* Because of this, and struggles with working memory, Parents indicate it is "reasonable to conclude" that Student has experienced regression and should therefore have qualified for ESY. *Id.* at pp. 11-15.

32. District's position is that Student did not qualify for ESY because there was no data to demonstrate that Student experienced significant regression or failure to recoup learned skills following breaks. *Response*, p. 12. The progress monitoring data available at the time demonstrated Student was making progress toward his annual reading goals, and there was no data to suggest that Student experienced regression throughout his time in District. *Id.*

33. On April 5, 2022, Case Manager emailed Parents to schedule an IEP meeting to discuss ESY. *Exhibit K*, p. 379.

34. On April 6, 2022, Parents responded to Case Manager and indicated that, "[r]egarding the ESY meeting, we don't think we would have anything to add, so in order to make the meeting more efficient we think you should meet without us." *Id.* Case Manager responded on April 12, 2022 and indicated the IEP Team meeting would be held on April 19, 2022. *Id.* Although Parents indicated they did not wish to meet, Case Manager provided Parents with a Google Meet link so Parents could join the meeting if they changed their minds. *Id.*

35. On April 19, 2022, School Psychologist, Case Manager, SLP, a director designee, one of Student's general education teachers, and Student's occupational therapist met to discuss ESY. *Exhibit A*, p. 84; *Interviews with Case Manager, School Psychologist, and SLP.* District staff reviewed Student's progress monitoring data and determined that there was no data to suggest that he regressed following breaks or required an unusually long amount of time to recoup skills. *Exhibit A*, p. 84; *Interviews with Case Manager, School Psychologist, and SLP.* District staff also determined that predictive factors did not demonstrate a need for ESY. *Exhibit A*, p. 84; *Interviews with Case Manager, School Psychologist, and SLP.* District

accordingly found that Student did not qualify for ESY. *Exhibit A*, p. 84; *Interviews with Case Manager, School Psychologist, and SLP*.

36. On April 19, 2022, Case Manager emailed Parents and indicated that Student did not qualify for ESY over the summer of 2022. *Exhibit K*, p. 406. Case Manager provided Parents with a PWN explaining the decision, along with an Extended School Year Data Documentation form that was filled out during the meeting. *Id.*; *Exhibit A*, p. 84; *Exhibit 11*, pp. 1-3.
37. The PWN indicated Student did not qualify for ESY because the data did not demonstrate that he would experience significant educational loss following an extended school break. *Exhibit A*, p. 84. The PWN likewise documented that the IEP Team examined Student's progress monitoring data and found that he maintained and improved his skill level in all areas of his IEP goals, and there was no indication of regression following breaks. *Id.*
38. The Extended School Year Data Documentation form indicated that, although Student's progress was slow in some areas, he had made steady progress toward his annual goals, and there was no evidence of regression following school breaks. *Exhibit 11*, p. 1. The form further indicated that District members of the IEP Team examined Student's rate of progress, the type and severity of his disability, his behavior, his physical needs, the availability of alternative resources, his ability to interact with peers without disabilities (such as siblings), as well as whether he had any goals, objectives, curricular elements, or other IEP components that would require continuous attention to avoid regression. *Id.* at pp. 1-2. District members of the IEP Team found that predictive factors did not demonstrate a need for ESY, but the form indicated Student could nevertheless access the general education summer program at Parents' discretion. *Id.*
39. Upon review of the progress reporting data contained in the 2022 IEP, the SCO finds Student was making progress toward all his annual goals when the 2022 IEP was developed. *Exhibit A*, pp. 53-58. Similarly, progress monitoring data from May of 2022 demonstrates that Student was making progress toward all 14 of the annual goals contained in the 2022 IEP, including those in reading. *Exhibit E*, pp. 1-11.
40. SLP, Case Manager, and School Psychologist (who worked directly with Student during the 2021-2022 year) reported to the SCO that they had not observed any regression from Student following breaks, and that Student did not need ESY services to maintain learned skills over the summer of 2022. *Interviews with Case Manager, School Psychologist, and SLP*.

E. Parents' IEE Request

41. On June 7, 2022, Parents emailed Director of Special Education and requested an IEE to obtain additional information about Student's learning abilities. *Exhibit K*, p. 420. Director of Special Education responded the following day and provided Parents with forms to submit for their request. *Id.* Director of Special Education also provided Parents with

recommendations for private providers, and encouraged Parents to have the evaluator communicate with District staff during the evaluation process to obtain information on how things were going for Student at School. *Id.*

42. On June 15, 2022, Parents responded and attached completed forms requesting an IEE. *Id.* at p. 423. On June 29, 2022, Director of Special Education forwarded the request to District administration and asked that the request be approved. *Id.* On the same date, District provided Parents with a release of information to be signed to allow District to exchange information with the private provider(s) selected for the evaluation. *See id.* at p. 489.
43. In the following months, Parents contacted several private providers to schedule an IEE. *See id.* at pp. 476-77, 485, 488, 499-500. Due to scheduling issues and Parents' delays returning the signed release of information for each private provider, the IEE did not occur until December of 2022. *See id.; Exhibit H*, pp. 43-79; *Exhibit K*, pp. 489. District informed the private providers performing the IEE that Student was scheduled to have an annual IEP review on January 25, 2023, and asked that the evaluation report be provided before then, if possible. *Id.*
44. The IEE was administered at public expense over three sessions on December 1, 14, and 27, 2022. *Exhibit H*, pp. 43-79. The IEE included a developmental evaluation, an occupational therapy evaluation, and a speech/language evaluation. *Id.*
45. The IEE reports were provided to District on January 10, 2023, the day before Student's scheduled annual IEP review meeting. *Exhibit K*, pp. 548, 551. That same day, Case Manager provided copies of the IEE reports to all District members of the IEP Team. *Id.* at p. 552. All District members of the IEP Team read through the IEE report prior to the IEP meeting and discussed the report "by text" the night prior to the meeting. *Interviews with Case Manager, Director of Special Education, SLP, and School Psychologist.*
46. District staff credibly confirmed that they read the IEE report prior to the January 10, 2023 IEP meeting, indicating its information largely corroborated the data already known about Student. *Interviews with Case Manager, Director of Special Education, SLP, and School Psychologist.* District staff indicated they considered the information from the IEE report, but many of the suggestions from the IEE report were supports Student already received under the 2022 IEP. *Id.* For instance, the IEE report recommended that Student be allowed to present information orally rather than in writing when the goal of the assessment is not to test Student's writing ability. *Exhibit H*, p. 58. The 2022 IEP contained an accommodation that Student can verbally dictate his response to staff on class quizzes/tests and worksheets when needed to show his full understanding of the material. *Exhibit A*, p. 107. The IEE also recommended that he receive multisensory instruction in reading. *Exhibit H*, p. 56.
47. On January 11, 25, and February 15, 2023, a properly composed IEP Team met to review and revise the 2022 IEP (the "2023 IEP"). *Exhibit A*, p. 88; *Response*, p. 13; *Exhibit D*.

F. The January and February 2023 IEP Meetings

48. Parents' concerns are that they were denied meaningful participation at the January and February 2023 IEP meetings, and that the IEP Team failed to consider the IEE in the development of the 2023 IEP. *Interview with Parents*. The SCO reviewed recordings and transcripts of these meetings. *Exhibit D*. Upon review, the SCO finds that over the course of the three IEP meetings, the IEP Team spent extensive time considering input from Parents, including input about Student's reading services and the IEE. *Id.*

The January 11, 2023, IEP Meeting

49. SLP, a board-certified behavior analyst (a "BCBA"), School Psychologist, Student's general education science/social studies teacher, an occupational therapist, Case Manager, Director of Special Education, Parents, and Parents' advocate attended the January 11 meeting. *Id.*

50. At the beginning of the meeting, Director of Special Education referenced the IEE report, and Case Manager confirmed that she provided the report to District members of the IEP Team prior to the meeting. *Id.* The IEP Team then moved into discussions around Student's present levels, and each District IEP Team member reported on Student's progress, starting with a report from the general education science/social studies teacher. *Id.*

51. During each report, Parents and Parents' advocate asked numerous questions about Student's progress and details regarding his day-to-day instruction, including questions specific to reading intervention. *Id.* In each instance, District members of the IEP Team fully responded to these questions, and asked Parents if there were additional questions before moving to each new teacher/service provider. *Id.* The IEP Team spent approximately an hour and a half discussing teacher and service provider observations and Student's present levels before moving into discussions about new annual goals for the 2023 IEP. *Id.*

52. During the review of Student's annual goals, Parents and Parents' advocate asked numerous questions about his reading services and expressed concern about progress toward the reading goals under the 2022 IEP. *Id.* In each instance, District staff addressed Parents' questions and provided specific information on Student's progress in reading, and the reading interventions he was receiving. *Id.*

53. For example, Parents expressed concern that Student did not achieve Goal No. 1 from the 2022 IEP (which targeted reading under the BAS), and that this showed he made no progress in reading. *Id.* Case Manager indicated that although progress monitoring showed he was only able to independently read text at a level "D" (which was insufficient progress under the goal), she was seeing progress in reading. *Id.* For instance, Case Manager indicated Student can read more advanced texts (up to level "F") when he is provided with supports (e.g., prompts or pre-reading, practicing sounds to help Student understand the

text, doing a “picture walk”). *Id.*; *Interview with Case Manager*. Case Manager explained that the BAS assessment involves a “cold read” of a new text (meaning he is assessed on a new text without any pre-teaching), which is much harder for Student. *Exhibit D; Interview with Case Manager*.

54. Although Student did not achieve his reading goals under the BAS, he has been making slow but steady progress in reading. *Exhibit D*. Parents expressed concern that Student is not able to read at that level at home, and staff explained that his struggles with generalization make it difficult for him to read at the same level in different environments (like the home setting), which could help explain why Parents see lower reading skills at home. *Id.*
55. District staff explained to the SCO that Student’s annual goals in reading were ambitious given Student’s significant needs, consistent with Parents’ request that the goals be ambitious and suggestion that the goal aim for two grade levels of growth according to the BAS (the IEP Team agreed). *Response*, p. 5; *Interviews with Case Manager, Director of Special Education, and SLP*.
56. During the meeting, the IEP Team also referenced the IEE report. *Exhibit D*. For instance, approximately 25 minutes into the meeting, Parents’ advocate referenced the IEE report, and talked about how the evaluator found that Student can sometimes look like he is engaged in class, but he is not really understanding the material. *Id.* The IEP Team also discussed information from the IEE during the reports from the occupational therapist about Student’s fine motor deficits. *Id.* In both instances, the IEP Team took time to consider the information from the IEE report and respond to any questions or concerns posed by Parents around the information. *Id.*
57. The IEP meeting lasted 1 hour and 45 minutes before Director of Special Education suggested that the meeting be continued, and Parents agreed. *Exhibit D*. Director of Special Education asked that the IEP Team provide Parents and Parents’ advocate with a draft IEP to help facilitate discussions at the next meeting. *Id.* District created a shared document to communicate with Parents and Parents’ advocate about annual goals between meetings. *See Exhibit P*, pp. 1-15.

The January 25, 2023 IEP Meeting

58. On January 25, 2023, the IEP Team met again. *Exhibit D*. At Parents’ request, the meeting began with continued discussion around Student’s annual goals. *Id.* The IEP Team spent extensive time responding to Parents’ questions and agreed to several of Parents’ requests. *Id.* For instance, Parents, through their advocate, requested a reading goal targeting comprehension for Student, and the IEP Team agreed. *Id.* Parents also raised concerns about the BAS and asked that the goals be built around the acquisition of specific reading skills. *Id.* The IEP Team agreed to change the reading goals to target acquisition of skills at

Parents' request (although several staff members expressed frustration that the goal was previously developed around the BAS at Parents' request). *Id.*

59. The IEP Team rejected some of Parents' requests. *Id.* For example, Parents, through their advocate, requested that the 2023 IEP document the specific reading intervention or interventions that Student will receive. *Id.* Case Manager explained that she uses Wilson and Orton Gillingham, but that her instructional practices may be different from the teacher next year, so the 2023 IEP would not be written to require the same approach. *Id.* Instead, Case Manager suggested that the IEP Team document that the reading instruction must be a multisensory approach to allow flexibility on which methodology would be provided while ensuring that the approach would meet Student's needs. *Id.*
60. During the meeting, the IEP Team again discussed the IEE report. *Id.* Approximately one hour into the meeting, the IEP Team discussed a recommendation from the IEE that Student receive a multisensory and sequential reading program. *Id.* Case Manager explained that Student receives a multisensory approach to instruction, and that could be reflected in the 2023 IEP. *Id.* During internal staff discussions following the meeting, School Psychologist also indicated to other staff that she had read the IEE report, although School Psychologist expressed disagreement with some of the information contained in the IEE report, such as the developmental evaluator's summary of Student's intelligence level. *Id.*
61. The IEP Team met for one hour and ten minutes before the IEP Team agreed to continue discussions. *Id.* Although the IEP meeting ended, the transcript reviewed by the SCO documented an additional fifteen minutes of internal staff discussion following the IEP meeting. *Id.* Case Manager, Director of Special Education, and School Psychologist talked about Student's reading progress, and possible changes to his reading programming that might improve his progress and address Parents' concerns. *Id.* District staff discussed the possibility of incorporating a different reading methodology, such as Lindamood-Bell or Edmark, to supplement the Wilson and Orton Gillingham programming he was receiving. *Id.*

The February 15, 2023, IEP Meeting

62. On February 15, 2023, the IEP Team met again to continue discussions and finalize the 2023 IEP. *Id.* At the beginning of the meeting, Case Manager discussed the Edmark reading program, and suggested incorporating the program into Student's reading instruction to address Parents' concerns. *Id.* Parents agreed and requested that Student be taught using Edmark but indicated that they wanted the program taught "with fidelity" and that Edmark be explicitly written into the 2023 IEP. *Id.* Parents also renewed their request for the 2023 IEP to specify that Student's reading services would be delivered 1:1. *Id.*
63. District rejected Parents' request to specify the reading methodology in the 2023 IEP; however, Case Manager agreed to incorporate Edmark into Student's reading instruction and indicated that she would follow the program "with fidelity." *Id.* Director of Special

Education indicated that the 2023 IEP would not indicate 1:1 or small group “because we do not want to limit the ability for him to work with another student” if the other student is at an appropriate level to be paired with Student, but that Student would be taught 1:1 if no other students in the group were at his same level. *Id.* These rejected requests were documented in the 2023 IEP, along with the IEP Team’s reasoning. *Exhibit A*, pp. 112-13.

64. Parents also requested that the IEP Team find that Student qualifies for ESY over the summer of 2023 in reading. *Id.* The IEP Team indicated there was still not data showing regression, but since Student was making slow progress in reading, and because he would be starting on a new reading intervention shortly before the summer break, the IEP Team found that he qualified in reading based on predictive factors. *Id.* Director of Special Education acknowledged that there was still no data to demonstrate regression and that “we’re really stretching it to try to help with reading here because we’re trying our best to . . . offer as much as we can for him.” *Id.*
65. The IEP Team discussed accommodations and modifications, and asked Parents if they had questions or input before moving on to other sections of the 2023 IEP (there were none). *Id.* The IEP Team then discussed the service delivery of the 2023 IEP. *Id.* In response to Parents’ request for specificity around the service delivery, District staff explained the details of their service minutes, although District rejected Parents’ request to have those details (e.g., the specific methodology, specific information on how much of the time will be spent on each methodology, how much of each day will be spent working on specific goals, etc.) written into the 2023 IEP. *Id.*
66. The IEP Team then discussed Student’s least restrictive environment, and District took time to answer each of Parents’ questions and respond to any concerns. *Id.* Parents then requested an additional meeting in three months to review Student’s progress prior to summer, and the IEP Team agreed. *Id.* The meeting lasted over an hour and ended with District agreeing to send the finalized 2023 IEP to Parents for review following the meeting. *Id.*
67. Over the course of the three IEP meetings, the IEP Team considered the IEE in the development of the 2023 IEP. *Id.* For instance, the IEE discussed Student’s need for repetition and reteaching to master concepts, and the IEP Team modified Student’s literacy instruction to include whole language as well as a multisensory approach, in order to increase Student’s repetition of high frequency words. *Interviews with Case Manager, SLP, School Psychologist, and Director of Special Education.*
68. The IEP Team also rejected some of the recommendations from the IEE. *Interviews with Case Manager, Director of Special Education, SLP, and School Psychologist.* For example, the IEE report recommended that Student’s progress in literacy be reviewed every three months for measurable progress, because “yearly review is not sufficient.” *Exhibit H*, p. 56. The IEE report indicated that, if progress is not meaningful, “then services and the level of

training of the specialist will have to be modified.” *Id.* This suggestion was rejected because modifying the 2023 IEP is an IEP Team decision (although District agreed to meet informally with Parents after three months to review Student’s progress). *Interviews with Case Manager, Director of Special Education, SLP, and School Psychologist.*

G. The 2023 IEP

69. The 2023 IEP documents Student’s strengths, preferences, and interests. *Id.* at p. 89. It includes much of the same details as the 2022 IEP, but was updated to document that Student had made “a lot” of peer connections since coming to School. *See id.* at pp. 53, 89.
70. The 2023 IEP reviews Student’s present levels of performance, summarizing updated information about his educational history, scores on academic assessments, progress toward annual goals, and reports from teachers and service providers. *Id.* at pp. 89-98. Student made progress toward 12 of the 14 annual goals contained in the 2022 IEP (Student made “Insufficient Progress” for his two annual goals in reading). *Id.*
71. The Student Needs and Impact of Disability section contained the same information as the 2022 IEP, although information about behavioral challenges was removed due to Student’s improved behavior. *See id.* at pp. 59, 99.
72. The Parent/Student Input section documents input, including that Parents expressed concern about Student’s rate of progress toward his reading goal, and that Parents requested “text samples” from the occupational therapist and “raw data” for Student’s math goal. *Id.* at p. 99. This section also contains written input which Parents drafted and requested be included in the 2023 IEP. *Id.* at pp. 99-100. This input documents a renewed request for increased pull-out reading instruction and for the 2023 IEP to indicate reading instruction will be provided 1:1. *Id.* Parents also wrote that the “number of minutes available during the school day is not sufficient to advance [Student’s] reading ability in a reasonable manner and so additional instruction outside of the school day is needed.” *Id.*
73. The 2023 IEP contains 12 annual goals in social/emotional wellness, writing, math, reading, and communication. *Id.* at pp. 100-106. Relevant to this investigation are updated reading goals:
 - a. Goal No. 1 – Reading: “By January 2024, When [sic] presented with an end-of-1st-grade level novel passage, [Student] will improve word recognition skills to read the passage with 90% accuracy across 4 data collection days.”
 - i. Objective No. 1: “By November 2023, When [sic] presented with a familiar passage at his instructional level, [Student] will generalize his decoding and word recognition skills to read the passage with 90% accuracy across 4 data collection days.”

- b. Goal No. 2 – Reading: “By January 2024, when presented with a list of 40 sight words (10 presented at a time), [Student] will read the words with 90% accuracy across 4 data collection days, as measured by student work samples.”
- c. Goal No. 3 – Reading: “By January 2024, after reading a novel decodable text (Non-Fiction and Fiction) at his instructional level, [Student] will answer 5 ‘Wh’ questions (Who, What, When, Where, Why), about the text with 4 out 5 [sic] accuracy across, 4 data collection days.”

Id. at pp. 100-102.

74. The 2023 IEP contains 29 accommodations to help Student access the general education curriculum. *Id.* at p. 107. Most of the accommodations are the same as those contained in the 2022 IEP, however some accommodations, such as giving wait time for Student to process language and relay his thoughts and ideas clearly, are new. *Id.* at pp. 68-69, 107

75. The Service Delivery provides for:

- a. 90 minutes per month of direct occupational therapy services;
- b. 30 minutes per month of indirect occupational therapy services;
- c. 120 minutes per month of direct psychologist/social worker services;
- d. 60 minutes per month of indirect psychologist/social worker services;
- e. 240 minutes per month of direct specialized speech/language instruction;
- f. 15 minutes per month of indirect speech/language services;
- g. 900 minutes per week of direct specialized instruction (outside the general education classroom);
- h. 500 minutes per week of direct specialized instruction (inside the general education classroom); and
- i. 45 minutes per week of indirect specialized education services.

Id. at pp. 109-110.

76. To address Parents’ requests, the Service Delivery was updated to specify what the 900 minutes of direct specialized instruction would entail. *See id.* at p. 109. It indicates the

instruction breaks down to roughly 120 minutes each day of reading and writing instruction, and 60 minutes each day of math instruction, in a one-on-one and small group instructional model. *Id.* Within the 120 minutes of daily literacy services, 45 minutes of the instructional block will include direct reading instruction using a whole language and multisensory approach, and the remainder of outside instructional minutes will be spent supporting Student's current IEP goals and generalizing skills. *Id.*

77. The IEP Team determined it was appropriate for Student to be in the general education environment 40 to 79 percent of the time. *Id.* at p. 111.

78. The PWN section of the 2023 IEP documents information about other options considered by the IEP Team, to include Parents' request for 1:1 reading services and for an informal meeting every three months to review goal progress and consider changes to the 2023 IEP. *Id.* at pp. 112-113. The 2023 IEP indicates Parents' request for 1:1 reading was rejected because data demonstrated Student can make progress in a small group setting (so the service delivery reflected both 1:1 and small group instruction for reading intervention). *Id.* Parents' request for informal meetings every three months to consider changes to the 2023 IEP was rejected because IEP changes are an IEP Team decision (however District agreed to meet with Parents again in May of 2023 to review progress and indicated Parents can request a meeting at any time). *Id.*

79. The 2023 IEP was accompanied by a behavior intervention plan ("BIP") to address Student's behavioral needs. *Id.* at pp. 76-83.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District developed, reviewed, and revised an IEP, on or about January 25, 2022, that was tailored to meet Student's individualized needs, consistent with §§ 300.106, 300.320, and 300.324.

Parents' concerns regarding the 2022 IEP are twofold: (1) District failed to tailor the 2022 IEP to Student's individualized needs in reading and (2) District failed to find Student qualified for ESY.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under

the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

A. The 2022 IEP: Reading Services

i. IEP Development Process

An IEP is “the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017) (quoting *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). An IEP must contain a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*, to be provided to the child. 34 C.F.R. § 300.320(a)(4) (emphasis added). As this section makes clear, special education and related services must be based on peer-reviewed research only to the extent practicable. *Id.* “[P]arents, no matter how well-motivated, do not have a right under the [IDEA] to compel a school district to provide a specific program or employ a specific methodology” *Lachman v. Ill. State Bd. of Ed.*, 852 F.2d 290, 297 (7th Cir. 1988).

Here, as to the first prong of the *Rowley* standard, nothing in the Record indicates that the 2022 IEP did not comply with the IDEA’s procedural requirements regarding IEP development. The 2022 IEP was developed at a properly constituted IEP meeting, and it indicated, as required, the special education and related services, including reading, that were to be provided to Student. (FF #s 2-15). Therefore, the SCO finds and concludes that the development process for the 2022 IEP complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206. The SCO turns next to the question of whether the 2022 IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

ii. Substantive Adequacy of the IEP

Specialized Pull-Out Reading Services

Parents’ concern is that District failed to increase Student’s pull-out reading services to address slow reading progress. (FF # 16). The 2022 IEP provided for, in part, 900 minutes of specialized pull-out services in reading, math, and writing. (FF # 10). The SCO finds and concludes that the 2022 IEP was substantively appropriate in this respect for the following reasons.

First, at the time the 2022 IEP was developed, Student was making progress in reading, albeit slowly. (FF #s 17-18). Parents were unhappy with Student’s rate of progress in reading, but when the 2022 IEP was developed, Student was making progress in every area, including reading, as well as significant progress in some areas, such as behavior. (FF # 18-19).

Second, given the substantial amount of specialized pull-out instruction, the IEP Team had concerns that decreasing other services would be detrimental to Student's progress in other areas. (FF #s 20). There was also a concern that increasing Student's reading instruction might overburden him or cause a loss of motivation. (*Id.*).

Third, members of the IEP Team indicated that Student was accessing the curriculum during his time in general education, and that he benefitted from having the opportunity to practice generalizing skills outside of special education. (FF #s 21-22). The IEP Team was thus reluctant to increase Student's reading instruction at the expense of his general education time. (*Id.*).

Again, IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017). The *Andrew F.* standard addresses the amount of progress an IEP must be designed to enable a child to receive but it does not guarantee that a child will achieve a certain level of progress. *Id.* Thus, the fact that a student is making slow progress under an IEP does not necessarily mean the program falls short of the *Andrew F.* standard. *Johnson v. Boston Pub. Schs.*, 73 IDELR 31 (1st Cir. 2018). Otherwise stated, the IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017) (citing *Board of Education v. Rowley*, 458 U.S. 176 (1982)).

Overall, given Student's individualized needs, the SCO finds the reading services were reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. For these reasons, and in consultation with CDE Content Specialists 1 and 2, the SCO finds and concludes that the 2022 IEP—with respect to the quantity of reading services—was tailored to Student's individualized needs, as required by 34 C.F.R. §§ 300.320 and 300.324.

Reading Instruction Methodology

Parents' concern is that the 2022 IEP was insufficient to meet Student's individualized needs because the reading instruction Student received under the 2022 IEP was not from a CDE-approved reading intervention. (FF # 24).

The SCO finds and concludes that the literacy programming offered to Student under the 2022 IEP—specifically a combination of Orton Gillingham and Wilson—was peer reviewed to the extent practicable and met Student's individualized needs for the following reasons.

First, Student received 900 minutes of direct specialized instruction under the 2022 IEP outside of the special education classroom to support reading, math, and writing. (FF # 10). The 2022 specifically IEP required that he receive explicit, multisensory reading instruction. (FF # 25). Second, Wilson and Orton Gillingham are explicit, multisensory reading programs, and both are peer-reviewed to the extent practicable, established, scientifically and research based, and highly regarded in the educational community. (FF # 29). Third, Case Manager is trained in using

Wilson and Orton Gillingham, and has the experience to administer both programs successfully. (FF # 27). Finally, District and CDE specialists agree that Student's literacy needs require an explicit, multisensory reading program, as corroborated by the recommendations from the IEE report. (FF #s 25, 27, 29, 46).

For these reasons, and in consultation with CDE Content Specialists 1 and 2, the SCO finds and concludes that Student's specialized reading instruction was based on peer-reviewed research to the extent practicable and thus the 2022 IEP was tailored to Student's individualized needs, as required by 34 C.F.R. §§ 300.320 and 300.324.

B. The 2022 IEP: ESY Eligibility

Parents' concern is that District failed to find Student qualified for ESY services in reading during the development of the 2022 IEP when such services were necessary to the provision of FAPE. (FF # 30).

A school district must provide ESY services when a child's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2). ESY services cannot be limited to a particular category of disability or unilaterally limited in the type, amount, or duration of those services. 34 C.F.R. §300.106(a)(3). ESY services are not intended or required to maximize a student's educational benefit. *Cordrey v. Euckert*, 17 IDELR 104 (6th Cir. 1990), cert denied, 499 U.S. 938 (1991). Instead, ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10th Cir. 1990); *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010).

The 10th U.S. Circuit Court of Appeals has identified factors, other than regression and recoupment, that may be analyzed to determine whether ESY is a necessary component of FAPE. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10th Cir. 1990). These include: a child's degree of regression suffered in the past, the exact time of past regression, the ability of parents to provide educational structure at home, a child's rate of progress, a child's behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with nondisabled children, the areas of a child's curriculum that need continuous attention, a child's vocational needs, and whether the requested services are extraordinary for the child's condition as opposed to an integral part of a program for populations of students with the same disabling condition. *Id.*

Here, at Parents' request, the IEP Team reserved discussion about ESY until April 19, 2022, after spring break. (FF # 30). District invited Parents to the meeting and provided a link to attend, but Parents declined. (FF #s 33-34). At the meeting, District members of the IEP Team reviewed progress monitoring data and determined the data did not support regression or demonstrate that Student took an unreasonably long amount of time to recoup lost skills following extended

breaks. (FF # 19). District also examined predictive factors and determined they did not demonstrate a need for ESY (e.g., the nature and severity of Student’s disability and Student’s ability to interact with peers without disabilities, such as his siblings). (*Id.*).

After the meeting, District provided Parents with PWN of its decision, along with the Extended School Year Data Documentation form that was filled out during the meeting. (FF #s 36-38). This PWN contained all required information consistent with 34 C.F.R. § 300.503(b). (*Id.*).

For these reasons, the SCO finds and concludes, in consultation with CDE Content Specialist 2, that District properly determined that Student did not qualify for ESY over the summer of 2022, and that the 2022 IEP was therefore tailored to Student’s individualized needs, as required by 34 C.F.R. §§ 300.106, 300.320, and 300.324.

Conclusion to Allegation No. 2: District provided Parents meaningful participation in the development, review, and revision of Student’s IEP in the IEP Team meetings held on January 11, January 25, and February 15, 2023, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

Parents’ concern is that they were denied meaningful participation in the development, review, and revision of the 2023 IEP.

IDEA's procedural requirements for developing a child’s IEP are designed to provide a collaborative process that “places special emphasis on parental involvement.” *Systema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, IDEA requires that parental participation be meaningful, to include carefully considering a parent’s concerns for enhancing the education of his or her child in the development of the child’s IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than “mere form.” *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.* Evidence that a district “was receptive and responsive at all stages” to the parents’ position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, the IEP Team met to develop the 2023 IEP over three meetings on January 11, January 25, and February 15, 2023. (FF # 47). Upon review of the recordings and transcripts of these meetings, the SCO finds and concludes that Parents were afforded meaningful participation.

First, at all three meetings, Parents and Parents' advocate were given ample opportunity to provide input, and the IEP Team spent extensive time discussing Parents' concerns and considering Parents' requests. (FF #s 49-68). Second, District met with Parents over the course of three meetings, each of which lasted over an hour, reviewing the 2023 IEP and Student's progress monitoring data. (*Id.*). Third, throughout each meeting, District members of the IEP Team were responsive to Parents' input, and the IEP Team asked questions of and solicited input from Parents at each part of the 2023 IEP before moving on to a new section. (*Id.*).

Finally, although the IEP Team did not accept all of Parents' requests regarding the 2023 IEP (e.g., for additional pull-out reading services and for the 2023 IEP to require 1:1 reading instruction), many of Parents' requests, such as for a goal on reading comprehension, were incorporated into the 2023 IEP. (FF # 58). And, in instances where the IEP Team disagreed with Parents' requests, those requests and the IEP Team's reason for rejecting those requests, were documented in the 2023 IEP. (FF # 72, 78).

For these reasons, the SCO finds and concludes that District afforded Parents meaningful participation in the development of the 2023 IEP, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

Conclusion to Allegation No. 3: District developed, reviewed, and revised an IEP, on or about February 16, 2023, that was tailored to meet Student's individualized needs, consistent with §§ 300.320, 300.324, and 300.502(c)(1).

Parents' concerns regarding the 2023 IEP are twofold: (1) District failed to include a statement of the special education and related services to be provided to Student and (2) District failed to consider the results of the IEE in the development of the 2023 IEP.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

A. IEP Development

i. Statement of Special Education and Related Services

Special education and related services must be based on peer-reviewed research only to the extent practicable. 34 C.F.R. § 300.320(a)(4). An IEP is not required to identify specific curriculum or methodology for instruction. *Id.* “[P]arents, no matter how well-motivated, do not have a right under [IDEA] to compel a school district to provide a specific program or employ a specific methodology” *Lachman v. Ill. State Bd. of Ed.*, 852 F.2d 290, 297 (7th Cir. 1988).

Here, the 2023 IEP was developed by a properly constituted IEP Team over three meetings on January 11, January 25, and February 15, 2023. (FF # 47). The 2023 IEP described the special education and related services which would be provided to Student. (FF #s 69-79). At Parents’ request, the IEP Team delineated how much of the specialized instruction will be spent on reading, writing, and math skills. (FF # 76). The 2023 IEP also specifies that 45 minutes of instruction during each literacy instruction block will be spent on multisensory or whole language reading instruction. (*Id.*).

Moreover, there is no requirement that the 2023 IEP describe with specificity what methodology will be used during Student’s reading instruction. *See* 34 C.F.R. § 300.320(a)(4). Indeed, the SCO finds, in consultation with CDE Content Specialist 2, that writing a specific methodology into an IEP is not advisable because it does not allow flexibility in the delivery of instruction and can reduce a teacher’s ability to tailor instruction to the needs of a specific student, making the instruction less effective. While Parents here may have wished for a specific methodology to be specified in the 2023 IEP, this goes beyond what is required by IDEA.

Thus, as to the first prong of the *Rowley* standard, the SCO finds and concludes that the 2023 IEP complied the IDEA’s procedural requirements regarding IEP development in this respect.

ii. Evaluation Results

In developing a child’s IEP, the IEP Team must consider the strengths of the child; the concerns of the parents of enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a). The parents of a child with a disability have the right to obtain an IEE at public expense if the parent disagrees with the evaluation obtained by a public agency. *Id.* at § 300.502(b). If a parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at public expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of FAPE to the child. *Id.* at § 300.502(c).

Here, the 2023 IEP was developed over three properly constituted IEP meetings in January and February 2023. (FF # 47). The IEE report was provided to District the night prior to the January 11, 2023 IEP meeting, Case Manager shared the IEE report with all District members of the IEP Team prior to the meeting, and District staff discussed the IEE “via text.” (FF # 45).

At the start of the January 11 meeting, Director of Special Education confirmed that all District staff received the IEE report, and the IEE report was referenced by Parents and District staff at various points throughout the three IEP meetings. (FF #s 49-68). Although some of the recommendations from the IEE report (such as for standing quarterly IEP meetings) were rejected, other recommendations, like for Student to be allowed to answer questions orally, were incorporated into the 2023 IEP. (FF #s 49-68). During interviews, all District staff reported that they read the IEE report prior to the IEP meetings, and that the information in the IEE report largely corroborated what was already known about Student. (FF # 46).

Thus, as to the first prong of the *Rowley* standard, the SCO finds and concludes that the 2023 IEP complied the IDEA's procedural requirements regarding IEP development in this respect.

C. Substantive Adequacy of the IEP

The SCO turns next to the question of whether the 2023 IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

Here, Student made progress toward 12 out of his 14 annual goals under the 2022 IEP. (FF # 70). Although Student did not achieve his annual goals in reading, those goals were ambitious, and Student still demonstrated progress in reading, albeit not sufficient to achieve his reading goals. (FF # 53-54).

The IEP Team met in January 2023 to timely review and revise the 2022 IEP. (FF # 47). To address Student's lack of expected progress, the IEP Team adjusted his annual reading goals, added new annual reading goals (including a goal around reading comprehension per Parents' request), and modified his instructional methodology (adding Edmark to supplement the Wilson and Orton Gillingham Student was already receiving). (FF #s 61-63, 76). The 2023 IEP was recently developed and implemented, thus there are no progress reports available to evaluate Student's progress. *See* (FF # 47). Overall, the SCO finds, in consultation with CDE Content Specialists 1 and 2, that the IEP Team reviewed and revised the 2022 IEP to address, in part, any lack of expected progress toward annual goals, the results of the IEE, and information provided by Parents.

For these reasons, the SCO finds and concludes that the 2023 IEP was tailored to Student's individualized needs, as required by 34 C.F.R. §§ 300.320, 300.324, and 300.502.

REMEDIES

The SCO concludes that District did not violate the requirements of IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 18th day of April, 2023.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-77

Response, pages 1-17

- Exhibit A: IEP(s)
- Exhibit B: none
- Exhibit C: NOM(s)
- Exhibit D: IEP Meeting Recordings/Transcripts (combined)
- Exhibit E: Progress Monitoring
- Exhibit F: Service Logs
- Exhibit G: Grades and Attendance
- Exhibit H: Evaluation Reports (including IEE)
- Exhibit I: Academic Calendar
- Exhibit J: Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L/M: none (embedded in Response)
- Exhibit N: Verification of Delivery to Parents
- Exhibit O: Additional Documentation
- Exhibit P: Shared Google Document

Reply, pages 1-24

- Exhibit 1: Email re Medication
- Exhibit 2: 2018 IEP
- Exhibit 3: 2021 Progress Report
- Exhibit 4: Info re BAS
- Exhibit 5: CDE BAS Analysis
- Exhibit 6: Report re Diagnostic Accuracy of Oral/Reading Inventory Levels
- Exhibit 7: Studies re Wilson Reading
- Exhibit 8: Wilson Reading System Program Description
- Exhibit 9: 2023 iReady
- Exhibit 10: Working Memory and Dyslexia Webpage
- Exhibit 11: 2022 ESY Documentation
- Exhibit 12: IEE Corrections
- Exhibit 13: OT Samples
- Exhibit 14: Recording of Student Reading Book 1
- Exhibit 15: Recording of Student Reading Book 2
- Exhibit 16: Notes re Recording of Student Reading Book 1
- Exhibit 17: Working Google Document (re 2023 IEP)
- Exhibit 18: Parent Table re Student's Progress

Telephone Interviews

- Case Manager: March 23, 2023
- Director of Special Education: March 23, 2023
- Parents: March 30, 2023
- School Psychologist: March 22, 2023
- SLP: March 22, 2023