

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

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**State-Level Complaint 2021:504**  
**Douglas County School District RE-1**

**DECISION**

**INTRODUCTION**

On February 16, 2021, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Douglas County School District RE-1 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one (1) allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

On February 24, 2021, upon the agreement of both parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in impasse and, on March 26, 2021, the SCO resumed the investigation.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), 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 16, 2020 through February 16, 2021 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 Student has been denied a Free Appropriate Public Education (“FAPE”) because the District:

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<sup>1</sup> 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.

1. Failed to develop an IEP that was tailored to meet Student’s individualized needs during the 2019-2020 academic year, specifically as follows:
  - a. Special education and related services in the area of literacy were not based on peer-reviewed research to the extent practicable, from February 16, 2020 to June 8, 2020, consistent with 34 C.F.R. § 300.320(a)(4); and
  - b. Extended School Year (“ESY”) services in the area of literacy were not based on peer-reviewed research to the extent practicable, from June 8, 2020 through August 14, 2020, consistent with 34 C.F.R. §§ 300.106 and 300.320(a)(4).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>2</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. During the 2019-2020 academic year, the timeframe relevant to this investigation, Student attended sixth grade at a District middle school (“School”). *Interviews with Special Education Teacher, District Literacy Specialist (“Literacy Specialist”), and Parent.* Student was eligible for special education and related services in sixth grade under the Specific Learning Disability (“SLD”) category. *Id.*
2. Student is a creative and kind young man who gets along with other students and enjoys participating in groups. *Interviews with Parent and Special Education Teacher.* Student participates in athletics and enjoys playing with Legos at home. *Interview with Parent.*
3. Student’s greatest academic challenges center on basic reading and writing skills. *Interviews with Special Education Teacher, Literacy Specialist, and Parent.* Within reading and writing, he struggles most with phonics, decoding, and spelling. *Interview with Literacy Specialist.*
4. During elementary school, Student was diagnosed by a private provider with dyslexia, dysgraphia, and combined-type Attention Deficit Hyperactivity Disorder (“ADHD”). *Interview with Parent.* Student has received weekly private literacy tutoring through the Susan Barton literacy program since elementary school. *Id.*

#### **B. Reading Assessments in August and September of 2019**

5. At the start of sixth grade, in August of 2019, Student was administered standard iReady reading assessments and the results were inconsistent with iReady scores obtained at the

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire record.

end of fifth grade. *Exhibit F*, p. 1; *Exhibit A*, p. 8. iReady reading assessments have a low threshold for testing students out of phonics and phonemic awareness when they reach middle school, so students sometimes test out of subjects based on grade-level rather than ability. *Interview with Literacy Specialist*. Parent expressed concern that Student's data from elementary school was not representative of his needs. *Exhibit A*, pp. 18-19. Additional reading assessments were needed to determine if he tested out in the areas of phonics and phonological awareness because of ability or grade level. *Interview with Literacy Specialist*.

6. On September 6, 2019, Student was administered a reading and phonics inventory using the Read180 Diagnostic. *Exhibit C*, p. 31. The reading and phonics inventory demonstrated Student was at a "Beginning" Phonics Inventory Decoding Status level, and that Student had a Lexile Level of 218. *Id.*
7. On September 27, 2019, Student was administered the Woodcock Johnson Tests of Achievement (Reading Battery) – Fourth Edition ("Woodcock Johnson IV"). *Id.* at p. 29. Results of the Woodcock Johnson IV indicated Student scored in the low average range in basic reading skills, low average in reading fluency, low average in reading rate, and low in phoneme-grapheme knowledge. *Id.* at pp. 29, 32.
8. In addition to these evaluations, the District compiled grades and observational data obtained from Special Education Teacher, Student's primary literacy instructor throughout the 2019-2020 academic year, on October 3, 2019. *Id.* at pp. 30-31; *Interview with Special Education Teacher*.
9. An IEP meeting was scheduled for October 8, 2019 to discuss the results of the September 2019 reading assessments, Student's progress, and possible changes to Student's IEP. *Interviews with Literacy Specialist and Parent; see Exhibit A*, pp. 53-84; *Exhibit 4*, p. 2.

### **C. Revisions to Student's May 21, 2019 IEP**

10. On October 8, 2019, the District convened a properly constituted IEP team. *Interviews with Literacy Specialist and Parent; see Exhibit A*, pp. 53-84; *Exhibit 4*, p. 2. During Student's sixth-grade year, his May 21, 2019 IEP ("May 2019 IEP") was in effect. *Exhibit A*, pp. 1-26.
11. The May 2019 IEP detailed Student's present levels of performance in literacy, documenting that he tested out in the areas of phonics, high frequency words, and phonological awareness on iReady reading assessments administered at the end of fifth grade. *Exhibit A*, p. 8.
12. The May 2019 IEP contained annual goals in reading, writing, communication, social/emotional wellness, and self-determination. *Id.* at pp. 17-21. Student's goal in reading was designed to increase his ability to summarize main ideas, answer factual and inferential

questions, and use text evidence to answer vocabulary questions while reading informational and narrative texts given small group direct instruction. *Id.* at pp. 73-74.

13. The May 2019 IEP provided for 375 minutes a month of specialized literacy instruction in a co-taught language arts class, taught in part by Special Education Teacher. *Interviews with Special Education Teacher and Parent.* The May 2019 IEP further provided for 60 minutes a month of direct speech-language services outside the classroom in a small group or individual setting from either a speech-language pathologist or a speech language pathologist assistant, and Student received core reading instruction through the regular sixth-grade curriculum. *Exhibit A*, p. 24; *Interview with Special Education Teacher.*
14. The IEP team discussed the results of the September 2019 reading assessments and determined that Student's score on the phonics inventory indicated a need for specialized phonics instruction. *Interview with Literacy Specialist.* Specifically, Student scored at the beginning decoder range with low fluency on the Phonics Inventory, demonstrating a gap in phonics, with some success in phonemic awareness. *Id.* Since phonics was not normally taught in the co-taught language arts class, the IEP team decided a change to the May 2019 IEP, specifically literacy programming, was appropriate. *Id.*
15. Parent asked about structured literacy programs, and inquired about the possibility of Orton Gillingham instruction, as Student received structured literacy instruction from an Orton Gillingham trained specialist during fifth grade. *Interview with Parent.* Although the District employs some Orton Gillingham trained instructors, School did not employ an Orton Gillingham specialist. *Interview with Literacy Specialist.* The IEP team indicated Special Education Teacher is trained in other similar structured literacy programs, such as the Wilson method and System 44. *Interviews with Special Education Teacher and Literacy Specialist.* Under District policy, instruction and interventions are to be research-based, systematic, and explicit to the extent possible. *Exhibit J*, p. 46.
16. The IEP team modified the May 2019 IEP service delivery minutes in two respects: (1) an increase in direct speech language services from a speech-language pathologist from 60 minutes per month to 90 minutes per month and (2) a change from 375 minutes per month of specialized literacy instruction inside the general education classroom to 230 minutes per week of specialized instruction outside the general education classroom for language arts strategies, provided by Special Education Teacher (a moderate needs interventionist). *Exhibit A*, pp. 80-81; *Interview with Special Education Teacher*; see *Exhibit C*, pp. 33-55. The specific method of literacy instruction was not written into the IEP. See *Exhibit A*, pp. 53-84.
17. The May 2019 IEP contained a number of accommodations related to literacy, including extended time for assessments, assignments, and tests; choice of ways to respond in class (i.e., verbal response instead of writing); and access to multi-sensory scientifically research-based approaches for reading and writing. *Id.* at p. 25.

18. The May 2019 IEP provided that Student’s least restrictive environment (“LRE”) would be the general education classroom at least 80% of the time. *Id.* at p. 82. Student’s LRE under the May 2019 IEP was not adjusted during this meeting. *Id.*
19. Parent’s concern with Student’s special education programming is that the System 44 program has not been researched through peer reviewed studies as an effective standalone form of instruction for students with dyslexia. *Complaint*, p. 4. The language arts strategies class, also taught by Special Education Teacher, used, among other teaching methods, a form of instruction known as System 44, which incorporates direct instruction in phonics and phonemic awareness. *Interviews with Special Education Teacher and Literacy Specialist.*

#### **D. System 44**

20. System 44 is a foundational reading program designed for the most challenged readers in grades 3-12+. *See Exhibit K*, p. 13. Launched in 2008, System 44 is considered by specialists both at the CDE and within the District to be a structured literacy approach because the program is an explicit, systematic teaching method that focuses on phonological awareness, word recognition, phonics, decoding, syntax, and spelling. *Interviews with CDE Specialist and Literacy Specialist; see Exhibit K*, pp. 1-126.
21. Often integrated with the Read180 partner program—a literacy intervention that offers guidance in mastering oral reading fluency, academic language, text comprehension, writing, and grammar skills—System 44 also provides support in reading comprehension, fluency, vocabulary, oral development, and sentence construction. *See CDE Exhibit 1.*
22. Although not currently present on the CDE’s 2020 Advisory List of Instructional Programming, System 44 was previously endorsed as an approved program in prior years. *CDE Exhibit 2; CDE Exhibit 3.* In 2020, the CDE performed a review of instructional programs with a new rubric, and all previous vendors were required to reapply for inclusion in the updated list. *CDE Exhibit 2.* The CDE’s 2020 review of System 44 was halted given restrictions for in-person gatherings due to COVID-19.<sup>3</sup> *Id.*
23. System 44 is considered by specialists, both at the CDE and within the District, to be an appropriate form of literacy instruction for students with SLD in reading and writing, especially when paired with other forms of instruction, such as the Wilson method. *Interviews with Literacy Specialist and CDE Specialist.* Like other well-respected and established structured literacy programs such as Wilson or Susan Barton, System 44 teaches foundational literacy skills and contains all the necessary components of an effective literacy program – including explicit instruction in phonics and phonemic awareness. *Id.*

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<sup>3</sup> See Colo. Exec. Order No. D 2020 007 (Mar. 18, 2020), [https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20007%20Ordering%20Suspension%20of%20Normal%20In-Person%20Instruction\\_0.pdf](https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20007%20Ordering%20Suspension%20of%20Normal%20In-Person%20Instruction_0.pdf).

24. The efficacy of the System 44 program for students with foundational reading and writing deficiencies has been assessed through a variety of evidence-based, peer reviewed research studies. *See generally Exhibits K-Q.* Several studies have also addressed the impact of System 44 on students with SLD in reading and/or writing. *Exhibit K*, pp. 42-43, 48-49, 76, 90-91, 106-107; *Exhibit O*, pp. 1-2; *Exhibit P*, pp. 1-38; *Exhibit Q*, pp. 1-12.
25. One study that examined the efficacy of System 44 on students with SLD occurred during the 2009-2010 academic year in the Central Indiana School District. *Exhibit K*, pp. 42-43. At the time, the Central Indiana School District served approximately 12,000 students, and the district implemented System 44 as a standalone program for 159 students in one elementary school, one sixth grade academy, one middle school, and one high school. *Id.* at p. 43. Students were selected to participate in the intervention program if they scored below 400 Lexile Level on the Reading Inventory and exhibited poor word-reading skills on the Reading Inventory and Phonics Inventory. *Id.* Approximately 31% of the System 44 students were students with disabilities, with the most common classification being SLD. *Id.*
26. Students with disabilities in the Central Indiana study demonstrated significant growth on the Reading Inventory from fall to spring, averaging gains of 112 Lexile Level. *Id.* Students in the study also showed statistically significant gains on the Woodcock Johnson Test of Achievement – Third Edition (“Woodcock Johnson III”). *Id.*
27. Another study that examined the efficacy of System 44 for students with SLD occurred in the Biddeford School Department of Maine. *Id.* at 76. The Biddeford School Department enrolled approximately 2,700 K-12 students during the 2009-2010 academic year, and the district piloted the System 44 program in grades 4-8 to students who scored low on reading assessments. *Id.* Most of the System 44 students were students with disabilities, with the majority classified as having SLD, autism, or an emotional disability. *Id.* All classrooms implemented System 44 as a standalone model during a 45- or 90-minute daily classroom period. *Id.* Students within the study showed overall significant gains in reading comprehension, with an average increase of 140 Lexile Level. *Id.*
28. The specific impact of System 44 on students with dyslexia is currently being examined by a California study. *Exhibit O*, pp. 1-2. The study directly examines the impact of System 44 on students with dyslexia who were identified as struggling with foundational reading skills at the Charles Armstrong School in San Francisco. *Id.* at pp 2. All students selected for the study were in grades 3-7, had dyslexia, and were identified as struggling with foundational reading skills during the 2018-2019 academic year. *Id.* Students in the study completed a Phonics Inventory and were given approximately 20 minutes of System 44 daily in conjunction with core reading instruction in the classroom using the Wilson curriculum and System 44 program materials. *Id.*

29. Although still in progress, the first-year results of the students in the study showed statistically significant improvements in English Language Arts and Literacy skills after one year. *Id.* On average, System 44 students showed an increase of 127% in Phonics Inventory reading fluency scores, as well as significant increases in Phonics Inventory sub-scores, indicating growth in decoding skills rather than compensated memorization, as is often seen in students with dyslexia. *Id.* Students within the program also showed an average increase of 160% in oral fluency as measured by the Read Naturally Reading Fluency Progress Monitor, demonstrating that using the software-only portion of the System 44 program to provide a reading intervention is an effective method of increasing literacy for students struggling to achieve grade level English Language Arts proficiency. *Id.*
30. In this case, all District middle schools offered Read180 and System 44 as of the 2019-2020 academic year. *Interviews with Literacy Specialist and Special Education Director.* School was the first middle school within the District to use System 44, and other middle schools within the District adopted System 44 because students at School were performing better on reading assessments such as iReady than students in other District middle schools that did not use System 44. *Interview with Literacy Specialist.*
31. System 44 also provides teachers with more support than other former literacy programs, and further includes texts that meet secondary students' interest levels, which can be difficult to find for remedial literacy programs aimed at secondary students. *Id.* Since the System 44 program was adopted District-wide, the District has seen improvements in reading and writing performance for students using the program. *Id.*

#### **E. Application of System 44 from October 2019 – February 2020**

32. As a result of the October 8, 2019 changes to the May 2019 IEP, Student began using System 44 within the language arts strategies class taught by Special Education Teacher on October 23, 2019. *Interviews with Special Education Teacher, Literacy Specialist, and Parent.* Student took a placement exam to determine his starting place within System 44 and was ultimately started at the beginning level based on his score. *Interviews with Literacy Specialist and Parent.*
33. The language arts strategies class used a blended model, meaning students rotated between several different forms of instruction during each lesson block. *Interview with Special Education Teacher and Literacy Specialist.* Lesson blocks would start with approximately 25 minutes of whole group instruction (often Read180), followed by a rotation between small group instruction (using the Wilson method or System 44), independent reading, and personalized computer instruction using the System 44 computer program. *Id.*

34. From October 23, 2019 through February 25, 2020, Student received daily instruction using System 44, as well as other forms of instruction within the language arts strategies class, including weekly instruction from Special Education Teacher using the Wilson method. *Interviews with Special Education Teacher and Literacy Specialist.*
35. Parent's concern is that the System 44 program is inferior to "structured literacy" programs for students with dyslexia. *Complaint*, p. 4; *Interview with Parent*. However, the SCO finds that System 44 is considered by specialists at both the CDE and within the District to be a structured literacy program, akin to well-regarded and established programs like Susan Barton and the Wilson method. *Interview with Literacy Specialist and CDE Specialist.*
36. Special Education Teacher, the language arts strategies class instructor, is a moderate needs interventionist with special training in both the Wilson method and System 44. *Interview with Special Education Teacher*. Although System 44 uses different terminology and approaches to literacy instruction from other structured literacy programs, System 44 teaches the same foundational literacy skills that are taught through other structured literacy programs, including phonics and phonemic awareness. *Interviews with Special Education Teacher, Literacy Specialist, CDE Specialist.*
37. As Student worked through the System 44 program from October 23, 2019 through February 25, 2020, Parent became concerned about Student's progress. *Exhibit A*, pp. 89; *Interviews with Special Education Teacher, Literacy Specialist, and Parent*. Student remarked to Parent that the System 44 program felt like a "baby class", and that he would "puff air" into the microphone while using the computer component of System 44 rather than making the sounds prompted by the program. *Interview with Parent*. Parent expressed her concerns to District staff, and a meeting was scheduled for February 25, 2020 to evaluate Student's progress. *Id.*

#### **F. The February 25, 2020 Meeting**

38. On February 25, 2020, Parent, IEP and Assessment Specialist, Literacy Specialist, Moderate Needs Interventionist, and School Social Worker, met to discuss Parent's concerns regarding Student's progress within System 44. *Exhibit C*, pp. 2; *Exhibit A*, pp. 94. This was not an official IEP team meeting, and no changes were made to the May 2019 IEP during this meeting. *See Exhibit G*, p. 2; *see Exhibit 14*.
39. During the February 25, 2020 meeting, given Parent's concerns, the meeting participants decided to update Student's progress based on his level of completion within the Susan Barton program that he received through his private tutor. *See Exhibit 14; Interviews with Literacy Specialist and Parent*. Changes were made only to Student's programming within System 44 at this meeting. *See Exhibit 14*.



40. After the meeting, Parent provided Literacy Specialist with information regarding Student's level of progress from his private tutor in the Susan Barton program. *Interviews with Literacy Specialist and Parents; Exhibit H*, pp. 3-6. Using the Scope and Sequence materials for the two programs, Literacy Specialist was able to estimate what level of System 44 would correspond with his level of completion in the Susan Barton program. *Interviews with Literacy Specialist and Parent; Exhibit H*, pp. 3-6. Although the methodology and terminology of the two programs is different, both teach similar skills, and Literacy Specialist was able to correlate them by comparing the skills he was being taught through the language arts strategies class with those being taught by his private tutor. *Id.*
41. Literacy Specialist recommended adjusting Student to level 19 in System 44 to match his progress in Susan Barton, but the meeting participants instead decided to adjust him to level 17 to allow time to gain confidence based on input from Parent. *Interviews with Literacy Specialist and Parent*. Literacy Specialist indicated that the System 44 program allowed fast tracking, and Student could fast track his way to level 19. *Interview with Literacy Specialist*.
42. Parent also expressed some concern that Student's ADHD might be causing attention issues that prevented him from doing well in System 44. *Interview with Literacy Specialist*. To accommodate Student's possible attention issues within the program, the fluency portion of the System 44 program was removed so that Student would only be graded for accuracy on assessments and would not be penalized for attention issues. *Id.*
43. Student continued with System 44 until late March of 2020, when stay-at-home orders caused the District to move to remote learning. *Interviews with Special Education Teacher, Literacy Specialist, and Parent*. The District offered Student continued literacy instruction through System 44 during remote learning, but Parent opted to have Student continue instead with the private tutor and increased his weekly tutoring minutes by approximately 50-100 minutes. *Exhibit E*, pp. 1-2; *Interview with Parent*. Student continued with his private tutor until May 4, 2020, the date of his annual IEP review meeting. *Interview with Parent*.

#### **G. The May 4, 2020 IEP Team Meeting**

44. On May 4, 2020, a properly constituted IEP team met to perform an annual review of Student's progress and discuss the possibility of ESY services. *Exhibit C*, pp. 5.
45. The IEP team found Student showed progress on both of his annual reading goals and his annual writing goal. *Interviews with Special Education Teacher and Literacy Specialist; see Exhibit A*, pp. 90-93; *Exhibit C*, pp. 7-12. Student's score on the Reading Inventory Assessment also increased 99 points from December of 2019. *Id.* at p.91; *Exhibit C*, p. 7.

46. Regarding Lexile Level, as reflected by the Reading Inventory, Student showed improvement. *See Exhibit C*, pp. 77-78. On September 6, 2019, Student's Lexile Level was 218. *Id.* at p. 77. On October 22, 2019, the day before Student began using System 44, Student's Lexile Level was 237. On February 25, 2020, after four months of instruction in the language arts strategies class, Student's Lexile Level was 491, a net increase of 254 points since Student began with System 44. *See Id.*
47. On the iReady reading assessments, Student's growth during the 2019-2020 academic year was an improvement over the previous year. *See Exhibit A*, p. 5; During the 2018-2019 academic year, Student's iReady score was a 508 at the beginning of the year and a 511 at the end of the year (a net increase of 3 points). *See Exhibit A*, p. 5. By contrast, during sixth grade, Student scored a 511 upon entering School and a 583 by the end of the academic year (an increase of 72 points). *See Exhibit A*, p. 88; *Interview with Literacy Specialist*.
48. In terms of grades in Language Arts, Student's performance showed growth over the 2019-2020 academic year. *See Exhibit A*, pp. 90. Student's grades in Language Arts were C/B first quarter, B/B second quarter, and A/A third quarter, showing a pattern of improvement. *Id.*
49. The IEP team discussed the possibility of ESY services based on progress data. *Id.* at pp. 94, 100, 102. The IEP team reviewed Student's data and determined it did not indicate a need for ESY because he did not experience severe regression on his IEP goals and objectives, and he did not require an unreasonably long period of time to relearn previously learned skills. *Exhibit A*, p. 98. Parent nonetheless requested ESY, and after lengthy discussion, the IEP team ultimately agreed to offer ESY during the summer of 2020 to maintain reading skills. *Exhibit I*, pp. 1-2; *Exhibit A*, pp. 94, 100; *Interview with Parent*.
50. The May 2019 IEP was modified to include ESY services to maintain one of Student's two annual reading goals. *Exhibit A*, p. 100. Student's May 4, 2020 IEP indicated ESY would be provided but noted that the IEP team had concerns as it thought Student might benefit more from summer activities provided independent of School to promote skills. *Id.* Under the District's offer of FAPE for ESY services, Student was to receive four hours of specialized instruction weekly from a special education teacher. *Exhibit I*, p. 4.

#### **H. Extended School Year Services during Summer 2020**

51. During the summer of 2020, when ESY was set to begin, ESY Instructor contacted Parent regarding Student's services. *Exhibit 1*, p. 6; *Interview with Parent*. Parent questioned ESY Instructor regarding the programs available during ESY, as well as ESY Instructor's teaching experience. *Exhibit 1*, p. 6; *Interview with Parent*. Parent was concerned the proposed ESY services were unacceptable because she did not feel the program offered a "structured literacy" approach appropriate for students with dyslexia, and declined ESY services, instead continuing Student's private tutoring during the summer of 2020. *Exhibit 1*, p. 6; *Interview*

*with Parent*. Student did not participate in any ESY services offered by the District. *Interview with Parent*.

52. On August 14, 2020, Parent informed School that Student would be disenrolling from the District and enrolling in a private school the following year. *Interview with Parent; Complaint*, p. 5; *see Exhibit 6*, p. 1; *Exhibit 8*, p. 1. Student did not attend School during the 2020-2021 academic year. *Interview with Parent*.

### **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 an IEP that was tailored to meet Student’s individualized needs during the 2019-2020 academic year. Special education and related services in the area of literacy were based on peer-reviewed research to the extent practicable.**

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. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Developing an IEP that is reasonably calculated is a “fact-intensive exercise” that is “informed not only by the expertise of the school officials, but also by the input of the child’s parents or guardians.” *Id.* at 999.

An IEP must contain—among other components—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 a 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. Moreover, the IEP is not required to identify specific curriculum or methodology for instruction. “[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).

As long as the IEP is procedurally compliant, the specialized knowledge and expertise of the professional educators can reasonably be relied on in determining that the resulting IEP is substantively appropriate. *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1318 (10th Cir. 2008) (relying on *Board of Educ v. Rowley*, 458 U.S. 176 (1982)). “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. The absence of a bright-line rule should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Endrew*, 137 S. Ct. at 992 (citing *Rowley*, 458 U.S. at 206).

“[C]ourts must be careful to avoid imposing their view of preferable education methods upon the states.” *Joshua v. Rocklin Unified Sch. Dist.*, No. CV 07-01057, 2008 WL 906243, at \*3 (E.D. Cal. Mar. 31, 2008). The analysis is not on whether the District employed a methodology preferred by a parent, but rather whether the District employed an appropriate methodology. See *Stanley C. v. M.S.D. of Sw. Allen Cty. Sch.*, 628 F. Supp. 2d 902, 967 (N.D. Ind. 2008). If a school’s methodology is appropriate, the student is not denied a FAPE simply because the parents prefer a different method. *Id.*

An educational approach proposed by a school district for teaching a child with a disability meets the legal standard for appropriateness if: (a) the school district can articulate its rationale or explain the specific benefits of using that approach in light of the particular disabilities of the child; (b) the teachers and special educators involved in implementing that approach have the necessary experience and expertise to do so successfully; and (c) there are qualified experts in the educational community who consider the school district’s approach to be at least adequate under the circumstances. *Id.* (citing *J.P. ex rel. Popson v. W. Clark Community Schools*, 230 F.Supp.2d 910 (S.D. Ind. 2002)).

#### **A. Suitability of System 44**

Parent’s position is that System 44 is not a structured literacy program, and that System 44 is not peer reviewed (or at least not peer reviewed as a standalone literacy program for students with dyslexia). (FF #19, 35). The SCO finds and concludes that literacy programming offered to Student, specifically System 44 in the blended model language arts strategies class, was both peer-reviewed to the extent practicable and appropriate given Student’s individualized needs.

Student received instruction through System 44 as part of his specialized literacy services from October of 2019 through March of 2020 under the May 2019 IEP. (FF #34, 43). The May 2019 IEP (as amended on October 8, 2019) provided for 230 minutes of specialized literacy instruction outside the general education classroom in School’s language arts strategies class. (FF #16). Although the May 2019 IEP does not explicitly mention System 44, Student’s time in the language arts strategies class was spent learning through the System 44 program, as well as through Read180 and Wilson. (FF #16, 19, 33-34).

The language arts strategies class uses a blended model, so Student received instruction through System 44 during small group instruction and personalized computer instruction rotations, as well as instruction through Read180 and Wilson during whole and small group instruction. (FF #33). The appropriateness of Student’s literacy programming, in particular System 44, can be demonstrated by Student’s progress during the 2019-2020 academic year while attending the language arts strategies class. (FF #45-48).

From elementary school to the present, Student has received private tutoring on a weekly basis through the Susan Barton program. (FF #4). During Student’s fifth grade year, Student also

received specialized instruction using the Orton Gillingham structured literacy program. (FF #15). Over the course of Student's fifth grade, however, Student only demonstrated a 3-point net increase in his iReady reading assessment scores. (FF #47).

By contrast, during the 2019-2020 academic year, Student showed a net improvement of 72-points on iReady reading assessments, suggesting Student's literacy instruction had a positive impact. *Id.* This is further demonstrated by Student's Lexile Level, which only increased 19 points from September to October of 2019 before Student's entry into the language arts strategies class. (FF #46). From the time that Student entered the language arts strategies class to the time when Student changed to private tutoring during remote learning, Student's Lexile Level increased 254 points, a marked improvement in rate of growth. *See id.* The timing of the increased growth rate suggests Student's growth can be attributed to his entry into System 44 and the language arts strategies class. *See id.* Student also showed progress on his annual goals in reading and writing during the annual review of his IEP in May 2020. (FF #45).

During interviews, District staff were able to articulate a reasonable rationale for choosing the language arts strategies class and System 44 for Student's literacy programming. (FF #14-16, 19). District staff identified specific areas of need, based on Student's assessments, that System 44 addressed, such as phonics. (FF #14). Special Education Teacher is trained in using System 44, as well as the Wilson method, and therefore has the experience to administer both programs successfully. *See* (FF #15). During lesson blocks, Student not only received specialized instruction daily using System 44, but he also received whole and small group instruction using other methodologies, such as Read180 and Wilson. (FF #19, 33-34).

Specialists at both the District and the CDE agree the programming offered by the District was appropriate for a student with SLD in reading and writing who struggled with phonics – especially when paired with other structured literacy methodologies. (FF #23). Specialists at both the District and the CDE likewise agree that System 44 qualifies as a structured literacy program, akin to established and well-regarded programs like Wilson and Susan Barton. (FF #20, 23, 35).

System 44 has a substantial research base, it is respected within the special education field, and it is in frequent use nationally. (FF #20-29). Additionally, Student was not receiving System 44 as standalone literacy instruction – he was also receiving instruction in whole group and small group settings using the Read180 and Wilson teaching methods. (FF #19, 33-34).

As the Record demonstrates, System 44's research base includes studies that analyze the program's effectiveness with students with SLD in reading and writing. (FF #24-29). Like Student, the students in the cited studies struggled with foundational reading and writing skills and exhibited low Lexile Level, and showed growth using System 44, either as a standalone program or in combination with other literacy instruction such as the Wilson method. (FF #24-

29, 45-48). Like the students in those studies, Student showed growth while using the program – evidence that the instruction was effective. *See id.*

For these reasons, the SCO finds and concludes that the District developed an IEP that was tailored to meet Student’s individualized needs during the 2019-2020 academic year because the District provided special education and related services for literacy based on peer-reviewed research to the extent practicable.

### **B. Extended School Year Services**

Parent’s position is that Student’s ESY services in literacy were likewise not based on peer reviewed research to the extent practicable.

Despite the data suggesting Student did not require ESY services to maintain skills and prevent regression, the District nonetheless made an offer of ESY services to support one of Student’s annual reading goals after lengthy discussion and upon the request of Parent. (FF #49-50). Specifically, the District offered four hours weekly of specialized literacy instruction from a special education teacher. (FF #50).

However, Student did not participate in ESY services during the summer of 2020. (FF #51). When ESY was set to begin, the ESY instructor called Parent who decided not to have Student participate in ESY and instead continued Student’s private tutoring. *Id.* By not allowing Student to participate in ESY services, Parent effectively rejected District’s offer of ESY services.

To the extent Student’s IEP team determined Student did not need ESY services to maintain skills, and because Parent unilaterally rejected the District’s offer of ESY services, the SCO finds and concludes that the District did not violate the IDEA.

### **REMEDIES**

The SCO concludes that the District did not violate the requirements of the 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. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 17<sup>th</sup> day of May, 2021.



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Ross Meyers  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-7**

- Exhibit 1: Letter to DCSD re Student

### **Response, pages 1-5**

- Exhibit A: Student's IEPs
- Exhibit B: Student's Evaluation Data
- Exhibit C: Student's Progress Data
- Exhibit D: none
- Exhibit E: PWNs
- Exhibit F: Requests for Parental Consent
- Exhibit G: Notices of Meeting
- Exhibit H: Correspondence
- Exhibit I: ESY Information
- Exhibit J: District Policies and Procedures
- Exhibit K: System 44 Studies/Info
- Exhibit L: none
- Exhibit M: none
- Exhibit N: The Effect of System 44 Reading Interventions (study)
- Exhibit O: Armstrong S44 2018-2019 Year 1 Summary Report
- Exhibit P: System 44 and READ 180 – Research Based Literacy Instruction (study)
- Exhibit Q: System 44 Research Update – San Antonio (study)

### **Reply, pages 1-8**

- Exhibit 2: May 2020 IEP Meeting Audio
- Exhibit 3: Email to District re Literacy Concerns
- Exhibit 4: October 8, 2019 Meeting Documentation
- Exhibit 5: Correspondence w/International Dyslexia Association
- Exhibit 6: July 23, 2020 Emails
- Exhibit 7: May 2020 Emails
- Exhibit 8: Student Withdrawal Form
- Exhibit 9: Parent Teacher Night Emails
- Exhibit 10: Correspondence Between Literacy Specialist and Parent
- Exhibit 11: Correspondence re System 44 Progress
- Exhibit 12: October 2019 Emails 1
- Exhibit 13: September 2019 Emails re Accommodations



- Exhibit 14: February 25, 2020 Meeting Audio
- Exhibit 15: June 9, 2020 Email
- Exhibit 16: Q&A Endrew F. v. Douglas County School District RE-1
- Exhibit 17: May 2019 IEP Meeting Audio
- Exhibit 18: October 2019 Emails 2
- Exhibit 19: Reply Email
- Exhibit 20: August 11, 2019 IEP Amendment Info
- Exhibit 21: System 44 Scope and Sequence

#### **Telephonic Interviews:**

- Parents: April 21, 2021
- District Literacy Specialist: April 22, 2021
- Special Education Director: April 23, 2021
- Special Education Teacher: April 23, 2021

#### **CDE Exhibits:**

- CDE Exhibit 1: *System 44 Next Generation Study: Beam et al. (2011)*, NAT'L CNTR. ON INTENSIVE INTERVENTION, <https://charts.intensiveintervention.org/intervention/toolGRP/8555525b49d688c8> (last visited Apr. 28, 2021).
- CDE Exhibit 2: E-mail from READact@cde.state.co.us to SCO (April 14, 2021) (on file with author).
- CDE Exhibit 3: *Archived Approved Interventions Programs*, COLORADO DEPARTMENT OF EDUCATION, <https://www.cde.state.co.us/coloradoliteracy/approvedinterventionsprograms> (last visited April 29, 2021).