

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

State Complaint SC2025-503
Gunnison Watershed School District RE-1J

DECISION

INTRODUCTION

On January 23, 2025, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state complaint (“Complaint”) against Gunnison School District RE-1J (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after January 23, 2024. Information prior to January 23, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

1. District did not develop, review, and revise an IEP that was tailored to meet Student’s individualized needs from September 4, 2024 to present because it did not ensure special

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.

² The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

education and related services—specifically, Student’s specialized reading instruction—were based on peer-reviewed research to the extent practicable, as required by 34 C.F.R. § 300.320(a)(4).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is nine years old and attends a District elementary school in fourth grade. *Exhibit A*, p. 31. She qualifies for special education and related services under the disability category of Specific Learning Disability. *Id.*
2. Student is creative, hard-working, and energetic. *Interviews with Parent, Student’s special education Teacher (“Teacher”) and Student’s reading interventionist (“Interventionist”).* She socializes well with peers, is interested in history and art, and loves gymnastics and dance. *Id.*
3. This investigation involves an IEP dated December 3, 2024 (“the IEP”), which was developed after a District evaluation in December 2023. *Exhibit A*, p. 31.

B. The IEP

4. Student’s IEP documents her strengths, preferences, and interests, noting that she is outgoing and creative, and enjoys physical activities. *Id.* at p. 33.
5. The IEP’s present levels of performance section details student’s academic performance and her progress on standardized assessments. *Id.* at pp. 33-36.
6. The IEP’s Student Needs and Impact of Disability section documents that Student’s learning disability impacts her performance in reading, writing, and mathematics, noting that she will benefit from skill-specific instruction in reading. *Id.* at p. 37.
7. The IEP includes parent input, noting that Student has struggled with negative self-talk but is motivated and wants to learn. *Id.*
8. The IEP’s Consideration of Special Factors section indicates that Student will use assistive technology, including text-to-speech and word prediction programs as needed. *Id.*
9. The IEP includes four annual goals – two in Reading, and one each in the areas of Writing and Mathematics. *Id.* at pp. 37-39

³ The appendix, attached and incorporated by reference, details the entire Record.

10. The IEP lists 19 accommodations necessary for Student to access the general education environment. *Id.* at pp. 39-40.
11. The IEP identifies specialized instruction and related services to be delivered to Student. *Id.* Relevant to this investigation, the IEP indicates that Student’s specialized instruction in reading would include “direct instruction from a licensed teacher trained in the science of reading for at least 120 minutes a week, outside the general education classroom,” and “60 minutes per week of in-class support, and during that time she will receive instruction at her level on focused literacy skills.” *Id.* at p. 42.
12. The IEP determines that it was appropriate for Student to be in the general education classroom 90.8% of the time. *Id.* at p. 43.

C. District’s Policies, Practices and Procedures

13. District uses a comprehensive, 84-page special education policy and procedure manual, which describes District’s responsibilities under the IDEA and ECEA. *Exhibit I*, pp. 5-89. District’s Director of Special Education (“Director”) stated that all staff have access to this manual, as well as other special education resources, via a shared folder. *Interview with Director.*
14. District regularly offers professional development training to special education staff to ensure that staff are knowledgeable about their obligations, and holds weekly meetings with staff to ensure building-level compliance with special education law. *Id.*
15. Specialized instruction and related services are determined on an individual basis by each student’s IEP team, which is expected to develop an IEP that meets that student’s needs. *Id.*
16. District’s special education manual specifies that District is obligated to ensure that special education and related services are based on peer-reviewed research to the extent practicable. *Exhibit I*, p. 44.
17. The reading curricula available to building-level staff are chosen and approved by District’s director of curriculum, instruction and assessment (“Curriculum Director”). *Interviews with Director and Curriculum Director.*
18. When choosing a literacy curriculum for District schools, Curriculum Director works in partnership with the CDE’s Office of Elementary Literacy and School Readiness to choose evidence-based literacy programs that meet the CDE’s literacy standards. *Interview with Curriculum Director.*

D. Student’s Reading Instruction

19. Student’s evaluation concluded that Student’s areas of need in reading were in “phonics, vocabulary, and comprehension.” *Exhibit B* at p. 15. Her IEP describes that she will receive

specialized reading instruction from “a licensed teacher trained in the science of reading.” *Exhibit A*, p. 42. The specific curriculum and mode of instruction for these services is determined by the instructor. *Interviews with Interventionist and Teacher*.

20. At the start of the 2024-2025 academic year, Student received push-in reading support from a paraprofessional in the general education classroom, as well as pull out reading instruction from Interventionist. *Interviews with Parent and Interventionist; Exhibit J*, p. 7.
21. During these pull-out sessions, Student, along with a small group including three same-grade peers, worked with Interventionist on reading and literacy skills. *Interview with Interventionist*.
22. During the spring semester of the 2024-2025 academic year, Student began to receive these pull-out services from Teacher. *Exhibit J*, p. 23.
23. These lessons were based upon a reading curriculum developed by the 95 Percent Group, in which both Interventionist and Teacher have received specific training. *Interviews with Interventionist and Teacher; Exhibit J*, pp. 7, 23.
24. Prior to the start of the 2024-2025 school year, Parent requested that Student be enrolled in Take Flight, a different reading program offered to selected District students. *Interview with Parent; Exhibit J*, p. 2.
25. Take Flight is a targeted reading intervention program which works with small groups of four to six students for 45 minutes per day. *Interview with Curriculum Director; Exhibit 3*. The program started because of a private donation to District, and students are selected to participate based on current and historical individualized student data. *Id.*
26. Parent provided the state complaints officer (“SCO”) with extensive information detailing the research basis for the Take Flight program. *Exhibit 3*.
27. District determined that the Take Flight program already in place would not be appropriate for Student due to the fast-paced nature of the program and Student’s limited attention skills. *Interview with Teacher*.
28. In response to Parent’s request for Take Flight programming, District proposed a modified version of the Take Flight program in which Student and one other student would work with a reading interventionist for 30 minutes per day five days per week. *Exhibit J*, p. 9. Parent declined this proposal, asking that District “reconsider and develop an alternative plan.” *Id.* at p. 8.
29. Following Parent’s response, District stated that it would “continue to serve [Student] as we did last year for literacy,” and that Student would receive literacy services through the 95% curriculum. *Id.* at p. 7.

30. Parent disagrees with this determination and asserts that Student is showing progress and success while using a similar reading program with her private tutor. *Interview with Parent; Reply*, pp. 1-5.

E. The 95 Percent Group Literacy Program

31. The 95 Percent Group literacy program is a suite of reading curricula and tools designed to improve literacy outcomes among elementary school students. *Interview with Curriculum Director*.

32. District employs components of the 95 Percent Group literacy program in both the general education setting and in intervention programming used with students, including Student, who are performing below grade level in reading. *Interviews with Curriculum Director, Interventionist, and Teacher*.

33. As part of the IEP process, Interventionist and Teacher chose to use the 95 Percent Phonics Intervention program for Student's specialized instruction, noting that Student's experience using the 95 Percent Core program in the general education setting would help create alignment between her general education and specialized instruction. *Interviews with Interventionist and Teacher*.

34. When implementing intervention programming with Student, Interventionist and Teacher each described Student's reading instruction as building from a foundation of phonics to develop reading fluency, vocabulary, and comprehension. *Id.*

35. Each described the reading programming as engaging with students from a multi-sensory perspective, involving visual decoding, auditory comprehension and dictation, and tactile learning using physical tiles. *Id.* The tiles in the Phonics Chip Kit, which is part of the 95 Percent Group's Phonics Intervention program, represent phonemes and can be manipulated and assembled by Students to create phonetic words and phrases. *Id.*; *CDE Exhibit 4*.

36. As part of its obligations under the READ Act, the CDE is required to identify evidence-based reading instructional programs approved for use by Colorado school districts. *CDE Exhibit 3*, p. 1. The 95 Percent Group's Phonics Core programming, which is used in District's general education environment, and the company's Phonics Intervention programming have both been identified and approved by the CDE through this process. *Id.* at pp. 5, 9.

37. A study involving 1,503 students in a Maryland school district indicated statistically significant⁴ improvements across in-year growth of students engaged with a curriculum featuring both the Phonics Core programming and the Phonics Intervention programming, versus the prior year's curriculum, which did not implement either. *CDE Exhibit 2*. On average,

⁴ Each of the two grade-level cadres observed displayed improvements with a confidence value of $p < 0.001$, far exceeding the typical threshold for statistical significance of $p < 0.05$.

students engaged with the 95 Percent reading programming displayed 32% growth from the fall measurement to the spring measurement, whereas the control group displayed an average growth of 8.5%. *Id.*

38. A study involving 316 students in a California school district observed the differences between students from four schools which had implemented the Phonics Intervention programming, including the Phonics Chip Kit tool, during the previous year and four schools which had implemented other reading intervention programming. *CDE Exhibit 1*. The students in the former group displayed average growth of 46.53 points on standardized district reading assessments whereas those in the latter group displayed average growth of 27.13 points on the same assessments. *Id.*

CONCLUSIONS OF LAW

Based on the Findings of Fact, the CDE 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 2024-2025 academic year, as required by with 34 C.F.R. § 300.320(a)(4). District complied with the IDEA.

A. Legal Standard for IEP Development

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). 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 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.

B. Legal Standard for IEP Development

Here, Parent did not raise concerns regarding the IEP development process under the first prong of the *Rowley* standard, so the SCO turns directly to consider the second prong of the *Rowley* standard and whether the IEP was substantively adequate. *Id.* at 207.

C. Substantive Adequacy of the IEP

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.*

The CDE follows this approach in its state complaint decisions. If an instructional method is determined by qualified instructors to be appropriate to a student’s needs and is found to be supported by peer-reviewed research, the CDE must defer to that determination. See, e.g., *Douglas County School District RE-1*, 79 IDELR 117 (SEA CO 5/17/21); *Denver Public Schools*, 121 LRP 43008 (SEA CO 11/19/21); *Adams County School District 14J*, 124 LRP 16298 (SEA CO 5/7/24).

i. District’s Reading Programming

Here, Parent is concerned that Student’s reading instruction uses the 95 Percent Group literacy programming rather than the Take Flight program preferred by Parent and used by Student’s private tutor. (FF # 30).

Student’s specialized reading instruction is set forth in her IEP, which specifies that she is to receive direct instruction from a teacher trained in the science of reading. (FF # 11). Interventionist and Teacher, both trained in the science of reading, chose to employ the 95 Percent Group’s Phonics Intervention curriculum for this specialized instruction. (FF #s 19, 23).

At the start of the 2024-2025 school year, Parent requested that Student instead be enrolled in Take Flight, another reading program available in District, and provided information regarding the research basis for that program. (FF #s 24, 26). District carefully considered that request and proposed a modified version of the Take Flight curriculum, which Parent ultimately declined. (FF # 28). Following Parent's decline of the modified Take Flight curriculum, District continued to provide Student's specialized instruction via the 95 Percent Intervention curriculum. (FF # 29).

This curriculum is approved by the CDE as an evidence-based reading instructional program. (FF # 36). Moreover, the curriculum is supported by efficacy studies which show statistically significant educational outcomes for students engaged with its programming. (FF #s 37-38).

Parent provided extensive information regarding the merits of the Take Flight reading program, and nothing in the Record contradicts her contention that this program is also a research-supported curriculum. Nonetheless, the CDE need not engage in a comparative weighting among two appropriate teaching programs because where a school district, like District here, has provided a mode of specialized instruction based upon peer-reviewed research, it does not deny FAPE simply because a parent prefers another approach. See *Stanley C.* at 967.

For these reasons, the CDE finds and concludes that the 95 Percent Group's Phonics Intervention curriculum is based upon peer-reviewed research. District complied with the IDEA.

REMEDIES

The CDE concludes that District complied with the requirements of the IDEA. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the CDE 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 4th day of March, 2025.

A handwritten signature in blue ink, appearing to read "Nick Butler", with a large, sweeping flourish extending to the right.

Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-16

- Exhibit 1: Various documents related to complaint allegations

Response, pages 1-7

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: n/a
- Exhibit D: n/a
- Exhibit E: Notices of Meeting
- Exhibit F: Report cards, progress monitoring data, and progress reports
- Exhibit G: Attendance Records
- Exhibit H: District Calendar
- Exhibit I: District Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: Information regarding District personnel, and certificates of training
- Exhibit L: Verification of delivery to Parent

Reply, pages 1-9

- Exhibit 2: Student diagnostic data
- Exhibit 3: Information regarding Take Flight program

CDE Exhibits

- CDE Exhibit 1: Efficacy Study Re: Phonics Intervention program
- CDE Exhibit 2: Efficacy Study Re: 95 Percent Ecosystem
- CDE Exhibit 3: Advisory List of CDE Approved Literacy Programming
- CDE Exhibit 4: Phonics Chip Kit Evidence Packet

Telephone Interviews

- Parent: February 14, 2025
- Special Education Director: February 14, 2025
- Interventionist: February 19, 2025
- Special Education Teacher: February 19, 2025
- Curriculum Director: February 20, 2025