

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

---

**State-Level Complaint 2024:581  
Pueblo County School District 70**

**DECISION**

**INTRODUCTION**

On July 25, 2024, the parents (“Parents”) 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 Pueblo County School District 70 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

The CDE’s goal with this investigation and written decision is to build capacity among all participants in the special education process and to provide opportunities for professional growth to educators. The CDE views the state complaint process as an opportunity for participants in the IEP process to learn about special education, identify points for improvement, and tap available resources, all to improve outcomes for students with disabilities.

**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 July 25, 2023. Information prior to that date may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

---

<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.

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

1. District did not develop, review, and revise an Individual Education Program (“IEP”) that was tailored to meet Student’s individual needs between July 25, 2023 and present because it:
  - a. Did not include sufficient special education and related services—specifically, occupational therapy—to enable Student to advance appropriately toward attaining annual goals, as required by 34 C.F.R. §§ 300.320 and 300.324; and
  - b. Did not ensure special education and related services—specifically, speech and language therapy—were based on peer-reviewed research to the extent practicable, as required by 34 C.F.R. § 300.320(a)(4).
2. District did not review and, as appropriate, revise Student’s IEP from July 25, 2023 to present to address Student’s progress toward goals, as required by 34 C.F.R. § 300.324(b).
3. District did not fully implement Student’s IEP from July 2023 to present because it:
  - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d);
  - b. Did not provide the specially designed instruction listed in the IEP, specifically communication instruction during Extended School Year (“ESY”), as required by 34 C.F.R. § 300.323(c).
  - c. Did not provide the specially designed instruction listed in the IEP, specifically by not ensuring that the specialized instruction listed in the service delivery plan was delivered by an appropriate District staff member, as required by 34 C.F.R. § 300.323(c).

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is nine years old and attends a District elementary school (“School”) in fourth grade, where he participates in District’s autism program. See *Exhibit A*, p. 40. He qualifies for special education and related services under the disability categories of Multiple Disabilities, Autism Spectrum Disorder, Intellectual Disability, and Speech or Language Impairment. *Id.*
2. Student is bright, happy and affectionate, and loves music and being active outside. *Interviews with Parent, Student’s Special Education Teacher (“Teacher”), Student’s Speech-*

---

<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

*Language Pathologist (“SLP”), Student’s Occupational Therapist (“OT”), and Student’s Paraprofessional (“Paraprofessional”).*

3. Student has been diagnosed with Autism Spectrum Disorder as well as Childhood Apraxia of Speech, a condition that inhibits Student’s planning and sequencing of motor movements necessary for speech. *Exhibit I*, p. 23; *CDE Exhibit 1*, p. 1. Student uses minimal verbal speech to communicate, and he communicates in school with the assistance of an augmentative and alternative communication device (“AAC device”). *Exhibit A*, p. 51.
4. This investigation involves the development, review, revision, and implementation of three IEPs in place for Student during the 2023-2024 academic year—one dated August 29, 2022 (“IEP 1”), one dated October 9, 2023 (“IEP 2”), and one dated March 11, 2024 (“IEP 3”).

### **B. Student’s IEPs**

5. All three IEPs document Student’s functional strengths, preferences and interests. *Exhibit A*, pp. 3, 17, 43.
6. The IEPs’ present levels of performance sections document Student’s academics, behavior, attendance and health. *Id.* at pp. 3-5, 17-22, 43-50. In addition, each IEP documents Student’s progress on his IEP goals and objectives established in the previous IEP. *Id.*
7. Each IEP describes Student’s needs and the educational impact of his disabilities. *Id.* at pp. 5, 23, 51.
8. Each IEP documents Parent input, reflecting Student’s experiences at home and with outside therapists. *Id.* at pp. 5, 23-24, 51.
9. The IEPs’ Consideration of Special Factors sections all note that Student has unique communication needs, that he needs assistive technology devices or services, and that he requires specialized transportation. *Id.* at pp. 6, 24, 52.
10. Each IEP includes annual goals. *Id.* at pp. 6- 10, 24-33, 52-60.
11. IEP 1 contains six annual goals—two around self-determination, and one each in the areas of communication, mathematics, reading, and writing. *Id.* at pp. 6-10. Relevant to this investigation, IEP 1’s communication goal does not pertain to motor planning with respect to vocalization. *Id.* at pp. 6-7.
12. IEP 2 contains ten annual goals—three each in the areas of reading and communication, two in mathematics, and one each in the areas of writing and self-determination. *Id.* at pp. 24-33. Relevant to this investigation, each of the three communication goals specifies that Student will pursue his speech-language goals via the use of principles of motor planning. *Id.* at pp. 30-33.

13. IEP 3 contains nine annual goals—three in mathematics, two each in the areas of reading and communication, and one each in the areas of writing and self-determination. *Id.* at pp. 52-60. Relevant to this investigation, one of Student’s communication goals specifies that Student will pursue that goal via the use of principles of motor planning. *Id.* at p. 58. Student’s other communication goal does not pertain to vocalized speech but instead to the use of his AAC device. *Id.* at p. 59. Additionally relevant to this investigation, Student’s writing goal proposes that by March 10, 2025, Student will write his name on lined paper and provide correct letter formation with 90% accuracy on three out of four consecutive data tracking days. *Id.* at p. 55.
14. Each IEP documents that Student requires accommodations and curriculum modifications to access the general education environment. *Id.* at pp. 10, 34, 60-61.
15. All three IEPs document the determination that Student is eligible for extended school year services. *Id.* at pp. 10, 35, 61.
16. Each IEP contains a Service Delivery Statement describing the specialized instruction and related services Student must receive. *Id.* at pp. 12, 37, 63.
17. IEP 1 documents that Student must receive:
- 240 minutes weekly direct classroom support services within the general education classroom;
  - 1,140 minutes weekly direct specialized instruction services outside the general education classroom; and
  - 240 minutes monthly direct speech/language therapy services outside the general education classroom.
- Id.* at p. 12.
18. IEP 2 documents that Student must receive:
- 480 minutes weekly direct classroom support services within the general education classroom;
  - 870 minutes weekly direct specialized instruction services outside the general education classroom; and
  - 240 minutes monthly direct speech/language therapy services outside the general education classroom.
- Id.* at p. 37.
19. IEP 3 documents that Student must receive:

- 320 minutes weekly direct classroom support services within the general education classroom;
- 1,150 minutes weekly direct specialized instruction services outside the general education classroom; and
- 90 minutes weekly direct speech/language therapy services outside the general education classroom.
- 30 minutes monthly indirect occupational therapy services inside the general education classroom.

*Id.* at p. 63. IEP 3 also specifies, in relevant part, that Student should receive speech services during the extended school year session. *Id.*

20. Each IEP specifies that the direct specialized instruction minutes provided outside the general education classroom must be provided by a special education teacher. *Id.* at pp. 12, 37, 63.
21. Each IEP documents the determination that the IEP team found it appropriate for Student to be in the general education environment less than 40% of the time. *Id.* at pp. 13, 38, 64.
22. Each IEP contains a Prior Written Notice (“PWN”) section documenting other options considered by the IEP team. *Id.*

### **C. District’s Practices, Policies and Procedures**

23. District’s director of special education (“Director”) stated that District seeks to ensure that the services in students’ IEPs are tailored to their individualized needs by carefully considering all appropriate data, including the results of formal and informal assessments, progress toward annual goals, parental input, and the observations of teachers and staff. *Interview with Director.*
24. In developing an instructional modality for students with specialized needs, District staff are encouraged to collaborate with one another, to ask questions of Director’s office, and, where appropriate, to participate in outside training and consultation to ensure that their chosen mode of instruction is appropriate to the student’s needs. *Id.*
25. Director stated that District staff are expected to review and revise an IEP as needed to meet a student’s changing needs. *Id.* When doing so, IEP team members must carefully review the student’s progress on prior annual goals—if the student has met those goals, the team must seek to develop new and appropriately ambitious goals and objectives, but if the goal has not been met, the team must consider whether a goal requires more time or a different approach. *Id.* An IEP team should also, when appropriate, consider parent input in developing new goals. *Id.*

26. District staff are directed to implement a student’s IEP with fidelity to the IEP document. *Id.*
27. When an IEP is developed, the student’s case manager is responsible for ensuring that all staff members tasked with the implementation of the IEP have sufficient knowledge of their duties under the IEP in order to fulfill the District’s obligations. *Id.* Staff with frequent contact with a student receive a hard copy of the IEP document and have access to that document via the District’s electronic data management system. *Interviews with Director and Teacher.*
28. Many District students work with paraprofessionals, who are tasked with supporting students through their instruction. *Interview with Director.* In such cases, the special education teacher is responsible for developing the lesson plan and providing the instruction, while a paraprofessional may work with a student to help them to access the material and to reinforce skills. *Id.*
29. District provides regular professional development training to its staff members to ensure that they are knowledgeable regarding developments in special education and the laws pertaining to it. *Id.* District also provides staff with a special education guidebook, which provides detailed information regarding the development and implementation of an IEP. *Interview with Director; CDE Exhibit 2.*

#### **D. The October 2023 IEP Meeting**

30. On October 5, 2023, a properly constituted IEP team—including Parent, two advocates invited by Parent, Teacher, SLP, OT, Paraprofessional, Student’s general education teacher, a District special education coordinator (“Coordinator”), a School administrator, and a board-certified behavioral analyst—convened for an annual IEP review meeting. *Exhibit A, p. 15; Exhibit D, p. 1.*
31. During this meeting, Parent raised concerns regarding Student’s difficulties with verbal communication. *Interviews with Parent, Teacher, SLP, and Coordinator.* She described Student’s diagnosis with childhood apraxia of speech and requested that District make changes to its speech-language services to address Student’s motor-related speech skills. *Id; Exhibit A, p. 23.*
32. Specifically, Parent recommended that District use a technique called dynamic temporal and tactile cueing (“DTTC”) to address Student’s apraxia. *Interviews with Parent and SLP; Exhibit A, pp. 23-24.* Parent also requested that SLP participate in a training program related to DTTC to better work with Student. *Id.* SLP agreed to participate in this training. *Interview with SLP.*
33. At this meeting, the IEP team reviewed Student’s progress on his annual goals from IEP 1 and developed new goals. *Interviews with Parent, Teacher, SLP, and Coordinator.* Parent proposed the addition of several goals, and the addition of objectives to existing goals, which were added to the IEP. *Id.* Based upon Parent’s expressed concerns regarding apraxia of speech,

the IEP Team developed goals around the use of motor planning with respect to speech therapy. *Interviews with Teacher, SLP, and Coordinator; Exhibit A*, pp. 30-33.

### **E. Speech and Language Therapy Methodology**

34. Parent stated that the verbal speech services provided to Student by SLP were not appropriate for a student with childhood apraxia of speech (“CAS”). *Interview with Parent*.
35. CAS is a speech disorder “characterized by deficits in the motor planning required for speech production.” *CDE Exhibit 3*, p. 3. “Although the child knows what they would like to say, there is a breakdown in the ability to plan the fine, rapid movements required for speech production.” *Id.*
36. An academic review of 23 articles discussing 13 treatment approaches categorizes CAS treatments into three main categories: targeting of motor skills, targeting of linguistic skills, and the use of AAC to provide a primary means of communication. *CDE Exhibit 5*, p. 15. This review found that “[T]hree treatment approaches, two motor (Integral Stimulation/DTTC, ReST) and one linguistic (Integrated Phonological Awareness Intervention) met the criteria for preponderant evidence (replicated evidence across participants with promising treatment, maintenance, and generalization data.)” *Id.* at p. 13. The review noted that “DTTC appears to work better for clients with more severe CAS.” *Id.* at p. 16.
37. In a letter dated May 6, 2024, Student’s private speech language pathologist (“Outside SLP”) specifically listed DTTC among the modalities she would recommend for a student with CAS and noted that “I have provided individual speech and language sessions using therapy approaches rooted in the principles of motor learning, including DTTC, Kaufman, and NDP3, have experienced great success with [Student].” *CDE Exhibit 1*, p. 2.
38. DTTC, previously known as integral stimulation, focuses treatment on the development of motor movements and planning related to speech, rather than directly targeting the sound vocalizations themselves. *CDE Exhibit 4*, p. 10. Literature describing DTTC treatment focuses on a four-step hierarchy of treatment for each speech motor movement to be taught. *CDE Exhibit 3*, p. 6; *CDE Exhibit 4*, p. 11. First, the therapist and child engage in “simultaneous production” of an utterance. *Id.* Once the child has demonstrated proficiency at simultaneous production, the child is asked to repeat the utterance immediately after the therapist’s demonstration. *Id.* Next, the child is asked to repeat the utterance after a delay from the therapist’s demonstration. *Id.* Finally, the child is asked to engage in spontaneous production of the utterance without prompting from the therapist. *Id.* If the child is unsuccessful at any stage of this hierarchy, the therapist is encouraged to return to a lower stage to reinforce skills. *CDE Exhibit 4*, p. 12.
39. SLP stated that she was familiar with CAS prior to the October 2023 IEP meeting via her education, experience with other students, and continuing professional development training. *Interview with SLP*.

40. After the meeting, SLP participated in a 4.5-hour training program entitled “Diagnosis and Treatment of CAS Using Dynamic Temporal and Tactile Cueing (DTTC),” which described the DTTC motor planning methodology. *Interview with SLP; Exhibit O*. When asked to describe the DTTC methodology, SLP described the methodology in close conformity with the academic literature discussing the practice. *Interview with SLP; Consultation with CDE Content Specialist 1*.
41. SLP stated that she incorporated principles of DTTC into her speech therapy with Student. *Id*. Moreover, Student’s March 11, 2024 evaluation states that “the school SLP has used the DTTC approach when working with [Student] in a 1:1 setting to target speech motor planning needs associated with Childhood Apraxia of Speech.” *Exhibit I*, p. 33.
42. In describing her therapeutic practice with Student, SLP stated that she worked with Student to have him imitate her motor movements and simultaneously produce given vocalizations. *Interview with SLP*. Once Student had established proficiency with simultaneous production, SLP employed higher hierarchical stages such as immediate repetition and delayed repetition. *Id*.
43. According to the progress reports for Student’s annual communication goals from IEP 2, Student succeeded at the first three stages but had not yet mastered the final hierarchical stage—spontaneous production: “SLP has worked on backing off of verbal prompts, and this has proved to make it difficult for [Student] to give a verbal attempt of the motor sequence.” *Exhibit A*, p. 50.
44. On April 5, 2024, Parent sent an email to Director asking that “moving forward, the school-based SLP or SLPA only provide AAC sessions and not verbal speech sessions.” *Exhibit K*, p. 53.
45. Following this request, beginning April 9, 2024, District contracted with Outside SLP to provide 45 minutes of weekly speech therapy focused on Student’s verbal speech in addition to the 90 minutes per week provided by SLP. *Exhibit K*, p. 79. For the remainder of the 2023-2024 academic year, SLP focused her services on Student’s AAC device. *Interview with SLP*.

#### **F. Student’s Re-Evaluation**

46. On December 18, 2023, Parent requested that Student’s re-evaluation, which would have been due in May 2024, be conducted as soon as practicable, and that that re-evaluation include an assessment for occupational therapy. *Complaint*, p. 12; *Exhibit K*, p. 6.
47. On or around January 8, 2024, District sent Parent a PWN and Consent to Evaluate form, which Parent signed and returned on or around January 18, 2024. *Exhibit K*, p. 8. Shortly thereafter, District scheduled an IEP meeting for March 11, 2024 to discuss the results of that evaluation. *Exhibit D*, p. 3.



48. As part of this process, District sought and received a release of information for SLP and OT to speak with and receive information from Outside SLP and Student's private occupational therapist ("Outside OT"). *Exhibit P; Exhibit N*. SLP and OT consulted with Outside SLP and Outside OT, respectively, regarding their treatment history of Student. *Interviews with SLP and OT*.
49. District also performed assessments in the areas of social/emotional/behavioral, cognitive, communication, and occupational therapy. *Exhibit I*, pp. 23-49.
50. The occupational therapy assessments found that Student exhibited significant visual motor deficits, as well as significant sensory issues. *Exhibit I*, p. 49.

### **G. The March 2024 IEP Meeting**

51. On March 11, 2024, a properly constituted IEP team—including Parents, an advocate invited by Parents, Teacher, SLP, OT, Paraprofessional, Coordinator, Outside SLP, Outside OT, one of Student's general education teachers, a board-certified behavior analyst, a behavior specialist, a physical therapist, and a school administrator—convened to hold a triennial re-evaluation IEP meeting. *Exhibit A*, p. 41.
52. The IEP team reviewed and discussed the March 2024 evaluation, and reviewed Student's progress on his annual goals from IEP 2. *Interviews with Teacher, SLP, and Coordinator; Exhibit A*, pp. 43-50, 66. Student made progress on his annual goals during the five months since the goals were established, and met one of the ten goals by the time of the March 2024 IEP meeting. *Exhibit A*, pp. 48-50. The completed goal was removed from the IEP. *Id.* at pp. 52-60.
53. Parent proposed revisions to the annual goals for this IEP, which were reviewed by the team and incorporated into the final IEP. *Interviews with Parent, Teacher, and Coordinator*. For example, for many goals, Student's accuracy target was raised from 70 or 80 percent accuracy to 90 percent accuracy. Compare *Exhibit A*, pp. 24-33, with *Exhibit A*, pp. 52-60. Additionally, new goals were added to the IEP pertaining to simple arithmetic operations and recognition of safety-related words. *Exhibit A*, pp. 54, 56.
54. Parent stated that during the October 2023 and March 2024 IEP meetings, District failed to adequately revise Student's IEP goals in light of his progress or lack of progress toward goals. *Interview with Parent*.
55. Parent also raised concerns at this meeting regarding Student's occupational therapy and sensory needs based on the results of the March 2024 evaluation. *Interviews with Parent, Teacher, OT and Coordinator*. Following discussion of these concerns, the IEP team added thirty minutes per month of indirect occupational therapy services. *Exhibit A*, p. 64.
56. Indirect occupational therapy services were chosen to ensure that Student could benefit from the expertise of an occupational therapist while receiving instruction and support directly

from trusted adults in the classroom such as Teacher and Paraprofessional. *Interviews with OT, Coordinator, and Teacher*. Parent and Outside OT agreed to this formulation of services. *Id.*

#### **H. Student's Occupational Therapy Services**

57. Parent stated that these indirect services alone are insufficient, and that Student should receive direct occupational therapy services. *Interview with Parent*.
58. OT described her provision of these indirect services, stating that she visited the classroom on a weekly basis to observe Student in his classroom interactions. *Interview with OT*. Based on her observations, she would consult with Teacher to share her concerns, suggest ways in which Student's motor skills could be worked on, and suggest changes to the environment that might address Student's sensory concerns. *Interviews with OT and Teacher*. Based on these consultations, Teacher would implement OT's recommendations in the classroom and track Student's progress on his occupational therapy-related writing goal. *Id.*
59. Teacher recorded student's progress on his writing goal on a weekly basis from March 26, 2024, through May 29, 2024—the end of the 2023-2024 academic year. *Exhibit E*, pp. 16-20. During that time period, Student progressed from the 50% accuracy baseline recorded in the first week of progress monitoring to 70%, 80%, and 100% accuracy during each of the last three weeks of the school year, respectively. Compare *Exhibit E*, p. 16, with *Exhibit E*, p. 19.
60. In addition to these consultative services, OT participates weekly in small-group sessions with the students in Student's autism classroom, providing hand-over-hand support and modeling of fine motor skills. *Id.*
61. Consultative and small-group services are often appropriate for students with fine motor skills needs. *Consultation with CDE Content Specialist 2*. While direct services may be necessary for students whose IEP requires development of particular skills, handwriting goals are often best addressed through consultation and small-group services. *Id.*

#### **I. IEP Implementation**

##### **Accessibility and Responsibilities**

62. All professionals responsible for the provision of IEP services to Student indicated that they had access to Student's IEP in both paper copy and via District's electronic data management system. *Interviews with Teacher, SLP, OT, and Student's ESY Speech Language Pathology Assistant and Assistive Technology Specialist ("Summer SLP Assistant")*. When asked to describe their responsibilities under the IEP, these professionals provided descriptions consistent with the document. *Id.*
63. Paraprofessional stated that after any new or amended IEP was issued, Teacher provided him a copy of an IEP snapshot document which reviewed Student's goals, services and

accommodations to help him to support the implementation of the IEP. *Interview with Paraprofessional.*

64. Teacher, as Student's case manager, regularly consulted with other members of Student's IEP team to ensure that they had the knowledge and resources they needed to effectively implement Student's IEP. *Interview with Teacher.*
65. Based on these facts, the SCO finds that Student's IEP was made accessible to teachers and service providers responsible for its implementation.

*Provision of Specialized Instruction during the 2023-2024 Academic Year*

66. Parent stated that Student's direct specialized instruction was provided by paraprofessionals and not a special education teacher. *Interview with Parent; Complaint, p. 7.*
67. Teacher described her responsibilities under Student's IEP, stating that she develops a lesson plan, designs specialized instruction for each student in her classroom, and presents that instruction to students. *Interview with Teacher.* Teacher also routinely engages in small group and one-on-one instruction with Student and other students in the autism classroom. *Id.*
68. While Teacher is providing instruction, Paraprofessional provides support to Student at his desk. *Interviews with Teacher and Paraprofessional.* For example, Paraprofessional will assist Student with the use of his AAC device so that he can respond to Teacher prompts or will provide behavioral support if Student becomes dysregulated. *Interview with Paraprofessional.*
69. When Teacher is engaged in small-group or individual work with other students, Paraprofessional works with Student to reinforce the instruction provided by Teacher, such as by helping Student to read passages assigned by Teacher. *Interviews with Teacher and Paraprofessional.*
70. During the 2023-2024 academic year, Paraprofessional assisted Teacher by helping to fill in Student's daily parent log. *Id.* Teacher reviewed the parent logs before they were sent home with Student. *Interview with Teacher.*
71. Based on the above facts, the SCO finds that Teacher provided the specialized instruction services identified in Student's IEP, and that Paraprofessional provided in-classroom support to Student under the supervision of Teacher.

*Provision of Speech and Language Services during Summer 2024*

72. Parent stated that Student did not receive any speech-language services during the summer 2024 ESY session. *Interview with Parent; Complaint, p. 11.*

73. IEP 3's Service Delivery Statement indicates that Student must receive speech and language services during ESY. *Exhibit A*, p. 63.
74. In April 2024, Parent requested that District staff no longer work with Student on his verbal speech goals, and instead focus exclusively on AAC. *Exhibit K*, p. 53. Shortly thereafter, District contracted with Outside SLP to provide Student's verbal speech services. *Id.* at p. 79.
75. District's 2024 ESY program took place over the course of four weeks in June, working with students for four hours per day, four days per week. *Response*, p. 16. The program is designed to help qualifying students to maintain skills and avoid regression over the summer. *Id.*, p. 17; *Interview with Summer SLP Assistant*.
76. During the course of the ESY program, Student continued to work with Outside SLP on his verbal speech goals. *Interviews with Parent and Coordinator*. Parent stated that Student made progress on his verbal speech during Summer 2024 because of these sessions. *Interview with Parent*.
77. To work with Student on his AAC goals during the ESY program, District assigned two professionals to work with him—a District speech-language pathologist ("Summer SLP") and Summer SLP Assistant, an assistive technology specialist who, during the school year, frequently consulted with SLP on Student's use of his AAC device. *Interviews with SLP and Summer SLP Assistant*.
78. On each Tuesday of the four-week ESY program (June 4, June 11, June 18, and June 25), Summer SLP and Summer SLP Assistant scheduled a 45-minute session to work with Student on the use of his AAC device. *Interview with Summer SLP Assistant; Exhibit E*, p. 59.
79. Summer SLP and Summer SLP Assistant recorded the notes from their ESY services into a service log, noting the date and time of services provided, as well as a description of the skills worked on with Student. *Exhibit E*, p. 59.
80. This service log indicates that services were provided to Student for the first three weeks (June 4, June 11, and June 18) of the ESY program. *Id.* The note for June 25 indicates that Student was absent from the program that day. *Id.*
81. Based on these facts, the SCO finds that Student's speech-language services were properly implemented during the 2024 ESY program session.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District developed, reviewed and revised an IEP tailored to meet Student's individual needs, as required by 34 C.F.R. §§ 300.320 and 300.324. District complied with IDEA.**

Parent’s concerns are that IEP 3 contains insufficient occupational therapy services to meet Student’s needs, and that the speech-language services delivered under IEPs 2 and 3 were not based on a methodology supported by peer-reviewed research. (FF #s 34, 57.)

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). 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 IEP Development Process**

Here, as to the first prong of the *Rowley* standard, nothing in the Record indicates that either IEP 2 or IEP 3 did not comply with IDEA’s procedural requirements regarding IEP development. Both IEPs were developed at properly constituted IEP meetings, and each indicated, as required, the special education and related services that were to be provided to Student consistent with 34 C.F.R. § 300.320(a)(4). (FF #s 5-22, 30, 51). For these reasons, the SCO finds and concludes that the development process for the IEPs complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206.

Next, the SCO turns to the substantive adequacy of the IEPs—that is, whether the IEPs have been reasonably calculated to enable Student to receive an educational benefit.

#### **B. Substantive Adequacy of the IEP**

##### **i. IEP 3: Sufficiency of OT Services**

Parent is concerned that the consultative and indirect occupational therapy services required by IEP 3 are insufficient to enable Student to make appropriate progress toward his annual goals. (FF # 57).

An IEP is “the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 580 U.S. at 399. An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Id.* An IEP must include measurable goals and a statement of the special education and related services designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. 34 C.F.R. § 300.320(a)(2). An IEP must include the special education and related services and supplementary aids and services that will be provided

to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* § 300.320(a)(4).

Here, at the March 2024 IEP meeting, where IEP 3 was developed, the IEP team determined that Student would receive thirty minutes per month of indirect occupational therapy services. (FF # 55). The team, which included Parent and Outside OT, based this decision on the rationale that Student, who struggles with changes to routine, would benefit from receiving support directly from trusted adults in the classroom. (FF # 56). OT visited the classroom weekly, observed Student’s motor skills in the classroom environment, and worked with Teacher to develop ways in which Student’s motor and sensory needs could be addressed. (FF # 58). In addition, although IEP 3 did not require direct services, OT worked directly with Student in small groups, providing hand-over-hand support and modeling. (FF # 60). Over the course of less than three months receiving these services, Student demonstrated substantial progress toward his annual writing goal, moving from a 50% accuracy baseline in March to scores of 70%, 80%, and 100% over the last three weeks of school in May. (FF # 59).

Indirect and consultative services are appropriate for many students and can be the best and least restrictive option for students with handwriting goals. (FF # 61). See also, *Alex W. v. Poudre Sch. Dist. R-1*, 94 F.4<sup>th</sup> 1176, 1189-1190. Although Student has not yet attained his writing goal (which requires three out of four consecutive data tracking days over 90% accuracy), he has made substantial progress toward that goal in a short period of time. (FF # 13). Indeed, annual goals describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child’s special education program. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). Here, Student has made progress toward that annual goal appropriate to the less than three months in which he was able to work toward it.

For these reasons, the SCO finds and concludes that IEP 3 provides for sufficient occupational therapy services to enable Student to advance appropriately toward attaining his annual goals, as required by 34 C.F.R. §§ 300.320 and 300.324.

ii. *Methodology of Speech-Language Services*

Parent is concerned that the methodology District used in delivering speech-language services was not appropriate for use with a student with childhood apraxia of speech. (FF # 34).

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. *Id.* Moreover, the IEP is not required to identify specific

curriculum or methodology for instruction. See 34 C.F.R. §§ 300.320, 300.324. “[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 a school district employed a methodology preferred by a parent, but rather whether the school 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 legal standard in its state complaint decisions. If an instructional method is determined by qualified instructors to be appropriate to a student’s individualized needs and supported by peer-reviewed research, the CDE defers to that determination. See, e.g., *Douglas County Sch. Dist. RE-1*, 120 LRP 19820, (SEA CO 5/15/20); *Douglas County Sch. Dist. RE-1*, 79 IDELR 117, (SEA CO 5/17/21); *Denver Pub. Schs.*, 121 LRP 43008, (SEA CO 11/19/21); *Adams County Sch. Dist. 14J*, 124 LRP 16298, (SEA CO 5/7/24).

Here, at the October 2023 IEP meeting, Parent requested that, in light of Student’s childhood apraxia of speech, District make changes to its methodology of speech-language services in order to address Student’s motor-related speech skills. (FF # 31). Specifically, Parent recommended the DTTC methodology, an approach to speech therapy that focuses primarily on the principles of motor planning. (FF #s 32, 36). Parent also requested that SLP participate in a 4.5-hour training on the DTTC methodology in order to better work with Student, which SLP completed. (FF #s 32, 40). SLP demonstrated fluency in discussing both CAS and the DTTC methodology. (FF # 40). In response to Parent’s request, District developed IEP 2 (and later IEP 3) with goals that would be pursued via the use of principles of motor planning. (FF #s 12-13, 33).

Based upon her prior knowledge and the knowledge gained from the training program requested by Parent, SLP developed a plan of speech therapy based upon the DTTC method. (FF # 41-42). This therapy involved the progression through the four hierarchical stages of motor planning identified by DTTC research and literature, moving from simultaneous production to immediate repetition to delayed repetition to spontaneous production. (FF # 37, 42). Student’s progress

reports indicate that over the course of about six months of these services, Student made substantial progress, showing success at the first three hierarchical stages of DTTC therapy, but continuing to struggle with the final stage, spontaneous production. (FF # 43). For these reasons, the SCO finds that the speech-language methodology employed by District and SLP conforms to the DTTC methodology.

The parties do not dispute that DTTC is an appropriate methodology for addressing CAS—both Parent and Outside SLP have recommended DTTC to the District as an appropriate methodology. (FF #s 32, 37.) Nevertheless, the SCO reviewed peer-reviewed research regarding treatments of CAS. (FF #s 35-36, 38.) Although DTTC is not the only methodology to demonstrate success in addressing the needs of students with CAS, it has shown preponderant evidence in peer-reviewed research as an effective methodology for treatment of CAS. (FF # 36.)

For these reasons, the SCO finds and concludes that DTTC, the methodology employed by District in providing speech-language services, is based on peer-reviewed research, as required by 34 C.F.R. § 300.320(a)(4).

**Conclusion to Allegation No. 2: District reviewed and revised Student’s IEP to address any lack of expected progress toward annual goals, as required by 34 C.F.R. § 300.324(b). District complied with IDEA.**

Parent’s concern is that during the October 2023 and March 2024 IEP meetings, District failed to adequately review and revise Student’s IEP goals in consideration of his progress toward his annual goals. (FF # 54).

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress. *Andrew*, 137 S. Ct. at 998. To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA contemplates that a student’s IEP may need to be reviewed and revised more frequently to address, in part, lack of expected progress toward the annual goals, a child’s anticipated needs, or other matters. *See* 34 C.F.R. §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

The U.S. Department of Education confirmed that an “IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it.” *Questions and Answers on Andrew F. v. Douglas Cnty. School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). This includes monitoring and revising an IEP as necessary, particularly if progress that is appropriate given a child’s circumstances is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.* Although a school district remains responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability may request an IEP meeting at any time to discuss concerns with their child’s special education program. *Id.*



Here, the Record indicates that District reviewed and revised Student’s IEP on two occasions during the 2023-2024 academic year—October 5, 2023, and March 11, 2024.

On each occasion, District convened a properly constituted IEP team including a wide variety of District staff involved in implementing Student’s IEP, Parent, and Parent’s invitees including advocates and private therapists. (FF #s 30, 51). At each meeting, the IEP team reviewed and discussed Student’s progress on his annual goals from the previous IEP. (FF #s 33, 52). At each meeting, the IEP team collaborated to develop new and revised goals and establish new services considering that progress and Parent’s expressed concerns. (FF #s 33, 52-53). At these meetings, Parent proposed new goals, higher accuracy targets for existing goals, and new objectives, which were incorporated into the IEP. *Id.* When it was determined that Student had met his previous goals, those goals were removed from the IEP and new goals were added. (FF # 52-53).

For these reasons, the SCO finds and concludes that District reviewed and revised Student’s IEP to address any lack of expected progress toward annual goals, as required by 34 C.F.R. § 300.324.

**Conclusion to Allegation No. 3: District fully implemented Student’s IEP, as required by 34 C.F.R. § 300.323. District complied with IDEA.**

Parent’s concerns are that paraprofessionals, not a special education teacher, provided Student’s specialized instruction services, and that District did not provide Student with required speech-language services during the summer 2024 ESY session. (FF # 68, 74.)

**A. IEP Implementation: Legal Requirements**

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

**B. IEP Accessibility and Responsibilities**

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d).

Here, each of Student's teachers and service providers responsible for the implementation of his IEP had access to that IEP via the District's data management system. (FF # 62). Those staff members consistently and accurately described their responsibilities under the IEP. *Id.* Paraprofessional was provided an IEP snapshot by Teacher, which described to him the IEP's goals, services, and accommodations to enable him to support the implementation of the IEP. (FF # 63). Teacher regularly consulted with other members of Student's IEP team to ensure they had the knowledge and resources they needed to effectively implement the IEP. (FF # 64).

For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

### **C. Provision of Specialized Instruction**

The SCO must determine whether District provided specialized instruction to Student during the 2023-2024 academic year in accordance with his IEP. Parent is concerned that Paraprofessional, not Teacher, is providing the specialized instruction required by Student's IEP. (FF # 66).

The Service Delivery Statements for each of the three IEPs in effect during the 2023-2024 academic year require that Student's specialized instruction be provided by a special education teacher. (FF #s 17-20).

The Record shows that Teacher developed, designed and implemented Student's specialized instruction lesson plan. (FF # 67). In addition, Teacher routinely engages in small group and one-on-one instruction with Student. *Id.* During these lessons, Paraprofessional provides support to Student, such as by helping Student with the use of his AAC device or addressing behaviors. (FF # 68.) Paraprofessional also assists Teacher by reinforcing instruction provided by Teacher, such as by providing reading assistance to Student. (FF # 69.) In addition, Paraprofessional helped to prepare Student's daily parent log, which was reviewed by Teacher before being sent to Parent. (FF # 70.)

The activities described above, however, constitute instructional support, not instruction. The ECEA Rules state that "[p]araprofessionals may serve in supportive roles, but may not be the sole instructional provider." ECEA Rule 12.02(2)(j)(vi). Guidance from the U.S. Department of Education regarding Title 1 indicates that paraprofessionals may provide instructional support, which includes "provid[ing] one-on-one tutoring," "assist[ing] with classroom management," "conduct[ing] parental involvement activities," and "provid[ing] instructional support services under the direct supervision of a highly qualified teacher." *CDE Exhibit 6*, p. 6; also available at <https://www2.ed.gov/policy/elsec/guid/paraguidance.pdf>. CDE has issued similar guidance regarding the scope of acceptable instructional support by paraprofessionals. *Exhibit U*; also available at [https://www.cde.state.co.us/fedprograms/tii/a\\_hqp](https://www.cde.state.co.us/fedprograms/tii/a_hqp).

For these reasons, the SCO finds and concludes that Student's specialized instruction services were implemented in accordance with his IEP, as required by 34 C.F.R. 300.323(c).

**D. Provision of Speech-Language Services at ESY**

The SCO must determine whether District provided speech and language services to Student during the summer 2024 ESY session.

Here, IEP 3’s Service Delivery Statement requires that Student receive speech services during the extended school year session. (FF # 19).

During the four weeks of the summer 2024 ESY program, two service providers from District, Summer SLP and Summer SLP Assistant, scheduled weekly 45-minute sessions with Student to work with him on the use of his AAC device. (FF # 77-78.) Summer SLP and Summer SLP Assistant recorded their notes from these sessions into a service log, noting the date and time of the session as well as a description of the skills worked on with Student. (FF # 79.) This service log indicates that speech and language services were provided to Student on each of the first three weeks of the ESY session, but that Student was absent from the program for the final session. (FF # 80.)

For these reasons, the SCO finds and concludes that Student’s speech and language services were fully implemented during the 2024 ESY program session, as required by 34 C.F.R. 300.323(c).

**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 State Complaints Officer (“SCO”).

Dated this 23rd day of September, 2024.



---

Nick Butler  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-15

- Exhibit 1: Supporting documents for Complaint

### Response, pages 1-20

- Exhibit A: IEPs
- Exhibit B: Documentation from IEP meetings
- Exhibit C: Prior Written Notices
- Exhibit D: Notices of Meeting
- Exhibit E: Report Cards, Progress Monitoring, and Progress Reports
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: District Calendar
- Exhibit I: Evaluations
- Exhibit J: District Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L: District Personnel
- Exhibit M: n/a
- Exhibit N: Release of Information for OT
- Exhibit O: Training Certificate for SLP
- Exhibit P: Release of Information for SLP
- Exhibit Q: IEE Report
- Exhibit R: ESY Questionnaire
- Exhibit S: Staff Licensure Information
- Exhibit T: Daily Schedule
- Exhibit U: CDE Guidance on Paraprofessionals

### Reply, pages 1-4

### CDE Exhibits

- CDE Exhibit 1: Outside SLP Letter
- CDE Exhibit 2: District ESS Guidebook
- CDE Exhibit 3: Intervention Approaches for Childhood Apraxia of Speech
- CDE Exhibit 4: Dynamic Temporal and Tactile Cuing: A Treatment Approach
- CDE Exhibit 5: A Systemic Review of Treatment Outcomes for Children with CAS
- CDE Exhibit 6: U.S. Dept. of Ed. Title 1 Paraprofessionals Non-Regulatory Guidance

## Telephone Interviews

- Parent: August 28, 2024
- SLP: August 28, 2024
- Teacher: August 28, 2024
- OT: August 29, 2024
- Coordinator: August 29, 2024
- Paraprofessional: August 29, 2024
- Summer SLP Assistant: August 30, 2024
- Director: August 30, 2024