

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

---

**State-Level Complaint 2022:555  
Adams 14 (Commerce City) School District**

**DECISION**

**INTRODUCTION**

On October 20, 2022, the parent (“Parent”) of a student (“Student”) not currently 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 the Adams 14 (Commerce City) School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two (2) allegations 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.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (“CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from October 20, 2021 through October 20, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to identify and evaluate Student from July 2022 to present, when District was on notice that Student may have a disability and be in need of special education and related services, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).

---

<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.

2. Failed to conduct an initial evaluation, as requested by Parent on August 30, 2022, to determine whether Student qualified as a child with a disability under the IDEA, in violation of 34 C.F.R. § 300.301.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is a sweet, cooperative, and hardworking 5-year-old, who is quiet, but “gets along with everyone.” *Exhibit G*, p. 3; *Exhibit C*, p. 4; *Interviews with Parent and General Education Teacher*. Student does not currently qualify for special education and related services. *Exhibit B*, p. 2; *Response*, p. 2.
2. This investigation concerns the 2022-2023 academic year, during which Student attended kindergarten at a District elementary school (“School”). *Response*, p. 2. In July of 2022, prior to the start of classes at School, Parent obtained a private evaluation from an outside organization (“Outside Organization”) to assess Student’s early academic skills (“Outside Evaluation”). *Exhibit G*, pp. 2-9.

#### **B. The Outside Evaluation**

3. The Outside Evaluation was administered during an in-person session on July 13, 2022. *Id.* at p. 2. Parent informed Outside Organization that she had concerns about Student’s early literacy and math skills, as well as his letter knowledge, number knowledge, comprehension, and ability to follow directions. *Id.*; *Interview with Parent*. Parent also reported that Student has a family history of speech/language delays, dyslexia, learning disabilities, and attention deficit hyperactivity disorder. *Exhibit G*, p. 3. At the time of the evaluation, he had not participated in any previous school-based learning assessments. *Id.*
4. The Outside Evaluation reviewed Student’s developmental and medical history, and indicated that Student was born on-time following a routine pregnancy, labor, and delivery. *Id.* at p. 2. His developmental history was reported as “typical for motor milestones.” *Id.* Student has no reported serious or chronic illness, and his most recent vision and hearing screenings (completed in March of 2022) were “within normal limits.” *Id.*
5. Student’s phonological processing skills were assessed through the Comprehensive Test of Phonological Processing – Second Edition. *Id.* at pp. 4-5. Student’s scores demonstrated

---

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

“weaknesses” in the areas of phonological awareness, phonological memory, and rapid automatized naming. *Id.*

6. Student’s vocabulary, listening comprehension, and oral expression skills were assessed using the Peabody Picture Vocabulary Test – Fifth Edition and the Weschler Individualized Achievement Test – Third Edition. *Id.* at p. 4. Results of these assessments demonstrated Student’s listening comprehension and oral expression skills were “solidly age appropriate.” *Id.* Student’s vocabulary was “fragile” yet “approaching age expectations.” *Id.*
7. Student’s early literacy and early math skills were assessed using the Weschler Individualized Achievement Test – Fourth Edition. *Id.* Student’s scores fell in the “low average” range for word recognition, rhyming, and letter/sound discrimination. *Id.* The Outside Evaluation indicated Student’s early literacy skills were “age below expectations.” *Id.* Student’s scores on a test of early mathematical understanding were similarly in the “low average” range. *Id.*
8. Student’s behavior was assessed through observation and an interview with Parent. *Id.* Results of the behavioral observation and Parent responses “reflected potential difficulties with attention and self-regulation”; however, the Outside Evaluation indicated the difficulties could be caused by a variety of factors outside the scope of the evaluation, and thus, recommended Parent discuss the difficulties with Student’s primary care provider. *Id.*
9. The Outside Evaluation concluded that Student was “at high risk” for a specific learning disability in reading/writing, and “may be at risk” for a learning disability in math based on “demonstrated weaknesses” in math problem-solving abilities. *Id.* at p. 3. However, due to Student’s age and limited education, a formal diagnosis was “premature.” *Id.* The Outside Evaluation recommended that Student receive a comprehensive reevaluation in one or two years to “clarify the diagnostic picture” and update treatment recommendations. *Id.*
10. The Outside Evaluation provided several “primary” recommendations for Student:
  - a. Participation in direct, systematic reading and spelling instruction based on the principals of multisensory phonemic awareness and phonics to develop Student’s early literacy skills. *Id.* at p. 3. Several teaching methodologies were recommended, including Heggerty, Wilson Reading, Pre-Flight/Take Flight, Lindamood Bell, and Orton Gillingham. *Id.* The Outside Evaluation indicated that a “[s]chool based distributed practice” in this approach would be “best.” *Id.*
  - b. When possible, Student should be taught math concepts and operations in “meaningful contexts.” *Id.*
  - c. Given Student’s “high risk” for dyslexia and dyscalculia, Parent should share the results of the Outside Evaluation with School, and when classes begin, Student’s

performance should be monitored through literacy benchmarks like the Dynamic Indicators of Basic Early Literacy Skills (“DIBELS”) and iReady (as the results may “further indicate” that Student should be on a READ plan). *Id.*

11. The Outside Evaluation further indicated that due to Student’s difficulties on oral language skills, a comprehensive language evaluation from a speech language pathologist “may be warranted.” *Id.* at p. 4.
12. On August 30, 2022, upon advice from the Outside Evaluation, Parent obtained an outside literacy skills assessment from Outside Organization (“August Assessment”). *Id.* at pp. 11-13. The August Assessment was administered virtually by a learning specialist from Outside Organization, and it consisted of the Phonological Awareness Test – Second Edition: Normative Update (“PAT-2”). *Id.* at p. 11.
13. Results of the PAT-2 demonstrated Student was below age expectations for phonological awareness, however, the evaluator indicated that Student exhibited difficulties with attention during the teleassessment, to include crawling under the desk, laying down in the computer chair, and leaving the camera area. *Id.* The SCO finds that Student’s attention issues during the August Assessment necessarily impacted the reliability of the results, and that the administration of the PAT-2 here did not constitute a “comprehensive language evaluation.” *Consultation with CDE Content Specialist.*

**C. Requests for Special Education Evaluation: District Policy, Practice, and Procedure**

14. Under District policy and procedure, parents can make a request for a special education evaluation to any staff member. *Interviews with Director of Special Education and Assistant Director of Special Education.* There is no form requirement for evaluation requests, and staff are trained to interpret any “inkling or hint” toward requests as a request for a special education evaluation. *Interview with Director of Special Education.* Once a request for a special education evaluation is made, staff are directed to ask parents for information about the nature of their concerns and to forward the request to Assistant Director of Special Education or Director of Special Education. *Interviews with Director of Special Education and Assistant Director of Special Education.*
15. Once a request is forwarded to Assistant Director of Special Education or Director of Special Education, one of those staff members will contact the school team to collect data and arrange a referral meeting. *Id.* The school team then reaches out to the parent to obtain information about the parent’s concerns (as well as ask about any outside reports or information that the team should consider). *Id.* There is no hard timeline for District staff to respond to a parent request for an evaluation or to schedule a referral meeting, however, the expectation is that staff reach out to parents within five days of the request to discuss next steps, or in any case as soon as possible. *Interview with Director of Special Education.*

16. Once a referral meeting is set, the school team lead (often the “special education staffing head” for the school) must contact the student’s general education teacher to obtain information about the student and collect assessment data, as well as decide which other staff should be included in the referral (e.g., if the concerns relate to speech/language skills, the referral should include a speech language pathologist). *Interviews with Director of Special Education, Assistant Director of Special Education, and Special Education Teacher*. If, upon investigating the parent’s concerns, District disagrees with the parent’s request for an evaluation, District must provide the parent with PWN, a copy of the Special Education Referral Form, and the procedural safeguards notice. *Id.*
17. District maintains a special education manual, which is shared with all special education staff. *Interview with Director of Special Education; see Exhibit K*, pp. 2-65. District’s special education manual includes sections with detailed information about requests for special education, referral meetings, and the contents and purpose of PWN, as well as information about District’s process for when District refuses to evaluate upon a parent’s request. *Id.* at pp. 14-15, 17-18. This manual also includes contact information for District’s service providers and special education coordinators, District staff contacts, and a list of additional online and community resources for special education concerns to staff. *Id.* at pp. 59-63.

#### **D. Parent’s Request for a Special Education Evaluation**

18. Classes for the 2022-2023 academic year began at School on August 9, 2022. *Exhibit J*, p. 2. On August 30, 2022, Parent emailed several District staff members, including Assistant Director of Special Education, and requested a special education evaluation for Student. *Exhibit L*, p. 8. Parent attached the information from the Outside Evaluation and August Assessment to the email and indicated that it documented learning concerns. *Id.*
19. On September 7, 2022, following the Labor Day weekend, Assistant Director of Special Education responded to Parent and indicated that the next step would be to schedule a referral meeting with Parent, and for the School team to gather a body of evidence to identify Student’s needs. *Id.* Assistant Director of Special Education indicated she would follow up with the School team to start the process and schedule a referral meeting. *Id.*
20. Assistant Director of Special Education contacted Special Education Teacher, the “special education staffing chair” at School, to start the referral process. *Interviews with Special Education Teacher, Assistant Director of Special Education, and Director of Special Education*. Each District school has a “special education staffing chair” appointed by the school principal to assist with building-level IDEA compliance. *Interview with Director of Special Education; Exhibit K*, p. 59.
21. Special Education Teacher reviewed the information from the Outside Evaluation/August Assessment and contacted General Education Teacher and Speech Language Pathologist (“SLP”) to build a body of data about Student for the referral meeting. *Interviews with*

*General Education Teacher, Assistant Director of Special Education, and Special Education Teacher.* On September 21, 2022, Special Education Teacher contacted Parent to schedule the referral meeting, which was set for September 28, 2022. *Interview with Special Education Teacher; Exhibit L*, p. 13.

22. In the time leading up to the referral meeting, Special Education Teacher and SLP met with General Education Teacher to discuss her observations of Student, to include how he was doing in class behaviorally and academically. *Interviews with Special Education Teacher and General Education Teacher.* General Education Teacher compiled data about Student's attendance, grades, scores on general education literacy screeners (DIBELS and general kindergarten screeners), and SLP administered a speech/language screener. *Interviews with Special Education Teacher, Speech Language Pathologist 2<sup>3</sup>, and General Education Teacher; Exhibit G*, pp. 15-24.
23. Due to scheduling conflicts, the referral meeting was rescheduled to October 5, and then to October 12, 2022. *Exhibit L*, pp. 16, 44, 66, 69.

#### **E. The October 12, 2022 Referral Meeting**

24. On October 12, 2022, Assistant Director of Special Education, Special Education Teacher, General Education Teacher, SLP, Parent, and Parent's educational advocate met virtually to discuss the Outside Evaluation, the August Assessment, the data obtained by District, and Parent's request to have Student evaluated for special education and related services. *Exhibit D.*
25. General Education Teacher reported her observations of Student, to include Student's scores on testing (DIBELS and general kindergarten assessments), peer interactions, and general classroom performance. *Id.* General Education Teacher reported that Student is a "dream student" and "the type of kid any teacher would want," and indicated she had no concerns about Student. *Id.*

#### **General Kindergarten Assessments - Literacy**

26. General Education Teacher reviewed the results of general kindergarten assessments which she administered starting in August of 2022. *Id.; Exhibit G*, p. 14. In terms of letter recognition, General Education Teacher reported that Student recognizes all upper-case letters except for "V", "Y", and "U", and Student recognizes all lower-case letters except for "d", "t", and "y." *Exhibit D.* General Education Teacher indicated that it is "very common" for kindergarten students to struggle with these letters, and that at the time of the referral meeting, the class had only covered seven letters during direct learning (so Student was beyond most of the class). *Id.*

---

<sup>3</sup> SLP was out on leave during this investigation, so District made available Speech Language Pathologist 2 to interpret the results of the speech/language assessment and answer the SCO's questions.

27. In terms of letter sounds, General Education Teacher indicated Student knows “just about all” of his sounds, and he is only missing four of the “common sounds” that are the “hardest for kindergarten” (“v”, “e”, “u”, and “y”). *Id.* Overall, General Education Teacher reported that his letter and sound recognition were better than most other students in the class. *Id.*
28. For sight words (words that people memorize because they use them often or because they employ unusual spelling rules), Student recognized the words “a” and “I” during 1:1 testing. *Id.* Student’s class was also taught the words “the” and “like”, but Student was unable to identify those words during 1:1 testing. *Id.* General Education Teacher indicated, however, that Student “always” does well on these words during whole group instruction. *Id.* General Education Teacher explained that it is early in the year to have gone through so many sight words (Student’s class is ahead of previous years), so she was not concerned about his progress, particularly given that he is able to recognize and use those words during whole group instruction. *Id.*
29. For rhyming words, General Education Teacher indicated Student could look at sets of words and determine whether they rhyme. *Id.* General Education Teacher indicated that Student is not yet at a point where he is consistently able to produce his own rhymes, but that is not a skill that students are expected to perform in kindergarten. *Id.*

#### General Kindergarten Assessments – Math

30. In terms of early math skills, General Education Teacher reported that Student could count to “16.” *Id.* In one-on-one correspondence for counting, Student could count to “15.” *Id.* General Education Teacher explained that by the end of the year the goal is for students to be able to count to “100.” *Id.* The goal is broken down by quarter, so the goal for quarter one is for Student to be able to count to “25” (and Student is “just below” the 25-mark). *Id.* General Education Teacher indicated that she does not have concerns about Student’s math skills, but Student does need practice working on counting skills to increase his fluency. *Id.*
31. In terms of number recognition, Student recognized “0” through “7” as well as “10” (Student missed the numbers “8” and “9”), and he can write numbers “1” through “10.” *Id.* General Education Teacher indicated, however, that Student’s class had only been taught to write and recognize numbers through “5” so Student’s number recognition and number writing skills were beyond most of the class (the class learns numbers “6” through “10” later in the year). *Id.* The end of the year goals for the class are to write and recognize numbers up to “20” so Student already passed the goal for quarter one (to write and recognize number up to “5”). *Id.*
32. General Education Teacher summarized her observations by saying she had “zero” concerns about Student. *Id.* Following her review of the general kindergarten assessments, General Education Teacher reviewed Student’s scores on DIBELS. *Id.*

### DIBELS Testing

33. General Education Teacher reported that Student's DIBELS scores demonstrate he has been making significant progress throughout the year. *Id.*
34. Kindergarten students at School were first tested on DIBELS at the beginning of the year on August 22, 2022. *Exhibit G*, p. 19. General Education Teacher indicated Student's composite score on DIBELS at the beginning of the year was a 20, which is in the "strategic" range (yellow). *Id.* at p. 18; *Exhibit D*. General Education Teacher explained that "strategic" means his score was "just below" the grade level benchmark, and that kindergarteners typically score low on this assessment at the beginning of the year. *Exhibit D*. Although Student scored in the "strategic" range, his composite score was one of the highest in the class, and a "strategic" score means a student is projected to score at grade level by the end of the year. *Id.*; *Interview with General Education Teacher*.
35. For First Sound Fluency ("FSF"), the beginning of the year benchmark was "10" and Student scored a "14" which General Education Teacher indicated was higher than most students' scores. *Exhibit D*. On the most recent round of testing, Student's FSF score was a "40." *Id.* The mid-year goal for kindergarten is for students to score a "30" for FSF, so Student is already progressing beyond the mid-year goal. *Id.*
36. General Education Teacher explained that Student's composite score was in the "strategic" range because of his beginning of the year Letter Naming Fluency ("LNF") score, which was a "6." *Id.* General Education Teacher conceded that a "6" is a low score but explained that the beginning of the year testing is done when students are new to School (and to testing), and that the assessment is administered by someone they do not know, which can impact results. *Id.* General Education Teacher indicated that Student's beginning of the year LNF score "surprised" her, as it does not match her observations or Student's subsequent scores on general kindergarten assessments (however, LNF is not tested during subsequent administrations of DIBELS, so Student does not have any subsequent LNF DIBELS scores). *Id.*; *Interview with General Education Teacher*.
37. General Education Teacher indicated that since the beginning of the year DIBELS testing, Student has moved on to phoneme segmenting (in DIBELS testing, students move through several different testing areas as they learn skills). *Exhibit D*; *Interviews with General Education Teacher and Special Education Teacher*. The mid-year phoneme segmenting goal for kindergarten is a score of "20" and the end of the year goal is "40." *Exhibit D*. As of the October 12 referral meeting, Student's phoneme segmenting score was "25" (so Student was beyond the mid-year phoneme segmenting goal for kindergarten). *Id.*
38. General Education Teacher summarized her report of Student's DIBELS scores by again reporting that she had no concerns about Student. *Id.* During interviews, General Education



Teacher added that she was “shocked” that Parent had concerns about Student’s attention in class, as he is one of the “best” in the class in terms of attention. *Interview with General Education Teacher*. Student has no attendance issues, and there have been no disciplinary referrals during the 2022-2023 academic year. *Interviews with Parent and General Education Teacher; Exhibit I*, pp. 2-3. General Education Teacher further added that his grades are all either “Proficient” or “Developing” and none of his grades in any subject/area are “NI” for “Needs Improvement.” *Interview with General Education Teacher; Exhibit I*, p. 3.

#### *The Outside Evaluation/August Assessment and Parent’s Concerns*

39. Following General Education Teacher’s report, Assistant Director of Special Education asked Parent if she had questions for General Education Teacher about the information she shared. *Exhibit D*. In response, Parent said she had concerns about Student’s “cognitive” skills based on the Outside Evaluation. *Id.*
40. Parent shared that she had been working with Student on learning the letter/sounds of “b” and “d” and it was “surprising” that he still struggles with those letters/sounds. *Id.* Parent indicated that when she works with Student at home, Student knows what letters look like, but he sometimes struggles with identifying the sounds they make. *Id.* Parent indicated that she worked all summer with Student for two hours/day, five days/week learning letters. *Id.*
41. General Education Teacher responded that for kindergarten, it is typical for students to struggle with “b” and “d” as well as “p” and “q” (even if they are working on those letters at home), and it is not generally a concern if a student does not master those letters until after kindergarten. *Id.* General Education Teacher shared some teaching strategies for those letters from the class’s “Superkids” curriculum for Parent to use at home but indicated that “Superkids” does not start teaching the letter “b” until later in the year. *Id.* General Education Teacher cautioned, however, that she did not recommend doing “hours and hours” of additional work at home, as that can be overwhelming to a child of Student’s age, and she would recommend reading to Student at home instead. *Id.*

#### *The Speech/Language Screener and SLP’s Observations*

42. SLP reviewed her observations of Student and discussed Student’s results on a speech/language screener. *Id.*
43. SLP indicated that, leading up to the referral meeting, she met with General Education Teacher to discuss General Education Teacher’s observations of Student in the classroom, to include whether he was able to work with peers and follow directions, and whether he appeared to get lost with any of the vocabulary or concepts introduced in class. *Id.* General Education Teacher reported no concerns to SLP and indicated Student was doing well. *Id.*

44. Following the conversations with General Education Teacher, SLP administered a speech and language screener. *Id.* The screener she administered was a diagnostic tool designed to assess students aged three to six years old for possible specific learning disabilities. *Interview with Speech Language Pathologist 2; Consultation with CDE Content Specialist.* A failing score on the speech/language screener would indicate a possible specific learning disability. *Interview with Speech Language Pathologist 2; Consultation with CDE Content Specialist.* The speech/language screener used here is accepted within the field as a valid, research-based diagnostic tool for determining if a student has a specific learning disability. *Consultation with CDE Content Specialist.*

#### The Speech/Language Screener – Language Skills

45. The first part of the speech/language screener assessed Student’s language skills. *See Exhibit G*, pp. 15-16. SLP indicated that, during the assessment, Student was able to provide general information about himself, such as his name and age, and the names of other members of his family. *Exhibit D.* In terms of expressive language, Student was able to identify colors, both when SLP pointed to a picture and asked him to identify the color, and when SLP pointed at a color and asked him to name the color. *Id.*

46. To assess Student’s skill with prepositions, SLP used a block and tokens and asked Student to put the token inside the box, under the box, behind the box, etc. *Id.* SLP then tested Student’s expressive language using the block and tokens (e.g., SLP put the token on the box, behind the box, and asked Student to indicate where the token was in relation to the box). *Id.* SLP indicated Student did “really well” with this section, although he expressed some confusion with “behind the box” (a passing score was a “3” and Student scored a “4” for this section – missing a point for “behind the box”). *Id.*

47. SLP indicated Student could identify body parts and clothing items without missing any points. *Id.* Similarly, Student had a perfect score for comprehending senses (SLP would ask Student to finish a sentence like “we use our nose to \_\_\_\_\_”). *Id.*

48. Student was able to identify categories of words (such as animals and food), as well as basic functional vocabulary by image and function (pen, ball, chair, bed, etc.). *Id.* Student was also able to answer questions such as “[w]here do you sleep” and “[w]hat animal lives in the water.” *Id.* SLP indicated Student said an “alligator” lives in the water, and he was able to produce all the sounds in the word “alligator” without issue. *Id.*

49. In terms of morphology (looking at the endings of words), Student missed one point on the screener, but was otherwise able to identify the correct endings of words (Student scored three out of four possible points correct). *Id.* For spontaneous language, Student could look at an image and provide descriptions of what was happening in the image (e.g., playing on playground, catching flies, climbing up the tree). *Id.* SLP indicated that Student initially didn’t identify pronouns, but when prompted (i.e., what is *she* doing), he corrected and said

things like “she is climbing up the tree”. *Id.* During this section, Student was using action words, and his grammar was “really good.” *Id.*

50. SLP indicated that for a five-year-old, an overall score of 80% on the language portion of the screener is considered “passing”. *Id.* Student’s overall score was 92%, so Student’s score exceeded the passing criteria for a six-year-old student (a “passing” score for a six-year-old is 90%). *Id.* SLP indicated that the language portion of the speech/language screener did not show any areas of need, and that currently (based on her collaboration with General Education Teacher) Student is not struggling with language academically. *Id.*

#### The Speech/Language Screener – Articulation Skills

51. The speech/language screener also contained a section to assess Student’s articulation skills. *Exhibit G*, p. 17. SLP assessed Student’s articulation skills by presenting Student with “articulation picture cards” and asking him to identify the object in the picture, focusing on “target phonemes.” *Exhibit D.* SLP indicated that Student scored a 100% on this section, he knew all his sounds, and she did not see any phonological processes (e.g., velar fronting, gliding, consonant deletion). *Id.*
52. SLP further indicated she was able to understand almost everything Student said without issue and that a passing articulation score for a five-year-old was 70% (for a six-year-old a passing score was 87%). *Id.*
53. SLP indicated that she read through the data from the Outside Evaluation and August Assessment and noticed that Student’s scores were “a little low” for vocabulary and semantics, but that she did not see anything to suggest concerns in her own assessment and said Student was “doing really well.” *Id.* SLP asked Parent for information on what Parent was seeing at home. *Id.*

#### Parent’s Concerns Regarding Student’s Speech/Language Skills

54. Parent indicated that Student sometimes mispronounces words at home (e.g., “watermelon”), particularly when he speaks quickly. *Id.* Parent also said that during the Outside Evaluation, Student had trouble separating compound words (e.g., “pancake” into “pan” and “cake”). *Id.* Parent indicated the Outside Evaluation was based on “age appropriate” standards and expressed concern that it demonstrated Student was behind. *Id.*
55. SLP responded that now Student’s class began with teaching letters/letters sounds, and the class is moving into learning more advanced skills like segmentation. *Id.* SLP explained that the Outside Evaluation was likely the first time Student was asked to, for example, separate a three-syllable word into syllables, which may explain why Student’s scores were lower during the summer. *Id.* Even if the Outside Evaluation was testing Student for “age

appropriate” skills, Student may have had lower scores because he has never encountered those concepts in School, and a low score does not necessarily mean he is behind. *Id.*

56. SLP further responded that during every one of the tasks she asked Student to complete, he was able to perform “very well” (and she did not observe any issues like him forgetting syllables in multi-syllabic words), and academically and functionally, he is likewise doing “very well.” *Id.* General Education Teacher indicated Student’s class has been taught about compound words and Student is able to separate and construct compound words during class. *Id.* Student’s class has also been taught about syllables, and Student is able to identify syllables during whole group instruction. *Id.*

### Parent’s Additional Concerns

57. Parent’s advocate indicated the Outside Evaluation’s results showed Student struggled with isolation, segmenting, and rhyming, and that Student is at high risk for a specific learning disability, so the “next step” is to refer him. *Id.* Parent added that Student may be doing well academically in the classroom, but a “deeper dive” was needed. *Id.*

58. Assistant Director of Special Education pointed out that the Outside Evaluation made recommendations about teaching methodologies for Student (e.g., multisensory phonemic awareness and phonics instruction) and District was following those recommendations (e.g., Student receives instruction in phonics and phonemic awareness through the “Superkids” and “Heggerty” curriculum). *Id.*; *Interview with General Education Teacher.* The SCO finds “Heggerty” and “Superkids” are research-based teaching methodologies that are accepted within the field, and incorporate direct, systematic instruction based on the principals of multisensory phonemic awareness and phonics. *Consultation with CDE Content Specialist.*

59. Assistant Director of Special Education asked General Education Teacher to discuss her observations of how Student was performing in the classroom. *Exhibit D.*

### General Education Teacher’s Observations – General Classroom Performance

60. General Education Teacher indicated that all her reading groups focus on phonics and phonemic awareness, and Student is in her second highest reading group (at the time of this Decision, Student had moved up to the highest reading group in General Education Teacher’s class). *Id.*; *Interview with General Education Teacher.* In terms of phonemic awareness, Student’s segmenting skills on DIBELS are above the mid-year goal for kindergarten. *Exhibit D.* Student is currently working on isolating sounds within words during whole group instruction and is doing “very well.” *Id.*

61. In terms of phonics, Student’s class is working on separating word sounds using “Elkonin Boxes.” *Id.* He can identify the first sound in a word and put the letter down “every single time,” the middle sound/letter “95 percent of the time,” and the last letter/sound “maybe

about 70 percent of the time.” *Id.* General Education Teacher indicated the last sound is usually the hardest for students, and they are currently working on a strategy called “punching it out” to learn the last letter/sounds. *Id.* Fluency is not yet being taught in Student’s class because that comes after students are able to start reading. *Id.*

62. In terms of vocabulary, Student’s class is learning vocabulary words through the “Superkids” curriculum, and Student is using those words “perfectly” in class and understands what they mean. *Id.* For comprehension, Student can discuss what happened during a reading in whole group or small group instruction. *Id.* General Education Teacher indicated Student’s comprehension abilities are ahead of most other students in her class. *Id.*

63. General Education Teacher further explained to the SCO that she also teaches math in “meaningful contexts” as recommended by the Outside Evaluation (although the math curriculum was not explicitly discussed during the referral meeting). *Interview with General Education Teacher.*

#### District’s Decision to Not Evaluate Student

64. Parent’s advocate maintained that there is a “disconnect” between what the Outside Report shows and what is being seen at School, because the Outside Evaluation demonstrates that Student struggles with isolation, segmentation, and rhyming. *Exhibit D.* Parent also indicated that she thought District should evaluate based on her concerns and the Outside Evaluation even if there was not School data to support those concerns. *Id.*

65. Assistant Director of Special Education pointed out that the Outside Evaluation did not recommend that Student be screened for special education and related services. *Id.* The Outside Evaluation recommended that the Outside Evaluation be shared with District, and that Student be monitored using literacy benchmarks like DIBELS (which District is doing). *Id.* General Education Teacher and Special Education Teacher also pointed out that Student is receiving direct systematic instruction in both phonemic awareness and phonics through the “Superkids” and “Heggerty” curriculum (as was further recommended by the Outside Evaluation). *Id.*

66. Parent and Parent’s advocate continued to request an evaluation for special education; District refused because the data obtained from General Education Teacher’s observations, scores on assessments (DIBELS, general kindergarten assessment), SLP’s observations, and scores on the speech/language screener demonstrated that Student was not suspected of needing special education. *Id.* Assistant Director of Special Education indicated that District would continue to monitor Student for concerns, and if there is new information or concerns arise, the team can always reconsider a referral. *Id.*

#### **F. Prior Written Notice (“PWN”) and Procedural Safeguards**

67. On October 13, 2022, the day following the referral meeting, Assistant Director of Special Education drafted PWN of District's decision not to evaluate Student. *Id.*; *Interview with Assistant Director of Special Education*. Assistant Director of Special Education provided the October 13, 2022 PWN to Parent, along with a procedural safeguards notice, and a copy of the Special Education Referral Form which was filled out during the October 12, 2022 referral meeting. *Exhibit D*; *Interview with Assistant Director of Special Education*; *Exhibit C*, pp. 2-5; *Exhibit B*, pp. 2-3. Assistant Director of Special Education also informed Parent that Parent could reach out to her directly with any questions. *Exhibit D*.
68. The Special Education Referral Form contained detailed information about Parent's request for the evaluation, including the information from the Outside Evaluation/August Assessment (and the Outside Evaluation's "primary" recommendations). *Exhibit C*, pp. 3-4. The Special Education Referral Form also included a detailed report of the data obtained by District, to include Student's DIBELS scores and progress in class, and information about the curriculum General Education Teacher teaches in class (e.g., "Heggerty"). *Id.* at pp. 2-3.
69. The PWN documented District's refusal to evaluate Student for special education and related services. *Exhibit B*, pp. 2-3. The PWN indicated District's refusal was based upon consideration of the results of the Outside Evaluation/August Assessment, General Education Teacher's report regarding Student's present levels of performance, the speech/language screener, and DIBELS scores. *Id.* at p. 2. The PWN noted the IEP Team considered evaluating him as requested by Parent, but that option was rejected because District is already following the recommendations from the Outside Evaluation, and the data does not show that Student may be in need of special education and related services. *Id.*

## **CONCLUSIONS OF LAW**

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

**Conclusion to Allegations No. 1 and 2: District did not have reason to suspect a qualifying disability and need specialized instruction, and therefore did not violate IDEA by failing to initiate a special education evaluation. District also responded to Parent's request for a special education evaluation consistent with 34 C.F.R. § 300.301. No IDEA violations occurred.**

Parent's concern is that District did not follow the IDEA by failing to initiate a special education for Student upon learning of Parent's concerns and receiving the Outside Evaluation/August Assessment and her request for an initial evaluation on August 30, 2022.

### **A. The Law**

#### **1. The Child Identification Process**

IDEA mandates that states develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process “shall include child find, special education referral, initial evaluation, and determination of disability and eligibility for special education.” ECEA Rule 4.02(1)(a)(ii).

Under the “special education referral” component of the identification process, school districts have an affirmative obligation to evaluate a child where the district has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(a). This obligation exists even where the child advances from grade to grade. 34 C.F.R. § 300.111(a).

The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry by a school district is “whether the child should be referred for an evaluation, not whether the child actually qualifies for the services.” *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion “may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation.” *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of a school district in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). School districts must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe County Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

## 2. Requests for an Initial Special Education Evaluation

An initial special education evaluation seeks to determine whether a child has a disability within the scope of the IDEA and, if so, aids the IEP Team in the development of the child’s IEP. 34 C.F.R. § 300.304(b)(1)(i)-(ii); ECEA Rule 4.02(4). School districts must complete a comprehensive initial evaluation before providing special education services to a child with a disability. 34 C.F.R. § 300.301(a).

As explained above, a school district may initiate a special education evaluation, or a parent may request an initial special education evaluation. *Id.* § 300.301(b); ECEA Rule 4.02(3)(a). Once a parent requests an evaluation, a school district has two options: (1) agree to evaluate the

child and obtain parental consent for the evaluation, or (2) deny the request to evaluate and provide the parent with PWN explaining its decision. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); 34 C.F.R. § 300.503(a). Neither the IDEA nor the ECEA require parents to submit requests for evaluation in writing or use any magic language for their request. *Charlotte-Mecklenburg Bd. of Ed. v. Brady*, 2022 WL 989231, 122 LRP 11445 (W.D. N.C. 2022) (collecting cases) (finding notice of student’s diagnoses and request for information about available resources sufficient to constitute a request for an evaluation).

A school district must provide the parent a PWN within a reasonable time before a school district refuses to initiate an initial special education evaluation. 34 C.F.R. § 300.503(a). Failure to provide PWN within a reasonable time before refusing to initiate or change a student’s identification constitutes a procedural violation that may result in a denial of FAPE. *See El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13). The notice must be provided so that parents have enough time to fully consider and respond to the action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those options were rejected; and a description of any other factors relevant to the district’s proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(3) and (6)-(7).

Finally, a copy of the procedural safeguards notice must also be provided in response to a parent’s request for evaluation. *Id.* § 300.504(a)(1).

## **B. Legal Analysis and Conclusion**

### **1. Parent’s Concerns and Request for a Special Education Evaluation**

Here, Parent obtained the Outside Evaluation and August Assessment in July and August 2022. (FF #s 3, 12). The Outside Evaluation indicated Student was at “high risk” for a specific learning disability in reading/writing, and that Student “may be at high risk” for a specific learning disability in math. (FF # 9). The Outside Evaluation further indicated Student demonstrated “weaknesses” in the areas of phonemic awareness, phonemic memory, and rapid automatized naming, as well as early literacy and early math skills. (FF # 5).

The Outside Evaluation did not diagnose Student or recommend that Student be evaluated for special education services. *See* (FF # 10). Rather, the Outside Evaluation recommended literacy and math teaching methodologies for Student, that the Outside Evaluation be shared with District, and that Student be monitored through beginning of the year literacy benchmarks, like DIBELS. (*Id.*) Parent shared the Outside Evaluation and August Assessment with District on August 30, 2022 and requested a special education evaluation. (FF # 18).

### **2. District’s Response to Parent’s Request for a Special Education Evaluation**



On September 7, 2022, Assistant Director of Special Education forwarded the request to Special Education Teacher, the “special education staffing head” for School. (FF #s 19-20). Special Education Teacher then reviewed the Outside Evaluation and the August Assessment, discussed Parent’s concerns with General Education Teacher and SLP, and reached out to Parent to schedule a referral meeting for Student. (FF # 21).

Due to scheduling conflicts, the referral meeting was scheduled for October 12, 2022. (FF # 21). In the time leading up to the referral meeting, General Education Teacher gathered observational data about Student, and compiled Student’s scores on assessments and screeners. (FF # 22). SLP likewise met with General Education Teacher to discuss her observations of Student and administer a speech/language screener on Student. (*Id.*)

On October 12, 2022, District met with Parent and Parent’s advocate to discuss the Outside Evaluation, the August Assessment, and Parent’s concerns. (FF # 24). Since Parent’s concerns involved Student’s speech/language skills, District invited SLP to attend. (*See id.*) At the meeting, General Education Teacher reported that she did not have any concerns about Student. (FF #s 25, 30, 32, 38). She shared observations of Student’s classroom performance and the results of general kindergarten assessments she administered on Student. (FF #s 26-38, 60-63). In class, she reported Student was doing well with literacy without intervention, and she had no concerns about his early literacy skills. (FF #s 25, 32, 38). General Education Teacher likewise indicated she had no concerns about Student’s performance in math, although she indicated he needed more practice with counting to increase fluency. (FF #s 25, 30, 32, 38). General Education Teacher reported no behavioral concerns and indicated during interviews that Student is one of the best students in her class for attention. (FF # 38).

General Education Teacher reviewed Student’s DIBELS scores and reported that his scores (including in the areas where he scored low on the Outside Evaluation) were high compared to other students in the class, that they demonstrated significant growth, and that Student had already surpassed many of the DIBELS goals for Q1. (FF #s 33-38). General Education Teacher indicated Student was receiving systematic, multisensory literacy instruction in phonemic awareness and phonics through the “Superkids” and “Heggerty” curriculums in class (as was recommended by the Outside Evaluation), and Student was performing well without interventions. (FF #s 60-63). Although not discussed during the referral meeting, Student was also receiving math instruction in “meaningful contexts” as recommended by the Outside Evaluation, and General Education Teacher indicated Student was doing well in math. (FF # 63).

SLP likewise reported no concerns about Student. (FF # 53). SLP reviewed the results of the speech/language screener she administered and indicated that Student passed the language portion of the screener with a score of 92%, and the articulation portion of the screener with a perfect score of 100%. (FF #s 50-51). The speech/language screener SLP used is a research-based diagnostic tool designed to determine if a student has a specific learning disability, and

Student's scores on the assessment did not raise any concerns (including in the areas in which Student demonstrated "weaknesses" under the Outside Evaluation). (FF # 44, 50, 53).

Student's grades for the 2022-2023 academic year are all "Developing" or "Proficient" and he is not receiving any grades of "NI" for "Needs Improvement". (FF # 38). Student also has no attendance issues and has not been subjected to any disciplinary referrals. (*Id.*) Taking into consideration all this information, District determined there was no reason to suspect Student may have a qualifying IDEA disability and a need for special education and related services, and therefore declined to refer Student for a special education evaluation. (FF # 66).

### 3. District's Decision to Not Evaluate Student

District made the decision not to evaluate Student on October 12, 2022. (*Id.*) On October 13, 2022, District provided Parent with a PWN, a copy of the Special Education Referral Form, and the procedural safeguards notice. (FF # 67).

The PWN contained a description of the action refused by District (to not evaluate Student). (FF # 69). The PWN and Special Education Referral Form also contained a detailed descriptions of what District relied upon to come to the decision not to evaluate Student, including detailed information about Student's DIBELS testing, General Education Teacher's observations, and the speech/language screener. (FF # 68). The PWN contained a description of the other options the IEP Team considered (e.g., evaluating Student notwithstanding the lack of School data to support Parent's concerns), as well as the reasons why those options were rejected. (FF # 69). Finally, the PWN and Special Education Referral Form contained a description of the other factors relevant to District's proposal, such as the Outside Evaluation/August Assessment. (FF #s 68-69).

### 4. Legal Conclusions

The SCO finds and concludes—in consultation with CDE Content Specialist—that District did not violate the IDEA because it did not have reason to suspect a qualifying IDEA disability and a need for special education and related services. The SCO also finds and concludes that District did not violate the IDEA because it appropriately responded to Parent's request for an initial special education evaluation.

When District was informed of Parent's concerns, the Outside Evaluation, the August Evaluation, and Parent's request for an evaluation, District followed its special education referral procedures, to include bringing in appropriate service providers to offer expertise (e.g., SLP) and assessing Student's speech/language skills. (FF #s 21, 24). The diagnostic tools District used (e.g., DIBELS and the speech language screener) were appropriate tools to investigate Parent's concerns about a possible specific learning disability. (FF #s 33-38, 44). District considered the information provided by Parent and gathered Student specific data, but

ultimately concluded at a referral meeting that there was no evidence to suggest that Student may have a qualifying IDEA disability and need special education and related services. (FF # 66).

On October 13, 2022, the day following the referral meeting, District provided Parent with a proper PWN (the Special Education Referral Form was also included with relevant information), and the procedural safeguards notice. (FF # 67).

For these reasons, the SCO finds and concludes that District did not violate 34 C.F.R. § 300.111, ECEA Rule 4.02(1)-(3), or 34 C.F.R. § 300.301.

### **REMEDIES**

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

### **CONCLUSION**

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

Dated this 19th day of December, 2022.



Ross Meyers  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-9**

- Exhibit 1: Letter from Advocate and Evaluation Results

### **Response, pages 1-11**

- Exhibit A: none
- Exhibit B: PWNs
- Exhibit C: Meeting Notes
- Exhibit D: Recording of October 12, 2022 Referral Meeting
- Exhibit E: none
- Exhibit F: Parent Request(s) for Evaluation
- Exhibit G: Evaluation/Assessment Reports
- Exhibit H: none
- Exhibit I: Grade and Attendance Reports
- Exhibit J: School Academic Calendar
- Exhibit K: Policies and Procedures
- Exhibit L: Correspondence
- Exhibit M: none
- Exhibit N: Proof of Mailing
- Exhibit O: Other Relevant Documents
- Exhibit P: Additional Documentation Requested by SCO

### **Reply, pages 1-2**

- Exhibit 2: Multidisciplinary Care Plan
- Exhibit 3: Second Letter from Advocate

### **Telephone Interviews**

- Assistant Director of Special Education: November 29, 2022
- Director of Special Education: November 29, 2022
- General Education Teacher: November 29, 2022
- Parent: November 23, 2022
- Special Education Teacher: November 29, 2022
- Speech Language Pathologist 2: November 29, 2022