

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland Public School)
District 1J)

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 18-054-030

I. BACKGROUND

On May 30, 2018 the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Portland Public School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint by email on May 30, 2018.

On June 4, 2018, the Department sent a *Request for Response* (RFR) to the District, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of June 18, 2018. The District completed its *Response* and the Department's Contract Investigator (Investigator) received it on June 19, 2018 after resolving email delivery failure issues. The *Response* included a narrative, partial exhibit listing, and the following documents:

1. Meeting Minutes dated May 31, 2015
2. Specific Learning Disability Student Progress Monitoring (undated)
3. Student Progress Monitoring Graph – DIBELS for school year 2015-2016
4. PPS Grade 2 Phonics Survey – Assessor Copy (undated)
5. Building Screening Committee Referral and/or Recommendation dated March 16, 2016
6. Sample Interventions and Accommodations dated March 16, 2016
7. Notice of Team Meeting dated March 16, 2016
8. Meeting Minutes dated March 16, 2016
9. Meeting Minutes dated March 29, 2016
10. Prior Written Notice – Notice of Evaluation Decision dated March 29, 2016
11. Consent for Individual Evaluation dated March 29, 2016
12. Notice of Team Meeting dated May 18, 2016
13. Academic Evaluation Report dated May 31, 2016
14. Confidential Psychoeducational Report dated May 31, 2016
15. Eligibility Statement Dated May 31, 2016
16. Prior Written Notice Dated May 31, 2016
17. Disability Statement dated May 31, 2016
18. Notice of Team Meeting dated August 30, 2016
19. IEP dated September 13, 2016
20. Meeting Minutes dated September 13, 2016
21. IEP Progress Report – Annual Goal dated June 16, 2016
22. Special Education Determination Placement dated June 13, 2016
23. Provision of Special Education Services dated September 13, 2016
24. Notice of Team Meeting dated November 16, 2016
25. Notice of Team Meeting dated August 28, 2017
26. Emails between District and Parent created between August 29, 2017 and April 25, 2018
27. IEP dated September 7, 2017
28. Special Education Determination Placement dated September 7, 2017
29. Prior Written Notice dated September 7, 2017

30. Meeting Minutes dated September 7, 2017
31. Notice of Team Meeting dated January 14, 2018
32. IEP Progress Report dated April 13, 2018
33. Notice of Team Meeting dated May 2, 2018
34. IEP dated May 10, 2018
35. Notice of Team Meeting dated May 10, 2018
36. Meeting Minutes dated May 10, 2018
37. IEP dated June 1, 2018
38. IEP meeting notes dated June 1, 2018
39. Prior Written Notice dated June 1, 2018
40. Prior Written Notice and Consent for Evaluation dated June 1, 2018
41. Special Education Determination Placement dated June 1, 2018
42. IEP Progress Report – Annual Goal dated June 1, 2018
43. Student’s Attendance Report for school year 2017-2018
44. Oregon Department of Education Test Administration Manual

The Investigator determined that in-person interviews were necessary. On June 12, 2018, the Investigator interviewed District personnel. On July 3, 2018, the Investigator interviewed the Parent.

The Parent submitted the following documents to the Investigator in advance of the in-person interview:

1. Emails between the Parent and the District dated between November 13, 2017 and May 18, 2018
2. A shared “Google Doc” regarding the Parent’s “helpful hints” regarding implementation of the Student’s accommodations and modifications dated November 29, 2017.

The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department’s receipt of the complaint. The Department must issue a final order within sixty days of receiving the complaint. The District and the Parent can agree to extend the timeline to participate in mediation. The timeline may also be extended for exceptional circumstances.¹ This order is timely.

¹ OAR 581-015-2030(12).

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.² The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from May 31, 2017 through May 30, 2018.

	Allegations	Conclusions
1.	<p>IEP Implementation</p> <p>The Parent alleges that the District violated the IDEA because it did not provide the Student services in accordance with the Student's IEP including, but not limited to:</p> <ul style="list-style-type: none"> a. Prohibiting the Student from taking the "Smarter Balanced" assessment; b. Failing to provide the Student with speech to text accommodations; c. Failing to reduce the amount of questions on standardized tests; and d. Failing to instruct the Student in a small group. <p>(34 CFR §§ 300.323, 300.324, 300.320; OAR 581-015-2220, 581-015-2205).</p>	<ul style="list-style-type: none"> a. Not Substantiated. The Student completed the Smarter Balanced state assessment in a timely fashion and had access to accommodations such as text-to-speech and having the materials read aloud. This conforms to the Student's IEP. The Department does not substantiate this allegation. b. Substantiated. The District failed to provide appropriate "read aloud" classroom accommodations to the Student in conformity with the Student's IEP. The Department substantiates this allegation. c. Not Substantiated. The Student's IEP did not contain an accommodation to reduce the amount of standardized assessment questions. The Department does not substantiate this allegation. d. Not Substantiated. During the 2017-2018 school year, the Student left the English language portion of the Student's educational program and received SDI in a small group in the school's Learning Center. The Department does not substantiate this allegation.

² 34 CFR §§ 300.151-153; OAR 581-015-2030.

2.	<p>Least Restrictive Environment</p> <p>The Parent alleges that the District violated the IDEA because it failed to implement accommodations and modifications so that the Student may participate with non-disabled peers in the school's cultural immersion program.</p> <p>(34 CFR §300.114 OAR 581-015-2240, OAR 581-015-2250)</p>	<p>Not Substantiated.</p> <p>There is no indication that either the Parent or the District contend that the Student should be removed from the general education environment for less than 5% of the week. The Department does not substantiate this allegation.</p>
3	<p>Additional Findings</p> <p>a. Accommodations in the Japanese Language Program</p> <p>b. Bullying</p>	<p>a. Substantiated. The Department substantiates a finding that the District did not comply with the Student's IEP by not providing appropriate accommodations in the Japanese language portion of the Student's educational program.</p> <p>b. Substantiated The negative impact of peer bullying on the Student impeded the implementation of agreed-upon accommodations in the Student's IEP. The Department substantiates this finding.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<p>"Both [the Student's teachers] have demonstrated an inability to support [the Student] using [the Student's] IEP. These are not the only teachers at [the Student's school] that simply do not know how to instruct IEP students. [I don't know a] solution? Training?"</p>

III. FINDINGS OF FACT

1. The Student is ten years old and most recently attended fourth grade in a District elementary school.
2. The Student participates in a District cultural immersion program. One half of the Student's classes are conducted entirely in Japanese, the other half are conducted in English.
3. The Student is eligible for special education services under the category of Specific Learning Disability (SLD). The Parent reports the Student has dyslexia. The Student receives specially designed instruction (SDI) in reading and writing. The Student's September 7, 2017 placement team determined the Student would be placed in the general education environment for more

than 90% of the Student's school day so the Student could have access to the general education curriculum, participate in the general education setting with non-disabled peers, and experience fewer transitions.

4. For purposes of this Complaint, the Student's operative individualized education program (IEP) is from September 7, 2017. Under the header of "Required Testing and Assessments," the IEP Team decided that the Student would take the Smarter Balanced³ statewide assessment (Smarter Balanced) in English & Language Arts and Math with the following accommodations: (1) Print on Request; (2) Text-to-Speech Items and Stimuli for Math and Text-to-Speech Items for English and Language Arts (ELA); and (3) Read aloud (for ELA items and for Math stimuli and items.)
5. The Student's IEP explains that the Student requires accommodations on the Smarter Balanced because the Student's SLD in "Basic Reading Skills and Reading Fluency make it difficult to independently access the written materials provided in this assessment, thereby not fully assessing [the Student's] abilities to perform or demonstrate [the Student's] knowledge and potential."
6. In addition to statewide assessment accommodations, the Student's September 7, 2017 IEP Team decided the Student required the following supplemental aids, services, accommodations, or modifications in the classroom: test questions read aloud, extra time for completing assignments, prioritizing work projects to emphasize quality over quantity (e.g., homework packets), access to word processing programs, access to graphic organizers and visual tools, voice typing or dictation to record, preferential seating, teacher check-ins after transitioning back from receiving SDI, printed assessment materials, visually chunk assignments, visual isolator for reading or working on a lengthy text assignment, and a visual reference "tool kit" for strategies to continue working.
7. At the beginning of the 2017-2018 school year, the Parent emailed the Student's special education teacher, specifically requesting support for the Student in the English-language part of the Student's educational program.
8. In the Japanese language part of the Student's educational program, the Student's class was divided into three different ability levels. The Student was placed in a group that received a reduced workload and worked at a slower pace. The Student's Japanese teacher prepared different tests to reflect the different levels of student ability. The Student's Japanese teacher would not give the Student a full test, but rather select specific questions to evaluate the Student's comprehension.
9. The Student's Japanese teacher did not read math tests to the Student. Rather, the teacher had the class read math story problems as a class or in pairs. The teacher would not put a time limit on the tests but when approximately 70% of the class had completed the test, the teacher would collect all the students' tests.
10. At a parent-teacher conference on November 13, 2017, the Parent spoke with both of the Student's teachers. At this conference, the teachers noted they were having difficulty finding a methodology that would help the Student in all areas.

³ Smarter Balanced is a statewide summative computer-based standardized assessment. For fourth grade students Smarter Balanced evaluates students in the areas of Mathematics and English/Language Arts. The Smarter Balanced assessment contains a text to speech embedded function in its program.

11. On November 13, 2017 the Parent reached out to the school's administration requesting a meeting based on what transpired at the parent-teacher conference and because the Parent believed the Student's self-esteem was being adversely affected.
12. On November 15, 2017, the Parent reported that the Student's classmates were "making fun of [the Student], calling [the Student] an idiot and then huffing and hissing, etc. when [the Student] gets stuck reading." The Parent went on to state that "[the Student] was hesitant to even say anything to [the Parent]"
13. The Student experienced peer bullying during the 2017-2018 school year. The bullying prompted the Student to not participate in challenging activities and to not ask for help or request accommodations to assist in completing classwork. As an example, when the Student's Japanese teacher would attempt to "push-in" and help the Student, the Student would actively decline assistance.
14. As another example, the Student's English teacher kept bookmarks in the classroom for any student to access. However, the Student would not walk over to where the bookmarks were kept to retrieve one to assist in reading tasks because of fear of bullying. Additionally, the Student was afraid to ask the English teacher for help.
15. On December 1, 2017, the Parent communicated with the Student's English teacher that the Student was anxious about being assigned a reading partner who would be unkind about the Student's reading level and possibly make fun of the Student. The English teacher reassured the Parent that the teacher would be mindful of the choice of a reading partner for the Student and would monitor that choice.
16. On December 14, 2017, the Parent reported to the District that the Student was being bullied by three other students on a regular basis. The three students called the Student names and criticized the Student's dress and appearance.
17. On April 16, 2018, the Parent sent an email to the District inquiring about the plan for the Student taking the Smarter Balanced.
18. On or about April 20, 2018, the Parent emailed the Student's special education teacher regarding opting the Student out of taking the Smarter Balanced assessment. The special education teacher stated that the Parent should follow the Student's lead, but that all the supports for the Student to take the assessments were documented if the Student wanted to attempt the assessment. Ultimately, the Parent did not opt the Student out of the Smarter Balanced assessment.
19. On April 24, 2018, the first day the Student was to take the Smarter Balanced test, the Parent sent an email to each of the Student's teachers and again asked about the plan for the Student taking the Smarter Balanced assessment. District staff did not respond to the Parent on April 24, 2018.
20. On April 24, 2018, the Student's English language teacher pulled the Student from class before administering the Smarter Balanced assessment. The Student did not take the first portion of the Smarter Balanced assessment on April 24, 2018. The Parent brought this to the attention of the District after Student shared with the Parent that the teacher had sent the Student out of the classroom on the first day of testing.

21. The Student sat with other peers for the next administration of the Smarter Balanced assessment. The Student used the audio text function that came embedded in the assessment program, but selected answers quickly and without waiting for the assessment's audio text to finish announcing the question and potential answers. Upon discovering the Student was not using the audio text accommodation appropriately, the Student's special education teacher read the remainder of the written assessment materials to the Student.
22. On May 18, 2018, the Student's Japanese teacher emailed the Parent and voiced concerns that the Student was not asking to have tests read aloud and that the Student was not participating in the small group with peers and the classroom intern. Both teachers stated the Student would not ask to have classroom tests read to the Student, nor would the Student ask for assistance. Instead, the Student would simply stop working on tests.
23. The Student did not complete math tests throughout the school year. The Student typically became frustrated and stopped working. The last math test the Student took in the 2017-2018 school year dealt with fractions and decimals. The Student's teacher read the Student the word problem portions of the test as well as the answers choices. The Student completed the test. This was the first test the teacher read aloud to the Student and the first test that the Student completed during the 2017-2018 school year.

IV. DISCUSSION

A. IEP Implementation

1. Administering the Smarter Balanced

The Student took the Smarter Balanced assessment, albeit on a slightly different schedule than the Student's peers. Each student's IEP must include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on statewide assessments.⁴

The Student's September 7, 2017 IEP Team decided the Student would participate in the Smarter Balanced statewide assessment. Administration of the Smarter Balanced assessment began at the Student's school on April 24, 2018. The IEP Team had agreed on certain assessment accommodations for the Student, including: (1) Print on Request; (2) Text-to-Speech Items and Stimuli for Math and Text-to-Speech Items for ELA; and (3) Read aloud (for ELA items and for Math stimuli and items.)

On April 24, 2018, the Student's English language teacher pulled the Student from class before administering the Smarter Balanced assessment. The Student did not take the first portion of the Smarter Balanced assessment with other peers on April 24, 2018. The Parent brought this fact to the attention of the District after the Student shared it with the Parent.

The Student sat with other peers for the next administration of the Smarter Balanced assessment. The Student used the embedded text-to-speech function in the assessment's program, but selected answers quickly and did not wait for the assessment's audio text to finish announcing the question and potential answers. Upon discovering the Student was not using the audio text

⁴ 34 CFR § 300.320(a)(6); OAR 581-015-2200(1)(g).

accommodation appropriately, the Student's special education teacher read the remainder of the assessment to the Student. The Student's IEP Team convened after the administration of the Smarter Balanced, and the "present level of academic performance, including the Student's most recent performance on Statewide/districtwide assessments" section of the Student's IEP notes that the Student participated in each of the Smarter Balanced score reporting categories for a fourth-grade student.

The Student did not begin the Smarter Balanced with the Student's peers on April 24, 2018. However, the Student did ultimately complete the assessment in a timely fashion, and had access to accommodations such as text-to-speech and having the materials read aloud. This conforms to the Student's September 7, 2017 IEP. The Department does not substantiate this allegation.

2. Speech/Text Accommodations

The District failed to consistently provide accommodations to the Student to assist with the Student's challenges with reading, as required by the Student's IEP. Each student's IEP must contain a statement of the supplementary aids and services to be provided to the child to advance appropriately toward attaining the student's annual goals, be involved and progress in the general education curriculum, and be educated and participate with other children with and without disabilities.⁵

The Parent reports that the Student has dyslexia. The IEP Team agrees that, at least with respect to standardized testing, it is difficult for the Student to access written materials independently. As a result, the Student's September 7, 2017 IEP contains accommodations that include having test questions and/or answer options read aloud and voice typing or dictation to record in the classroom.

During tests, the Student's Japanese language teacher would take one of the following actions: (1) read tests aloud to the entire class; (2) assign the students to read the tests aloud to one another in pairs; or (3) pull together the group of students who required the "read aloud" accommodation and read the test aloud to them. Meanwhile, the Student's English language program, the Student's teacher did not begin reading the word problem portion of the Student's math test materials until the end of the 2017-2018 school year. To illustrate the effectiveness of the accommodation, the one test the English language teacher read aloud to the Student—the word problem portions of a mathematics test—was also the only test the Student completed in its entirety all year. Both teachers stated the Student would not request that tests be read aloud, nor would the Student ask for assistance. Instead, the Student would simply stop working on tests.

The District failed to provide appropriate "read aloud" classroom accommodations to the Student in conformity with the Student's IEP. The Department substantiates this allegation.

3. Reducing the Number of Questions on the Smarter Balanced

The District did not violate the IDEA by failing to reduce the number of questions the Student had to answer on the Smarter Balanced. As noted above, each IEP must describe the appropriate accommodations necessary for the Student to participate in statewide assessments.⁶ The Student's IEP Team did consider necessary appropriate accommodations for the Student when taking the Smarter Balanced, and agreed on three accommodations: (1) Print on Request; (2)

⁵ 34 CFR § 300.320(a)(4); OAR 581-015-2200(1)(d).

⁶ 34 CFR § 300.320(a)(6); OAR 581-015-2200(1)(g).

Text-to-Speech Items and Stimuli for Math and Text-to-Speech Items for ELA; and (3) Read aloud (for ELA items and for Math stimuli and items.) The IEP Team did not decide that reducing the number of questions was a necessary and appropriate accommodation, nor is there a finding that this in fact was a necessary accommodation for the Student. The Department does not substantiate this allegation.

4. Failing to Instruct the Student in a Small Group

The District did not violate the IDEA by failing to provide instruction to the Student in a small group. The Student's IEP called for the delivery of SDI in Writing Skills and Reading/Language Arts for thirty minutes per week and sixty minutes per week, respectively. During the 2017-2018 school year, the Student left class and received SDI in a small group in the school's Learning Center.⁷ The Student received appropriate small group instruction in conformity with the Student's IEP. The Department does not substantiate this allegation.

B. Least Restrictive Environment

The District did not fail to ensure that the Student received educational services in the least restrictive environment. School districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability. Removal from the general education environment must only occur if the nature or severity of the student's disability is such that education in the general education environment with supplementary aids and services cannot be achieved satisfactorily.⁸

There does not seem to be a dispute that the District should place the Student in a less restrictive environment. Pursuant to the Student's September 7, 2017 IEP, the Student is removed from general education to receive SDI in Reading/Language Arts and Writing for a total of ninety minutes per week. This represents a 5% removal from the general education environment on a weekly basis. The Student's September 7, 2017 placement team determined the Student would be placed in the general education environment for more than 90% of the Student's school day so as to have access to the general education curriculum, participate in the general education setting with non-disabled peers, and experience fewer transitions.

There is no indication that either the Parent or the District contend that the Student should be removed from removed from the general education environment for less than 5% of the week. The Department does not substantiate this allegation.

C. Additional Findings

1. Accommodations in the Japanese Language Program

The Department substantiates a finding that the District did not comply with the Student's IEP by not providing accommodations in the Japanese language portion of the Student's educational program. The Student's September 7, 2017 IEP contains accommodations including extra time to complete assignments, voice typing or dictation to record, and visually chunking assignments. These accommodations were not provided in the Student's Japanese language program. The Student's IEP notes these accommodations are to be provided in the classroom during instruction

⁷ The Student also received small group instruction in the Japanese language portion of the Student's educational program. This small group instruction was not characterized as SDI.

⁸ 34 CFR § 300.114; OAR 581-015-2240.

between September 7, 2017 and September 6, 2018. There is no exclusion or exception to their being implemented in the Japanese language portion of the Student's educational program. The Department substantiates this finding and orders corrective action.

2. Bullying

Throughout the 2017-2018 school year, the Student experienced peer bullying in school that impeded the implementation of the Student's IEP. Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive a free appropriate public education in accordance with his/her IEP. As part of its appropriate response to bullying, the school should convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit.⁹

As early as September 2017, the Parent contacted the Student's teacher to seek assurances that the Student would not be disparaged by peers for reading below grade level. The Student endured such comments during third grade and feared the same would continue in fourth grade. The Student's teacher acknowledged the Parent's request.

Despite notice from the Parent at the beginning of the 2017-2018 school year, the Student experienced peer bullying during fourth grade. In November 2017, the Parent contacted the Student's school's administration regarding daily bullying against the Student that was triggered by the Student's difficulties with reading. The bullying prompted the Student to avoid participating in challenging activities, not ask for help in completing classroom assignments, and not request or accept IEP accommodations.

To illustrate, the Student's Japanese teacher reports attempts to provide the Student with 1:1 assistance, during which time the teacher could implement the Student's IEP accommodations. Rather than accept the 1:1 attention, the Student refused help, actively declining assistance to avoid further bullying based upon the attention it would draw toward the Student's difficulties with reading and writing. As another example, the Student's English teacher kept bookmarks in the classroom for any student to access.¹⁰ However, the Student would not walk over to where the bookmarks were kept to retrieve one to assist in reading tasks because of fear of bullying. On December 14, 2017, the Parent reported to the District that the peer bullying was ongoing. The District did not respond by convening an IEP Team meeting to determine whether, as a result of the effects of the bullying, the Student's needs changed in such a way that the Student's IEP was no longer designed to provide the Student with a meaningful educational benefit.

The negative impact of peer bullying on the Student impeded the implementation of agreed-upon accommodations in the Student's IEP. The Department substantiates this finding.

⁹ Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013).

¹⁰ One of the Student's accommodations is the use of a "visual isolator" such as a bookmark, to assist in reading working on a lengthy text assignment.

V. CORRECTIVE ACTION¹¹

In the Matter of Portland School District 1J
Case No.18-054-030

Based on the facts provided, the following corrective action is ordered.

No.	Action Required	Submissions ¹²	Due Date
1.	<p>Provide ODE-approved professional development to district and school general and special education administrators and staff who are, or may be, involved in:</p> <ul style="list-style-type: none"> • Developing the Student's IEP or determining placement; and • Ensuring the IEP is implemented as written in all environments (general and special education, immersion or traditional school setting). <p>Professional development shall include:</p> <ul style="list-style-type: none"> • Reviewing the IEP development process, with emphasis on the selection of effective supplementary aids, services, accommodations and supports to be included to ensure they comply with the IDEA; • Identifying and ameliorating the effects of bullying in classroom settings. 	In consultation with ODE, identify training dates and sessions needed.	September 30, 2018

¹¹ The Department's order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (OAR 581-015-2030(15).) The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. (OAR 581-015-2030(17)-(18).)

¹² Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeanray@state.or.us; fax number (503) 378-5156.

2.	Provide coaching and support for implementation of new strategies (2 hours per month November 2018 through February 2019)	With District, ODE staff will develop a coaching implementation plan.	November 1, 2018
3.	Implement according to plan.	Provide summaries of coaching session topics and implementation (Note: No staff evaluation is intended in this.)	2 weeks after each coaching session.

Dated this 27th Day of July 2018



Lisa Darnold
 Director, Continuous Improvement & Assessment
 Office of Student Services

Mailing Date: July 27, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)