

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland
Public Schools 1J

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 18-054-034

I. BACKGROUND

On August 13, 2018, the Oregon Department of Education (Department) received a written request for a special education complaint investigation 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 confirmed receipt of this Complaint and forwarded the request to the District on August 13, 2018.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On August 17, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 31, 2018.

On August 31, 2018, the District submitted a *Response* to the Parent's Complaint. In total, the District submitted the following items:

1. District Exhibit List
2. District Written Response to Department's Request for Response
3. Student Grade Report
4. Student Individualized Education Program (IEP), 10/12/2017
5. IEP Team Meeting Minutes, 10/12/2017
6. IEP Progress Report, 06/08/2018
7. Special Education Placement Determination, 10/12/2017
8. Prior Written Notice, 10/12/2017
9. Notice of Team Meeting, 09/28/2017
10. IEP Team Meeting Minutes, 05/19/2017
11. Prior Written Notice, 05/19/2017
12. Notice of Team Meeting, 05/01/2017
13. Academic Evaluation Report, 09/22/2016
14. Psychoeducational Report, 10/26/2016

¹ 34 CFR § 300.152(a); OAR 581-015-2030(12).

² 34 CFR § 300.152(b); OAR 581-015-2030(12).

15. Speech-Language Pathology Report, 11/15/2016
16. Student Progress Monitoring, 11/15/2016
17. 9/25/2017 Email, Re: Accessible Text for Student with Dyslexia
18. 9/26/2017 Email, Re: Accessible Text for Student with Dyslexia
19. 9/27/2017 Email, FW: Accessible texts
20. 10/02/2017 Email, Question
21. 10/04/2017 Email, Responding to parent voice mail. 1) Extra set of Books for [Student]. 2) Meeting set for IEP review on 10/12 at 3:30pm
22. 10/05/2017 Email, Re: A few questions for [School]
23. 10/16/2017 Email, Goals for [Student]
24. 10/18/2017 Email, Re: [School]
25. 02/22/2018 Email, Re: For [Student] – Next Steps
26. 02/12/2018 Email, re: Checking in
27. 04/24/2018 Email, Please have [Student] bring [Student's] ipad
28. 05/01/2018 Email, Re: Can anyone offer some insight about [Student's] [Parent] requesting a meeting over -Multiple choice questions
29. 05/01/2018 Email, -Multiple choice questions
30. 06/04/2018 Email, -Emergency Transition IEP Meeting
31. 06/07/2018 Parent complaint to District requesting transfer
32. 07/03/2018 District response to Parent transfer request
33. 07/05/2018 Parent response to District denial and transfer appeal
34. 06/13/2018 Letter from Nurse Practitioner in support of Student transfer
35. (Undated) Letter from Student in support of transfer
36. 08/07/2018 District complaint review
37. 08/07/2018 Email from District and Parent response to transfer denial
38. Timeline of event for the 2017/2018 school year
39. List of District staff knowledgeable regarding the appeal

On September 7, 2018, the Parent submitted a *Reply* to the District's *Response*. On September 13, 2018, the Investigator interviewed the Parent and collected additional documentation from the Parent. The Investigator determined that onsite interviews were necessary. On September 18, 2018, the Investigator interviewed the District's Program Administrator, Teacher on Special Assignment (TOSA), School Psychologist, School Counselor, and Counsel for the District. The Investigator reviewed and considered these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.³ The Parent's allegations and the Department's conclusions are set out in the chart below. The 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 August 14, 2017, to the filing of this Complaint on August 13, 2018.⁴

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

⁴ For background, this Order includes relevant facts that occurred prior to August 14, 2017.

	<u>Allegations:</u>	<u>Conclusions:</u>
1.	<p><u>Content of the IEP</u></p> <p>The Parent alleges that the District violated the IDEA when the District failed to formulate an IEP that addressed the Student's needs, specifically in the areas of reading and social skills.</p> <p>(34 CFR § 300.320; OAR 581-015-2200(1)(b)(A) & (B))</p>	<p><u>Not Substantiated</u></p> <p>Concerns observed both by the Parent and the District regarding the Student's disability and its impact on the Student's education were considered when developing the Student's IEP. The Student has performed well academically and made progress toward IEP goals. The Department does not substantiate this allegation.</p>
2.	<p><u>Parent Participation</u></p> <p>The Parent alleges that the District violated the IDEA when it impeded the Parent's opportunity to participate in the decision-making process regarding the Student's changing needs, specifically by not entertaining the Parent's requests to hold an IEP meeting to consider new information about the Student.</p> <p>(34 CFR §§ 300.500, 300.327 & 300.501(b); OAR 581-015-2190(1))</p>	<p><u>Not Substantiated</u></p> <p>Evaluative data provided by the Parent was considered by the District and factored into the IEP and 504 Plan formulated by the District. The Parent's request for an IEP meeting was addressed despite it not convening before the end of the 2017-2018 school year. The Parent meaningfully participated in the IEP process. The Department does not substantiate this allegation.</p>
3.	<p><u>Denial of FAPE</u></p> <p>The Parent alleges that the District's failure or refusal to select the appropriate educational placement for the Student violated the IDEA by denying the Student a FAPE.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>	<p><u>Not Substantiated</u></p> <p>The observed and documented manifestations of the Student's disability were appropriately addressed by the District. Data collected by the District demonstrate the Student's positive academic performance. The Department does not substantiate this allegation.</p>

III. FINDINGS OF FACT

1. The Student is in the ninth grade and attended Portland Public Schools (District) during the 2017-2018 school year. The Student is eligible for special education under the primary category of Specific Learning Disability.

2. The Student's disability most significantly impacts the area of reading fluency. The Student's October 12, 2017 Individualized Education Program (IEP) reports that on a recent easyCBM reading assessment, the Student read grade-level text with 93% accuracy at a rate of 129 correct words per minute (CWPM), with a benchmark of 168 words per minute. The Student has difficulty processing reading information at the same rate as same age peers.
3. The Student's Reading/Language Arts IEP goal for the 2017-2018 school year was to increase that reading fluency rate to 150 CWPM with 98% accuracy.
4. The Student had another IEP goal surrounding the use of assistive technology to have written text read aloud.
5. The Student's October 12, 2017 IEP notes that the Student will be placed in the general education environment for the majority of the school day (1% removal) and would be removed for 15 minutes per week to receive special education instruction in Reading/Language Arts and 10 minutes per week to address classroom/school skills.
6. The Student's IEP Team also decided the Student would receive assistive technology in the amount of 120 minutes per year and occupational therapy for 60 minutes per year.
7. During the relevant period, the Student received "A" grades in every course with the exception of one "B" grade in Math.
8. The Student has had a 504 Student Accommodation Plan in place since September 15, 2016 that contains various accommodations, including the following:
 - a. Options for alternative test formats that are more accessible;
 - b. Access to technology for both reading text and writing responses and assessments, and the permitted use of a personal iPad;
 - c. No penalty for spelling errors;
 - d. Ability to preview and review information in class, preview upcoming information and main points at the beginning of class, review main points at the end of the whole class, and check for understanding at the end of class;
 - e. Access to a quiet room for testing;
 - f. Access to quiet breaks and/or headphones when needed and requested;
 - g. Preferential seating to minimize noise and visual distractions;
 - h. Extra time on tests and in class work;
 - i. Allowance for processing and thinking time before oral responses are expected; and
 - j. Allowance for time to read material before required to read aloud and the opportunity to pass on reading.
9. The Parent expressed interest in the District providing opportunities for testing accommodations and data to measure the effectiveness of the Student's IEP. The Parent reported that the Student felt overwhelmed and spent a great deal of time completing homework. The Parent reported that much of the distress felt by the Student was the result of the Student not having technology resources that read text aloud in a fluid manner. The Student's IEP Team reviewed independent assessments provided by the Parent and the

various recommendations and strategies recommended therein.

10. During the 2017-2018 school year, the Parent corresponded with the District regarding the Student's needs and accommodations. Early in the 2017-2018 school year, the District provided the Student with the technology necessary to read textbooks aloud.
11. On April 9, 2018, the Parent sent an email to the District School Counselor regarding testing, accommodations, and the potential that the Student may opt out of standardized testing. In conversation with a District School Counselor regarding a variety of factors relevant to the decision whether to take the test, the Parent wrote, "I don't think [the Student] can hear the difference between 'of' and the suffix 'ive'."
12. On or around May 1, 2018, the Parent requested a meeting with a District Learning Specialist regarding multiple choice questions for the Student. Specifically, the Parent noted an interest in "speak[ing] with you about multiple-choice questions and [the Student's] difficulty reading."
13. During the 2017-2018 school year, the Parent entered the lottery system for obtaining a transfer to a different district.
14. On June 4, 2018, the Parent suggested an emergency IEP Team Meeting to address concerns the Parent had with the Student's IEP. The District's last day of school was June 8, 2018. On June 13, 2018, the Parent again requested an IEP team meeting.
15. On August 13, 2018, the Department received the Parent's Complaint.

IV. DISCUSSION

A. Content of the IEP

The Parent alleges that the District violated the IDEA when it failed to formulate an IEP that addressed the Student's needs, specifically in the areas of reading and social skills. The Parent alleges that the Student was not making adequate progress toward IEP goals in reading and that this lack of progress impacted the Student's social interactions in school. The Parent further alleges that the Student's demonstrated behaviors around reading fluency should have prompted the District to reformulate the Student's IEP to appropriately address the Student's needs.

A student's IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects their involvement and progress in the general education curriculum.⁵ The IEP must meet the student's needs that result from their disability.⁶ The IEP should also describe how the special

⁵ OAR 581-015-2200(1)(a).

⁶ OAR 581-015-2200(1)(b)(A).

education and supplementary aids and services provided will support the student in advancing toward attaining annual goals.⁷

1. Reading Fluency

The Parent alleges that the IEP formulated by the District did not provide enough support to the Student in the areas of reading fluency and this lack of support caused the Student's anxiety to increase which impeded the Student's learning and social interactions. Indeed, the Student's decoding fluency was below average, which became a focus of the Student's IEP and 504 Plan accommodations. The District provided the Student with specially designed instruction in the area of reading and also furnished the Student with the technology resources to have written work read aloud. During the 2017-2018 school year, the Student performed well academically and improved reading fluency as measured by easyCBM testing. The Student expressed opposition to visiting the school's Learning Center for support and in response, meetings were convened to adjust the curriculum to facilitate the Student's progress. The District adequately followed the appropriate content contained within the Student's October 12, 2017 IEP. The Department does not substantiate this allegation.

2. School Skills

The Parent further alleges that the Student suffered from anxiety that impeded the Student's learning and social interactions in school. The Parent alleges that the Student's anxiety had not been addressed by the District and that it impeded the Student's access to services in the IEP. District staff unanimously reported that the Student experienced anxiety and hesitated to leave the general education classroom to access services in the school's Learning Center due to embarrassment. In response, the District adjusted the Student's services to deliver them in the general education classroom and alleviate the Student's concerns. Additionally, District staff agreed that the Student displayed feelings of anxiety related to confusion over how to utilize assistive technology, specifically how to operate software designed to read electronic versions of text books. Special education staff reported working with the Student during the school year to address and alleviate these issues. Moreover, District staff did not observe the Student exhibiting anxiety that impacted the Student's education. Nevertheless, the District did accommodate some of the Parent's concerns about the Student's education through the Student's 504 Plan, such as providing access to quiet spaces, preferential seating, extra time on tests and classwork, and allowing the Student extra time for processing and thinking before expecting oral responses. Throughout the relevant period, the Student continued to perform well academically. The Department does not substantiate this allegation.

B. Parent Participation

The Parent alleges that the District violated the IDEA by not entertaining the Parent's requests to hold an IEP meeting to consider new information about the Student and that multiple requests were made and subsequently ignored by the District.

⁷ OAR 581-015-2200(1)(c)(A).

School districts are required to provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of their child.⁸ Various factors can trigger the review and revision of a student's IEP, including whether annual goals for the student are being achieved, lack of expected progress toward annual goals, results of evaluations, and information from the parent.⁹ Meetings should be scheduled at a mutually agreeable time and place.¹⁰

The Parent sent three email communications to the District that the Parent asserts were requests for IEP meetings. The first was to a District School Counselor dated April 9, 2018, where the Parent addressed whether the Student would take a standardized test and the considerations and accommodations that were available in the event the Student took the assessment. In that email exchange, the Parent wrote, "I don't think [the Student] can hear the difference between 'of' and the suffix 'ive'." Next, the Parent's sent an email to the District dated June 4, 2018 where the Parent writes that in conversation with District employees, an emergency IEP meeting had been recommended by District staff, and that the Parent would be as flexible as possible in scheduling such a meeting. On June 13, 2018, the Parent reiterated interest in scheduling an IEP meeting previously addressed in the June 4, 2018 email. The District School Counselor did not recall seeing or understanding the Parent's email as a request for an IEP meeting, but rather a conversation regarding accommodations for the Student's test taking. The School Counselor pointed to the Student's 504 Plan's accommodations for the concerns raised by the Parent. The Parent's later communications to the District asking to convene an IEP Team Meeting came at the end of the school year. The District's ability to hold such a meeting after the end of the school year was frustrated by the unavailability of those knowledgeable about the Student due to contracted work days for licensed staff.

The Parent did communicate a concern about the Student's educational needs. The District understood those concerns as having been previously addressed by a 504 Student Accommodation Plan that provided for "alternative testing formats that are more accessible for [the Student]," among other considerations. The Parent's additional requests to convene an IEP meeting came at a time when the District was unable to accommodate the request, and would have been scheduled for the beginning of the 2018-2019 school year but for the Student's transfer to a different school district. The District provided the parent with a meaningful opportunity to participate in the IEP process. The Department does not substantiate this allegation.

C. Free Appropriate Public Education (FAPE)

The Parent alleges that the District's failure or refusal to select the appropriate educational placement for the Student violated the IDEA by denying the Student a free appropriate public education (FAPE). The Parent alleges the Student required a smaller and quieter classroom due to the specific needs of the Student's identified disability. The Parent further alleges the District was incapable of providing such a classroom environment, necessitating a transfer to a different district.

⁸ OAR 581-015-2190(1).

⁹ OAR 581-015-2225(1)(b).

¹⁰ OAR 581-015-2195(1)(b).

Districts are required to provide a FAPE to all school-age children with disabilities for whom the district is responsible.¹¹ The District must comply with the procedures set forth in the IDEA, and each student's IEP must be reasonably calculated to enable the student to receive educational benefit.¹² While harmless procedural errors do not constitute a denial of FAPE,¹³ "procedural inadequacies that result in the loss of educational opportunity . . . clearly result in the denial of FAPE."¹⁴ The United States Supreme Court has further described the FAPE standard as an obligation to formulate an IEP reasonably calculated to enable a student to make progress that is appropriate in light of the student's circumstances.¹⁵

When developing the Student's IEP, the District considered evaluations furnished by the Parent regarding appropriate listening environments and the Student's experiences with anxiety. The Student's 504 Plan includes preferential seating closer to the teacher, and the option to take tests in quiet room, as well as such accommodations as taking breaks and using headphones to create a quieter learning environment. The District found, and the Student's academic performance supports, that education in the general education environment was occurring with the support of supplementary aids and services that were utilized by the Student. The Student did not use many of the recommended accommodations and hesitated to use assistive technology until additional support was provided. Nevertheless, the Student earned "A" grades in all but one class and made appropriate progress in light of the Student's circumstances. The Department does not substantiate this allegation.

¹¹ OAR 581-015-2040(1).

¹² *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (U.S. 1982).

¹³ *L.M v Capistrano Unified Sch. Dist.*, 556 F.3d 900, 910 (9th Cir. 2008).

¹⁴ *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1079 (9th Cir. 2003).

¹⁵ *Id.* (slip op., at 12).

V. CORRECTIVE ACTION¹⁶

*In the Matter of Portland Public Schools #1J
Case No. 18-054-034*

The Department does not order Corrective Action resulting from this investigation.

Dated: this 12th Day of October 2018



Candace Pelt, Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: October 12, 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).)

¹⁶ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (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)).