

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
North Santiam School District 29J)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-045

I. BACKGROUND

On November 20, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) who attends high school in the North Santiam School District 29J (District). The Parents' complaint contained allegations of violations of the Individuals with Disabilities Education Act (IDEA). The Department confirmed receipt of the Complaint and forwarded the request to the District by email.

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 of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint investigation is November 21, 2018 through November 20, 2019.

On November 25, 2019, the Department's Complaint Investigator (Investigator) 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 December 9, 2019.

On December 9, 2019, the District submitted a packet of materials for the Investigator. The materials included in the submission are listed below:

1. District Response
2. Schedule, Transcript, Grade Reports, etc.
3. IEPs, Meeting Notices and Minutes, Prior Written Notices
4. Email Communications

The Investigator determined that on-site interviews were necessary. On December 11, 2019, the Investigator interviewed the District Special Education Director, two Assistant Principals, two General Education Teachers, an Autism Specialist, a Counselor and a Case Manager. On December 30, 2019, the Investigator interviewed the Parents.

The Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

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

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.³ The Parents' 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 on the Discussion in Section IV. This complaint covers the one-year period from November 21, 2018 through November 20, 2019.

<p>1. <u>When IEPs Must Be In Effect</u></p> <p>The Parents allege the District violated the IDEA when it failed to provide the Student with:</p> <ul style="list-style-type: none"> a. Modifications of the Student's curriculum to a fourth-grade reading level; b. Specially Designed Instruction (SDI) for the total amount of the service times in reading, writing and math as specified in the IEP; c. The service of Adult Assistance as specified in the IEP; d. Visual supports to increase the Student's understanding as specified on the IEP; e. The amount of parent-school communication as specified on the IEP; and, f. A full school day equivalent to other students in the high school. 	<ul style="list-style-type: none"> a. Not Substantiated The District appropriately modified the Student's curriculum. b. Substantiated in Part The Student received SDI in reading and writing in accordance with the Student's IEP, but did not receive SDI in math in accordance with the Student's IEP for the first three months of the 2019-2020 year. c. Not Substantiated Adult assistance was available to the Student in class and at times the Student needed extra support in accordance with the Student's IEP. d. Not Substantiated Visual Supports were added to the Student's IEP on November 25, 2019 and were not found to be a necessary but omitted accommodation during the Complaint period. e. Not Disputed The District acknowledges it has not implemented and maintained an effective communication system with the Parents. The District set up a new system as of November 26, 2019, which includes accountability measures to assure usage by all staff. f. Not Disputed The District acknowledges that the Student was required to leave school early in the afternoons to
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³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

	(34 CFR § 300.323, 300.324; OAR 581-015-2220(1)(b))	accommodate the Student's bus schedule. The District stated that it will work with the bus company to address this issue. The District will offer compensatory education as needed.
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Requested Corrective Action

The Parents request the following action be implemented as a resolution to the Complaint:

1. When IEPs Must Be In Effect:

- Create and implement a schoolwide system for modifying coursework for students on modified diploma. The following questions should be considered. Who will modify the work (special education teachers? General education teachers?) What training do they need?
- All teachers involved will need to be trained on the system and be given appropriate resources to implement the system.
- Offer make up services for missed minutes.
- The district should take a comprehensive look at the needs of high school students on IEPs compared to the adult assistant hours available and provide needed resources (in hiring and training more IAs) to meet the needs of these students.
- Training to all staff members about autism, and the importance of visuals and simplified for accessing directions and educational concepts.
- Begin weekly systematic gathering data from all teachers and communicating with parents via weekly email as discussed at IEP revision.
- Offer make up services for missed minutes for [Student] and all other special education students who are affected.
- Change bus schedule.
- Stop ending special education classes 10-15 minutes early. Provide meaningful education to all student until 3:00 bell then help them transition to buses.
- Help [the high school] establish a culture of transparency with parents about what is going on and abide by team decisions so that students receive the best education possible.

III. FINDINGS OF FACT

1. The Student is sixteen years old and is in the eleventh grade. The Student is described as being a very social person who loves to tell jokes, and enjoys computer time, science, and looking at books.
2. The Student is eligible for special education as a student with Autism Spectrum Disorder, most recently established on January 3, 2018.
3. The Student's December 3, 2018 Individualized Education Program (IEP) includes Specially Designed Instruction (SDI) in Behavior, Written Language, Math, Reading, and Personal Hygiene. The Student's current educational placement is defined as less than 40% of the school day in general education classes. Currently the Student takes a general education art

class, modified US History, Science, and Health classes; and Life Skills classes in functional academics and vocational skills.⁴

4. The Student's December 3, 2018 IEP notes that the Student receive adult assistance, "for all classes; special care for when not in routine, plus ensuring [Student] gets to bus on time at the end of the day."⁵ Other accommodations include: All curriculum modified to 4th grade reading level, and alternate grading (50% and above is a "P" for Pass in all general education classes).
5. The Student's December 3, 2018 IEP includes four hours per year of consultation to parent and staff. The District and Parents understood this "Program Modification" to mean regular parent-school communication.
6. The District has placed seven instructional assistants at the school to support students in the behavior, life skills, and learning center classes. According to the District, only one of these instructional assistants is assigned 1:1 to a student with behavioral needs. Instructional assistants are also assigned to support students in general education classes, where they are available to several different students in need of assistance.
7. One of the Student's general education teachers noted that an instructional assistant is available to the Student, but that the Student rarely needs more help than the teacher provides.
8. The Student comprehends most reading material at the fourth grade level, but can decode more complex words successfully. When the Student's functional academics life skills class was assigned the book *Touching Spirit Bear*,⁶ the Student struggled to comprehend the story. The Student was assigned homework about the book, and the Parents observed that the Student needed assistance and more processing time to understand. In class, the teacher provided an audio version of the book to which students could listen and conducted discussion sessions to assist with comprehension.
9. The Student's December 3, 2018 IEP offered the Student 25 daily minutes of SDI in Written Language and Reading. Services were to be provided in the Resource Room. For Math, the amount of SDI to be provided was 40 minutes daily in the Resource Room. During the 2018-2019 school year, the Student took a Learning Resource Center (LRC) Basic Skills class in Language Arts and an LRC Basic Skills in Math Concepts class for an average of 50 minutes daily; as well as a class in Lifeskills Functional Academics for an average of 50 minutes daily.
10. During the 2019-2020 school year, the Student takes a Lifeskills class in Functional Academics for an average of 50 minutes daily. The Student also receives SDI in Written Language and Reading based on the Student's modified curriculum.
11. When the 2019-2020 school year began, the Student did not receive any SDI in Math. The Parents expressed their concern about this at the November 25, 2019 IEP meeting, and in response the District arranged for the Student to receive SDI in Math in one of the Lifeskills

⁴ The District offers a menu of modified courses in the content areas for students who are on a modified or other diploma plan. Additionally, the District offers a menu of classes in Functional Skills (academics, Lifeskills, vocational skills, etc.)

⁵ In January 2019, an incident occurred where staff did not escort the Student to their bus and the Student wandered off alone and unsupervised. The Student arrived at the swimming pool within a short amount of time afterwards and was not harmed in the incident; but it was very worrisome to the Parents.

⁶ This book has been rated at 670 Lexile which is approximately equivalent to a fourth grade level.

classes. The Student will take a modified Math class second semester of the 2019-2020 school year.

12. The Student's December 3, 2018 IEP did not include any visual accommodations to be used to support the Student in classes. After the Parents requested this accommodation at the November 25, 2019 meeting, it was added to the Student's IEP.

13. The Parent filed this Complaint on November 20, 2019.

III. DISCUSSION

When IEPs Must Be In Effect

The Parents allege the District violated the IDEA when it failed to provide the Student with various services and accommodations contained within the Student's IEP. The Parents also allege the Student did not receive a full day of instruction, a shortening of which was not agreed upon by the Student's IEP Team. A school district must provide services to a student in accordance with the student's IEP. This includes Specially Designed Instruction (SDI), accommodations and modifications, and supplementary aids and services.⁷

A. Modifications to Appropriate Reading Level

The Student received appropriate Reading modifications in accordance with their IEP during the Complaint period. The Student's curriculum, specifically a book in Language Arts, is at the Student's reading level. To address the Student's difficulties in comprehension, the District offered classroom discussions and an auditory tape to assist the Student. The Department does not substantiate this allegation.

B. SDI in Reading, Writing, and Math

The investigative record indicates that the Student received an amount of SDI in Reading and Writing in accordance with the Student's IEP. Meanwhile, the Student did not receive SDI in Math in accordance with the Student's IEP for the first three months of the 2019-2020 school year. The Department substantiates this allegation as to Math SDI and orders corrective action

C. Adult Assistance

The investigative record indicates that the Student received adult assistance in accordance with the Student's IEP. Several District instructional assistants are available to support students in the Behavior, Lifeskills, and Learning Center classes. An instructional assistant is available to assist the Student in class, though the Student's teacher observed the Student rarely needs more adult assistance than which is provided by the teacher. Also, adult assistance is provided to ensure the Student makes it safely to their transportation at the end of the school day. The Parents point to two isolated instances where the District did not deliver adult assistance, but the record shows that this supplementary aid was provided to the Student in conformity with their IEP. The Department does not substantiate this allegation.

⁷ OAR 581-015-2220.

D. Visual Supports

The Student’s IEP Team convened on December 3, 2018 for an annual IEP review. At that meeting, the accommodation of visual supports was not discussed, nor does the record indicate that this intervention was an improperly omitted accommodation during the Complaint period. After the Parents requested visual supports at the November 25, 2019 IEP team meeting, the District added them as accommodations to the Student’s IEP. The Department does not substantiate this allegation.

E. School-Parent Communication

The District does not dispute that it did not provide the school-parent communication in accordance with the Student’s IEP. The Department appreciates the District’s acknowledgment of this violation, substantiates it, and orders corrective action.

F. Instructional Time

The District does not dispute that the Student’s school day was shortened by between ten and fifteen minutes in order to accommodate the Student’s transportation schedule. The Department appreciates the District’s acknowledgement of this violation, substantiates it, and orders corrective action. The District has proposed implementing training and accountability measures to correct this error.

CORRECTIVE ACTION⁸

In the Matter of North Santiam School District 29J
Case No. 19-054-045

No.	Action Required	Submissions ⁹	Due Date
1.	With the assistance of the County Contact, the District shall review its current practices around the IEP meetings and IEP implementation to ensure that all necessary parties are in attendance and all elements of IEPs are appropriately implemented. The District will also provide training in these areas to special education staff, general education staff, and administrative staff. The District has already contracted with a Special Education Consultant to assist with this	All training materials as well as sign-in sheets for all trainings will be submitted to the County Contact.	Training materials due: August 30, 2020; Sign-in sheets due: September 30, 2020.

⁸ 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)).

⁹ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634; e-mail: mike.franklin@ode.state.or.us fax number (503) 378-5156.

	training and created a delivery schedule.		
2.	The District will calculate the amount of math SDI that was not provided during the first three months of the 2019-20 school year as well as the amount of education that was not provided prior to January 16, 2020, and provide this compensatory education to the Student. The District has extended the school day for students in this program by ten minutes beyond the school day of other students for the remainder of the current school year. SDI for the Student may be provided during this extended time.	Calculation of Math SDI as well as compensatory education to be provided to the County Contact. Proof of the provision of compensatory education and Math SDI to the Student will be submitted to the County Contact	February 7, 2020 June 30, 2020.

Dated: this 17th day of January 2020

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Enhancing Student Opportunities

Mailing Date: January 17, 2020

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).)