

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Corvallis School District)
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FINDINGS OF FACT
CONCLUSIONS,
AND FINAL ORDER
CASE NO. 21-054-012

I. BACKGROUND

On June 7, the Oregon Department of Education (Department) received a written request for complaint investigation (Complaint) from the parent (Parent) of a student (Student) residing in the Corvallis 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 June 7, 2021.

On June 13, 2021, 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 28, 2021. The District completed its *Response* and the Department's Contract Complaint Investigator (Investigator) received it on June 28, 2021. The *Response* included a narrative, partial exhibit listing, and the following documents:

1. Notice of Individualized Education Program ("IEP") Team Meeting dated October 17, 2019 scheduling October 18, 2019 meeting
2. Notice of IEP Team Meeting dated December 2, 2019 scheduling December 16, 2019 meeting
3. Notice of IEP Team Meeting dated January 15, 2020 scheduling February 6, 2020 meeting
4. IEP Team Meeting Notes dated February 6, 2020
5. Prior Written Notice ("PWN") dated May 11, 2020
6. Annual Goals Progress Reports dated June 15, 2020 (English)
7. Notice of Team Meeting dated September 28, 2020 scheduling October 15, 2020 meeting (Spanish)
8. Notice of Team Meeting dated September 28, 2020 (English)
9. Notice of Team Meeting dated October 19, 2020 (English) scheduling October 26, 2020 Meeting
10. IEP Team Meeting Notes compilation dated between October 20, 2020 and April 28, 2021
11. IEP Team Meeting Notes compilation (Spanish) dated between October 15, 2020 and April 28, 2021
12. Behavioral Support Plan dated November 3, 2020
13. Behavioral Support Plan (Spanish) dated November 3, 2020
14. Notice of Team Meeting dated December 3, 2020 scheduling December 14, 2020 meeting
15. Notice of Team Meeting dated December 3, 2020 scheduling December 17, 2020 meeting
16. Notice of Team Meeting dated January 7, 2021 scheduling January 26, 2021 meeting
17. Annual Progress Note (Spanish) dated February 4, 2021
18. Augmented Communication Report dated February 5, 2021 (unsigned by evaluator)
19. Augmented Communication Report (Spanish) dated February 5, 2021 (unsigned by evaluator)
20. Notice of Team Meeting dated February 10, 2021 scheduling February 26, 2021 team meeting

21. Notice of Team Meeting dated March 9, 2021 scheduling March 19, 2021 meeting
22. Notice of Team Meeting dated March 9, 2021 scheduling March 30, 2021 meeting
23. Emails between the Case Manager and Parent dated between March 15, 2021 and May 13, 2021
24. Notice of Team Meeting dated April 19, 2021 scheduling April 28, 2021 meeting
25. IEP dated April 28, 2021 without any goal data
26. Placement Determination dated April 28, 2021
27. Prior Written Notice (PWN) dated April 28, 2021
28. Annual Academic Progress Reports (English) dated April 28, 2021
29. Annual Academic Progress Reports (Spanish) dated April 28, 2021
30. IEP snapshot dated April 28, 2021
31. IEP dated April 28, 2021 (Spanish) without any annual goal data
32. Prior Written Notice (Spanish) dated April 28, 2021
33. IEP Snapshot (Spanish) dated 4/28/21
34. Request for Complaint Investigation (English) typewritten, undated
35. Request for Complaint Investigation (Spanish) dated June 7, 2021
36. Email exchange between Parent and ODE County Contact dated June 7, 2021
37. District response to Complaint directed to Parent dated June 25, 2021

The Investigator determined that personal interviews were necessary and requested specific witnesses for interview purposes. The District produced one (1) of the requested witnesses and the SPED Director was interviewed in lieu of the other two requested witnesses, said interviews being conducted on July 26, 2021. The Investigator interviewed the Parent initially on July 1, 2021 with the assistance of an ODE translator. The Investigator then prepared a listing of follow up questions for the Parent which were answered and returned to the investigator on or about July 26, 2021.

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

1. IEP dated October 28, 2020
2. Progress Report dated October 15, 2020
3. Progress Report dated April 28, 2021 (without progress updates)
4. Progress Report dated April 28, 2020 (with progress updates)

After the initial interview with the Parent, the Parent produced the following documents:

1. Emails between Parent and District personnel dated from November 16, 2018 to June 14, 2021
2. PWN for Evaluation and Consent for Evaluation for assisted and augmented communication dated February 19, 2020
3. PWN regarding Evaluation and Consent dated February 19, 2020
4. Medical Statement of Health Assessment dated February 27, 2020
5. Physician's Letter dated July 24, 2020 recommending Student avoid public settings
6. Draft of Student Present Levels dated October 15, 2020
7. Draft of Behavioral Support Plan dated November 3, 2020
8. Gross Motor Questionnaire for Phys Ed completed and dated April 12, 2021
9. Notices of Team Meeting (English and Spanish) dated March 9, 2021 scheduling March 19 Meeting.

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. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint. 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 June 8, 2020 through June 7, 2021.

Allegations	Conclusions
<p>Parent Participation</p> <p>The Parent alleges that the District violated the IDEA because it thwarted the Parent's ability to participate in the IEP process by failing to remit the finalized annual IEP to the Parent in a timely manner.</p> <p>(34 CFR §§300.322 and 300.501; OAR 581-015-2195)</p>	<p>Substantiated</p> <p>The District failed to remit a copy of the completed written IEP for both school year 2019-2020 and school year 2020-2021. Hence, because the Parent could not refer to a written document and misunderstood or assumed the scope of educational services, the Parent could not participate in the Student's educational process.</p>
<p>Access to Educational Records</p> <p>The Parent alleges that the District violated the IDEA because it denied the Parent access to the Student's educational records, more particularly the District did not remit IEP team meeting minutes/notes after the Parent requested a copy of said notes.</p> <p>(34 CFR §300.501; OAR 581-015-2300)</p>	<p>Substantiated</p> <p>The Parent did not receive any meeting minutes after requesting said minutes and did not have access to the meeting minutes until receiving the District's response to this Complaint. The Parent did not have any written record upon which to rely or refer to when the IEP was finalized after seven months of IEP team meetings</p>
<p>Content of IEP/Measurable Annual Goals</p> <p>The Parent alleges that the District violated the IDEA because the District:</p> <p>a. Failed to include a measurable annual goal regarding the Student's use of augmentative and assistive technology as well as the Student's progress in learning to use said technology; and</p>	<p>Substantiated in part</p> <p>a. Not Substantiated</p> <p>At the time the Parent filed this Complaint on June 7, 2021, the Parent did not have a written or electronic copy of the Student's April 28, 2021 IEP. The Parent received the District's written</p>

<p>b. Failed to collect data regarding the Student's short term and measurable annual goals so the Student's progress could be determined.</p> <p>(34 CFR §300.324; OAR 581-015-2200)</p>	<p>response to the Complaint on or about June 28, 2021 which included an IEP dated April 28, 2021. The April 28, 2021 IEP contained two measurable annual goals regarding the Student's use of Augmentative Assistive technology.</p> <p>b. Substantiated</p> <p>Reviewing the notes from the IEP meetings produced by the District, the only time goals were addressed in the meetings was November 2, 2020 wherein the general education teacher reviewed the Student's present levels in reading and suggested a new goal because the Student's reading level was higher than what had been contained in the Student's previous present level.</p>
<p>Annual Review of IEP</p> <p>The Parent alleges that the District violated the IDEA because it failed to:</p> <ul style="list-style-type: none"> a. Convene the Student's annual IEP meeting; and b. Failed to finalize the Student's IEP in a timely manner. <p>(34 FR §300.324, OAR 581-015-2225)</p>	<p>a. Substantiated</p> <p>The Student's annual IEP meeting had historically been held on or about October 26 of each year. During the Complaint Period, the District contacted the Parent in mid-October to schedule the annual IEP meeting. The initial IEP meeting was held on October 15, 2020. However, the IEP was not completed until April 28, 2021, well beyond the one-year requirement.</p> <p>b. Substantiated</p> <p>The District did not attempt to complete the IEP expeditiously but rather conducted short, segmented meetings which resulted in the Student's participating in the educational process during the 2020-2021 academic year with an outdated IEP. The District spread the IEP process over a seven (7) month time span.</p>
<p>IEP Implementation</p>	<p>a. Substantiated</p>

<p>The Parent alleges that the District violated the IDEA because it did not implement the Student's IEP. More particularly:</p> <p>a. The Parent did not receive and/or has not timely received Progress Reports regarding the Student's measurable annual goals and benchmarks or short-term objectives; and</p> <p>b. Has not received any information or supporting data regarding the Student's progress toward measurable annual goals and benchmarks or short-term objectives.</p>	<p>The Parent has not received timely progress reports during the Complaint Period and only received Progress Reports for two months of Limited In-Person Instruction (LIPI) for school year 2020-2021.</p> <p>b. Substantiated</p> <p>The Case Manager failed to collect any supporting data between October 15, 2020 and June 10, 2021. Further, the Parent did not receive any Progress Reports until after both school years (2019-2020 and 2020-2021) had been completed.</p>
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<p>REQUESTED CORRECTIVE ACTION</p> <p>The Parent requested a copy of the Student's IEP including the meeting minutes of all the IEP team meetings for all eleven meetings. The Parent also requested the Student's updated Health Protocol and BSP as well as the Student's AAC evaluation, goals, and services. The Parent requested all the Student's Annual Progress Reports inclusive of data collected to create said progress reports. Student's IEP team, including the Parent, will engage in mediation.</p>

III. FINDINGS OF FACT

1. The Student is fifteen years old and completed eighth grade during academic year 2020-2021. The Student enjoys singing and playing guitar and piano. The Student has a great sense of humor and is active in religious activities. The Student is bi-lingual.
2. The Student is medically fragile and has specific health care protocols for diet, physical education, and toileting.
3. The Student is eligible for Special Education services under the primary category of Intellectual Disability and the secondary category of Communication Disorder. The Student is socially reserved in the academic environment and generally does not speak while in an educational setting. The Student is much more animated and gregarious in the home environment.
4. Pursuant to the Student's October 28, 2019 IEP, the Student was to receive Specially Designed Instruction (SDI) in speech. There is no evidence that the Student received SDI for speech throughout the entire 2019-2020 school year.
5. The Student's annual IEP has generally occurred in October of every school year. The first IEP meeting held for the Student's 2019-2020 IEP took place on November 12, 2019.
6. The Parent did not receive a copy of the Student's October 28, 2019 IEP which was actually finalized on February 6, 2020. The Parent contacted the Student's Case Manager on June 3, 2020 and June 12, 2020 for a copy of the IEP. On May 20, 2020, the Parent

also contacted the middle school's administration to obtain a copy of the Student's October 28, 2019 IEP. After the middle school principal intervened, the Parent received a copy of the October 28, 2019 IEP on or about June 14, 2020. After receiving the document, the Parent discovered that the October 28, 2019 IEP did not contain the Student's FBA/BSP or the Student's Health Care Protocol.

7. On October 12, 2020, the Parent signed and returned a consent form to allow provision of "teletherapy services" for the delivery of the Student's SDI in speech. The Student began receiving speech services on December 6, 2020 in small group instruction.
8. On October 13, 2020, the Parent received a questionnaire from the Case Manager regarding augmentative communication which was part of the evaluation for the Student's augmentative communication evaluation. (The Parent had consented to this evaluation in February 2020).
9. The Student's Case Manager took an unexpected leave of absence beginning on October 8, 2020. At the time of this Case Manager's leave, the Student's special education files did not contain any information on the Student's progress toward goals or any other information to assist in tracking the Student's progress.
10. In mid-October 2020, the Student's new Case Manager emailed the Parent, asking questions about the Student's social and academic ability. Thereafter, during school year 2020-2021, the Parent shared input with the IEP team regarding goals, strategies (noting what was effective and what was ineffective), specific needs, and specific desires.
11. On October 14, 2020, the Case Manager emailed the Parent asking if the Student was able to log on to a Zoom meeting so the Case Manager could take data on the Student's IEP goals.
12. On the morning of October 15, 2020, the Case Manager emailed the Parent and explained that she was working on the Student's IEP. She promised to send a draft of present levels and proposed IEP goals to the Parent "shortly". The Case Manager "wanted to make one last effort in getting some current data on [the Student]" and asked if the Student was "up to working with [the Case Manager]" that morning. Subsequently, the Case Manager "got some AMAZING data on [the Student] and updated the Student's present levels on Reading and Reading Comprehension as well as Money -- Coins and Counting Coins." The Case Manager noted that the Student's addition/subtraction and phonics were next to be updated.

Prior to the IEP meeting scheduled for that afternoon, the Case Manager again emailed the Parent with an update on the Student's goals from the October 28, 2019 IEP and with proposed goals for the new IEP. The Case Manager only noted data on Math goals, to-wit, the Student could add and subtract numbers, hence meeting the first math goals at least 60% of the time. The Student did not meet any other objectives in their Math goals. The remainder of the goals in speech/language, Independent Living, Behavior, and Reading were not addressed, the Case Manager stating that "Due to Covid, Distance Learning and student absences [*sic*] data was not able to be taken." Although the Case Manager told the Parent she had taken reading data, there is no evidence that this was discussed during the IEP meeting.

13. In the Meeting Minutes for the October 15, 2020 IEP meeting, the Case Manager indicated that multiple IEP meetings would be necessary to complete the IEP.

14. At the October 15, 2020 and the October 26, 2020 IEP meetings, the Case Manager reviewed the Student's Present Levels but did not address goals or specify the Student's present academic or functional levels.
15. On October 20, 2020, the Parent contacted the Case Manager and requested copies of the Student's Progress Reports for school year 2019-2020. The Case Manager responded that she was "working on getting it translated! [She] just [didn't] want to send it through Google."
16. On October 22, 2020, the District's Autism Consultant emailed the Parent regarding the Student's BSP. The Autism Consultant stated that the Student's IEP needed to be updated and that she "[wanted] to make sure [the Student] has a solid behavior plan for the rest of this year as well as heading into high school."
17. The District began offering Limited In-Person Instruction (LIPI) in November 2020. Eligible students had a choice of attending LIPI in addition to Comprehensive Distance Learning. ("CDL")
18. At the November 2, 2020 IEP meeting, the Student's goals were discussed. The general education teacher was not familiar with the Student's reading skill, but believed the Student needed to work on phonemic awareness and opined as to her reasoning. The Case Manager stated the Student read between a 2nd and 4th grade level but did not provide any data to support that assertion. The November 2, 2020 meeting is the only occasion on which the Student's short-term progress or annual goals were discussed in addition to the Student's present levels.
19. On December 14, 2020, the Speech Language Pathologist (SLP) emailed the Parent with updated goals for the Student's IEP prior to the IEP team meeting that was scheduled for later that day. The Parent and the SLP then collaborated on another goal together for the Student's IEP.

That afternoon, an IEP Meeting was held via Zoom. The agenda included a review of the goals presented at the previous IEP meeting, the BSP, the service providers' reports, the remainder of the IEP, and placement. The Case Manager said that she would like to "get through the rest of the IEP this week!" At this time, the Parent questioned why the Student's Health Protocol was not included in the IEP. The Parent then emailed the District's nurse to invite her to the Student's IEP meeting so that the Student's health could be discussed.

20. On December 15, 2020, the Autism Specialist emailed the IEP team requesting input on the draft BSP which was created on November 30, 2020 using assessment data generated on October 22, 2020 and October 23, 2020.
21. On January 26, 2021, the Case Manager sent the Parent an email stating that the IEP team meeting items for the January 26, 2021 IEP meeting were reviewing behavioral goals and "having the OT report out."
22. The Student's Progress Goal reports for February, 2021 stated for all goals: "In lieu of progress reports, IEP meetings were held on 10/15/2020, 10/26/2020, 11/2/2020, 11/12/2020, 12/17, 2020, [sic] and 1/26/2021. A meeting is also scheduled to be held on 2/26/2021. These meetings focused on present levels and new goals. Goals continue to be developed; therefore, no new data has been collected at this time."

23. The Parent did not receive written progress notes in February 2021. According to the October 28, 2019 IEP, the Student's annual progress reports were to be sent in February and June of every academic year.
24. On February 24, 2021, the Student suffered a serious injury which caused the Parent to cancel the IEP meeting scheduled for February 26, 2021. The IEP meeting was rescheduled for March 19, 2021.
25. On March 15, 2021, the Case Manager sent the Parent an email stating that the items on the March 19, 2021 IEP meeting agenda were Services Page and Placement Determination.
26. The Parent received a draft IEP on March 15, 2021. This was the first draft IEP that was provided during academic year 2020-2021.
27. On March 18, 2021, the Case Manager emailed the Parent with a listing of services and goals for the Student's IEP. The Parent inquired about the completion and inclusion of the Student's Health Protocol in the Student's IEP.
28. On April 27, 2021, the Case Manager emailed the Parent with the agenda for the April 28, 2021 IEP meeting. The agenda included ESY services and placement as well as completion of the Assistive Augmentative Communication report. The Case Manager then stated, "And that's the end of the IEP!:) YAY! I will send a copy of the IEP."

The Parent then emailed the Case Manager and requested all the meeting minutes from all IEP meetings that occurred in the creation of the April 28, 2021 IEP. The Parent also requested a copy of the Student's BSP.

29. The Student's April 28, 2021 IEP has eighteen (18) measurable annual goals, all containing benchmarks or short-term objectives.
30. During the April 28, 2021 IEP meeting, the Case Manager stated that the Student would not qualify for ESY services because the Student made adequate progress on IEP goals.
31. The Parent received the Student's BSP when the District responded to the instant complaint on June 28, 2021 and received copies of the meeting minutes at that time.
32. The Case Manager contacted the Parent in June 2021 to "take data" on the Student's Measurable Annual Goals on or about June 11, 2021.¹ The Case Manager met online with the Student and took data in one day on 11 goals in Speech/Language, Independent Living, Emotional/Behavioral, Reading, and Math.
33. Goals were to be measured in two manners: (1) teacher observation, data collection, and testing and (2) measured skills on a numerical basis where "[skills] will be measured on the following scale (i.e., the numerical basis scale) in conjunction with language/oral speech samples, work samples, on-going data, progress monitoring and informal assessments."

¹ The record shows that the Case Manager used the dates of June 11, 2021 as the date she obtained data on the Student's goals, with the exception of one goal that was updated on June 11, 2021 using data with a reported collection date of June 14, 2021. It is likely that data for all goals was collected on June 11, 2021.

34. The Case Manager did not obtain data on seven (7) goals and inserted the following information regarding the Student's annual progress report dated June 11, 2021: "During the time [the Student] was at school from 4/13/2021 to 5/10/2021" and then would note that the Student either refused to work on a goal at that time or that the goal could not be addressed. There is no reference to obtaining data when the Student participated in school via CDL.
35. The SLP updated the Student's AAC goals on June 11, 2021 as follows: "Student was seen 5/4, 5/11, 5/18, 5/20, 6/7 & 6/11 since IEP goals were written", and explained the Student had learned to use certain icons to communicate. The SLP also noted that the Parent was going to receive training videos.
36. There is no evidence in the record regarding the Student's progress on Measurable Annual Goals during the time the Student participating in school via CDL. The only discussion of the Student's goals during an IEP team meeting during school year 2020-2021 was at the November 11, 2020 IEP meeting wherein the general education teacher opines on the Student's reading level being higher than noted in the IEP.
37. There were a total of ten (10) IEP team meetings during school year 2020-2021: October 15, 2020; October 26, 2020; November 2, 2020; November 12, 2020; December 17, 2020; January 26, 2021; February 26, 2021; March 19, 2021; March 30, 2021; and April 28, 2021.

IV. DISCUSSION

Parent Participation

The Parent alleges the District failed to remit a copy of the Student's IEP in a timely manner thus thwarting the Parent's ability to participate in the IEP process.

A school district must give the parent a copy of the IEP at no cost to the parent.²

In school year 2020-2021, the Student's annual IEP meeting was to take place on or before October 28, 2020. However, the Student's IEP wasn't actually finalized until April 28, 2021. In its *Response*, the District characterizes the changes to the IEP after October 15, 2020 as amendments. However, the meeting notes for this meeting reflect that the Case Manager said, "We will need multiple meetings to complete the IEP." These meeting notes are cumulative in nature – the IEP meeting on October 26, 2020 is headed "Part Two," the IEP meeting on November 2, 2020 "Part Three," the IEP meeting on November 12 "Part Four," and the IEP meeting on January 26, 2021 "Part Five." There are also entries for March 19, 2021; March 30, 2021; and April 28, 2021. The Student's annual IEP review date was then changed to reflect the tardiness of the completion of the school year 2020-2021 IEP. The Parent did not receive a written copy of the Student's IEP until after June 7, 2021 (the date this complaint was filed).

Without the IEP, the Parent did not know what teachers were required to implement as part of the Student's IEP. The failure to provide a written IEP prohibited the Parent from fully participating in the Student's education.

The Department substantiates this allegation.

² OAR 581-015-2195(5)

Failure to remit educational records

The Parent alleges that the District violated the IDEA because it denied the Parent access to the Student's educational records. Specifically, the Parent alleges that the District did not remit IEP team meeting minutes/notes after the Parent requested a copy of these records.

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.³

In the instant case, the Parent requested copies of the IEP meeting minutes for school year 2020-2021 on April 27, 2021, the day before the last IEP meeting was scheduled and the day before the Student's annual IEP would be completed and formalized. Because the Student's annual IEP had taken ten (10) meetings to create (the April 28, 2021 meeting being the 10th and final meeting) and because the Parent did not have any record of what had been memorialized in the nine (9) preceding meetings, it was rational to request the meeting minutes to ensure that the Student's present levels, services, and goals were created properly and that the Student would continue in the correct placement with the correct, agreed-upon Individualized Educational Program.

The Parent did not receive any meeting minutes after requesting said minutes until receiving the District's response to this Complaint.

The Department substantiates this allegation.

Content of IEP/Measurable Annual Goals

a. Measurable Annual goal for Augmentative and Assistive Technology

The Parent alleges that the District failed to include a measurable annual goal regarding the student's use of augmentative and assistive technology as well as the Student's progress in learning to use said technology.

An IEP must include measurable annual goals designed to show the Student's progress in the general education environment.⁴

As discussed above, when the Parent filed this Complaint, the Parent did not have access to either the Student's IEP or the IEP Team Meeting Notes. However, the District provided the completed IEP dated April 28, 2021 to the Parent as part of the District's response to this matter. The April 28, 2021 IEP contains two (2) measurable annual goals regarding the Student's use of augmentative and assistive technology.

The Department does not substantiate this portion of the allegation.

b. Data collection to measure short term progress and progress toward measurable annual goals

³ OAR 581-015-2190(1)

⁴ OAR 581-015-2200(1)(b)

The Parent alleges that the District failed to collect data regarding the Student's measurable annual goals and benchmarks or short-term objectives so that the Student's progress could be determined.

"Short-term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gauge, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

- (a) Breaking down the skills described in the goal into discrete components, or
- (b) Describing the amount of progress the child is expected to make within specified segments of the year.⁵

The Student's October 28, 2019 IEP stated that the Student's progress would be reported twice a year in February and June when the term ended and when report cards were remitted. Because the Student's annual IEP for school year 2020-2021 was not finalized in October 2020, the Student's previous goals, if they were not met, would still be used in the measure of the Student's progress. The Student's report card of February 2021 did not contain any progress reporting.

The Student's April 28, 2021 IEP contains a statement noting that in lieu of data collection, the Student's present levels and goal progress was updated during the first six (6) IEP meetings held prior to February 4, 2021. However, since the IEP was not complete, the question arises as to which goals are being measured: the goals of the October 28, 2019 IEP, or the goals from the April 28, 2021 IEP which were not even proposed until March 18, 2021. The SLP's Progress Notes of June 14, 2021 indicate that the new goals were not broached until May, 2021.

Reviewing the notes from the IEP meetings produced by the District, the only time goals were addressed in the meetings was November 2, 2020 wherein the general education teacher reviewed the Student's present levels in reading and suggested a new goal because the Student's reading level was higher than what had been contained in the Student's previous present level.

After the Parent filed this Complaint, the Case Manager attempted to engage the Student online to collect data to ascertain if the Student was meeting measurable annual goals or benchmarks of short-term objectives. The Case Manager collected the data on June 11, 2021, the day before the school year ended. The Case Manager could only collect data in one area: life skills, counting money. This was a goal created in the April 28, 2021 IEP.

The Department substantiates this allegation.

Annual review of IEP

a. Failure to timely convene the annual IEP meeting

The Parent alleges that the District did not commence the annual IEP in a timely manner.

Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved and to revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals.⁶

The Student's annual IEP date was October 28, 2019. Hence, the Student's IEP had to be reviewed prior to October 27, 2020. The IEP team began meeting on or about October 10, 2021,

⁵ OAR 581-015-2000(35)

⁶ OAR 581-015-2225(1)(b)

two weeks before the Student's annual IEP would have been due for review. However, this process was not concluded until April 28, 2021.

Because the District did not complete the annual IEP review process before October 27, 2021, a timely annual review of the IEP fell beyond 365 days of the last IEP review.

The Department substantiates this allegation.

b. Failure to finalize the IEP in a timely manner.

The Parent alleges the District violated the IDEA because it did not create the Student's IEP in a timely manner.

An IEP which is outdated is not reasonably calculated to enable a Student to receive FAPE.⁷ Moreover, the failure of a District to adhere to the requirements of the IDEA cannot be blamed on extraneous circumstances or the conduct of a Parent.⁸

The District met over a seven month period to create the Student's IEP. The meeting notes from October 15, 2020 reflect that the District did not intend to fully complete the IEP during this meeting, and the IEP was not actually completed until April 28, 2021.

The Department substantiates this allegation.

IEP Implementation.

The Parent alleges that the District violated the IDEA because it failed to implement the Student's IEP.

a. Timely progress reports

The Parent alleges that they did not receive and/or have not timely received Progress Reports regarding the Student's measurable annual goals and benchmarks or short-term objectives.

At least once every 365 days an IEP must be reviewed and revised and a determination must be made whether the annual goals are being achieved.⁹ The IEP must include a description of how the child's progress toward meeting the annual goals will be measured.¹⁰ It must also include when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.¹¹

The Student's October 28, 2019 IEP states that the Student's Progress Reports will be remitted to the Parents every February and June. The District revised how Progress Reports will be given in the Student's April 28, 2021 IEP, stating that oral updates during the Student's IEP meetings would be implemented as well as the twice per year written reports.

The Student's report card during the Complaint Period was a single document showing the Student's letter or pass/fail grade. No other information regarding the Student's education was given.

⁷ *Anchorage Sch. Dist. v. M.P.*, 689 F. 3d 1047, 1055 (9th Cir., 2012)

⁸ *Id.*, at 1058

⁹ OAR 581-015-2225

¹⁰ OAR 581-015-2200(1)(c)

¹¹ OAR 581-015-2200(1)(c)

The Department substantiates this portion of the allegation.

b. Supporting data

The Parent alleges that District violated the IDEA by failing to include supporting data on the Student's Progress Reports.

During the annual review and revision of a child's IEP, the IEP team must determine the whether the child's measurable annual goals are being achieved.¹²

During the Complaint Period, the Student had 7 goals in math, reading, speech/language, and behavior noted on the October 28, 2019 IEP. However, because the IEP team did not complete the Student's annual IEP meeting for school year 2020-2021 until April 28, 2021, the Student's new goals were clearly not addressed throughout the majority of the academic year. The Student's goals were not proposed to the Parent until March 18, 2021, nearly five months after the annual IEP review date of October 28, 2020. The Case Manager stated that no data would be taken on the old goals while a new IEP was being created. Consequently, data related to the Student's goals under the October 28, 2019 was not collected for at least seven months.

The Case Manager took data on a majority of the Student's goals a few days before school year 2020-2021 was ending. This data was taken in a single day and would not accurately reflect the ability of the Student over time.

The Department substantiates this portion of the allegation.

V. ADDITIONAL FINDING

During the Complaint Period, the District has committed the following procedural violations of the IDEA:

Misapplication of Extended School Year Standard

The IEP team did not consider sufficient criteria for determining the Student's eligibility for Extended School Year (ESY).

The Case Manager informed the Parent that the Student would not be eligible for ESY because the Student attained all previous goals. Not only is there no data in the record supporting the assertion that the Student met all previous goals, but the meeting of goals is not the standard utilized to determine whether a Student is eligible for ESY. While school districts are responsible for developing the criteria used to determine the need for extended school year services, those criteria must minimally include regression and recoupment time.¹³

The Department substantiates this finding.

V. CORRECTIVE ACTION

In the Matter of Corvallis School District
Case No. 21-054-012

¹² OAR 581-015-2225(1)(a)

¹³ OAR 581-015-2065(5)

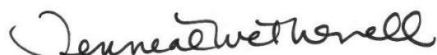
Based on the facts provided, the following corrective action is ordered:

Action Required	Submissions¹⁴	Due Date
<p>1. Staff training for all district staff who participate in IEP meetings as either: (a) the special education teacher or special education provider of the child; or (b) a representative of the school district who is qualified to provide, or supervise the provision of, specially designed instruction; knowledgeable about the general education curriculum; knowledgeable about district resources; and authorized to commit district resources and ensure that services set out in the IEP will be provided in each of the following areas:</p> <p>a. How to write present levels of academic and functional performance based on student-specific data that establish a baseline.</p> <p>b. How to write measurable annual goals linked to baselines established in present levels of academic and functional performance to assure IEP through-lines.</p> <p>c. District procedures to ensure that evaluations are completed appropriately and in a timely fashion.</p> <p>d. District procedures to ensure that IEPs are</p>	<p>The District shall:</p> <p>a. Submit a training plan to the Department for approval,</p> <p>b. Complete the training according to the approved plan,</p> <p>c. Submit evidence of completed training, materials, agenda, and sign-in sheets.</p>	<p>November 30, 2021</p> <p>Training plan must be submitted to the Department for approval no later than September 15, 2021.</p> <p>Training must be completed consistent with timelines established in the plan, but not later than November 30, 2021.</p> <p>Evidence of completed training must be submitted by November 30, 2021.</p>

¹⁴ 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.

<p>completed appropriately and in a timely fashion.</p> <p>e. District procedures to ensure that parents receive IEPs in a timely fashion and that any requested documents are provided to parents in a timely fashion.</p> <p>f. District procedures to prepare periodic progress reports that are clearly linked with present levels of academic and functional performance and measurable annual goals.</p>		
<p>2. The IEP Team must meet to consider the need for Individualized COVID-19 Recovery Services.</p>	<p>The District must submit the completed Individualized COVID-19 Recovery Services Review sample form developed by the Department or a form developed by the school district that contains the same content that was provided to the parent following this meeting.</p>	<p>September 15, 2021</p>

Dated: this 5th day of August 2021



Tenneal Wetherell

Assistant Superintendent

Office of Enhancing Student Opportunities

Emailing date: August 5, 2021

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).)