

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Ashland School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-029

I. BACKGROUND

On August 17, 2022, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the attorney (Attorney) for the parent (Parent) of a student (Student) residing in the Ashland School District (District). The Attorney requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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 Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On August 23, 2022, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of September 13, 2022. The parties in this matter later agreed to an extension of the timeline to pursue mediation; however, the parties never mediated, and the complaint timeline resumed.

The parties in this matter later agreed to continue the investigation following the attempted mediation. On September 20, 2022, the Department's Complaint Investigator sent a revised *Request for Response (RFR)* to the District with a new *Response* due date of October 14, 2022.

The District submitted a *Response* on October 14, 2022, denying most of the allegations, providing an explanation for other allegations, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District Response
2. Student IEP 1, 11/02/2021
3. IEP Meeting Notes, 11/02/2021
4. Student IEP 2, 11/02/2021
5. Student IEP, 01/13/2021
6. IEP Meeting Notes, 01/13/2021
7. PWN, withdrawal from online charter school, 09/20/2021
8. IEP Team Meeting Notice, 01/04/2021
9. PWN, provision of SpEd, 01/13/2021

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

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

10. Prior Notice and Consent for Initial Provision of Special Education Services, 01/13/2021
11. Statement of Eligibility for Special Education (Other Health Impairment 80), 01/13/2021
12. Statement of Eligibility for Special Education (Specific Learning Disability 90), 01/13/2021
13. Prior District Student Assessment, 01/12/2021
14. Special Education Referral, 10/01/2020
15. Student IEP Progress Report, 01/13/2021
16. District New Student Registration, 09/16/2021
17. Student Assessment, 01/12/2021
18. Statement of Eligibility for Special Education (Other Health Impairment 80), 01/13/2021
19. Statement of Eligibility for Special Education (Specific Learning Disability 90), 01/13/2021
20. Student Progress Report, 2021/22
21. Student IEP Progress Report 11/02/2021
22. Email: [Student] excused 9-29-22
23. Email: Re Annual IEP 10/25 3:00
24. Email: Re: Checking in
25. Email: Choir
26. Email: [Student] absent 9-12-22
27. Email: Test
28. Email: Re: Sept 9th
29. Email: Re: Greeting and introduction
30. Email: [School] Choir
31. Email: Re: [Student]
32. Email: Re: This is the correct request form
33. Email: [Student]
34. Email: School_Transfer_Request_CO-11_2_2_.pdf
35. Email: Re 2022/23 school year for [Student]
36. Email: Bus/pick up
37. Email: Re: Summer School Bussing Transportation
38. Email: Geocaching
39. Email: Re: Sumer School Off-Site Enrichment Field Trip Permission Form
40. Email: Re: Nuestra ultimo reunion de la Union de Estudiantes Latinos
41. Email: Re: Letting you know
42. Email: Application for 22/23
43. Email: Re: FW: LSU today after school
44. Email: Re: FW: Ashland K-8 Summer Learning Program
45. Email: Re: Re:
46. Email: _
47. Email: Field trip permission slip
48. Email: Early pick up for [Student]
49. Email: Volunteer background check
50. Email: Re: Volunteer Clearance
51. Email: Re: i-Ready
52. Email: No bus today
53. Email: [Student] sick 3-16
54. Email: [Student] out sick today
55. Email: [Student] excused absence 3-15
56. Email: no rush to reply!
57. Email: Short Meeting Time for [Student]
58. Email: Re: Conference Time
59. Email: Re: BUS
60. Email: Friday, Feb 11
61. Email: Valentine's Day
62. Email: Distance Learning Survey – [Student]

- 63. Email: Re: Checking in
- 64. Email: Re: Tuesday's Walk-A-Thon
- 65. Email: Phone call message follow-up
- 66. Email: Re: Conference Sign-ups and Halloween
- 67. Email: Re: [School] 2nd grade
- 68. Email: Re: 2nd grader enrollment/transfer
- 69. Copy of District response to RFR
- 70. List of Relevant Staff

The Complaint Investigator interviewed the Parent on October 25, 2022. On October 31, 2022, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of 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 under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' 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 18, 2021, to the filing of this Complaint on August 17, 2022.

Allegations	Conclusions
<p>Transfer Students</p> <p>The Parent alleged that the District violated the IDEA when it failed to implement services comparable to those described in the Student's IEP from the Student's previous school district. The Parents alleges specifically that the Student was not provided with service comparable to their previous IEP. It is further alleged that the District did not develop or adopt a new IEP for the Student until some weeks after the Student enrolled in the District.</p> <p>(OAR 581-015-2230; 34 CFR 300.323)</p>	<p>Substantiated</p> <p>There was a delay between the Student's registration, the Student beginning to attend classes, and when the District formulated an IEP for the Student. During this time, the Student did not receive specially designed instruction.</p>
<p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA when it failed to collect and/or document appropriate IEP progress data for the Student. Specifically, it is alleged that data gathered for the purpose of measuring the Student's progress toward annual goals was insufficient for such assessment purposes.</p> <p>(OAR 581-015-2220; 34 CFR 300.323 & 343.055)</p>	<p>Substantiated</p> <p>The District did collect IEP goal assessment data for the Student. The data collected by the District showed improvement over the 2021-22 school year. The District, however, did not implement the Student's IEP</p>

	when the Student initially enrolled in the District.
<p>Review and Revision of IEPs</p> <p>The Parent alleged that the District violated the IDEA when it failed to revise the Student’s IEP to address the Student’s lack of progress toward meeting the annual goals described in their IEP. In particular, the Parent alleged that the Student demonstrated a lack of progress in reading and that the District did not convene an IEP meeting to address this demonstrated lack of progress.</p> <p>(OAR 581-015-2225; 34 CFR 300.324(a)(4), (a)(5), (a)(6) & (b)(1))</p>	<p>Not Substantiated</p> <p>Rather than showing a lack of progress, the Student showed progress toward their IEP goals. The Student remains behind grade level in many areas and and continues to receive special education for the 2022-23 school year.</p>
<p>Extended School Year Services</p> <p>The Parent alleged that the District violated the IDEA when it failed to appropriately consider whether the Student was eligible for extended school year (ESY) services. Rather, it is alleged that the District unilaterally determined the Student’s eligibility for ESY. It is further alleged that the District did not discuss the Student’s eligibility for ESY at an IEP meeting, did not provide relevant regression and recoupment data for the Student, nor any documentation regarding how the District determined the Student’s eligibility for ESY.</p> <p>(OAR 581-015-2065; 34 CFR 300.106)</p>	<p>Not Substantiated</p> <p>There is evidence in the record that the Student’s IEP team considered whether the Student required extended school year services.</p>
<p>Individualized COVID-19 Recovery Services</p> <p>The Parent alleged that the District failed to consider individualized COVID-19 recovery services for the Student. It is alleged that the District did not discuss, with the Parent, the Student’s experience with comprehensive distance learning (CDL) during the school year prior to the Student’s enrollment in the District, and therefore did not have the requisite information required to determine the Student’s needs, or to determine whether difficulty during CDL contributed to the Student’s academic progress toward annual goals.</p>	<p>Substantiated</p> <p>There is no evidence in the record that the Student’s IEP Team considered the Student’s need for Individualized COVID-19 Recovery Services.</p>

(OAR 581-015-2229)	
<p>Free Appropriate Public Education (FAPE)</p> <p>The Parent alleged that the District violated the IDEA when it failed to (a) implement the Student’s out-of-District IEP, (b) create or maintain adequate IEP progress data, (c) revise the Student’s IEP to address observed lack of progress toward the IEP goals, (d) consider extended school year services for the Student, and (e) consider the Student’s eligibility for Individualized COVID-19 Recovery Services.</p> <p>(OAR 581-015-2040; 34 CFR 300.101)</p>	<p>Substantiated In Part</p> <p>The District, for a six-week period, did not implement the Student’s out-of-District IEP, and appears not to have considered whether the Student was eligible for Individualized COVID-19 Recovery Services.</p> <p>There is not sufficient evidence to substantiate the allegations concerning creating and maintaining adequate IEP progress data, revising the Student’s IEP, or consideration of extended school year services.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<ul style="list-style-type: none"> • The Parent suggests that the District is in violation of the IDEA in the above described areas. • The Parent suggests that the District provide training to staff regarding transfer student’s IEPs, child find, progress reporting, and when IEP teams should revise annual goals. • The Parent suggests that the District convene a facilitated IEP meeting to address the Student’s lack of progress toward annual goals. • The Parent requests compensatory education equivalent to the 2021-2022 academic year, reflecting the time period where the District allegedly failed to implement the Student’s IEP from their previous school district, and the time from which the District allegedly did not revise the Student’s annual goals after the Student showed lack of progress.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department’s receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before August 17, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

- 1) The Student in this matter is in the third grade and attends school in the Ashland School District.
- 2) The Student is eligible for special education under the eligibility categories of Other Health

Impairment (80) and Specific Learning Disability (90). The Student has a diagnosis of attention deficit hyperactivity disorder (ADHD) and other health related issues that impact their learning.

- 3) While the Student can display impulsivity in asking questions and sharing ideas, the Student's Teacher (Teacher) described the Student as a joy to have in the classroom. The Student has shown growth in many academic areas, especially mathematics. The Student is very social and enjoys talking with classmates.
- 4) The Student was initially enrolled in the District during the 2019-20 school year. The Student was then in Kindergarten.
- 5) The Parent reports that upon enrollment in the District for the 2019-20 school year, the District was provided with documentation from the Student's early childhood education program. This information included a medical statement and information relevant to occupational therapy services.
- 6) On April 10, 2019, the Parent inquired by email with the District whether the Student could be enrolled in kindergarten. The District responded that given the time of year of the Student's birth, according to District policy they would be enrolled in the grade appropriate for their age, which for the coming 2019-20 school year would be first grade.
- 7) On July 1, 2019, the Parent received an email from the school district where the Student had received early childhood special education services. Attached to the email were copies of the Student's education records.
- 8) On July 1, 2019, the Parent forwarded the email and the Student's education records to the District's Department of Student Services.
- 9) On July 2, 2019, the District's Department of Student Services confirmed receipt of the email and the Student's education records. As part of the records review, the District noted that the Student was previously found eligible for special education services and that these records could serve as a resource for the District's own special education eligibility determinations.
- 10) On August 21, 2019, one of the District's special education teachers sent an email to the Parent inquiring about special education services for the Student and requesting further information.
- 11) On August 28, 2019, the Parent responded to the Special Education Teacher confirming the Student's diagnosis of ADHD and providing the Teacher with the contact information of the Student's doctor.
- 12) On November 20, 2019, the Parent sent an email to the District's then Director of Student Services, writing in part, "I was told that you were the one to go to with some of the questions and concerns I have regarding a request for an I.E.P. eval that I made at the beginning of the school year."
- 13) On January 6, 2020, the Parent sent a follow-up email to their November 20, 2019, email, asking whether the Director of Special Education was still employed in that role.
- 14) On April 7, 2020, the Parent and the District exchanged emails regarding the Parent's preference to continue using paper worksheets rather than online resources.
- 15) On April 8, 2020, the District informed the Parent that paper packets would not be offered to

families through comprehensive distance learning unless the family had no access to technology.

- 16) Following the onset of the COVID-19 Pandemic, the Student transitioned to comprehensive distance learning.
- 17) The Parent reported that following the transition to online learning the family did not have the requisite technology to support the Student through online learning. On April 16, 2020, the Parent exchanged emails with the District about obtaining a tablet to allow them to access online schooling for the Student. The District noted that the process for obtaining a tablet for the Student would take some time but that the Student could be placed on a waiting list.
- 18) On either April 22, 2020 or April 23, 2020, the Parent withdrew the Student from the District and enrolled the Student in an online charter school. The Parent reported that they had not yet received a tablet to allow the Student to take part in online classes. Consequently, they had concerns regarding the Student's educational progress and decided to seek alternatives.
- 19) The Student enrolled in the Online Charter School for the 2020-21 school year. The Student was then in the first grade.
- 20) On October 1, 2020, the Parent requested that the Online Charter School evaluate the Student for concerns stemming from academic performance, cognitive ability, behavior, occupational therapy needs, and a medical diagnosis of ADHD.
- 21) On October 20, 2020, the Online Charter School provided the Parent with a Prior Written Notice (PWN) of its intent to evaluate the Student based on its assessment, class performance, and Parent input. The Parent provided consent and the Online Charter School began its evaluation of the Student.
- 22) The October 20, 2020 PWN further stated that the Student "has been struggling for a number of years and parent has continued to be denied a SPED evaluation."
- 23) The Online Charter School administered the Woodcock-Johnson Test of Achievement in English, Woodcock-Johnson Test of Cognitive Abilities, Adaptive Behavior Assessment System, and examined the Student's developmental history. The Online Charter School also utilized medical statements provided by the Parent.
- 24) On January 13, 2021, the Online Charter School formulated an IEP for the Student. As part of this meeting and review of relevant evaluations, the Student was found eligible for special education under the eligibility categories of Specific Learning Disability and Other Health Impairment. The Student's IEP team indicated that the Student might need to visit an occupational therapist to address handwriting concerns.

As a result of these assessments, the team observed that the Student was in the limited range for academics. The Student showed a pattern of strengths and weakness scoring average in processing speed, long-term retrievals, visual processing, and fluid reasoning. The team expressed concerns with the Student's vision which required accommodations around written materials. The Student's IEP team noted that the Student previously underwent intensive speech intervention which improved the Student's articulation. The team also indicated that the Parent should take the Student to an occupational therapist to address handwriting concerns.

The team further observed that the fires which impacted the Southern Oregon area in the fall

of 2020 impeded the Student's learning due to a loss of internet connection as well as and fire related evacuations. The team further observed that COVID-19 impacted the family because it eliminated face to face interactions with school staff. Due to the assessments and observations, the team developed an IEP for the Student.

25) During the January 13, 2021 IEP meeting, the IEP team considered whether the Student required extended school year (ESY) services. The team determined that the Student did not require ESY, noting that the Student did not display significant regression and that recoupment was not delayed. The IEP team also noted that should the Student choose to attend summer school, they would receive support over the summer.

26) The Student's January 13, 2021 IEP included goals in math, reading, and writing. The Student's math goal stated that, "provided instruction in math, [Student] will increase (their) understanding of math concepts enabling (them) to add numbers up to a sum of 10 as well as understand place values for 10 to 100, count to 100, and when given a group of items, write numbers up to 30." The Student's progress would be measured through district assessment results, coursework progress, and monitoring sheets in program virtual records.

The Student's reading goal indicated that "provided instruction in basic reading skills [Student] will demonstrate skills in decoding, CVC and CCVC, CVCC words correctly reading 12 nonsense word and 12 words on the DIBELS by fall of 2021." The Student's progress would be measured through district assessment results, coursework progress, and monitoring sheets in program virtual records.

The Student's writing goal indicated that the Student "will improve [their] handwriting to form legible letters. [Student] will write simple sentences that begin with a capital letter and end with punctuation." The Student's progress would be measured through district assessment results, coursework progress, and monitoring sheets in program virtual records.

The Student was given 20 minutes monthly of specially designed instruction (SDI) in each subject. The Student's IEP also called for multisensory learning opportunities with available, active breaks, extended time for assignments, text to speech services, a scribe, and the use of grid paper. In addition, the Student's curriculum was modified to include a modified pace of instruction, as well as modifying curriculum based on the Student's performance on achievement tests.

27) On June 1, 2021, the Online Charter School provided a progress report of the Student's progress toward their IEP goals. The Student displayed progress in reading. The Online Charter School's progress note stated that the Student "was able to read 6 nonsense words and 2 sight words on the recent Dibels assessment. [Student] is able to write [their] letters legibly and spells phonetically. Currently working on Lexia Core 5. [Parent] notices students mixed up letter and sounds when spelling and reading."

The Student's progress report in math indicated that the Student was making progress. Student was "making progress in Math and [Parent] says [Student is] able to do the current Math goals listed on the IEP. [Student's] Star scores improved from 278 in Feb to 292 in June. [Parent] is concerned that some Math concepts aren't being retained."

28) On August 30, 2021, the Parent submitted a zone transfer request with the District to change the elementary school the Student was assigned to. The Parent stated the reason for the transfer request was their experience with the prior elementary school during the Student's first grade year.

- 29) August 30, 2021 was the first day of school for the 2021-22 school year.
- 30) On September 11, 2021, the District approved the zone transfer request.
- 31) On September 16, 2021, the Parent registered the Student in the District. The District's online registration system offers a series of questions as part of the registration. Under "Special Services" the Parent selected that the Student was "Currently Receiving Services" for the option labeled "Special Education." When completing the registration materials, the Parent indicated that the Student was moving from the Online Charter School, had needs in reading, and was diagnosed with ADHD. The Parent also indicated that the Student suffered from anxiety and had received reading services previously.
- 32) On September 20, 2021, the Online Charter School documented the Student's transfer from the Online Charter School and transfer of records to the District.
- 33) On October 14, 2021, the Parent sent an email to the District informing the Student's Second Grade Teacher of the Student's diagnosis of ADHD, severe anxiety, and associated symptoms.
- 34) On October 14, 2021, the Teacher responded to the Parent thanking them for the information and stating that the Student's IEP Team would be meeting soon to discuss reading, math, and other services for the Student.
- 35) On October 29, 2021, the Student's Case Manager sent an email to the Parent apologizing for the delay in implementing the Student IEP and invited the Parent to an IEP Team meeting to discuss adding additional support and extending the time allotted to SDI.
- 36) On November 2, 2021, the District held an IEP Team meeting to review the Student's IEP received from the Online Charter School. This meeting was conducted by phone, with the Parent in attendance. The notes from that meeting indicated that the District would accept the Student's IEP and increase the SDI provided to the Student given the return to in-person instruction. The District took that time to formulate a new IEP for the Student as the Student's annual IEP was due in January, 2022.
- 37) The District formulated an IEP for the Student on November 2, 2021. The IEP included updated observations of the Student's progress, strengths, weaknesses, and input from the Parent. The District noted that the Student required additional support in repetition and can struggle with short-term memory. The District reviewed the Student's test scores, noting that the Student was working on fluency, literacy, and showed strengths in mathematics.

As part of the IEP discussion, the District considered the Student's needs for ESY. The IEP team documented that the Student did not show significant regression. The IEP Team also noted no delay in recoupment. The IEP Team did not recommend ESY for the Student. IEP Team meeting notes also indicate that ESY was considered.

The IEP Meeting Notes state, "The team would like [Parent] to visit with an occupational therapist to go over ideas and get more tips and tricks that could help [Student]." However, these notes are not terribly detailed. As such, it is impossible to determine how much discussion occurred around this topic or whether this recommendation indicates a need for further services the District was obligated to provide. The Case Manager at that time is no longer with the District.

- 38) On November 2, 2021, the District produced an IEP progress report for the Student. This

report indicated that the Student was showing progress in math. The progress report indicated that the Student had mastered the goal of adding numbers up to a sum of 10, as well as place value for 10 and 100, counting to 100, and when given a group of items, and could write number up to 30. The District also recorded that the Student was making progress toward their reading and writing goals.

- 39) On March 3, 2022, the Teacher sent an email to the Parent and members of the Student's IEP Team reiterating conversations with the Parent the prior day at parent-teacher conferences. The Teacher communicated the Parent's interest in supporting the Student's reading at home with additional strategies.
- 40) On May 12, 2022, the District sent the Parent an email regarding the District's summer school program.
- 41) On May 16, 2022, the Teacher sent an email to the Parent stating that the District was interested in retesting the Student in math, as the Student "didn't show a ton of growth" and that the District suspected that this was due to the Student "zipping through the test because [they] wanted to be the first done."
- 42) On May 16, 2022, the Parent responded by email saying they were unsure about retesting for various reasons.
- 43) The Student's final grade report, issued June 10, 2022, indicated that the Student was meeting most of their IEP goals.
- 44) The Parent reports that over the summer between the 2021-22 and 2022-23 school years, they received copies of the Student's IEP progress reports. The Parent reports having not received copies of these when they were generated.
- 45) The Student's IEP progress report in reading showed that the Student went from reading eight correct words per minute as of February 7, 2022, to 16 correct words per minute as of February 28, 2022. Thereafter the Student's progress declined slightly, displaying 15 correct words per minute as of April 21, 2022, and 14 correct words per minute as of May 26, 2022.
- 46) The Student's 2021-22 iReady diagnostic performance summary in reading indicated that the Student was two grade levels behind in most areas, and one grade level behind in other areas.
- 47) On August 17, 2022, the Parent filed this Complaint.
- 48) On October 5, 2022, one of the Student's teachers sent an email to the Parent observing the Student's need to move throughout the day. The Parent responded by email discussing the Student's ADHD diagnosis and needs in that area. The Teacher responded informing the Parent that the Student would have access to such accommodations as a wobble chair.
- 49) On October 17, 2022, the Parent requested, and was provided, a copy of the Student's iReady math and reading assessment scores.
- 50) On October 25, 2022, the Department's Complaint Investigator interviewed the Parent by phone. The Parent related their experience initially registering the Student with the District, transfer to the Online Charter School, and return to the District for the 2021-22 school year. The Parent had continuing concerns regarding the Student's reading ability and whether the Student's IEP team had considered all of the Student's needs. The Parent noted that the Student previously had OT services prior to kindergarten and was concerned about the

Student's handwriting and whether the District had overlooked this need.

The Parent related that the Student had reported to them that such accommodations such as wobble stools, fidgets, and other interventions to address the Student's ADHD were available in the classroom but not offered to the Student.

- 51) On October 31, 2022, the Department's Complaint Investigator interviewed one of the Student's second grade teachers. The Teacher described the Student's happiness and enthusiasm for school. The Teacher further described having observed tremendous growth in the Student. The Teacher noted specifically that the Student showed growth in self-advocacy. The Teacher noted that the Student showed the most growth in their mathematics abilities. The Teacher further indicated their awareness of the Student's IEP goals and described how they worked with those goals in the general education setting in collaboration with the Student's SDI.

The Teacher indicated that Student was provided with work in small reading groups. The Student's goals in reading were described in word per minute improvements. The Teacher explained their approach in helping the Student with reading. The Teacher further noted that progress was measured through EasyCBM data in their classroom and through iReady data in the resource room where the Student received SDI.

- 52) On October 31, 2022, the Department's Complaint Investigator interviewed the District's Director of Special Education. The Director of Special Education noted that there was some delay with the Student starting school as the Parent had requested a zone transfer. The school to which the Student would transfer to was then in the process of moving locations, and did not have physical space for the Student (due in part to physical distancing rules in place because of COVID-19, and construction to the physical building). These obstacles contributed to the District not timely communicating the Student's eligibility for special education to the proper staff. The Director of Special Education noted that the District had a record of generating and sending IEP progress reports to the Parent. The District further reported that an offer to provide summer school services was extended to the Parent.

IV. DISCUSSION

Transfer Students

The Parent alleged that the District violated the IDEA when it failed to implement services comparable to those described in the Student's IEP from the Student's previous school district. The Parents allege specifically that the Student was not provided with services comparable to their previous IEP nor did the District develop or adopt a new IEP for the Student until some weeks after the Student had enrolled.

When a child with a disability transfers to a new school district in Oregon, and enrolls in a new school within the same school year, the new school district must provide a free appropriate public education (FAPE) to the child, including the provision of services comparable to those described in the child's IEP from the previous school district. The FAPE offered to the child should be comparable to the services outlined by IEP in effect from the previous school district in Oregon. The new school district may either adopt the child's IEP from the previous school district or develop, adopt, and implement a new IEP for the child.³

³ OAR 581-015-2230(1), (1)(a)—(1)(b)

The Student transferred back to the District from the Online Charter School on September 16, 2021. The Parent previously requested a zone transfer and was in conversation with the District regarding the Student's return to the District. In the registration information the Parent completed, the Parent indicated that the Student had an IEP. The Online Charter School sent records to the District on October 6, 2021. During interviews as part of this investigation, the District acknowledged some delay between the Student's registration, the receipt of records from the Student's prior district, and the formulation of a new IEP or implementation of the Student's existing IEP. The District formulated a new IEP, based on the Student's previous IEP, on November 2, 2021. There was a delay of approximately 10-11 days between the Student's first day of attendance and implementation of the District's IEP or formulation of a new IEP for the Student. During interviews with the District, staff acknowledged issues with processing and analyzing the registration forms and education records received from the Student's prior school. District staff noted that the District's schedule during this time equated to approximately six weeks of instruction time for the Student when an IEP was not in place.

The Department substantiates this allegation.

When IEPs Must Be in Effect

The Parent alleged that the District violated the IDEA when it failed to collect and/or document appropriate IEP progress data for the Student. Specifically, it is alleged that the data gathered for the purpose of measuring the Student's progress toward annual goals was insufficient for such assessment purposes.

At the beginning of each school year, a district must have an IEP in effect for each child with a disability within the district's jurisdiction. The district must provide special education and related services to the child in accordance with that IEP. As soon as possible, following the development of the IEP, special education and related services must be made available to the child in accordance with that child's IEP. In addition, the district must ensure that the IEP is accessible to each regular education teacher, special education teacher, and related services provider responsible for its implementation. Each teacher and service provider responsible for implementing the IEP must be informed of their specific responsibilities therein.⁴

As noted above, there was a delay between the Student's transfer back to the District on September 16, 2021, and the District's formulation of an IEP for the Student on November 2, 2021. From interviews with the District staff, it is evident that teachers were aware of the Student's IEP and understood the contents and means of measuring the Student's progress. The Student's progress in reading was measured through their proficiency in phonics by analysis of CVC, CCVC, and CVCC words. The Student's progress was also assessed through EasyCBM data and curriculum-based measures. These means of assessing the goals were much the same as those proposed by the Student's previous school district. The Student displayed progress towards all IEP goals. While the Student showed progress toward IEP goals, the Student remained below grade level in areas such as reading.

The Student's IEP progress reports showed that the Student made considerable progress toward IEP reading goals during the first half of the 2021-22 school year. The Student went from reading eight correct words per minute as of February 7, 2022, to 16 correct words per minute as of February 28, 2022. Thereafter the Student's progress declined, with the Student displaying

⁴ OAR 581-015-2220(1)—(3)

15 correct words per minute as of April 21, 2022, and 14 correct words per minute as of May 26, 2022.

The District collected IEP goal assessment data for the Student. The data collected by the District showed that the Student improved over time. However, the District failed to implement the Student's IEP at the time the Student enrolled in the District.

The Department substantiates this allegation.

Review and Revision of IEPs

The Parent alleged that the District violated the IDEA when it failed to revise the Student's IEP to address the Student's lack of progress toward meeting the annual goals described in their IEP. In particular, the Parent alleged that the Student demonstrated a lack of progress in reading and that the District did not convene an IEP meeting to address this demonstrated lack of progress.

A district must ensure that the IEP Team reviews the child's IEP periodically, at least every 365 days. The IEP is reviewed to ensure that the annual goals for the child are being achieved. The IEP should be revised as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum. The IEP team should revise the IEP to address the results of evaluations, information from the parents, the child's anticipated needs, or other matters.⁵

The evidence in the record shows the Student made progress in reading during the 2021-22 school year. The Student's IEP progress reports indicates that the Student made the largest progress in the first half of the 2021-22 school year, with progress slightly declining thereafter. The Parent expressed concern regarding the Student's reading ability and continued struggles in this area. The Teacher noted that the Student made progress toward their goals, and showed considerable progress toward other IEP goals over the same time.

During interviews with the Department's Complaint Investigator, the Director of Special Education indicated that the Student had made progress and no significant lack of progress was observed that would indicate to the Student's IEP team that the goals in place were not appropriate for the Student. During this investigation, the parties held a facilitated IEP meeting to revise the Student's IEP for the 2022-23 school year.

The Department does not substantiate this allegation.

Extended School Year Services

The Parent alleged that the District violated the IDEA when it failed to appropriately consider whether the Student was eligible for extended school year (ESY) services. Rather, it is alleged that the District unilaterally determined the Student's eligibility for ESY. It is further alleged that the District did not discuss the Student's eligibility for ESY at an IEP meeting, did not provide relevant regression and recoupment data for the Student, nor any documentation regarding how the District determined the Student's eligibility for ESY.

⁵ OAR 581-015-2225(1)(a)—(b)

School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to children with disabilities. Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child. School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or on predictions according to the professional judgment of the IEP team.⁶

The District considered whether the Student required ESY at the time of formulating the November 2, 2021, IEP. This is documented in the Student's November 2, 2021, IEP, and the meeting notes. The Student's IEP Team determined that the Student did not show signs of significant regression. Similarly, the IEP Team did not note a delay in recoupment. Due to these observations, ESY was not recommended for the Student.

The Department does not substantiate this allegation.

Individualized COVID-19 Recovery Services

The Parent alleged that the District failed to consider individualized COVID-19 recovery services for the Student. It is alleged that the District did not discuss, with the Parent, the Student's experience with comprehensive distance learning (CDL) during the school year prior to the Student's enrollment in the District. As a result the Parent alleges that the District did not have the requisite information required to determine the Student's needs, or to determine whether difficulty during CDL contributed to the Student's academic progress toward annual goals.

IEP teams must consider the need for Individualized COVID-19 Recovery Services at least at each initial IEP meeting and each regularly scheduled annual review meeting. IEP teams must consider the impact of COVID-19 on the eligible student's ability to engage in their education, develop and re-establish social connections with peers and school personnel, and adapt to the structure of in-person learning. For initial IEPs, the IEP team must also review the impact of COVID-19 on the eligible student's initial evaluation timeline and eligibility determination in considering the need for Individualized COVID-19 Recovery Services. For annual reviews, IEP teams must consider the impact of COVID-19 on the implementation of the eligible student's IEP in considering the need for Individualized COVID-19 Recovery Services.⁷

IEP teams are not required to meet more than once annually to consider the need for Individualized COVID-19 Recovery Services unless updated information indicates the eligible student's circumstances have changed or there is reason to suspect that the eligible student may need any additions or modifications to their Individualized COVID-19 Recovery Services. IEP teams that considered the need for Individualized COVID-19 Recovery Services at an initial IEP or annual review meeting on or after June 24, 2021 shall review the need for Individualized COVID-19 Recovery Services at the next annual review, but are not required to do so before then unless the eligible student's circumstances have changed, or there is reason to suspect that the eligible student may need additions or modifications to their Individualized COVID-19 Recovery Services.⁸

⁶ OAR 581-015-2065(1), (2), (5)

⁷ OAR 581-015-2229(3)(a)—(3)(c)

⁸ OAR 581-015-2229(4)(a)—(4)(b)

When Individualized COVID-19 Recovery Services are recommended, the eligible student's IEP must be updated to reflect the recommendation. The school district must provide written notice to the parents of each eligible student regarding the opportunity for the IEP team to meet to consider Individualized COVID-19 Recovery Services. After each determination is made, the school district or program shall provide written notice to the parent regarding the determination of need for Individualized COVID-19 Recovery Services.⁹

The District, in its *Response* to the Department's *Request for Response* in this matter, acknowledged that there was no evidence in the District's records that Individualized COVID-19 Recovery Services were discussed by the Student's IEP Team. The District noted that the Student had taken part in summer school where the Student received individualized services in conformity with the Student's IEP. The Parent observed that they opted to sign the Student up for summer school of their own accord.

There is no information in the record regarding whether the Student's IEP team considered the impact of COVID-19 on the Student and whether the Student needed Individualized COVID-19 Recovery Services. While the IEP meeting notes indicated, for example, that ESY was discussed, the notes do not indicate that Individualized COVID-19 Recovery Services were discussed by the Student's IEP team.

The Department substantiates this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District violated the IDEA when it failed to (a) implement the Student's out-of-District IEP, (b) create or maintain adequate IEP progress data, (c) revise the Student's IEP to address observed lack of progress toward the IEP goals, (d) consider extended school year services for the Student, and (e) consider the Student's eligibility for Individualized COVID-19 Recovery Services.

Each school district must provide a free appropriate public education to school age children with disabilities for whom the school district is responsible.¹⁰ Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities."¹¹ If an IEP cannot be implemented as written for distance learning, the IEP team must meet to review and revise the IEP.¹²

The District acknowledged a brief delay in implementing the Student's IEP when the Student began attending school. While there is a dispute regarding when IEP progress reports were sent, the District did have progress monitoring data for the Student's IEP goals. The evidence in the record further shows that the Student made progress toward their IEP goals. The Student's IEP Team did consider the need for extended school year services. However, there is no evidence in the records that the District considered the Student's eligibility for Individualized COVID-19 Recovery Services.

The Department substantiates the allegations related to implementing the Student's out of District IEP and consideration of eligibility for Individualized COVID-19 Recovery Services. However, the Department does not substantiate the allegations related to maintaining

⁹ OAR 581-015-2229(5), (6), (7)

¹⁰ OAR 581-015-2040(1); 34 CFR §300.101(a)

¹¹ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

¹² Oregon's Extended School Closure Special Education Guidance (ODE 5/11/20)

adequate progress data, revising the Student's IEP, and consideration of ESY.

V. CORRECTIVE ACTION¹³
In the Matter of Corvallis School District 509J
Case No. 022-054-011

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

Action Required	Submissions	Due Date
<p>1. The District must provide Compensatory Education to make up for the SDI not provided pursuant to the Student's IEP. An IEP meeting must be convened to determine how this Compensatory Education will be delivered. The Compensatory Education to be provided shall include at least:</p> <ul style="list-style-type: none"> • 720 minutes of SDI in reading, • 720 minutes of SDI in math, and • 720 minutes of SDI in writing. <p>The District must hold an IEP meeting with the Parent to develop a plan to deliver this SDI and to discuss the need for Individualized COVID-19 Recovery Services.¹⁴</p>	<p>The District shall submit the following:</p> <p>Completed plan for delivery of Compensatory Education developed in IEP meeting with Parent;</p> <p>Evidence showing compensatory education was provided, that Individualized COVID-19 Recovery Services were considered, and that these services were provided if determined necessary.</p>	<p>June 1, 2023</p> <p>September 1, 2023</p>
<p>2. The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this student receive training in each of the following area:</p> <ul style="list-style-type: none"> • IEP Implementation for transfer students; • Individualized COVID-19 Recovery Services. 	<p>Training agenda/materials to County Contact for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>February 15, 2023</p> <p>September 15, 2023</p>

Dated: this 22nd Day of November 2022



¹³ 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)).

¹⁴ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email ode.disputeresolution@ode.state.or.us.

Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: November 23, 2022

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).)