

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-002

I. BACKGROUND

On January 5, 2010, the Oregon Department of Education (Department) received a letter of complaint from the attorney representing the parent of a student attending school and residing in the Portland Public School District 1J (District). The attorney requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on January 6, 2010 and provided the District a copy of the complaint letter.

On January 13, 2010, the Department sent an *Amended Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated. The District submitted its *Response* to the Department; the parent’s attorney submitted a *Reply*.

The Department’s complaint investigator determined that on-site interviews were necessary. On March 5, 2010, the Department’s investigator interviewed the student’s parent and the parent’s attorney by telephone¹ and conducted on-site interviews with: the student’s eighth grade special education teacher/case manager, the student’s ninth grade special education teacher/case manager, the student’s ninth grade science teacher, a school psychologist, and a District special education program administrator. The Department’s complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.² The Department agreed to extend the timeline for resolving this complaint by 23 days at the request of the parties in order to provide the parties an opportunity to participate in mediation and attempt to informally resolve the issues in this complaint.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR § 300.151-153 (2009) and OAR 581-015-2030. The parent's allegations and the Department's

¹ The Complaint Investigator discussed meeting the parent and the parent’s attorney in-person, but the parties agreed telephone interviews were sufficient.

² OAR 581-015-2030(12)

conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint covers the period from January 9, 2009, to the filing of this complaint on January 8, 2010.³

	Allegations	Conclusions
1.	<p data-bbox="245 365 826 438"><u>Content of Individualized Educational Program (IEP).</u></p> <p data-bbox="245 478 826 657">The parent alleges that the October 24, 2008 and October 22, 2009 IEPs the District developed for the student do not include required content. Specifically, the attorney alleges:</p> <p data-bbox="245 697 826 875">(a) The student’s IEPs do not include appropriate statements with current data describing the student’s present levels of academic achievement and functional performance.</p> <p data-bbox="245 1062 826 1241">(b) The student’s IEPs by the District do not include measurable annual goals because the goals do not contain sufficient information to measure the student’s progress.</p> <p data-bbox="245 1354 826 1575">(c) The student’s IEPs identify the student’s need to learn to advocate for himself but do not include goals in the area of classroom and organizational skills related to learning advocacy skills.</p>	<p data-bbox="846 365 1159 401">Substantiated, in part.</p> <p data-bbox="846 697 1427 1022">(a) The student’s October 24, 2008 IEP did not include appropriate statements with current data describing the student’s present levels of academic achievement and functional performance. However, the Department found that the October 22, 2009 IEP included this content.</p> <p data-bbox="846 1062 1427 1314">(b) The student’s October 24, 2008 IEP did not include measurable annual goals or contain sufficient information to measure the student’s progress. However, the Department found that the October 22, 2009 IEP included this content.</p> <p data-bbox="846 1354 1427 1789">(c) The student’s October 24, 2008 IEP included a short-term instructional objective in the area of study skills, classroom, and organization skills related to learning advocacy skills but did not contain sufficient information to measure the student’s progress. The student’s October 22, 2009 IEP continued to identify the student’s need to develop advocacy skills, but did not provide goals or services in this area.</p>

³ See 34 CFR 300.153 (c); OAR 581-015-230(5). The parent’s complaint concerns the District’s implementation of a March 31, 2009 IEP.

2.	<p><u>Implementation of IEP.</u></p> <p>The parent alleges that the District did not modify the student's homework or provide accommodations in the student's science class as required by the October 24, 2008 IEP.</p>	<p>Not Substantiated.</p> <p>The Department determined that a miscommunication at the October 22, 2009 IEP meeting, together with the parent's observation of the amount of homework the student was doing in science, led the parent to believe the science teacher was not providing the modifications and accommodations required by the student's IEP. The Department does not substantiate this allegation, finding that the science teacher was providing the required modifications and accommodations.</p>
3.	<p><u>Transition Services.</u></p> <p>The attorney alleges that the District did not appropriately consider the courses of study needed to assist the student in reaching postsecondary goals. Specifically, the attorney alleges that the District incorrectly advised the parent at the October 22, 2009 meeting that a modified diploma would qualify the student for federal financial aid.</p>	<p>Not Substantiated.</p> <p>The Department found that District staff erred by incorrectly advising the parent at the October 22, 2009 IEP meeting that a modified diploma would not affect the student's postsecondary objective to attend college, or affect financial aid for college. The Department concluded that this error did not violate the IDEA because the IEP team did not develop a transition plan for the student and did not decide that the student would pursue a modified diploma or otherwise rely on the incorrect information.</p>
	<p>Requested Corrective Action: The attorney seeks as order requiring:</p> <ul style="list-style-type: none"> • The District to circulate a memorandum to all Portland Public Schools administrators and teachers regarding the fact that graduation with a modified diploma will not be sufficient to allow an otherwise eligible student to receive federal financial assistance; • The District to convene an IEP meeting to develop an IEP which 	<p>Ordered. See Corrective Action.</p>

	meets the requirements of IDEA; <ul style="list-style-type: none"> • Reimbursement of \$580 for tutor expenses incurred from January 2009 through May 2009; and • Compensatory education 	
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III. FINDINGS OF FACT

Background

1. The student resides within the District and is enrolled in the ninth grade. For purposes of eligibility under the IDEA, the student is identified as eligible to receive special education and related services as a child with a Specific Learning Disability, affecting achievement in the areas of basic reading skills, written expression, mathematics calculation, and mathematics reasoning. The student is also identified as eligible for special education and related services under the classification of Other Health Impaired as a result of a diagnosed condition of attention deficit hyperactivity disorder (ADHD).
2. The District conducted a comprehensive evaluation of the student in May 2007 that included standardized achievement testing, resulting in the following standard scores: Letter-Word Identification – 89; Calculation – 72; Math Fluency – 108; Writing Fluency – 89; Passage Comprehension – 86; Applied Problems – 72; Writing Samples – 100; Word Attack – 98; Reading Vocabulary – 84; Quantitative Concepts – 79. Broad Math - 74; Basic Reading Scores – 93; Reading Comp – 83; Math Calc Skills – 82; Math Reasoning – 73; Written Expression – 91; and, Academic Apps – 80.

October 24, 2008 IEP: (2008-09 School Year – Eighth Grade)

3. On October 24, 2008, the District developed an IEP for the student that remained in effect through the remainder of the 2008-09 school year (eighth grade) and the fall of the 2009-10 school year (ninth grade). The student and parent participated at the meeting, together with the student’s eighth grade special education teacher/case manager and a regular education teacher.
4. The October 24, 2008 IEP included specially designed instruction in Reading/Written Language (150 minutes/week); Math (75 minutes/week); Reading (180 minutes/week); and, Study Skills/Classroom Organization (15 minutes/week).
5. The October 24, 2008 IEP provided for the three hours per year of occupational therapy for writing support as a related service. The IEP also provided for several supplementary aids/services, modifications, and accommodations. The IEP required modified assignments “as needed.” The accommodations included breaking larger assignments into smaller parts, extending time for tests, offering alternate sites for

testing, providing access to a computer and spell checker, copying lecture notes, and issuing written directions.

6. The October 24, 2008 IEP's Nonparticipation Justification statement described the extent of the student's removal from participation in general education programs as no more than 40% of his school day, explaining that: "[the student] receives specially designed instruction in the resource center on a pull out basis to work on his IEP goals and to meet his individual needs." The Special Factors section indicated that the student needed assistive technology services, addressed in the IEP, but the student's IEP team did not identify any other factors to consider as part of the IEP development process.
7. The student's October 24, 2008 IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) statement described the student as making major improvements in his overall attitude towards school and taking an active role in his education. The statement described the student as completing more homework assignments, studying for tests/quizzes, advocating for himself, and using his time more wisely. The statement described the student as off-task in class but not in a disruptive way. The statement described the student as losing focus and not able to comprehend what is happening in class, needing reminders of what the task is and what the expectations are. The statement described the student as receiving specially designed instruction in the areas of written expression, reading, math, and classroom/study skills. In the area of writing, the statement described the student as needing to increase writing skills in the areas of conventions, sentence fluency, ideas and content, and organization. The statement described the student as having good ideas but being unable to organize them into complete sentences or paragraphs. In the area of reading, the statement described the student as a good decoder of words but reported that the student's reading comprehension was below grade level.
8. In the area of mathematics, the student's October 24, 2008 IEP's PLAAFP statement described the student as struggling with multiplication, division, and subtraction with borrowing. The statement reported that the student attends the special education learning center (resource room) to work on math goals and does not attend a regular education math class.
9. The student's October 24, 2008 IEP had annual goals and short-term objectives for each area of specially designed instruction: reading, writing, mathematics, and study skills. In the area of writing, the annual goal stated that the student would "increase his writing skills in the areas of conventions, sentence fluency, ideas and content, and organization as measured by analysis of writing samples and state writing assessment." The criterion for measuring the student's progress was "score of 4 or higher according to state scoring guide or a meeting notice" with the evaluation procedures described as "informal and formal writing samples." There were several short-term objectives related to the writing goal, including: "Use knowledge of phonics, word patterns, sight words, and syllabication when spelling words;" "Edit writing to correct punctuation, grammar, and spelling;" and, "Use various strategies

and resources to edit/revise writing (spell checker, dictionary, computer, peers, adults).”

10. In the area of reading, the October 24, 2008 IEP stated that the student would “increase his reading accuracy, fluency, and comprehension to the 6.0 grade level as measure by informal reading inventories, performance assessment, and teacher/student data.” The criterion for measuring the student’s progress was “80% accuracy” with the evaluation procedures described as “informal reading inventories, performance assessment, and teacher/student data.” There were three short-term objectives related to the reading goal; they were: “Use information from illustrations, table of contents, glossaries, indexes, graphs, charts, diagrams, [and/or] tables to assist in comprehension of text;” “Return to text to locate information, support conclusions, and answer questions;” and “Increase reading fluency.”
11. In the area of mathematics, the October 24, 2008 IEP stated that the student would “increase the ability to select and apply mathematical operations in a variety of contexts with 80% accuracy.” The criterion for measuring the student’s progress was “80% accuracy” with the evaluation procedures described as “[t]eacher observation/records.” There were three short-term objectives related to the mathematics goal; they were: “Solve multi-digit multiplication, subtraction, and division problems that require borrowing, and correct place value;” “Select and use relevant information in a problem to solve it;” and “Solve problems using strategies (e.g. guessing and checking, looking for a pattern, making systematic lists, making a drawing or model, eliminating possible answers, or solving a simpler related problem.”
12. In the area of study skills, classroom, and organization skills, the October 24, 2008 IEP stated that the student would “remain on task and complete schoolwork according to the given criteria 80% of the time as measured by teacher data and records.” The criterion for measuring the student’s progress was “80% accuracy” with the evaluation procedures described as “[t]eacher observation/data, classroom assignments.” There were these five short-term objectives related to the study skills goal; they were: “Work quietly in the classroom without verbal disruption to self and others;” “Demonstrate on-task behavior, as specified during class;” “Work steadily on task for length of time required by the teacher when given an assignment or activity decreasing the need to rush;” “Complete and return homework assignments at required time;” and, “Ask for clarification or assistance when unsure of directions and/or assignment criteria.”
13. The IEP Team placed the student in the regular education classroom with support from a resource room, noting that the student would remain in general education with non-disabled peers at least 60% of the time with specially designed instruction provided in the learning center.
14. The eighth grade special education teacher provided each of the student’s regular classroom teachers with a copy of the services summary page from the student’s October 24, 2008 IEP, showing the accommodations and modifications the student required. The teacher also participated in regular education and special education

staff meetings to ensure that the student's accommodations were provided in regular classes and communicated through email, by telephone, and informally with the student's teachers to ensure that any problems were resolved. The eighth grade special education teacher monitored the student's progress in regular classes, including assisting with modifying class work and ensuring class work was completed and submitted. The teacher also provided assistance with class work, homework, and tests directly in the resource room.

15. The student was in the eighth grade special education teacher's class for the first two periods each school day and received services in the areas of math, reading, writing, and study and organization skills. He reported administering a math inventory assessment for the student at the beginning of the school year, reviewing the student's statewide assessment scores, administering the San Diego Reading Inventory, and working with the student in order to gather information and set realistic goals for the student. The eighth grade special education teacher then used assignments from the student's regular classes to work on the goals and objectives on the student's IEP, pulling curriculum from the general education curriculum. For example, the special education teacher used regular education reading and writing assignments to work on the student's IEP writing goals. He reported also using separate assignments at times, selecting the curriculum based on his observations of the student. The eighth grade special education teacher did not use a specific curriculum with the student for his math services, but pulled assignments from a variety of sources and selected assignments based on his assessment of the student; the student was not enrolled in a general education mathematics class during the 2008-09 school year.
16. The eighth grade special education teacher worked with the student's regular education teachers in preparing the student's progress reports, taking into consideration the student's capabilities and the effort the student made. The student received grades of "P" in the Learning Center, grades of "A" or "B" in most classes (including eighth grade science), and finished middle school with a cumulative GPA of 2.5.
17. The District provided progress reports on 12/1/2008, 3/9/2009, and 6/10/2009 for the student's IEP goals in reading, mathematics, and study skills, but not for the student's writing goal. In the area of reading, the 12/1/2008 progress report stated, "[The student] continues to make strides to reach this goal. He is willing to learn and try new strategies. He needs to work on returning to the text to locate information, support conclusions, and answer questions. He is currently a 65% accuracy level." The 3/9/2009 progress report stated, "[The student's] reading fluency has been improving, but he still needs to work on his reading comprehension. His accuracy level continues to be at the 65%ile." The 6/10/2009 progress report stated, "[The student] continues to make strides to reach this goal. He is willing to learn and try new strategies. He needs to work on returning to the text to locate information, support conclusions, and answer questions. [The student] is currently at a 70% accuracy level."

18. In the area of mathematics, the 12/1/2008 progress report stated, “[The student] has done a great job increasing his accuracy level on objectives 1-2. He continues to struggle with objective number 3 (Solve problems using strategies (e.g. guessing and checking, looking for a pattern, making systematic lists, making a drawing or model, eliminating possible answers, or solving a simpler related problem)) Overall goal 75% accuracy.” The 3/9/2009 progress report stated, “[The student] continues to make improvements in on (sic) all objective areas. Objective one is [the student’s] main concern and what [the student] needs to continue working on. [The student] needs to continue working on solving multi-digit multiplication, subtraction, and division problems that require borrowing, and correct place value.” The 6/10/2009 progress report stated, “[The student] has been making progress towards reaching this goal but has not mastered it. [The student] is currently at 70% accuracy.”
19. In the area of study skills, the 12/1/2008 progress report stated, “[The student] has taken a more active role [in] classroom and organization skills. At times [the student] still struggles with the completion of homework assignments, but has shown improvement. 75% accuracy.” The 3/9/2009 progress report stated, “[The student] has taken a more active role [in] classroom and organization skills. At times [the student] still struggles with the completion of homework assignments, but has shown improvement. 75% accuracy.” The 6/10/2009 progress report stated, “[The student] has made great strides this school (sic) towards reaching this goal and mastering it. Objective 4 is the only the (sic) objective that [the student] has not met, but overall [the student] has met the given criteria of 80% accuracy for this goal.”
20. The parent hired a tutor from January 2009 through May 2009 to work with the student outside of school. The parent paid \$580 for tutoring service from January to May of 2009.

October 22, 2009 IEP: (2009-10 School Year – Ninth Grade)

21. The student transitioned to a District high school in September 2009. The ninth grade special education teacher became the student’s new case manager and special education teacher. She was already familiar with the student, as the eighth grade special education teacher came to the high school the previous spring and provided a synopsis of all the students transitioning to the high school. The ninth grade special education teacher had also received and reviewed the student’s October 24, 2008 IEP. She provided all of the student’s regular education teachers with a copy of the cover sheet (services summary) from the student’s IEP, highlighting and writing in areas for the student’s teachers to be aware of, and talked with his teachers about the main points. The ninth grade special education teacher also participates in a structured, weekly Academy meeting involving all three of the student’s regular education teachers. At these weekly Academy meetings, the special education teacher reviews the students’ assignment log books, homework, and composition notebooks, addresses the specific needs of each of the students, and provides consultation to regular education teachers.
22. The ninth grade special education teacher provides pull-out direct services to the student in a resource room (Learning Center), providing instruction in reading,

writing, and study skills. She uses quarterly reading probes and in-class exams to measure the student's progress in reading, reporting that the student's reading fluency is strong and the student's reading comprehension is low. The special education teacher uses in-class writing assignments and assignments from the student's English class to measure the student's progress in writing, using the State Scoring Guide to score the samples. She reports that a score of 4 or higher meets the goal. The ninth grade special education teacher also reports using a Frye Oral Reading Test and San Diego Quick Assessment to measure the student's performance. She reports talking with the student about strategies to self-advocate, measuring the student's progress by homework completion, and contact with the student's teachers, noting they report the student does not initiate and they have to ask, and that the student's teachers have to write in missing assignments. The student has access to a computer and spell checker in the resource room.

23. The ninth grade special education teacher is aware that the student is earning a "D" grade in science and notes that a "D" is enough to receive credit for passing this required class. The student was placed in a modified math class that is a general education class taught by a special education teacher.
24. On October 22, 2009, the District developed a new IEP for the student; the October 2009 IEP was still in effect at the time of the filing of the complaint in this case. The student and the student's parent participated at the meeting, together with the student's ninth special education teacher/case manager, the student's ninth grade science teacher, and the school psychologist.
25. The October 22, 2009 IEP included specially designed instruction in: Reading (75 minutes/week); Writing (100 minutes/week); Math (200 minutes/week); and, Study Skills/Classroom Organization (25 minutes/week).
26. The October 22, 2009 IEP provided for three hours per year of occupational therapy for writing support as a related service. The IEP also provide for several supplementary aids/services and modifications and accommodations. The accommodations included shortened assignments, extended time on assignments and tests, the option of taking tests in the resource room, copies of lecture notes, preferential seating, breaking large tasks into smaller parts, and written instructions.
27. The October 22, 2009 IEP's Nonparticipation Justification statement described the extent of the student's removal from participation with non-disabled peers as 400 minutes per week or less than 40% of his school day in order to receive specially designed instruction in reading, math, and study skills. The Special Factors section indicated that the student did not need assistive technology services, and the student's IEP team did not identify any other factors to consider as part of the IEP development process.
28. The student's October 22, 2009 IEP's PLAAFP statement described the student as a student with a learning disability and other health impairment receiving specially designed instruction in the areas of written language, reading, math, and study skills. The statement described the student as making major improvements in overall

attitude towards school the previous year and starting to take an active role in his own education. The statement reported that the student is learning to manage the academy logbook but often loses focus and does not comprehend what is happening in class. The October 22, 2009 IEP's PLAAFP statement included the standard scores from the District's May 2007 comprehensive evaluation of the student.

29. The October 22, 2009 IEP's PLAAFP statement described the student's achievement in the areas of writing, reading, mathematics, and study skills. Concerning writing, the statement states, "[The student] needs to increase ... writing skills in the areas of conventions, sentence fluency, ideas, and content and organization. At times [the student] has good ideas but is unable to organize these into complete sentences or paragraphs." The statement stated that the student "is a good decoder of words, but [the student's] comprehension of the text is below grade level. On a recent reading probe 10/09 [the student] had 90% accuracy on a 5th grade level comprehension probe and 65% accuracy at the 6th grade level. [The student's] instructional level for reading words in isolation was at the 6th grade level and reading words in context was at the 7th grade level."

30. Concerning math, the October 22, 2009 IEP's PLAAFP statement states:

"[The student] took several informal surveys of basic math skills during the first week of school with the following results. Computational inventory shows that [the student] is able to do addition including regrouping with 80 to 100% accuracy; subtraction basic facts from 18 he scored 100% but simple double digit subtraction without regrouping is 60%; subtraction requiring regrouping his scores drop to 20% or less; multiplication facts [the student] has 100% mastery of the tens and no other basic facts mastered. [The student] also took a Connecting Math Concepts Placement test during the first week of school. [The student] scored 35/39 or 89% correct at Level C and 15/33 or 45% correct. [The student's] current math skills place [the student] at the 3/4th grade level. [The student] currently is needing to be refocused many times in ... math class as shown from this random sampling of days; 10/12/09 6 times, 10/16/09 8 times and 10/19/09 6 times."

31. Concerning study skills, the October 22, 2009 IEP's PLAAFP statement states:

"While in the regular classroom [the student] often does not understand the directions for in-class and homework assignments. When this happens [the student] does not always ask for help and sits in class without completing any work. [The student] needs to learn to [self-advocate] by asking teachers for help or asking to go to the Learning Center for help. [The student] has difficulty watching a movie and taking notes at the same time. It would be helpful to get copies of notes for [the student]. [The student] should attend tutorial on a regular basis to check in with ... teachers on how the student is doing with ... work and to complete unfinished work."

The IEP also noted that the parent was concerned about “[the] difficulty with [the student] at home to modify and complete homework and having adequate resources to support [the student] in school.”

32. The student’s October 22, 2009 IEP had annual goals for each area of specially designed instruction. In the area of reading, the annual goal stated that the student would “increase his reading accuracy, fluency and comprehension to the 6th grade level as measured by reading probes and teachers’ observations.” The criterion for achieving the reading goal was stated as 80% accuracy measured by reading probes and teachers’ observations. In the area of writing, the annual goal stated that the student would “increase writing skills to scores of 4 or higher in the areas of Ideas and Content, Organization, Sentence Fluency and Conventions as measured by State Scoring Guide and analysis of writing samples.” The criterion for achieving the writing goal was stated as “scores of 4 or higher” measured by writing samples. In the area of study skills the annual goals stated that the student would “use organizational skills and time management skills with 80% frequency as measured by an analysis of teacher observation, teachers’ reports and grades.” The criterion for achieving the study skills goal was stated as 80% accuracy measured by an analysis of teacher observation, teachers’ reports, and grades.
33. The student’s October 22, 2009 IEP also had an annual goal for the specially designed instruction in mathematics, stating, “[The student] will increase [the student’s] ability to select and apply mathematical operations in a variety of contexts to 4th grade as measured by teacher survey and or student work.” There were several short-term instruction objectives related to the annual goal in mathematics, including, for example: “Order and compare fractions with like denominators;” and “Add and subtract commonly-used fractions using a variety of computation strategies including algorithms such as regrouping.”
34. The IEP Team placed the student in the regular class with Learning Center (resource room) support.
35. The District kept notes of the October 22, 2009 meeting reflecting the team’s discussion of the student’s progress in class, struggles with homework, and other issues. The meeting notes reflect discussion of the student’s study skills and in-class needs, including getting copies of notes. The ninth grade science teacher stated that the student could access PowerPoint presentations and notes on the teacher’s web site, that the student needs to ask for help and go to available tutorial sessions, and that the teacher can shorten assignments for the student. The parent asserts that the ninth grade science teacher stated at the meeting that the teacher did not have time to modify the student’s homework or provide accommodations in the science class and that there were 35 students in class asking questions. The parent also states that she spends significant time at home with the student on the science assignments and homework, and that, if she weren’t providing this assistance, the student would likely not pass the science class.

36. The science teacher agrees that, during the meeting, she stated that she does not have time during class to make modifications to the student's assignments. The science teacher stated that the class has 30 students. There is not always time to work one-to-one with the student during class to make modifications to the student's assignments because these modifications sometimes take additional time to figure out. The science teacher also stated that she works with the student individually, makes herself available to assist during weekly tutorial time and outside class, and works with the special education teacher to alter the student's assignments. The science teacher reported that all class notes, presentations, and assignments are posted on the class web site and available to all students in her class. The science teacher also reported having a teacher's assistant who takes notes during class. Those notes are also available to all of her students. The science teacher stated that she provides the accommodations required by the student's IEP, including shortening assignments and homework, providing extra time for assignments and tests, and providing opportunities to complete assignments and tests in the resource room. The science teacher reported that she gives full credit to the student and that the student is one of several earning a grade of "D," which is a passing grade in the class. The teacher stated that the grade is an unmodified grade reflecting the student's achievement.
37. The notes from the October 22, 2009 meeting also reflect the team's discussion concerning whether the student would seek a modified or standard high school diploma. The notes reflect discussion of the difficulty the team felt the student would face in obtaining credits required for the standard diploma, particularly three years of math credits and passing proficiency tests. No decision was made regarding the diploma option that the student would pursue. The parent asserts that District staff at the meeting strongly encouraged her to agree that the student should seek a modified diploma, stating that the student would remain eligible for financial aid for post-secondary education (college). The parent reports that she had read in the news shortly before the meeting that students with modified diplomas are not eligible for financial aid in college. The parent asserts that staff did not listen to her concerns regarding the student's eligibility for financial aid for college and continued to strongly suggest that a modified diploma was the best option. The parent contends that seeking a modified diploma is not an appropriate transition goal for the student because it affects financial aid eligibility for post-secondary education goals such as attending college.
38. In order to qualify for federal financial aid, a student must obtain a high school diploma or the recognized equivalent of a high school diploma. For federal financial aid purposes, an Oregon modified diploma is not considered a high school diploma or its recognized equivalent. Therefore, an Oregon modified diploma does not qualify a student for federal financial aid.
39. The District does not dispute that staff stated during the meeting that a modified diploma would not affect the student's ability to seek financial aid for college. The school psychologist agrees that the team discussed whether the student should seek a modified diploma. The school psychologist reported that students are required to make a decision by May or June of their sophomore year concerning

seeking a modified diploma, and it is important to start discussing this issue early as the IEP team must make a decision by then.

40. The District provided a November 2009 progress report concerning the student's IEP goals in reading, writing, and organizational skills/study skills but not for the student's math goal. In the area of reading, the November 2009 progress report stated that: "[The student] had 90% accuracy on a 5th grade reading comprehension probe on 10/21/09." In the area of writing, the November 2009 progress report stated, "On a recent Narrative [the student] received scores of "3" for Ideas, Content, Organization, Fluency, and "4" for Conventions." In the area of study skills, the November 2009 progress report stated, "This quarter [the student] has learned to keep his Academy Logbook up to date by writing in assignments and taping them in with occasional reminders. Most assignments are submitted – only 2 missing in Eng."

February 2010 Evaluation (Ninth Grade)

41. The District conducted a comprehensive evaluation of the student in February 2010 to ascertain the student's current level of functioning, determine eligibility for special education services, and to assist in educational program planning. The District's evaluation included standardized achievement testing, resulting in the following standard scores: Letter-Word Identification – 84; Passage Comprehension – 79; Reading Fluency – 96; Calculation – 77; Applied Problems – 67; Math Fluency – 85; Spelling – 100; Writing Samples – 99; and, Writing Fluency – 85.

IV. DISCUSSION

In a complaint investigation, the Department looks at all available information to determine whether a school district or other program has complied with the requirements of the IDEA. The Department will substantiate an allegation if the evidence supporting it is more persuasive than the contradictory evidence. If the evidence on both sides is equally persuasive, the Department will not find a violation.

1. Content of IEP:

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.⁴ Each student's IEP must describe how a student's progress towards meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals will be provided.⁵ An IEP must contain a statement of the child's present levels of academic achievement and functional performance, including how the child's disability

⁴ OAR 581-015-2200(d).

⁵ OAR 581-015-2200(1)(c).

affects progress in the general education curriculum.⁶ An IEP must also contain statements of measurable annual goals that will enable the child to participate in and make progress in the general education curriculum.⁷ The statement of the student's present levels of academic and functional performance serves as the baseline on which the goals are built and against which the student's progress is measured.⁸ In combination, these components are designed to serve as a framework for the IEP Team to create the student's instructional plan. The IDEA requires school districts to timely reconvene IEP teams to review and revise a student's IEP to address any lack of expected progress towards the annual goals.⁹

The parent alleges that the student's October 24, 2008 and October 22, 2009 IEPs did not include required content. Specifically, the parent alleges that: (a) the student's IEPs do not include appropriate statements with current data describing the student's present levels of academic achievement and functional performance; (b) the student's IEPs by the District do not include measurable annual goals because the goals do not contain sufficient information to measure the student's progress; and, (c) the student's IEPs identify the student's need to learn to advocate for himself but do not include goals in the area of classroom and organizational skills related to learning advocacy skills. Further, the parent points to the lack of a link between the student's present level of performance and the annual goals and contends that, without knowing where a student is starting, the team cannot know if the goals are appropriate and cannot determine what amount of progress is being made.

A. October 24, 2008 IEP:

The District does not dispute the allegation that the October 24, 2008 IEP lacked detailed data related to the student's present level of academic achievement and functional performance in relation to the goals on the IEP. The District also recognizes the absence of present level of performance data sufficient to measure the student's progress towards reaching the goals in the student's IEP. The District asserts, however, that the goals written on the October 24, 2008 IEP accurately reflect where the student should be, provide measurable benchmarks, and clearly establish methods of monitoring the student's progress. With respect to self-advocacy, the District asserts that the October 24, 2008 IEP included services to address the student's identified need in this area. The District points to the study skills goal on the October 24, 2008 IEP, and

⁶ OAR 581-015-2200(1)(a).

⁷ OAR 581-015-2200(1)(b).

⁸ See, e.g. *Bend-LaPine School District*, DP 04-109 (ODE, August 20, 2004), affirmed, *Bend-LaPine School District v. K.H.*, 43 IDELR 191 (D. OR. 2005) ("The ALJ found that K.H.'s IEP was insufficient in regards to the adequacy of the statement of K.H.'s Present Level of Educational Performance (PLEP) regarding the detail necessary to provide a baseline for the impact of K.H.'s emotional disturbance disability on her ability to access her education. The PLEP is the starting point for determining annual goals under the IEP . . . Without that baseline of current performance and/or behavior, it is difficult to draft measurable and relevant annual goals. The ALJ correctly found that the statement . . . was insufficient to determine an accurate baseline of K.H.'s behaviors affected by her disability. The information explaining K.H.'s current level of performance failed to provide any measurable level of problematic behaviors, including how many times K.H. had been suspended as a result of the behaviors associated with her disability, or how many instances and in what settings had K.H. been verbally aggressive.") *But see also Bend-LaPine School District v. DW*, 28 IDELR 734 (1998)(unpublished decision)(while the IEP did not include a "direct correlation" between each short-term objective and each statement in the present level statement", the regulations did not require such a "close nexus", citing 34 C.F.R. § 300.346, App. C, No. 36(c)(pre-1999)).

⁹ OAR 581-015-2225.

the short-term instructional objective that the student, “[a]sk for clarification or assistance when unsure of directions and/or assignment criteria.” The District also states that it intends to continue this or a similar goal on the new IEP it develops for the student in March 2010.

The Department’s review of the October 24, 2008 IEP reveals a lack of appropriate current data describing the student’s present levels of performance. The IEP lacked statements describing how the student was actually performing and, therefore, failed to provide a benchmark for measuring the student’s progress. The goals and objectives on this IEP do not provide a basis for measuring whether the student was making progress. Therefore, the Department finds persuasive evidence to conclude that the student’s October 24, 2008 IEP did not include required content, including appropriate statements of the student’s present levels of academic achievement and functional performance and measurable annual goals, because the IEP, even when read as a whole, does not contain sufficient information to measure the student’s progress.

The parent contends that without appropriate links between statements of the student’s present level of performance on an IEP and the annual goals there is no way of determining whether the student made progress. The parent further contends that the IEP’s deficiencies with regard to progress monitoring resulted in the loss of educational benefit to the student. The District contends that this procedural error did not result in a lack of appropriate services to the student, asserting that the student made progress on his IEP goals as indicated by student progress reports.

The Department notes, however, that the progress reports also do not inform the parent of the progress the student was making, even when considered in conjunction with the short-term instructional objectives. For example, the October 24, 2008 IEP’s goal for the student’s math services was: “increase the ability to select and apply mathematical operations in a variety of contexts with 80% accuracy.” The short-term objectives, included “[s]olve multi-digit multiplication, subtraction, and division problems that required borrowing, and correct place value.” The 12/1/2008 progress report stated that “[the student] has done a great job increasing his accuracy level on objectives 1-2.” The 3/9/2008 progress report stated, “The student continues to make improvements.” The 6/10/09 progress report stated, “[The student] has been making progress towards reaching this goal but has not mastered it. [The student] is currently at 70% accuracy.” The IEP does not indicate the student’s ability to “select and apply mathematical operations in a variety of contexts” at the time the IEP was written, either through a PLAAFP statement or through the short-term instructional objectives. The progress reports also do not provide any indication of the student’s ability to “select and apply mathematical operations in a variety of contexts.”

With respect to self-advocacy skills, the student’s October 24, 2008 IEP referenced the student’s need to advocate for himself, request assistance or clarification, and ask to go to the Learning Center for help. These statements identify that the student has a need for services in this area. The student’s October 24, 2008 IEP includes a short-term instructional objective related to this need but no information concerning the student’s performance and no means for determining what progress the student demonstrated in this area. The Department is therefore persuaded that the student’s October 24, 2008

IEP did not include appropriate content to address the student's identified need in this area.

B. October 22, 2009 IEP

The District also does not dispute the allegation that the October 22, 2009 IEP lacked detailed data related to the student's present level of academic achievement and functional performance and recognizes the absence of present level of performance data against which to measure the student's progress. However, the District asserts that the goals on the October 22, 2009 IEP accurately reflect where the student should be, provide measurable benchmarks, and clearly establish progress monitoring methods. The District also proposes to include a goal in the area of self-advocacy on the student's 2010 IEP.

The Department's review of the October 22, 2009 IEP reveals incorporation of standard scores from the District's May 2007 evaluation and references to the student's scores on various assessments in reading, writing, and mathematics. Those assessments included scored reading probes (e.g. 65% accuracy on a 6th grade reading comprehension probe), results from a Connecting Math Concepts Placement test administered the first week of school, and analysis and scoring of writing samples using the State Scoring Guide. The Department finds that the goals and objectives on the October 22, 2009 IEP, when read together with the PLAAFP statement, provide a basis for measuring whether the student was making progress. Therefore, the Department does not find persuasive evidence to conclude that the student's October 22, 2009 IEP does not include required content, including appropriate statements of the student's present levels of academic achievement and functional performance and measurable annual goals. The IEP, when read as a whole, contains sufficient information to identify the student's educational needs and measure the student's progress. The Department notes, however, that while the November 2009 progress reports inform the parent of the progress the student was making in reading, writing, and organizational skills/study skills, the District has not provided any recent report concerning the student's progress towards his annual goal in math.

With respect to self-advocacy skills, the student's October 22, 2009 IEPs referenced the student's need to advocate for himself, request assistance or clarification, and ask to go to the Learning Center for help. This statement identifies the student's need for services in this area. However, the student's October 22, 2009 IEP does not provide a goal or short-term instruction objective in this area. The Department is therefore persuaded that the student's IEPs did not include appropriate content to address the student's identified need in this area.

C. Student Progress

The District contends that these procedural errors did not result in loss of educational opportunity to the student. However, a comparison of the standard scores the student received from the District's May 2007 evaluation with the standard scores the student received in February 2010 in identical areas reveals that the student has made little if any gains and actually received lower scores by comparison in six of the seven

subtests. The Department concludes that the District's assertion that the deficient IEP content did not result in a substantive loss of educational opportunity is not supported by the facts. The Department acknowledges that the IDEA does not require school districts to ensure progress in all areas of the domains addressed on a student's IEP. However, the Department finds that the deficiencies in the student's IEPs, considered in conjunction with the assessment results, denied the student a free and appropriate public education by failing to provide an educational program reasonably calculated to provide the student educational benefit.

The Department also notes here that the student received only 75 minutes per week of services in math while in the eighth grade. Further, the math services provided by the eighth grade special education teacher did not involve a research-based instructional program selected to meet the unique needs of the student and included no mechanism for tracking progress. The Department also has concerns regarding the services provided to the student in reading and writing, as the services described appear to be general education support services akin to a study hall, rather than a program of specially designed instruction to meet the needs of the student. Corrective action for the deficiencies in the student's October 2008 and October 2009 IEPs and the resultant lack of progress demonstrated by the student is discussed below.

2. Implementation of IEP:

A written IEP must be in effect for each eligible child at the beginning of each school year.¹⁰ School districts must implement the services, modifications, and accommodations identified on each student's IEP.¹¹ The student's October 24, 2008 IEP obligated the District to provide the student with several supplementary aids/services and modifications and accommodations to support his placement and participation in general education classes. These accommodations and modifications included: modifying assignments "as needed," breaking larger assignments into smaller parts, extended time and alternate site for testing, access to a computer and spell checker, copies of lecture notes, and copies of written directions.

The attorney alleges that the District did not modify the student's homework or provide accommodations in the student's science class as required by the October 24, 2008 IEP. This issue is related to the parent's report from the October 22, 2009 IEP meeting concerning the discussion she had with the science teacher regarding providing modifications and accommodations. The parent asserts that the science teacher directly stated she does not have time to provide the modification and accommodations the student requires. The parent further states that a person hearing such a statement would certainly infer that the modifications and accommodations were not provided.

However, the science teacher asserts that she does provide the student with the modifications and accommodations included in the student's IEP. The science teacher makes her class presentations and notes available to all of the students in her class, has a teaching assistant who takes notes that are available to all of the student in her class, is available to work with the student during the science tutorial time or after class,

¹⁰ OAR 581-015-0064(1).

¹¹ OAR 581-015-0064(2).

and works with the student and the special education teacher to modify and shorten assignments and provide for extra time on assignments and tests. The science teacher clarified that she has a class of students with questions and cannot provide the one-to-one time necessary to modify assignments for the student during class time but does provide the required modifications and accommodations. The Department does not find persuasive evidence of a violation regarding the District's implementation of the student's IEP.

3. Transition Services:

Beginning not later than the first IEP that will be in effect when a student turns 16 (or younger if determined appropriate by the student's IEP team), a student's IEP must also include: (A) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (B) the transition services (including courses of study) needed to assist the student in reaching those goals.¹²

The parent alleges that the District erred by asserting to the parent that a modified diploma was an appropriate goal for the student and would not affect the student's eligibility for financial aid. The District agrees that this guidance given by staff at the meeting was incorrect but contends that this is not a violation of IDEA. The District also points out that the state's modified diploma requirements are new and that school districts are working to implement the new requirements. The District points out that the student was not yet 16 years old at the October 22, 2009 IEP meeting when this discussion took place, that the IEP does not include transition services, and that the IEP does not specify a modified diploma for the student. The District reports having drafted guidance for teachers and parents concerning modified diplomas, stating:

“The potential effects of attaining a modified diploma on college admission, military enlistment, or employment should be explored at the time that diploma options are considered. Higher education, the Military, and prospective employers may use high school completion as selection criteria. Financial assistance (FAFSA) may be limited or unavailable to students with a modified diploma.”

The Department is aware of confusion within the State concerning the issue of modified diplomas and the potential effect of attaining a modified diploma on a student's admission to college or ability to receive financial assistance for college. The Department sought and received clarification on this issue, receiving a letter on July 22, 2009 from the U.S. Office of Postsecondary Education stating, “Oregon students who obtain a Modified Diploma may still be eligible for financial aid if they pass an independently administered test proving their ability to benefit from the training or instruction offered.” The Department disseminated this information to school districts throughout the State and updated its own website to reflect the policy concerning availability of college financial aid to students with modified diplomas. Nevertheless, there remained links to outdated information on the Department's website, informational

¹² OAR 581-015-2200(2).

websites carrying incorrect information, and school personnel who have not received the corrected information. The Department has removed inaccurate information from the Department's website and has contacted non-governmental agencies in an effort to have them remove incorrect information regarding the modified diploma.

With respect to the District, the Department concludes that no violation of IDEA resulted from the District's misstatements on this issue at the October 22, 2009 IEP meeting because the IEP did not actually address the student's transition needs and, therefore, did not impact the student's education or impede the student's ability to pursue transition goals. The Department finds the District's actions appropriate to prevent IEP Teams from selecting a diploma track or courses of study that could prevent a student with a post-secondary goal of attending college from receiving financial aid.

4. Corrective Action/Compensatory Services:

Under OAR 581-015-2030, if the Department finds a violation of the IDEA, the written decision must include "any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred." If the Department finds persuasive evidence that a violation resulted in the lack of appropriate services to the student, the final order must address "how to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child" and "appropriate future provision of services for all children with disabilities."¹³ Compensatory education is an equitable remedy, and the Department may consider other factors in determining the amount of compensatory education services necessary in a particular situation. The IDEA does not require an hour for hour approach in determining the amount of compensatory education services to be provided.¹⁴

Here, the Department has determined that there were procedural errors with respect to missing required content in the student's October 24, 2008 and October 22, 2009 IEPs. The missing content resulted in a lack of effective measures to determine whether or not the student was making progress and a lack of services designed to address the student's needs with respect to study skills and organization. Nearly three years later, a comparison of May 2007 and February 2010 standard scores from evaluations of the student's achievement reveals that, in fact, the student has made little progress or has regressed in a number of assessment areas.

Due to the errors described above, the IEP Team was unable to adequately measure the student's progress or to plan effectively in response to the student's special education and related service needs. The parent paid \$580 in private tutor expense from January 2009 through May 2009, supplementing at her own expense the services provided by the District. Given these facts, the Department determines it appropriate to order the reimbursement of this expense and compensatory education services. The Department based its calculation of appropriate compensatory education services on the one year look-back period that includes the second semester of the 2008-09 school

¹³ OAR 581-015-2030.

¹⁴ See, e.g. *Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489 (9 Cir. 1994).

year and the first semester of the 2009-10 school year during which the student did not receive specially designed instruction reasonably calculated to provide benefit.

V. CORRECTIVE ACTION¹⁵

In the Matter of Portland Public School District
Case No. 10-054-002

Action Required	Submissions ¹⁶	Due Date
1. <u>IEP Meeting</u> : The District shall hold an IEP meeting to review and revise the student's IEP consistent with the findings herein.	A copy of the student's revised IEP.	April 30, 2010
2. <u>Reimbursement</u> : The District shall reimburse the parent the \$580 private tutor <u>expense</u> she incurred supplementing the District's program from January 2009 through May 2009.	Send to parent, copied to ODE, any district business office procedures that must be followed to claim reimbursement. Send to ODE, copied to the parent, evidence that the District provided with full reimbursement.	June 15, 2010 June 15, 2010
3. <u>Compensatory Education Services</u> : a. Beginning no later than the week of May 3, 2010, the District shall offer 40 hours of specially designed instruction with specific emphasis on math outside the hours of the student's school schedule designed to assist the student in achieving the goals and objectives on the student's revised IEP. b. The District shall confer with the parent to develop a plan for implementation of the compensatory	Submit to ODE, copied to the parent, a copy of the agreed upon plan for providing compensatory education services. Submit a copy of any written agreement to modify the plan within 10 business days of modifying the agreement. Submit to ODE, copied to the parent, two reports of evidence of the number of hours completed.	May 21, 2010 August 30, 2010 & February 28, 2011

¹⁵ 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).

¹⁶ Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

<p>education services. The District shall reasonably accommodate the parent and student's preferences for scheduling these services.</p> <p>c. The District shall provide transportation as necessary for the student to access these services.</p> <p>d. The District is not required to provide make-up sessions for sessions scheduled but missed due to student absence or cancellation.</p> <p>e. Compensatory services shall be provided by qualified staff.</p> <p>f. The District and parent may agree in writing to modify the compensatory education services.</p>		
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Dated: March 29, 2010

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: March 29, 2010

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.