

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Nyssa School District #26)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-023

I. BACKGROUND

On September 13, 2010, the Oregon Department of Education (Department) received a letter of complaint from a parent on behalf of an adult student recently graduated from and residing in the Nyssa School District ("District"). The student and parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on September 14, 2010 and provided the District a copy of the complaint letter.

On September 16, 2010, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of September 30, 2010. The District submitted its timely *Response* to the Department and to the parent on September 30, 2010. The District's *Response* included a narrative response; copies of the student's two most recent IEP's; copies of progress reports, grade reports, transcripts, teacher's grade records; and an explanation of a specific curriculum program. On October 14, 2010, during the interview with the Department's complaint investigator, the student and parent submitted additional grade reports and progress reports in support of the complaint.

The Department's complaint investigator determined that on-site interviews were required. On October 13, 2010, the Department's investigator interviewed the following District staff: the superintendent, one of the student's regular education teachers, and the student's case manager. On October 14, 2010, the investigator interviewed the student, the parents, the student's brother, the high school principal, and a special education paraprofessional. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred 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. OAR 581-015-2030(12). This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR § 300.151-153 (2010) and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from September 13, 2009 to the filing of this complaint on September 13, 2010. See 34 CFR § 300.153(c); OAR 581-015-2030(5).

	Allegations	Conclusions
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<u>When IEPs Must Be In Effect:</u> Failing to provide special education accommodations and modifications in accordance with the IEP. Specifically, the District did not allow extra time for completion of assignments and did not award the student full points for accelerated reader assignments.	<u>Substantiated</u> The student was not given additional time for assignment completion in two language arts classes during the senior year, and did not receive 203 points in the Accelerated Reader program earned in a third language arts class taken during the second semester.
2.	<u>Parent Participation:</u> Failing to ensure that the adult student and the parent meaningfully participated in the development of the student's educational plan. Specifically, the District failed to maintain accurate records of the student's performance in language arts courses.	<u>Substantiated</u> Although the District sent a number of progress reports, on both general education progress and progress on IEP goals, there were large discrepancies in the actual grade records.
	Requested Corrective Action. The parents are requesting that the District: Provide staff training on how to accommodate Special Education students, how to be more sensitive to students with disabilities, and how to demonstrate cultural sensitivity.	

III. FINDINGS OF FACT

Background

1. The student is 19 years old, lives in the District, and received a regular education diploma in the summer of 2010 after attending a summer school credit recovery session.
2. Prior to receiving a regular education diploma, the student was eligible for special education as a student with a specific learning disability. The student was last found eligible for special education on January 13, 2008.

3. During the 2009-10 school year, the student initially received services based on an IEP developed on January 5, 2009. The student, one of the parents, the assistant principal, the case manager, and five general education teachers (science, two language arts, ESL, and math) attended the January 2009 IEP team meeting.
4. The January 2009 IEP specified that the student had limited English proficiency and needed to earn at least six of the required credits toward graduation with a standard diploma. The IEP also indicated that the student scored a 235 in reading and a 223 in math on the Oregon Assessment of Knowledge and Skills administered during the 2008-09 school year. During the 2008-09 school year, 236 was the minimum score with which a student was considered to have met applicable academic standards.
5. The January 2009 IEP contained annual goals in the areas of reading, assignment completion, and identifying personal, educational, and work goals. During the implementation of the January 2009 IEP, the team and other staff provided specially designed instruction in reading (120 minutes per week); school skills (45 minutes per week); and vocational (60 minutes per month). The District provided counseling for 10 minutes two times per month as a related service. The team identified four supplementary services and one support for school personnel. These are outlined in the table below:

Supplementary Services	Amount/Frequency
Allow more time for completion	All academic classes
Use of electronic dictionary	All writing assignments
Calculator	All math assignments and tests
Preferential seating	Away from distractions
Supports for School Personnel	Amount/ Frequency
Consultation with General Education staff	30 minutes per year

6. All of these services were provided in the general education setting, with the exception that the student was to be removed from the general education setting “no more than one class period or 12.5% of the day, due to academic needs”. The team identified a placement option described as “General Education with Special Education support”.
7. The IEP written on January 5, 2009 remained in effect until January 4, 2010, when the team met again to write the student’s final IEP, which remained in effect until the student received the standard diploma in the summer of 2010.
8. The student, one of the parents, the principal, the case manager, and two general education teachers of the student (biology and math) attended the January 4, 2010 meeting.
9. The January 2010 IEP specified that the student had limited English proficiency, and that the parent was concerned about the student’s habit of procrastination. In the transition plan, the team again noted that the student needed to earn “at least six required credits per year to graduate with a standard diploma”; however, the team did not detail exactly how many credits the student had accumulated at that time and how many were left to complete.
10. The team again set goals in the areas of reading, assignment completion, and identifying personal, educational and work goals. During the implementation of the January 2010 IEP, the team and other staff provided specially designed instruction in language arts (20 minutes per week); school skills (45 minutes per week); and vocational (60 minutes per month). The

District provided counseling for 10 minutes two times per month as a related service. The team identified four supplementary services and one support for school personnel. These are outlined in the table below:

Supplementary Services	Amount/Frequency
Allow more time for completion	All academic classes
Use of electronic dictionary	All writing assignments
Calculator	All math assignments and tests
Preferential seating	Away from distractions
Supports for School Personnel	Amount/ Frequency
Consultation with General Education staff	30 minutes per year

11. All of these services were provided in the general education setting, with the exception that the student was to be removed from the general education setting “no more than one class period or 12.5% of the day, due to academic needs”. The team identified a placement option described as “General Education with Special Education support”.
12. At the beginning of the senior year, the student had earned 19 of the 24 credits necessary to graduate from this high school with a standard diploma. The student had not yet completed the graduation requirements in math, English, social studies, and science.¹
13. In the first semester of the senior year, September to December of 2009, the student took nine classes, earning a GPA of 1.533 and a total of 3.25 credits. The student passed courses in science, math, and social studies and earned the appropriate credits. The student failed a Detective Fiction class and earned no credit for the class. The Detective Fiction course was worth .25 credits.
14. In the second semester of the senior year, January to June of 2010, the student took 11 classes and earned a GPA of .692 and a total of 4.50 credits. The student again passed the remaining math, science, and social studies courses need for graduation and earned the appropriate credits. The student also passed a required language arts course, English 10, and earned full credit for the course. The student failed a Creative Writing course and earned no credit for the class. The Creative Writing course was worth .25 credits.
15. The same teacher taught the Detective Fiction and Creative Writing courses that the student took and failed during the 2009-10 school year.
16. At the end of the 2009-10 school year, the student was short on the required Language Arts classes needed to graduate by .50 credits.
17. This District has an on-line grading program for which parents are given a code so that they can review the student’s progress on a home computer. Teachers post student’s grades regularly on this system. This family did not have any access to an on-line computer.
18. The District sends a wide variety of progress reports to parents throughout the school year. The school year calendar is divided into two semesters, each divided into two quarters. At each 3.5 week mark the District sends a progress report to the parents of each high school student. This report shows the student’s cumulative grade in each class, absences and

¹ For example, in this district, students must earn three science credits, and these three credits must include biology and physical science or biology and chemistry. In other words, in each curriculum area there are forced choices.

tardies by class period, and the student's grade point average for that period of time. At the end of each semester, the two quarter grades are averaged and the average becomes the student's grade for the semester.

19. Four times per year, the District also sends progress reports to parents outlining the progress that students have made on IEP goals. Two of these are given to parents in person during parent conferences, and two are sent via US mail.
20. The District sent and gave the IEP goals progress reports to the student's parents on time and outlined very thoroughly the student's progress on each goal.

Assignment Completion

21. The same teacher taught the two language arts classes that the student took but failed in the senior year. This teacher described the organizational structure of the class as follows:

"I use a portfolio system. I give assignments on Monday or Tuesday, usually the writing assignment is for 500 to 1000 words. The students have until Friday at noon to put the completed portfolio in my classroom. At the end of each quarter, I give students "re-do" time when they have an opportunity to re-do an assignment and earn more credit for it."

22. The language arts teacher did not attend the IEP meeting held in January of 2010 but had attended the one held the previous January of 2009. The teacher acknowledged an awareness of the student's IEP and the requirement that the student be given extra time to complete all academic assignments. The teacher said that the student often had until Monday or Tuesday of the following week to turn in an assignment originally due at noon on Friday.
23. Both the special education teacher and the special education assistant observed that most generally the student's assignments in this class were due at the same time as all other students.
24. When asked when the assignments were due in this class, the student said, "They were always due at noon on Friday." When asked a follow-up question – "Were you given any additional time to complete assignments in this class?" – the student replied "No, I was not."
25. Three days before the graduation ceremony was scheduled, the high school principal told the parents that the student would not be allowed to participate in the graduation ceremony. One of the student's parents and the student's brother participated with the student in a meeting with the language arts teacher and the principal. The family members asked if the student could be given an opportunity to do some extra credit in the next days so that the student could participate. The principal and the teacher refused to give the student any additional assignments and more time to complete them.
26. The District does not have a policy that governs student participation in the graduation ceremony. However, the student handbook states that "Only those students who have satisfactorily met the [District graduation] requirements will be allowed to participate in the Commencement exercises."

27. The high school principal reported that the high school conducts a meeting at the beginning of the students' senior year to provide information about graduation, credits, and how those specifically work during the senior year. The high school principal also meets during parent-teacher conferences two times per year with parents of students who are credit deficient. Although the principal reported having met with the parents and student about this issue several times, none of the family remembers any such meetings.
28. The student did not participate in the graduation ceremony.
29. The student completed a language arts class, worth the .50 credits that the student required for graduation, during the summer session and received the standard diploma.

Accelerated Reader Assignments

30. The District uses a published reading program titled Accelerated Reader in all schools in the District. According to the program's website², this software and book program is designed to:
 - a. *"Make essential reading practice more effective for every student.*
 - b. *Personalize reading practice to each student's current level.*
 - c. *Manage all reading activities including read to, read with, and read independently.*
 - d. *Assess students' reading with four types of quizzes: Reading Practice, Vocabulary Practice, Literacy Skills, and Textbook Quizzes.*
 - e. *Build a lifelong love of reading and learning".*
31. Students are given time to read in class and, in the senior level language arts classes, are required to accumulate 25 points per nine-week grading period. The Accelerated Reader points account for 8% of the student's total grade in the class. After reading the book, students take a test on a computer and then receive points for each correct answer.
32. The District's written explanation of the Accelerated Reader program states that "If a student is enrolled in two or more English classes at the same time, the points may be used for all classes." District staff confirmed this practice during interviews.
33. During the student's four years at this high school, the student read a total of eight fiction books, ranging in level from 4.5 grade level to 8.2 grade level. The student received a total of 63.8% right answers on the tests for these eight books, and received 91 of 168 points possible for reading them.
34. During the senior year, the student took three language arts classes, taught by two different teachers. In the first semester, the student earned no points for Accelerated Reader assignments. In the second semester, the English 10 class teacher recorded that the student earned 203 points for Accelerated Reader assignments on May 17, 2010. The student passed this class.

² <http://www.renlearn.com/ar/overview/>

35. In the second semester, the Creative Writing class teacher recorded that the student earned 20.8 points for Accelerated Reader assignments on May 17, 2010. The student failed this class.

Parent Participation

36. District staff stated that, at one point during the second semester, an unknown student hacked into the District computer grading system and removed some scores from a number of students' Accelerated Reader records. District staff were unable to recreate the original records.

37. In addition, District staff stated that the two language arts teachers recorded two different grades for the same assignment. When one of the teachers could not find the grade in the computer system, the teacher asked the student to take the test for the Accelerated Reader assignment. The student did and received a higher score than previously.

38. Finally, several District staff referred to incidents in which the student appeared to have gotten answers through means other than his own independent efforts. None of these incidents were validated at the time they occurred. However, the student believes that teachers credited the accusations and did not give the student credit for assignments completed.

39. The student and the parent filed the complaint on September 13, 2010.

IV. DISCUSSION

When IEPs are in Effect and Parent Participation:

The student and the parents alleged that the District violated IDEA when it failed to provide special education accommodations and modifications in accordance with the student's IEP. Specifically, the student and the parents allege that the District did not allow extra time for completion of assignments and did not award the student full points for accelerated reader assignments. A District meets its obligations under IDEA when it ensures that the student's IEP is in place at the start of the school year and that the student receives services, accommodations, and modifications as described in the IEP. OAR 581-015-2220.

In addition, the student and the parents alleged that the District violated IDEA when it failed to ensure that the adult student and the parent meaningfully participated in the development of the student's educational plan. Specifically, the District failed to maintain accurate records of the student's performance in Language Arts. The student and the parents alleged that the records were sufficiently confusing and discrepant to limit their ability to understand whether the IEP was being appropriately implemented and, consequently, limited any appropriate review or revision of the IEP. A District meets its responsibility to include parents when it provides, consistent with the student's IEP, accurate feedback on the student's progress on the IEP goals. OAR 581-015-2190 & -2220.

In this case, the student's IEP contained a clear provision that the student was to be allotted extra time to complete assignments in all academic classes. During the course of the student's high school career, it is apparent that the student struggled continuously in language arts classes. As a result, the student needed to and took three different language arts classes

during the senior year. The student passed one (English 10) of the three and failed the other two (Detective Fiction and Creative Writing). In both of the failed classes the student believed that there was no option for extra time for assignment completion. Other staff also observed that the student was held to the same assignment completion requirements as other students in both classes. In fact, the student and parents requested an opportunity to complete some additional work three days before the scheduled graduation ceremony. The District denied the request.

In addition, the student and parents believe that the student's grades on specific assignments were inaccurately recorded on the computerized record-keeping system, especially the student's progress in the Accelerated Reader program. After a thorough review, the Department concludes that the teacher's grade records in the three language arts classes are significantly discrepant and confusing. The District reported variously that the computer system had been compromised, and that the student had cheated; thus resulting in the confusion between the records.

The Department substantiates all of the allegations in this complaint. Based on interviews with the student and District staff, the Department concludes that the student was not given additional time for assignment completion in two language arts classes during the 2009-10 school year. This had a direct effect on the student's grades on assignment in these classes, and resulted eventually in the student not being able to participate in the graduation ceremony. Therefore the Department substantiates the allegation that the student was denied extra time to complete assignments in the Detective Fiction and Creative Writing courses.

Secondly, the student did not receive all 203 points earned in the Accelerated Reader program in the other language arts class, taken during the same semester, as per District practice. Although the District sent IEP and general education progress reports as required, there are large discrepancies in the general education progress reports, and it is understandable that this would be confusing to both the student and the parents. Therefore, the Department substantiates the allegations that the student was not granted credit for completed Accelerated Reader lessons in the Creative Writing course and that the parent and student were denied meaningful participation in the student's education by virtue of the discrepant progress reports provided by the District.

V. CORRECTIVE ACTION³

In the Matter of Nyssa School District #26
Case No. 010-054-023

Action Required	Submissions ⁴	Due Date
<u>Training:</u> The District must provide training to regular education and special education	The District shall submit the content of the training to the	January 31, 2011

³ The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).

⁴ 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>staff and school administrators regarding the District's obligation:</p> <ul style="list-style-type: none"> • to provide special education and related services children with disabilities in accordance with an IEP; • to ensure that each student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementations; and, • to inform each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for IEP implementation of his or her specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP. 	<p>Department for approval before conducting the training.</p> <p>The District shall submit the names/positions of participants, sign-in sheet, agenda and training evaluations.</p>	<p>April 1, 2011</p>
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Dated: November 10, 2010

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

Mailing Date: November 10, 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.