

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. 21-054-004

I. BACKGROUND

On April 5, 2021, the Oregon Department of Education (Department) received a Letter of Complaint from the attorney (Attorney) of a parent (Parent) of a student (Student) attending school and residing in the Portland Public 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 April 12, 2021, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of April 26, 2021.

The District submitted a *Response* on April 23, 2021 denying the allegations, providing an explanation, and supporting documents for the District's position. The Parents submitted a response on May 6, 2021. The Parents submitted additional documents on May 11, 2021. In total, the District submitted the following items:

1. Student IEP, 02/05/2020
2. IEP Progress Report, 01/15/2021
3. Eligibility Summary Statement, 01/14/2020
4. Disability Statement, SLD (90) Criteria 01/14/2020
5. Special Education Placement Determination, 02/05/2020
6. IEP Team meeting minutes, 01/14/2020
7. IEP Team meeting minutes, 09/20/2019
8. IEP Team meeting minutes, 02/05/2020
9. Prior Written Notice, Notice of Evaluation Decision, 09/20/2020
10. Prior Written Notice, Notice of Evaluation Decision, 01/14/2020

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

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

11. Notice of Team Meeting, Meeting Request, 02/05/2020
12. Notice of Team Meeting, Meeting Request, 09/30/2020
13. Notice of Team Meeting, Meeting Request, 01/14/2020
14. Parent/Guardian Consent for Individual Evaluation, Parent Permission, 09/30/2019
15. Prior Notice and Consent for Initial Provision of Special Education Services, 01/14/2020
16. Student IEP, 01/15/2021
17. Special Education Placement Determination, 01/15/2021
18. IEP Team meeting minutes, 01/15/2021
19. Notice of Team Meeting, Meeting Request, 01/14/2021
20. Prior Written Notice, 01/15/2021
21. Kaufman Test of Educational Achievement, 01/13/2020
22. Psycho-educational Report, 01/13/2020
23. Academic Evaluation Report, 01/14/2020
24. Parent/Guardian Consent for Individual Evaluation, 09/30/2019
25. Email: (Student's) section 504, 09/10/2019
26. Email: Possible Evaluation, 09/10/2019
27. Email: Re: (Student's) section 504, 09/11/2019
28. Email: Re: Possible Evaluation, 09/12/2019
29. Email: Fwd: Possible Evaluation, 09/13/2019
30. Email: Re: Re: Re: Meeting Request, 9/17/2019
31. Email: Fwd: Testing, 09/18/2019
32. Email: Electronic copies for 9/2019 meeting regarding (Student)
33. Email: Re: Re: (Elementary) School's Performance Rating
34. Email: (Student) Gradebook for US Studies: Const-Recon...period 7
35. Email: Request for (Student's) test score and question on Tier II and III reading support, 10/21/2019
36. Email: Re: (Student's) Gradebook for Health 8...period 4
37. Email: Re: (Student's) Gradebook for Science...period 3
38. Email: Re: (Student's) Gradebook for US Studies: Const-Recon...period 7
39. Email: Re: Coaching Athletes with Hidden Disabilities, 11/4/2019
40. Email: (Student) Gradebook for Language Arts 8...period 1, 11/14/2019
41. Email: Kaiser request for (Student), 12/02/2019
42. Email: Form are complete!, 12/10/2019
43. Email: (Student) teacher-information..., 12/16/2019
44. Email: Re: (Student) Gradebook for Integrated Science C..., period 3, 12/19/2019
45. Email: my grade, 01/05/2020
46. Email: Re: Status ad next steps on (Student's) evaluation, 01/06/2020
47. Email: Re: links for reading intervention, 01/06/2020
48. Email: Re: Status ad next steps on (Student's) evaluation, 01/07/2020
49. Email: Re: Fw: 9th Grade Course Guide + Request form, 01/24/2020
50. Email: Re: IEP Meeting, 01/28/2020
51. Email: (Student) – 9th Grade Course Request Form, 01/28/2020
52. Email: Re: IEP Meeting, 01/30/2020
53. Email: Re: Missing Science Work this Week, 02/07/2020
54. Email: (Student) Gradebook for Physical Ed 8, period 4, 02/07/2020
55. Email: Re: Update on Science Work this Week (2/10-2/14), 02/12/2020

56. Email: Re: March 5th Argumentative Essay DUE, 03/04/2020
57. Email: ASL request for (Student) for Grant High School, 03/04/2020
58. Email: IEP, 03/10/2020
59. Email: (Student) IEP – Example SPED Intervention for Reading and Writing, 03/10/2020
60. Email: IEP, 03/11/2020
61. Email: (Student) IEP – Example SPED Intervention for Reading and Writing, 03/12/2020
62. Email: Re: Consent form, 03/12/2020
63. Email: Re: Checking In, 04/01/2020
64. Email: Fwd: Lexia help Site, 04/19/2020
65. Email: Parent Signature Page, 04/22/2020
66. Email: Re: Re; (Student's) US Studies assignment, 04/23/2020
67. Email: Re: Consent form, 04/24/2020
68. Email: Re: Access to quizzes for (Student)
69. Email: Re: Assignments, 05/11/2020
70. Email: Question on yearbooks, 06/10/2020
71. Email: Re: Grant Academic Support, 08/26/2020
72. Email: Re: (Student) – Invitation to edit, 09/09/2020
73. Email: (Student), Period 2 Course: Algebra 1, 09/17/2020
74. Email: (Student), Period 1 Course: Academic Skills, 09/17/2020
75. Email: Re:, 09/23/2020
76. Email: Re: Untitled document – Invitation to edit, 09/25/2020
77. Email: (Student) Gradebook for Algebra 1, period 2, 09/29/2020
78. Email: Re:, 10/01/2020
79. Email: Re: Synergy/StudentVue Messages, 10/01/2020
80. Email: , 10/4/2020
81. Email: Re: (Student) Gradebook for Algebra 1, period 2, 10/05/2020
82. Email: , 10/05/2020
83. Email: Re: Academic Skills Grade, 10/06/2020
84. Email: Re: I do not have a Unite 2 Exam from you, 10/07/2020
85. Email: , 10/7/2020
86. Email: Thursday Math, 10/8/2020
87. Email: (Student) Gradebook for Dance 1, Period 3, 10/4/2020
88. Email: Algebra Plan, 10/15/2020
89. Email: Re:, 10/16/2020
90. Email: Re: Period 3: (Student) attendance for 10/14/ and 9/30, 10/20/2020
91. Email: , 10/20/2020
92. Email: , 10/22/2020
93. Email: Re: Parent/Teacher; Advocate/Teacher; Family/Teacher Conferences, 10/22/2020
94. Email: Re: retakes, 10/23/2020
95. Email: Fwd: Math help, 10/25/2020
96. Email: , 10/27/2020
97. Email: Re; Unit 3 Exam Retake – (Student), 10/29/2020
98. Email: (Student) Gradebook for Algebra 1, period 2, 11/06/2020
99. Email: Re: (Student) excused absences Nov. 12-Nov. 16, 11/09/2020
100. Email: Math Points Today, 11/10/2020

101. Email: , 11/10/2020
102. Email: Afternoon Algebra Support, 11/11/2020
103. Email: Re: unity 5 work – Invitation to edit, 11/12/2020
104. Email: Re: (Student) excused absence Nov. 16 is no longer needed, 11/15/2020
105. Email: Sorry!, 11/16/2020
106. Email: Re: (Student) Algebra, 11/18/2020
107. Email: , 11/18/2020
108. Email: Re: (Student) Algebra, 11/18/2020
109. Email: We're waiting in Zoom for (Student's) Parent-Teacher Conference, 11/20/2020
110. Email: Re: meeting code, 11/23/2020
111. Email: Re: Conferences, 11/23/2020
112. Email: Progress Report, 11/24/2020
113. Email: Fwd:, 11/27/2020
114. Email: Re: Untitled Jam – Invitation to edit, 12/04/2020
115. Email: Re:, 12/04/2020
116. Email: Re: Two Quick Things, 12/06/2020
117. Email: Re: American Sign Language (ASL) at Grant, 12/09/2020
118. Email: Re: Everyday Heroes_(Student) – Invitation to Edit, 12/18/2020
119. Email: Re: IEP Meeting, 12/18/2020
120. Email: Re:, 01/06/2021
121. Email: Re: Wednesday Extra Credit, 01/11/2021
122. Email: Shoot. What happened? Can you rejoin the Meet? 01/12/2021
123. Email: Re:, 01/12/2021
124. Email: IEP & PWN, 01/15/2021
125. Email: Re: Choreographer Research Project_(Student) – Invitation to Edit, 01/18/2021
126. Email: Re: Physics Link, 01/19/2021
127. Email: Re: A forwarded letter on 2020 Literacy Budget Requests, 01/10/2021
128. Email: IEP & PWN, 01/25/2021
129. Email: Re: (Student) Schedule, 01/26/2021
130. Email: IEP & PWN, 01/26/2021
131. Email: Re: IMG_7068.mov, 01/27/2021
132. Email: Re: Questions on AVID, 02/01/2021
133. Email: Re: How to Write a Proper Email assignment, 02/01/2021
134. Email: English FYI, 02/02/2021
135. Email: Re:, 02/03/2021
136. Email: Re: Reading Group?, 02/03/2021
137. Email: Re: English FYI, 02/03/2021
138. Email: Re: Reading/Writing, 02/03/2021
139. Email: Re: Afternoon Support Groups/Check-ins, 02/03/2021
140. Email: Re: Accepted: Reading/Writing @ Weekly from 1:30 pm to 2:00 pm on Wednesday, Friday from Wed Feb 3 to Fri Jun 11 (PST), 02/03/2021
141. Email: Re: Afternoon Support Groups/Check-ins, 02/03/2021
142. Email: Re: (Student) Exploratory Scavenger Hunt email, 02/08/2021
143. Email: Accessing Desmos, 02/09/2021
144. Email: Re: Questions on First Entry: Word Story, 02/13/2021
145. Email: Re:, 02/17/2021

- 146. Email: Tomorrow's Story, 02/21/2021
- 147. Email: Re: Quill :), 02/24/2021
- 148. Email: Re: Quiz Retake Time, 03/04/2021
- 149. Email: Re: Quiz, 03/05/2021
- 150. Email: Re: March 5th attendance for (Student), 03/08/2021
- 151. Email: Re: Off on Friday :), 03/16/2021
- 152. Email: Re:, 03/16/2021
- 153. Email: Re: Reading list feedback and thanks, 03/19/2021
- 154. Email: Physics Unit 2 Test, 03/26/2021
- 155. Email: Re: Reading list feedback and thanks, 03/29/2021
- 156. Email: Re:, 03/30/2021
- 157. Email: Fwd: ODE Complaint: (Student) and PPS, 04/06/2021
- 158. Email: 12:30 Meet?, 04/07/2021
- 159. Email: News to share, 03/19/2021
- 160. Student Schedule, 2019—2020
- 161. Course descriptions
- 162. Student Schedule, 2020—2021
- 163. 2021-22 9th grade course guide
- 164. Email: (Student) IEP, 04/21/2021
- 165. Student medical visit summary, 11/27/2019
- 166. Student 504 Plan, 10/25/2018 (11/08/2018)
- 167. Confidential Dyslexia Screening Report, 11/17/2015
- 168. District Exhibit List, and contact information

On May 6, 2021, the Department's Complaint Investigator interviewed the Parents. On May 6, 2021, the Parents provided additional materials for consideration. On May 12, 2021, the Complaint Investigator interviewed the Student's middle school Counselor, middle school Case Manager, the School Psychologist at the middle school, and the Student's high school Case Manager. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's 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 April 6, 2020, to the filing of this Complaint on April 5, 2021.

Allegations	Conclusions
<p>1) <u>Evaluation and Reevaluation Requirements</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to evaluate the Student for concerns arising out of the Student's perceived</p>	<p><u>Not Substantiated</u></p> <p>The District evaluated the Student in the areas of concern for the Parents. The</p>

<p>struggled with mathematics, after the Parent requested such an evaluation.</p> <p>(OAR 581-015-2105; 334 CFR § 300.301 & § 300.303)</p>	<p>Parents had additional concerns that were not raised with the District until after the filing of this Complaint.</p>
<p>2) <u>Determination of Eligibility</u></p> <p>The Parent alleges that the District violated the IDEA when the Student’s eligibility for special education was determined without reference to the Student’s diagnosis of dyslexia. The Parent alleges that the absence of the dyslexia diagnosis from the Student’s IEP has resulted in the Student not receiving the proper specially designed instruction (SDI) to meet their educational needs.</p> <p>(OAR 581-015-2120; 34 CFR § 300.306, § 300.308, and § 300.111)</p>	<p><u>Not Substantiated</u></p> <p>The District found the Student eligible for special education under the eligibility category of Specific Learning Disability (SLD). SLD includes dyslexia in its description. There is no specific dyslexia eligibility category.</p>
<p>3) <u>Content of the IEP</u></p> <p>The Parent alleges that the District violated the IDEA when the IEP formulated for the Student was inadequate and or defective. Specifically, the Parent alleges that:</p> <ul style="list-style-type: none"> a. the IEP does not sufficiently address all areas of need resulting from the Student’s disability; b. the Student’s baseline/present level statements are inadequate for their intended purpose; c. annual goals statements are inadequate because not all areas of need were considered, are not sufficiently specific, and that the stated goals are not measurable in a manner helpful to the team; d. supplementary aids and services are inadequate or missing; e. reading specialist support is missing from the Student’s IEP; and f. the District did not collect or report data regarding the Student’s progress toward meeting annual goals in the Student’s IEP. <p>(OAR 581-015-2200, (1)(a), (1)(b), (1)(c), (1)(d), (1)(g); 34 CFR § 300.320)</p>	<p><u>Not Substantiated</u></p> <p>Many of the concerns raised during the Complaint were not previously communicated to the District. There is insufficient information in the record to support that District staff were aware of or had reason to suspect other areas of need of the Student other than those identified and included in the February 5, 2020 IEP. Nor is there any information to support that present level statements are inadequate, annual goals were not appropriate, supplementary aides and services were not appropriate, and support from a reading specialist was necessary.</p> <p>District staff acknowledged that progress monitoring data was not collected for the Student between March 2020</p>

	<p>and the end of the 2019-2020 school year, due to the COVID-19 pandemic. However, this is not a matter of the content in the IEP being inappropriate.</p>
<p>4) <u>IEP Team Consideration and Special Factors</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to consider special factors such as the Student’s diagnosis of dyslexia, behavior, the impact of the Student’s anxiety on the Student’s education, and the manifestations of the Student’s anxiety, such as work avoidance and failing to turn in assignments.</p> <p>(OAR 581-015-2205; 34 CFR § 300.320, § 300.324(a)(1) & (2) & (b)(2))</p>	<p><u>Not Substantiated</u></p> <p>There is insufficient evidence in the record to show that the District had knowledge of the impact of the Student’s anxiety on their academic performance. Furthermore, the District did consider the Student’s disability when determining eligibility and services for the Student.</p>
<p>5) <u>Placement of the Child</u></p> <p>The Parent alleges that the District violated the IDEA when it enrolled the Student in an Academic Skills class during the 2020—2021 school year. Specifically, the Parent alleges that enrollment in this course amounted to a change in placement because it resulted in the Student’s removal from the general education environment for more than the time anticipated by the Student’s IEP then in effect.</p> <p>(OAR 581-015-2250; 34 CFR § 300.116 & § 300.327)</p>	<p><u>Not Substantiated</u></p> <p>As a result of the District’s move to distance learning, the class schedules of all students were altered. As a result, the Student received more service time than that anticipated by the Student’s IEP. However, advice provided to the District from the Department noted that the shift to distance learning does not constitute a change in placement, nor was the Student’s educational program significantly altered.</p>
<p>6) <u>Least Restrictive Environment</u></p> <p>The Parent alleges that the District violated the IDEA when it enrolled the Student in an Academic Skills class during the 2020-2021 school year. The Parent alleges that enrollment in this course amounted to a removal from the general education environment for more than the time anticipated by</p>	<p><u>Not Substantiated</u></p> <p>Given the impossibility of providing push-in support to the Student in general education classes, the Student’s Academic Skills class became the primary</p>

<p>the Student's IEP then in effect, resulting in the Student being placed in a more restrictive environment than the Student required.</p> <p>(OAR 584-015-2240; 34 CFR § 300.114)</p>	<p>locus of delivering specially designed instruction. The Student's more restrictive environment was the result of the District's shift to comprehensive distance learning, rather than the Student's enrollment in the Academic Skills class.</p>
<p>7) <u>Prior Written Notice</u></p> <p>The Parent alleges that the District violated the IDEA when it did not provide prior written notice prior to the Student's enrollment in the Academic Skills class. The Parent alleges that enrollment in this class amounted to a change in placement because it resulted in the Student's removal from the general education environment for more time than anticipated by the Student's IEP then in effect.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p><u>Not Substantiated</u></p> <p>The modification to the Student's schedule was the result of the District's move to comprehensive distance learning rather than an IEP team decision.</p>
<p>8) <u>When IEPs Must Be In Effect</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to:</p> <ul style="list-style-type: none"> (a) appropriately inform the Student's teachers and providers of the special responsibilities for implementing the Student's IEP; and (b) when it failed to provide services to the Student in conformity with the Student's IEP. Specifically, the Parent alleges that the District did not provide the Student with the 30 minutes of SDI called for in the Student's IEP. <p>(OAR 581-015-2220; 34 CFR § 300.323, § 300.324)</p>	<p><u>Substantiated In Part</u></p> <p>There is no information in the record to show that the District failed to inform the Student's teachers that the Student had an IEP, or that teachers were unaware of the content or accommodations. District staff did acknowledge that COVID-19 related school closures and the shift to online learning disrupted the delivery of SDI to the Student following the resumption of school in April 2020 through the end of the school year in June 2020.</p>
<p>9) <u>Review and Revision of IEPs</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to review and revise the</p>	<p><u>Not Substantiated</u></p> <p>The Parents reported that the Student required high levels</p>

<p>Student's IEP to address the Student's lack of expected progress toward IEP goals. The Parent alleges that the District had sufficient data, in the form of information provided by the Parent and the Student's academic performance to trigger the District to recognize the need to address the lack of expected progress toward annual IEP goals. The Parent also alleges that the Student's procrastination, work refusal, frequent test retakes, and crying, were contributing factors to put the District on notice of the need to revise the Student's IEP. The Parent further alleges that the Parent's request for the District to evaluate the Student in the areas of mathematics, considering EasyCBM test results that allegedly showed "high needs" in mathematics, were sufficient to demonstrate the need to revise the Student's IEP.</p> <p>(OAR 581-015-2225; 34 CFR § 300.324(a)(4), (a)(5), (a)(6) & (b)(1))</p>	<p>of support from the Parents and a private tutor to complete schoolwork. These support needs were not communicated to the District until after the filing of this Complaint.</p>
<p>10) <u>Free Appropriate Public Education (FAPE)</u></p> <p>(a) The Parent alleges that the District's failure to properly inform the Student's teachers and service providers of their specific responsibilities for implementing the Student's IEP and the specific modification, and supports, which the Parent alleges contributed to the District's failure to deliver services violated the IDEA by denying the Student a FAPE.</p> <p>(b) The Parent alleges that the District's failure to provide the 30 minutes of specially designed instruction called for in the Student's IEP, as evidenced by the Student's literacy grade level achievement and missed educational opportunities violated the IDEA by denying the Student a FAPE.</p> <p>(c) The Parent alleges that the deficiencies in the Student's IEP, given the alleged failure to fully evaluate, articulate the Student's specific needs, relevant diagnoses, and academic needs, produced an IEP that was not reasonably calculated to confer benefit to the Student thereby violating the IDEA by denying the Student a FAPE.</p>	<p><u>Not Substantiated</u></p> <p>There is no evidence in the record that teachers were not informed of the Student's IEP or the accommodations therein.</p> <p>Following the development of the IEP, the Student showed improvement toward IEP goals. This portion of the allegation appears to be referring to the Student's performance prior to being found eligible for special education services. This time period falls outside of the one-year look back provided by the IDEA for state complaints.</p> <p>The Student performed well in mathematics, however the Parents report that this was due largely to significant Parent support and the</p>

(OAR 581-015-2040(1); 34 CFR § 300.101)	support of a private tutor. After the filing of this Complaint the Parents communicated to the District the significant assistance the Student needed.
---	--

III. FINDINGS OF FACT

Background

1. The Student in this matter is 15 years old and in the ninth grade. The Student attends a local high school and is currently participating in distance learning activities due to the COVID-19 pandemic. The Student participates in comprehensive distance learning (CDL) with one period of an Academic Skills class. The Student also has academic support from family and a tutor hired by the family.
2. The Student was found eligible for special education services for a Specific Learning Disability (SLD) in the areas of basic reading skills, reading comprehension, reading fluency, and written expression on January 14, 2020. Previously, the Student was on a 504 Plan for dyslexia. The Student demonstrated weaknesses in working memory, organization, and performance-based anxiety. The Student requires additional time to process written information and produce written work. The Student benefits from visual prompts, reminders, and support breaking down and identifying important pieces of information for accessing instructional activities.
3. On September 10, 2019, the Parents sent an email to the District with their concerns regarding the Student’s progress and future academic success. The Parents observed that the Student was behind grade level in reading rate, accuracy, fluency, and comprehension.
4. On September 13, 2019, the Parents sent an email to the Student’s Case Manager at the middle school observing the Student’s struggles with reading and writing and asking for a “fuller academic and cognitive assessment.” The Parents highlighted that supporting the Student’s academic needs at home was equivalent to a part time job.
5. On September 18, 2019, the Student’s middle school Counselor sent the Parents an email providing an overview of the IEP development process.
6. On September 30, 2019, the Parents sent an email to the District ahead of a meeting providing relevant documents and listing their concerns about the Student’s readiness to enter high school. As part of this email the Parents expressed concerns about the Student’s performance on tests and quizzes and questioned whether the Student was receiving extended time for tests as required by the Student’s 504 Plan. The Parents also requested the District evaluate the Student for special education eligibility.

7. On September 30, 2019, the District provided to the Parents a prior written notice regarding its intent to collect data for the evaluation planning team to begin evaluating whether the Student is eligible for special education services. The Parents also signed consent to evaluate the Student for special education eligibility.
8. The District's School Psychologist conducted a psychoeducational assessment of the Student which took into consideration a variety of assessment data. The Student's recent math test scores displayed that the Student showed "a growth pattern from Low, to Low-Average, to Average. The District administered the Academic Skills Battery and Reading Composite portions of the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) exam to the Student on January 13, 2020. The Student scored average to below average in these areas. On October 15, 2019, the District completed a psychoeducational evaluation of the Student. The evaluation found that the Student primarily showed weakness in the areas of working memory and auditory processing affecting reading, writing, and language arts.
9. On January 6, 2020, the Parents exchanged emails with the Student's Case Manager, Counselor, and School Psychologist. As part of this exchange the Parents raised concerns about the Student's performance in science and whether the Student required additional support in science. The Parents went on to highlight their specific interest in reading supports offered by the District.
10. On January 14, 2020, the District found the Student eligible for special education under the category of Specific Learning Disability (SLD). Eligibility was determined using the pattern of strengths and weaknesses methodology. The team observed that the Student did not achieve adequately to meet grade level standards in several areas including: basic reading skills, reading fluency skills, written expression, mathematics calculation, and mathematics problem-solving.
11. On January 23, 2020, the Parents sent an email to the District inquiring about enrolling the Student in the District's Math Lab course. On January 24, 2020, the District responded with information on how the Student could enroll in the class.
12. On January 28, 2020, the Parents sent an email to the District notifying the District that the Student would return the necessary paperwork for enrollment in the Math Lab course.
13. On January 28, 2020, the Parents sent an email to the Student's middle school Case Manager and others, indicating that the Student would enroll in the Academic Skills class, writing, "In addition to the four Required Classes, we're [sic] highlighted the need for: - Academic Skills (SPED) – Math Lab to support Algebra 1-2..."
14. The District formulated an IEP for the Student on February 5, 2020. Present for the meeting were one of the Student's general education teachers, the Student's Case Manager, and School Psychologist. The Student's IEP team determined that the Student's educational placement should be 90% or greater in general education with special education support.

The IEP noted that the Student showed a yearly decline in reading scores in middle school. The Student's IEP documented that the Student's test scores relevant to reading and writing showed the Student was performing below average in many areas including letter and word recognition, silent reading fluency, word recognition fluency, decoding fluency, reading vocabulary, and writing fluency.

The IEP included accommodations for test taking. These included extended time for testing, opportunity for breaks, text-to-speech, and access to a separate testing space. In addition, among other accommodations, the Student was to receive access to an alternative testing space, access to notes for tests, access to test corrections post-test, access to pre-test study guides, a copy of printed class notes, directions and assignments that have been divided into smaller segments, opportunities for retesting, visual aids, and extended time to complete tests. The Student was to receive 30 minutes per week of SDI in the areas of writing skills and reading/language arts.

15. Following the development of the Student's IEP, the Student's Case Manager at the middle school sent notification to the Student's general education teacher that the Student had an IEP. This notification was sent on February 6, 2020.
16. On February 7, 2020, the Parents sent an email to the District in part discussing their assistance to the Student in instances where the Student displayed procrastination in completing schoolwork. The Parents noted that this habit affected math and social studies classes. The Student's Case Manager worked directly with the Student and others to address this concern and improve the Student's self-advocacy skills.
17. On March 17, 2020, all Oregon schools closed pursuant to the Governor's executive order 20-08.
18. Due to the closure of schools, the District modified the delivery of courses and student schedules. The District moved to a 4x4 model for course schedules. Students were enrolled in four classes during the fall semester, and four classes in the spring semester 2021. One of the Student's four classes during the fall semester was the Academic Skills class. The Student received a majority of their SDI in this class. SDI was provided in group video conference sessions and individual break-out sessions. This single class over the period of two semesters resulted in an approximate 12.5% removal from the general education environment.
19. During an interview with the Student's middle school Counselor it was noted that generally students and their families begin the process of selecting the courses for high school during the final year of middle school. At the start of the high school career, a case manager assigned to the student would then determine whether modifications to a student's schedule were warranted based on a student's IEP. Due to the use of comprehensive distance learning, the entire school schedule for the District was altered, which had the effect of changing when and how specially designed instruction (SDI) was delivered to students.

20. District staff noted that the move to comprehensive distance learning disrupted the standard model of staff delivering services in the general education environment as there was no practical way to deliver push-in services during a video conference with general education peers mutually engaged in a general education class. Instead, SDI was delivered through separate courses and break-out rooms.
21. On September 17, 2020, the Parents sent an email to Student's high school Case Manager explaining the Student's excused absence from the Academic Skills class for one day.
22. On September 29, 2020, the Parents sent an email to the Student's Math Teacher and high school Case Manager, writing in relevant part, "I'm copying [high school Case Manager] [Student's] Academic Skills Teacher. [Student] has an IEP for dyslexia, which has caused [Student] to miss steps in math problems in the past. Conceptually [Student] does well in math especially if [Student] can visualize it.
23. On October 1, 2020, the District provided the Student with math assignments through Khan Academy as part of the Student's homework. The District's *Response* included emails exchanged between the Student and the Student's Math Teacher regarding completion of math assignments and assistance with math work.
24. On October 6, 2020, the Parents sent an email to the Student's high school Case Manager requesting a meeting. The Parents expressed frustration around the technology side of distance learning, disclosed that the Student was overwhelmed and not completing assignments, and needed assistance with organizing work and contacting teachers for additional support. A Google Meet session was held to resolve these concerns.
25. On October 23, 2020, the Student exchanged emails with their Math Teacher requesting an opportunity to retake a portion of an exam. On October 29, 2020, the Parents sent another email to the Student's Math Teacher regarding retaking an exam. The Student was allowed to retake the exam, as were all Students during CDL upon request.
26. On January 15, 2021, the IEP team met to revise the Student's IEP. During the IEP meeting it was noted that the Student successfully adjusted to high school and distance learning. The Student's Parents expressed interest in the Student having access to high-quality reading instruction in the distance learning and in-person settings. The Parents also asked that the IEP clearly communicate the Student's dyslexia diagnosis and working memory deficiencies.
27. The Student's IEP team determined the Student's educational placement would continue to be 90% in general education. The Student's placement determination notes, "[Student] is attending an Academic Skills class during CDL. This is 1 of 4 classes, resulting in 25% of [their] school schedule in a special education placement. [Student] was more engaged during small-group and individual instruction. We will move to afternoon sessions for reading and writing instruction starting February 1, 2021 [second semester]. This is greater than 90% in general education settings,

which allows [Student] to add an elective class to [their] schedule.”

28. During the January 15, 2021 IEP meeting the Parents reported that the Student utilizes extra time on tests and schoolwork, and that they are supporting the Student in several classes and with a tutor hired by the Parents.
29. The District reported that the Student made progress toward all IEP goals over the previous year during the January 15, 2021 IEP meeting.
30. The Student’s January 15, 2021 IEP documents that the Student attends one period of Academic Skills class and receives support from family and a family provided tutor. The Student’s IEP documents in the present levels section state that the Student works with graphic organizers and works independently with structured writing activities. The Student’s accommodations were modified from the previous IEP to include: preferential seating, access to pre-study guides, assistance with directions, opportunities for reteaching and retesting, providing the Student with visuals, 50% extended time for tests, checks for understanding, providing copies of class notes to Student, access to notes for tests, access to tests read aloud, access to alternative testing space, and graphic organizers.
31. Following the IEP meeting, the Parents sent an email to the Student’s Case Manager sharing concerns about the Student’s access to clear reading instructions tailored to the Student’s IEP goals.
32. On April 5, 2021, the Parents filed this Complaint with the Department.
33. On April 19, 2021, the Parents sent an email to the District requesting the District evaluate the Student in math, and that anxiety be added to the Student’s IEP. The Parents previously raised the concern about anxiety during discussions in the evaluation planning stage; however, the Parents didn’t raise this concern again and District staff members did not observe any behaviors that caused them to be concerned about anxiety. The Parents expressed the opinion that the Student’s test scores indicated weaknesses in math, and that the Student has struggled with math assignments through the fall of 2020. Following the request from the Parents the District began planning for assessments of the Student’s needs in mathematics.
34. During an interview with the Department’s Complaint Investigator, the Parents reported that the Student needed significant levels of support at home to complete math assignments including the Parents reading the assignments to the Student. The Parents reported that some staff in the high school may have been unaware of the Student’s IEP. The Parents also wondered whether the lack of IEP data in the District’s computer systems visible to Parents was an indication that teachers also lacked such data. The Parents also expressed their preference and belief that informing teachers that the Student was diagnosed with dyslexia was important for teachers to adequately understand the Student’s educational needs.
35. The Student’s high school Case Manager noted that in addition to the IEP status visibility in the District’s computer system (Synergy), the Case Manager also reached

out to the Student's teachers to notify them of the Student's IEP and accommodations.

36. During interviews with District staff, the District's School Psychologist reported that the main areas of need for the Student were reading and writing comprehension. The School Psychologist noted that other areas of academic performance did not raise concerns.
37. During the Department's interview with the Student's Case Manager at the high school, the Case Manager reports having provided more than the 30 minutes of specially designed instruction. Specifically, the Case Manager noted that they would often work with the Student on assignments, organizing work, strategies for when and how to approach teachers for additional help with assignments, and addressing anxiety about issues such as incomplete assignments.
38. The Case Manager noted that the online learning platform allowed the Student to access text-to-speech capabilities for all schoolwork. The Case Manager routinely reviewed the Student's class work and exams for accessibility issues. The Case Manager also discussed knowledge of graphic organizers used in class and available to the Student. These accommodations were available to the Student through the online learning platform. Additional testing time, extended time to turn in assignments, and exam retakes were provided to all students as part of comprehensive distance learning. Additional accommodations relevant to in-person learning, such as seating and physical presence testing accommodations, were not relevant.

IV. DISCUSSION

1. Evaluation and Reevaluation Requirements

The Parents alleged that the District violated the IDEA when it failed to evaluate the Student for concerns arising out of the Student's perceived struggles with mathematics, after the Parents requested such an evaluation. The Parents report that the Student displayed sufficient difficulties and struggles in mathematics to trigger the District to evaluate the Student in this area.

A district must conduct an evaluation when determining a student's eligibility for special education.³ Parents may request a district evaluate their child for eligibility for special education.⁴ A district must conduct an evaluation of a child when the district suspects the child has a disability that has an adverse impact on child's educational performance, or that they may need special education services as a result of their disability.⁵ A school district must reevaluate a student when the educational or related service needs, including improved academic achievement and functional performance of the child, warrant a reevaluation.⁶ Reevaluations should also be considered when parents request

³ OAR 581-015-2105(1)(a)

⁴ OAR 581-015-2105(2)

⁵ OAR 581-015-2105(3)(a), (3)(b)

⁶ OAR 581-015-2105(4)(b)(A)

their child be reevaluated and conducted when warranted.⁷

The Parents allege the District erred by not evaluating the Student in mathematics. The Parents report that the District should have evaluated the Student in mathematics at the outset and should have recognized the Student's struggles in mathematics in the years preceding the development of the Student's IEP, and during the 2020-2021 school year following the development of the Student's initial IEP.

The Parents expressed an interest in addressing the Student's struggles in reading and writing due to the Student's diagnosis of dyslexia. The Student showed needs in the areas of short-term memory weakness and auditory processing weakness. The Student did show weaknesses in standardized testing in mathematics but displayed average grades in mathematics. The record in this matter does not show concern communicated by the Parents or teachers regarding the Student's mathematics ability during the Complaint Period. Once the Parents raised these concerns, the District made plans to evaluate the Student in this area.

The Department does not substantiate this allegation.

2. Determination of Eligibility

The Parents alleged that the District violated the IDEA when the Student's eligibility for special education was determined without reference to the Student's diagnosis of dyslexia. The Parent alleges that the absence of the dyslexia diagnosis from the Student's IEP has resulted in the Student not receiving the proper specially designed instruction to meet their educational needs.

After completing assessments and other evaluation materials, a student's IEP team must determine whether a student is a child with a disability under OAR 581-015-2130 through OAR 581-015-2180.⁸ The team must prepare an evaluation report and written statement of eligibility.⁹ That written evaluation report must include a list of the evaluation data considered, and a determination of whether the child's disability meets the minimum criteria for one of the disability categories in OAR 581-015-2130 through OAR 581-015-2180, or OAR 581-015-2795.¹⁰

The District completed its evaluations and the eligibility team determined the Student's eligibility for special education on January 14, 2020. The team determined that the Student was eligible for special education under the category of Specific Learning Disability (SLD). The eligibility category of SLD includes students with dyslexia, and specifically names dyslexia in the description¹¹.

The Department does not substantiate this allegation.

⁷ OAR 581-015-2105(4)(b)(B)

⁸ OAR 581-015-2120(1)

⁹ OAR 581-015-2120(2)(a)

¹⁰ OAR 581-015-2120(2)(b)(B)

¹¹ OAR 581-015-2000(4)(b)(J)

3. Content of the IEP

The Parents alleged that the District violated the IDEA when the IEP formulated for the Student was inadequate and/or defective. Specifically, the Parents alleged that:

- a. the IEP does not sufficiently address all areas of need resulting from the Student's disability;
- b. the Student's baseline/present level statements are inadequate for their intended purpose;
- c. annual goals statements are inadequate because not all areas of need were considered, the goals are not sufficiently specific, and the goals are not measurable in a manner helpful to the team;
- d. supplementary aids and services are inadequate or missing;
- e. reading specialist support is missing from the Student's IEP; and
- f. the District did not collect or report data regarding the Student's progress toward meeting annual goals in the Student's IEP.

A student's individualized education program (IEP) must include a statement of the student's present levels of academic and functional performance.¹² These should include how the student's disability affects their involvement and progress in the general education curriculum.¹³ The student's IEP should also include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs resulting from the student's disability to enable the child to be involved in and make progress in the general education curriculum.¹⁴ The IEP should meet each of the student's other educational needs that result from their disability.¹⁵ The IEP should also include a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided.¹⁶

The Student's IEP addressed those areas initially identified by the Student's IEP team as areas of need for the Student. Specifically, these included writing skills and reading/language arts. Mathematics was not identified as an area of need for the Student at the creation of the initial February 5, 2020 IEP, nor the January 15, 2021 IEP revision. There is no evidence in the record that the Parents raised this concern with the District until after the filing of this Complaint.

The Department does not substantiate this portion of the allegation.

The Parents alleged that the Student's baseline/present levels statements were inadequate. However, these statements were written by the IEP team, including the Parents, to address how the Student's area of disability affected the Student's involvement and progress in the general education curriculum. There is no evidence that these statements were deficient in serving this purpose.

¹² OAR 581-015-2200(1)(a)

¹³ *Id.*

¹⁴ OAR 581-015-2200(1)(b)(A)

¹⁵ OAR 581-015-2200(1)(b)(B)

¹⁶ OAR 581-015-2200(1)(c)

The Department does not substantiate this portion of the allegation.

The Parents similarly alleged that the Student's annual goals were insufficient, as they did not address the Parents' perception that the Student also had academic needs in math that were not addressed by the District. As observed above, the District's assessments initially identified challenges in writing and reading comprehension for the Student rather than mathematics, nor did the Parents raise concerns about mathematics to the District prior to filing the Complaint.

The Department does not substantiate this portion of the allegation.

The Parents allege that the Student's IEP should have included additional supplementary aids as well as services provided by a reading specialist. The IEP team, including the Parents, determined that neither additional supplementary aids nor access to a reading specialist was necessary in order for the Student to make appropriate progress toward their IEP goals. There is no evidence in the record that demonstrates either of these were necessary, nor is it clear that the Parents ever raised these concerns with the District.

The Department does not substantiate this portion of the allegation.

Finally, the Parents allege that the District did not report the Student's progress toward IEP goals. Soon after formulating the Student's IEP, all in-person instruction in the state ceased due to the COVID-19 pandemic. The District did not gather data regarding the Student's progress during the spring of 2020. The Student's IEP calls for quarterly progress reporting. The District began collecting data for the Student during the fall semester of the 2020-2021 school year. That data was reported on November 24, 2020, and January 15, 2021. However, this is unrelated to the appropriateness of the content in the IEP.

The Department does not substantiate this portion of the allegation.

4. IEP Team considerations and Special Factors

The Parents alleged that the District violated the IDEA when it failed to consider special factors such as the Student's diagnosis of dyslexia. The Parents also alleged that the District failed to consider the Student's behavior and the impact of the Student's anxiety on the Student's education. Specifically, the Parents point to the Student's anxiety manifesting as work avoidance and failing to turn in assignments as areas the District failed to consider.

In developing a student's IEP, the IEP team must consider many factors. These include the strengths of the student, the concerns of the parent, the results of evaluations and the academic, developmental, and functional needs of the child.¹⁷ The team must also consider a variety of other special factors that may be relevant to the student's needs.¹⁸

The Student's IEP team found the Student eligible for special education under the

¹⁷ OAR 581-015-2205(2)(a)—(d)

¹⁸ OAR 581-015-2205(3)

category of Specific Learning Disability. "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific Learning Disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.¹⁹

The Parents describe that, during the fall of 2020, the Student avoided schoolwork, failed to turn in homework, and had difficulty completing assignments. The Parents report that the Student required significant assistance from Parents and a private tutor for math. The Parents attributed work avoidance and failure to complete assignments to the Student's anxiety. The Parents also reported to the District that the Student had undergone a private assessment, which the Parents say that they placed in the School Psychologist's mailbox just before the COVID-19 closure.

District staff interviewed by the Department reported that they were unaware of these struggles at home. During their interview with the Department, the School Psychologist noted that the Student may have exhibited indications of anxiety regarding certain areas of academic performance, but not all. Rather than indicate a new diagnosis, the School Psychologist observed that subject-specific anxiety was indicative that the Student's disability was specific to certain areas of academic performance. They further noted that this would be in keeping with the eligibility category of Specific Learning Disability.

The Department does not substantiate this allegation.

5. Placement of the Child

The Parents alleged that the District violated the IDEA when it enrolled the Student in an Academic Skills class during the 2020-2021 school year. Specifically, the Parents alleged that enrollment in this course amounted to change in placement because it resulted in the Student's removal from the general education environment for more than the time anticipated by the Student's IEP then in effect.

School districts must ensure that the educational placement of the child with a disability is determined by a group of people, including the parents, and others knowledgeable about the child.²⁰ The student's educational placement must be made with consideration of least restrictive environment provisions.²¹ The placement should also be based on the Student's IEP.²² "Educational placement" means the general educational program of the student.²³ A change in educational placement occurs when the student is moved from one type of program to another.²⁴ An offer of FAPE is generally the IEP developed by a

¹⁹ OAR 581-015-2000(4)(b)(J)

²⁰ OAR 581-015-2250(1)(a)

²¹ OAR 581-015-2250(1)(b)

²² OAR 581-015-2250(1)(c)

²³ N.D. v. Hawaii Department of Education, 600 F.3d 1104, 116 (9th Cir. 2010)

²⁴ *Id.*

district. To “meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²⁵ A change in educational placement can result when there is significant change in the student’s program even if the student remains in the same setting.²⁶ However, the change to distance learning does not constitute a change in placement for students with IEPs.²⁷

On February 5, 2020, the District determined that the Student’s placement should be 90% or greater in the general education environment. The Student’s IEP called for 30 minutes of SDI per week in writing skills and 30 minutes of SDI per week in reading/language arts. During the 2019-2020 school year, the Student’s Parents sent emails to the District inquiring whether the Academic Skills class offered at the high school level would be appropriate for the Student, writing, “In addition to the four Required Classes, we’re [sic] highlighted the need for: - Academic Skills (SPED) – Math Lab to support Algebra 1-2...”

Following the closure of schools due to the COVID-19 pandemic, the District restructured the course schedule for all students in the high school. This model saw normally year-long courses grouped into fall or spring semesters and delivered through a distance learning method. On January 15, 2021, the Student’s IEP team determined the Student’s educational placement would be 90% in general education. The Student’s placement determination notes, “[Student] is attending an Academic Skills class during CDL. This is 1 of 4 classes, resulting in 25% of [their] school schedule in a special education placement. [Student] was more engaged during small-group and individual instruction. We will move to afternoon sessions for reading and writing instruction starting February 1, 2021 (second semester). This is greater than 90% in general education settings, which allows [Student] to add an elective class to [their] schedule.”

As a result of the COVID-19 pandemic, the District changed the schedule of course offerings for all students in the District. As a result of these changes to the course schedule, the Student’s Academic Skills class became the primary locus for the delivery of SDI as described in the Student’s IEP. As a result, the Student received more service time than that required by the Student’s IEP during the fall semester of the 2020-2021 academic year, but will receive less SDI during the spring semester, due to the District’s schedule. Given the unprecedented challenges created by the closure of schools during the pandemic, some degree of flexibility has to be considered with respect to how school districts deliver services to students. Overall, the Student was removed from the general educational environment for 12.5% of the time rather than the 10% removal called for in the IEP. The Student’s educational program was not significantly changed, nor is there any evidence that the Student was negatively impacted by this delivery model.

The Department does not substantiate this allegation.

6. Least Restrictive Environment

The Parents alleged that the District violated the IDEA when it enrolled the Student in an

²⁵ *Endrew F., v Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017)

²⁶ *Id.*

²⁷ Oregon’s Extended School Closure Special Education Guidance, March 2020, pg.

Academic Skills class during the 2020-2021 school year. The Parent alleges that enrollment in this course amounted to a removal from the general education environment for more than the time anticipated by the Student's IEP then in effect, resulting in the Student being placed in a more restrictive environment than the Student required.

It is the responsibility of the district to ensure, to the maximum extent appropriate, that children with disabilities are educated with children who do not have disabilities.²⁸ Districts must ensure that removal from the regular education environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁹

The District's move to comprehensive distance learning (CDL) meant that all students in the district received their education at home, through video conferencing platforms. All students were therefore educated separately. CDL had the effect of limiting the ways in which SDI could be delivered to students. During interviews with District staff, they noted that the traditional models of providing SDI instruction, either pushing into a student's classroom to provide support, or pulling a student out of the class to provide support were no longer applicable to the video conference model. As such, the Student's Academic Skills class became the primary locus of delivering SDI.

The Department does not substantiate this allegation.

7. Prior Written Notice

The Parents alleged that the District violated the IDEA when it did not provide prior written notice before the Student's enrollment in the Academic Skills class. The Parents alleged that enrollment in this class amounted to a change in placement because it resulted in the Student's removal from the general education environment for more time than anticipated by the Student's IEP then in effect.

Within a reasonable period of time before a school district proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, the district must provide prior written notice to the parent of the child.³⁰ The prior written notice must contain a description of the action proposed or refused by the school district.³¹ The notice must also explain why the district proposes or refuses to take the action, and a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action.³² In March 2020, the Department issued guidance to local education agencies regarding the impact of distance learning due to the COVID-19 pandemic.³³ This guidance was based on guidance issued by the U.S. Department of Education.³⁴

²⁸ OAR 581-015-2240(1)

²⁹ OAR 581-015-2240(2)

³⁰ OAR 581-015-2310(2), (2)(a)

³¹ OAR 581-015-2310(3)(a),

³² OAR 581-015-2310(3)(b), (3)(c), (3)(d)

³³ Oregon's Extended School Closure Special Education Guidance, March 2020

³⁴ Questions and Answers on Providing Service to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, March 2020, available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf> [last visited 5/17/2021]

This guidance indicated that school districts should consider the impact of distance learning on Students with IEPs, but that the general education move to distance learning plans does not require or constitute a change in placement for the student with an IEP.³⁵

The alteration to the percentage of time the Student spent away from general education peers via distance learning was the result of the District's move to comprehensive distance learning. This move altered the schedule of available classes for all students including the amount of time students spent in virtual classrooms. As previously observed, the Student's SDI could only be delivered through distance learning in a separate setting from the Student's general education classes. Because of these pandemic-induced changes, the Student spent slightly more time away from general education peers than initially anticipated by the Student's IEP developed before the pandemic.

The Department does not substantiate this allegation.

8. When IEPs Must Be In Effect

The Parents alleged that the District violated the IDEA when it failed to appropriately inform the Student's teachers and providers of the special responsibilities for implementing the Student's IEP. The Parents further alleged that the District failed to provide services to the Student in conformity with the Student's IEP. Specifically, the Parent alleges that the District did not provide the Student with the 30 minutes of SDI called for in the Student's IEP.

Districts must have an IEP in effect for each student with a disability within the district's jurisdiction.³⁶ Districts must provide special education and related services to a child with a disability in accordance with an IEP.³⁷ After developing an IEP, a district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider, or other service provider who is responsible for its implementation.³⁸ In addition to its accessibility, the district must inform each teacher and provider of their specific responsibilities for implementing the student's IEP and the specific accommodation, modifications, and supports required by the IEP.³⁹

The Parents reported concerns regarding whether the Student's teachers were aware of the Student's IEP, specifically whether they knew the Student had dyslexia. The Parents reported concerns that at least one teacher in the Student's middle school reported seeing no need for special education for the Student. The Parents speculated whether this was due to the District not informing teachers of the Student's accommodations. The Student's Case Managers at the middle and high school were able to explain how teachers were informed of the Student's IEP and relevant accommodations, and all of the Student's teachers could access the Student's IEP via the student data system. As noted during previous sections, during the fall of 2020, Student received more than the 30 minutes of SDI in writing skills and reading/language arts as called for in the Student's January 5,

³⁵ Oregon's Extended School Closure Special Education Guidance, March 2020, pg. 5.

³⁶ OAR 581-015-2220(1)(a)

³⁷ OAR 581-015-2220(1)(b)

³⁸ OAR 581-015-2220(3)(a)

³⁹ OAR 581-015-2220(3)(b)

2020 IEP.

The Department does not substantiate this portion of the allegation.

The District acknowledges that due to circumstances stemming from the COVID-19 pandemic and the Governor's Executive Order 20-08, "Stay Home, Save Lives" order, the Student may not have received the anticipated number of service hours following the resumption of school via distance learning during the first week of April 2020. The Student's Case Manager at the middle school reported that school personnel began contacting students with IEPs during the middle of April 2020. From late April through the end of the 2019/20 school year, the Student's middle school Case Manager worked to assist the family with such tasks as allowing the Student's private tutor to access the online classroom platform, technical issues with the online classroom, and working to modify assignment due dates in conformity with the Student's IEP accommodations. The middle school Case Manager noted that Students did not receive grades for the spring semester due to pandemic-caused school disruptions. However, the shift to online learning disrupted the delivery of SDI to the Student following the resumption of school in April 2020 through the end of the school year in June 2020.

The Department substantiates this portion of the allegation.

9. Review and Revision of IEPs

The Parents alleged that the District violated the IDEA when it failed to review and revise the Student's IEP to address the Student's lack of expected progress toward IEP goals. The Parents alleged that the District had sufficient data, in the form of information provided by the Parent and the Student's academic performance, to trigger the District to recognize the need to address the lack of expected progress toward annual IEP goals. The Parents also alleged that the Student's procrastination, work refusal, frequent test retakes, and crying were contributing factors to put the District on notice of the need to revise the Student's IEP. The Parents further alleged that the Parent's request for the District to evaluate the Student in the areas of mathematics, considering EasyCBM test results that allegedly showed "high needs" in mathematics, were sufficient to demonstrate the need to revise the Student's IEP.

Each school district must ensure that the IEP team reviews the student's IEP periodically, but at least once every 365 days.⁴⁰ IEPs are reviewed to determine whether the annual goals for the child are being achieved.⁴¹ IEP teams should revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum.⁴² IEP teams should also revise a student's IEP based on the results of any reevaluation conducted, information about the child provided by the parents, the child's anticipated needs, or other matters.⁴³

⁴⁰ OAR 581-015-2225(1)

⁴¹ OAR 581-015-2225(1)(a)

⁴² OAR 581-015-2225(1)(b)(A)

⁴³ OAR 581-015-2225(1)(b)(B)—(E)

The Student made progress toward the goals listed in the Student's IEP. Interviews with District staff revealed the perception that the Student was performing well overall academically. The District's School Psychologist noted that the test data in question was not dispositive but was considered as part of the District's initial evaluation. During interviews with the Parents, they reported that the Student required significant support to complete academic assignments. These home support needs were not communicated to the District until after the filing of this Complaint.

The Department does not substantiate this allegation.

10. Free Appropriate Public Education (FAPE)

The Parents alleged that the District's failure to properly inform the Student's teachers and service providers of their specific responsibilities for implementing the Student's IEP, including the specific modifications and supports required, which the Parent alleges contributed to the District's failure to deliver services, violated the IDEA by denying the Student a FAPE. The Parents alleged that the District's failure to provide the 30 minutes of Specially Designed Instruction called for in the Student's IEP, as evidenced by the Student's literacy grade level achievement and missed educational opportunities, violated the IDEA by denying the Student a FAPE. Finally, the Parents alleged that deficiencies in the Student's IEP, given the alleged failure to fully evaluate, articulate the Student's specific needs, relevant diagnoses, and academic needs, produced an IEP that was not reasonably calculated to confer benefit to the Student thereby violating the IDEA by denying the Student a FAPE.

School districts are required to provide a free appropriate public education to all school aged children with disabilities for whom the district is responsible.⁴⁴ In determining whether a District has denied Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.⁴⁵ While harmless procedural errors do not constitute a denial of FAPE,⁴⁶ "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."⁴⁷ FAPE is provided when the unique circumstances of the child are considered, and the IEP is appropriately ambitious and reasonably calculated to permit advancement through the general education curriculum.⁴⁸ An offer of FAPE is generally the IEP developed by a district. To "meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁴⁹

The Parents alleged that the Student's teachers were not, but should have been, informed of the Student's dyslexia diagnosis. During the Department's interviews with District staff at both the middle and high school levels there was agreement regarding the way teachers were informed regarding the Student's IEP. The Student's School Psychologist

⁴⁴ OAR 581-015-2040(1)

⁴⁵ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (U.S. 1982)

⁴⁶ *L.M. v Capistrano Unified Sch. Dist.*, 556 F3d 900, 910 (9th Cir. 2008)

⁴⁷ *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1079 (9th Cir. Ariz. 2003)

⁴⁸ *Id.* (slip op., at 13)

⁴⁹ *Endrew F., v Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017)

noted that dyslexia is included in the special education eligibility of SLD. There is no information in the record that the Student's teachers were confused or disadvantaged in delivering services to the Student due to a choice of terms.

The Department does not substantiate this portion of the allegation.

The Parents alleged that aspects of the Student's SDI were not provided to the Student in conformity with the Student's IEP. The Parents allege that these failures contributed to the Student performing below grade level in reading. The Student's reading level was one of the causes for the development of the Student's IEP. Following the development of the IEP, the Student has shown progress toward IEP goals. The concerns articulated here appear to be related to the Student's academic performance prior to the creation of the IEP, which falls outside of the one-year look back provided by the IDEA.

The Department does not substantiate this portion of the allegation.

The Parents alleged that the District failed to fully evaluate the Student, which resulted in deficiencies to the IEP, which in turn disadvantaged the Student. The Student showed academic improvement and progress toward the goals from the February 5, 2020 IEP. Despite the Parents' suggestion that the Student struggled in mathematics, the Student performed well. Only after the filing of this Complaint did the Parents communicate the significant assistance the Student required at home to complete assignments. Following the filing of this Complaint, the Parents communicated the Student's high needs in mathematics. As a result, the District agreed to evaluate the Student for additional areas of need.

The Department does not substantiate this portion of the allegation.

11. Additional Findings

A. Placement of the Child

As previously noted, a student's educational placement must be based on a student's IEP.⁵⁰ The Student's IEP required 30 minutes of SDI per week. Although the COVID-19 guidance provided by the Department to school districts stated that the move from in-person instruction to CDL did not constitute a change in placement, this guidance also states that when school districts are unable to provide services to students that are required by an IEP, the District is required to either hold an IEP meeting to draft a new IEP or, in the alternative, the parties can amend the IEP by written agreement.⁵¹ Neither of these things occurred in this case. From the time the Student began participating in distance learning until the end of the 2019-2020 school year, the District provided no SDI to the Student, substantially and unilaterally changing the Student's educational placement.

⁵⁰ OAR 581-015-2250(1)(c)

⁵¹ Oregon's Extended School Closure Special Education Guidance, March 2020

B. Prior Written Notice

OAR 581-015-2310 requires that prior written notice be provided to parents when a district proposes to initiate or change the educational placement of a student. In this case, the failure to provide SDI to the Student created a change in the Student's educational placement; however the District provided no prior written notice to the Parents with respect to the change in placement referenced in the preceding paragraph.

C. When IEPs Must Be in Effect

The District did not gather data regarding the Student's progress during the spring of 2020. The Student's IEP calls for quarterly progress reporting. The District began collecting data for the Student during the fall semester of the 2020-2021 school year. That data was reported on November 24, 2020, and January 15, 2021.

V. CORRECTIVE ACTION⁵²

*In the Matter of Portland Public Schools
Case No. 021-054-004*

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

Action Required	Submissions	Due Date
1. The District shall provide training to relevant Special Education staff around procedural safeguard requirements for students with IEPs during disruption of school schedules, including the provision of specially designed instruction, prior written notice requirements, and reporting of progress toward IEP goals.	Copy of agenda and training materials to County Contact	August 1, 2021
	Copy of training sign-in sheet	December 1, 2021
2. The District shall hold an IEP meeting to make an individualized determination whether and to what extent compensatory services may be needed, consistent with applicable requirements, including to make up for any skills that may have been lost due to the District's failure to provide SDI during	Documentation showing that such a determination was made	September 15, 2021

⁵² 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)).

the Spring 2020 Extended School Closure.		
3. The District shall provide all required compensatory services.	Evidence that all required compensatory services were provided	June 15, 2022

Dated: this 3rd Day of June 2021



Sara Green
Interim Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 3, 2021

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)