

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Lake Oswego School )  
District 7J )  
 )

FINDINGS OF FACT  
CONCLUSIONS  
AND AMENDED<sup>1</sup>  
FINAL ORDER  
CASE NO. 21-054-034

**I. BACKGROUND**

On September 29, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Lake Oswego School District (District). The Parent 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.<sup>2</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>3</sup>

On October 5, 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 October 19, 2021.

The District submitted a *Response* on October 18, 2021, denying all of the allegations, providing an explanation, and submitting supporting documents in support of the District's position. The Parent submitted supporting documents on October 26, 2021. In total, the District submitted the following items:

1. Response to Complaint Case No. 21-054-034
2. Table of Contents Case No. 21-054-034
3. IEP and special education placement determination, annual, 4/13/21
4. Prior Written Notice, re: annual IEP 4/19/21
5. IEP, amendment, 6/4/21
6. Prior Written Notice, re: added short-term objective, 6/4/21
7. Prior Written Notice, re: stand ready, 9/15/21
8. Prior Written Notice, re: refusal to schedule IEP meeting 10/11/21
9. Notice of Team Meeting, 11/17/20
10. Meeting Notes, IEP Review Meeting, 11/17/20
11. Notice of Team Meeting, 12/1/20
12. Meeting Notes, IEP Review Meeting, 12/15/20
13. IEP Progress Report, 1/29/21
14. Notice of Team Meeting, 4/13/21

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<sup>1</sup> On November 24, 2021, the Department issued a final order in this matter, On January 4, 2022, the Parents requested reconsideration of the final order. The Department accepted this request. After reconsideration, the Department issues this amended final order.

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>3</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

15. Notice of Team Meeting, 4/19/21
16. Meeting Notes, annual IEP part 1 and 2, 4/13/21 and 4/19/21
17. Notice of Team Meeting, 5/25/21
18. Parent Concerns Statement, 5/25/21
19. IEP Meeting Minutes, 5/25/21
20. IEP Progress Report, 5/28/21
21. Parent Concerns Statement, 5/25/21 (duplicate)
22. Parent concerns regarding District IEP implementation, 9/26/21
23. Notice of Team Meeting, 9/29/21
24. Meeting Notes, IEP review, 9/29/21
25. i-Ready Diagnostic Results, Reading, 9/22/21
26. i-Ready Diagnostic Results, Math, 9/14/21
27. i-Ready Historical Results, Reading, 20-21
28. i-Ready Historical Results, Math, 20-21
29. Oregon Statewide Assessment, Individual Student Report, 5/20/21
30. i-Ready for Families, Reading, 6/15/21
31. i-Ready for Families, Math, 6/15/21
32. Individual Student Performance Profile (DIBELS), 20-21
33. Student History (DIBELS), 17-18
34. Reading Support, 1st grade, 6/18
35. Progress Report, grade 4, 20-21
36. Report Cards, KG-3, 16-20
37. Student Permanent Record, 6/11/20
38. Eligibility Summary Statement, 4/26/19
39. Disability Statement, Specific Learning Disability, 4/26/19
40. Disability Statement, Communication Disorder, 4/26/19
41. Assistive Technology Handwriting Assessment, 4/2/19
42. Language Evaluation, 4/15/19
43. Occupational Therapy Evaluations, 4/1/19
44. Initial Psycho-Educational Evaluation, 11/13/18
45. Kaufman Test of Educational Achievement and Feifer Assessment of Reading, 9/27/18 and 9/28/18
46. Student Evaluation Report, 9/11/18
47. Background and Developmental History, 9/24/18
48. Speech Evaluation, 1/31/18
49. Graphic Organizer for Summarizing (student work samples), no dates
50. Title and Publishers of Instructional Materials, no date
51. School Board Policy, IGBAF-AR, Special Education-IEP, 3/7/16
52. School Board Policy, IIA, Instructional Resources/Instructional Materials, 12/8/14
53. Staff Knowledgeable, no date
54. Findings of Fact, Conclusions, and Final Order, Case No. 19-054-002
55. Writing Samples, 9/25/20, 11/18/20, 1/15/21, 4/20/21
56. IEP reading goals, 1/3/0/19, 4/22/20, 4/26/19
57. Email, re: Student's progress notes, 2/12/21
58. Email, re: Student's progress notes, 6/17/21
59. Email, re: your scan (statement from 20/21 classroom teacher), 11/3/21
60. Lexia Core 5 Reading, scope and sequence, no date
61. Prior Written Notice, re: eligibility, no language or OT, 4/26/19
62. Meeting notes, re: ESY and eligibility, 4/26/19
63. Email, re: request for additional information, 11/8/21

In total, the Parents submitted the following items:

Case No. 21-054-034

1. 21-054-034 Request for Complaint Investigation, 9/26/21
2. Parent letter for IEP meeting, 4/19/21
3. Parent letter for IEP meeting, 5/25/21
4. CCSS Reading Foundational Skills, 4/11
5. Dyslexia Handbook, no date
6. Student work sample (5th grade ruler challenge reflection), no date
7. Student work sample (weekly goals), no date
8. Supporting documents outline, no date
9. Individual Student Performance Profile (DIBELS), 20-21
10. Student Progress Report (Lexia), 9/30/20-2/22/21
11. Florida Center for Reading Research (Lexia Reading), no date
12. Supporting documents outline, no date
13. Email, re: meeting today and research, 11/17/20
14. Email, re: needed clarification, 4/23/21
15. Supporting documents outline, no date
16. Berkeley Unified School District Complaint, no date
17. Dear Colleague Letter, re: general education curriculum 11/16/15
18. Questions and Answers (Q&A) on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1, 12/7/17
19. Substantive vs. Procedural Violations Under the IDEA-Berney & Sang, 6/9/21
20. Progress Monitoring: Legal Issues and Recommendations for IEP Teams, 2006
21. CEC, Annual Convention and Expo (flyer), 4/5/20-4/8/20
22. Student Snapshot/Work Samples, various dates
23. 21-054-034 Parent Concerns IEP Meeting 9/26/21
24. 21-021-034 Parent Response to District Response, 10/26/21
25. Parent input statement, 4/19/21
26. Parent input statement, 5/25/21
27. Prior Written Notice, re: refusal to hold IEP meeting 10/11/21 duplicate
28. Parent input statement, 9/29/21
29. Wilson Reading System, scope and sequence chart, no date
30. Table 1, re: Data compiled by parent, varies
31. 80% mastery, no date
32. Email, re: CSSD loses another lawsuit over special education program, 11/4/21
33. Email, re: IEP goal progress reporting, what is meaningful progress?, 11/3/21
34. Email, re: questions I would ask, 11/2/21
35. Email, re: same case different article highlighting the need for appropriate intervention or kids will fail, 11/4/21
36. 21-054-034 IEP Meeting, 11/20
37. 21-054-034 Recorded IEP Meeting, 12/15/20
38. 21-054-034 Recorded IEP Meeting, 4/13/21, part 1
39. 21-054-034 Recorded IEP Meeting, 4/13/21, part 2
40. 21-054-034 Recorded IEP Meeting, 5/25/21

#### Additional Documents

1. 21-054-034 What Works Clearinghouse Lexia Reading Intervention Report, 2009
2. 21-054-034 Core5 and Dyslexia Product White paper

The Complaint Investigator interviewed the Parent on November 1, 2021. On November 3, 2021, the Complaint Investigator interviewed the District's Special Education Executive Director, the Student's Special Education Case Manager, school Principal, and a Teacher on Special

Assignment, who acted as District Representative at the IEP meetings regarding this matter. Virtual meetings were held instead of on-site interviews due to the COVID-19 pandemic. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The 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 September 30, 2020, to the filing of this Complaint on September 29, 2021.

The written Complaint alleges that the District violated the IDEA in the following ways:

<b>Allegations</b>	<b>Conclusions</b>
<p><b><u>Content of IEP</u></b></p> <p>The Parent alleges that the District violated the IDEA when the District failed to sufficiently measure the Student's progress toward IEP goals and failed to provide IEP progress reports to the Parent during the 2020-21 school year. The Parent also alleges the District failed to develop IEP goals and short-term objectives aligned with state and grade-level standards. Further, the Parent alleges the District used predetermined educational services with a lack of meaningful and consistent intervention, methodology, or instruction.</p> <p>(OAR 581-015-2200 and CFR § 300.320)</p>	<p><b><u>Substantiated in Part</u></b></p> <p>The District did not implement the accommodation of providing the Parent with weekly progress reports. However, this is an IEP implementation issue rather than an IEP content issue.</p> <p>The District did not develop a measurable annual IEP goal in the area of reading.</p> <p>The District did develop an annual IEP goal and short-term objectives that were aligned with state and grade-level standards.</p> <p>During the fall of 2020, the District imposed requirements on the use of certain instructional materials that prevented instructional staff from providing the Student with SDI, as described in the Student's IEP. However, the Student's IEP was later revised, and the Student ultimately made appropriate progress towards IEP goals.</p>
<p><b><u>Parent Participation</u></b></p>	<p><b><u>Substantiated in Part</u></b></p>

<p>The Parent alleges that the District violated the IDEA when the District failed to provide adequate progress monitoring data for the Parent to consider and to meaningfully participate in the development of the Student's IEP.</p> <p>In addition, the Parent alleges the District failed to consider the Parent's input about the Student's performance, needs, individualized education, and IEP goals.</p> <p>(OAR 581-015-2190 and CFR §§ 300.500, 300.327 &amp; 300.501(b))</p>	<p>The District's failure to provide the Parent with weekly progress reports during the 2020-21 school year was a failure to implement the IEP, but not a violation of OAR 581-015-2190.</p> <p>During IEP meetings, the District failed to respond to the Parent's questions and requests with either an amended IEP or a Prior Written Notice, refusing the request. The repeated lack of response by the District deprived the Parent an opportunity to participate in the development of the IEP for the Student.</p>
<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>The Parent alleges that the District violated the IDEA in ways that amounted to a denial of a FAPE when the District failed to provide an individualized education program that was designed to meet the Student's unique needs and support the student in making meaningful progress toward IEP goals.</p> <p>The Parent further alleges the Student is several years below state and grade-level standards as a result of the District's failure to provide a FAPE.</p> <p>(OAR 581-015-2140 and CFR §§ 300.500, 300.327 &amp; 300.501(b))</p>	<p><b><u>Substantiated</u></b></p> <p>The materials provided by the District offered systematic, explicit, direct, and multi-sensory instruction, as per the Student's IEP goal. However, the Student's SDI was not adapted until after the fall of 2020.</p> <p>The District's failure to respond to the Parent's questions and requests deprived the Parent of the ability to effectively participate in IEP decision-making along with the lack of a measurable reading goal resulted in a denial of FAPE.</p> <p>Based on the District's verifiable data, the Student is below grade-level standards.</p>

<p><b>REQUESTED CORRECTIVE ACTION</b></p> <ul style="list-style-type: none"> <li>• The District should be required to provide the Parents \$9,075 to fund, privately provided, Compensatory Education in the amount of 83 hours. On November 9, 2021, the Department received a request to revise the Compensatory Education award to \$27,000 to fund 200 hours of privately provided instruction.</li> <li>• The District should be required to pay for private, ongoing instruction until the Student is at the state and grade-level ELA standards in all areas of literacy (encoding, decoding, fluency, comprehension, and written language).</li> </ul>
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### **REQUESTED CORRECTIVE ACTION**

- The District should be required to pay for a third-party audit, selected by the Parent, of short term objectives in the academic area of reading to ensure the IEP goals and objectives are aligned toward state and grade-level standards.
- The District should be required to include in the IEP, and use, as intended, specifically named progress monitoring tools, and correct specific deficiencies in the IEP progress reports.

### **III. FINDINGS OF FACT**

#### **Background**

1. The Student is 11 years old and was in 4<sup>th</sup> grade during the Complaint window. The Student attends a local elementary school.
2. The Student is eligible for special education and related services due to a Specific Learning Disability due to dyslexia , and a Communication Disorder due to articulation, with eligibility due dates of April 25, 2022.
3. The Student is bright, curious, patient, determined, and hard-working. When not at school, the Student is interested in sports, friends, bikes, and listening to audiobooks.
4. The Student has difficulty with word decoding and spelling skills, which impacts the Student's ability to read and comprehend grade-level text independently.
5. The Student's Present Level of Academic Achievement and Functional Performance (PLAAFP) indicates the Student's learning disorders are dyslexia and dysgraphia.
6. During the 2020-21 school year, the District offered 3 hours of online instruction per day, with an emphasis on literacy and math, and independent projects in the afternoon as the Comprehensive Distance Learning (CDL) program. The Student also received special education services for reading for 1 hour daily. In the spring, the Student received some instruction on site and the special education services remained online for the remainder of the school year.
7. The Student receives Specially Designed Instruction (SDI) in the areas of language arts and literacy (reading instruction) for 150 minutes per week and communication-speech services for 90 minutes per month. No related services were deemed necessary.
8. The Student had supplementary aids and services for the 2020-21 school year that included the following accommodations: break large assignments into manageable tasks, weekly progress reports sent home, written assignments are not marked down for spelling errors, extra time on tests, test questions and directions will be read to Student when not testing reading ability, provide different opportunities to respond for social studies and science tests, provide a sentence starter, provide lecture notes, audio and digital text for reading materials, no timed tests, graph paper for multi-digit math problems, preferential seating, access to Chromebook and Google extensions, break down the thought process, and check for understanding when directions are given. All accommodations were listed to be implemented school wide with a frequency of 380

minutes per day.

9. Supports for school personnel included consultation to teaching staff from the learning and assistive technology specialists.
10. The Student's special education placement determination for the April 13, 2021 IEP is listed as general education for more than 80% of the day.

### **Content of the IEP**

11. The District describes its use of Lexia Core5 reading materials as primarily for SDI, but also as a supplement to general education instruction and a tool for Multi-Tiered System of Supports (MTSS). The Lexia Core5 Reading program is described as a "systematic and structured approach to six critical areas of reading: phonological awareness, phonics, structural analysis, automaticity/fluency, vocabulary, and comprehension." The program's white paper further describes the program as "explicit and multi-sensory."
12. The Parent's understanding of the SDI the Student was receiving for reading was that Lexia Core5 was completed during the Student's session with the licensed Learning Specialist. The online program included audio directions and the Learning Specialist would tell the Student how to spell words when independent attempts were incorrect. The online instruction included repetition and encoding instruction.
13. On November 17, 2020, the District responded to the Parent's request for research on Lexia Core5 and i-Ready as well as the Parent's question about the use of Lexia Core5 with the Student by sharing that the District was using this program as a pilot because it included the big five reading areas (phonological awareness, phonics, fluency, vocabulary, and comprehension), was an online program, scored the highest on the District rubric, and did not require extensive training. In addition, the District explained that all elementary special education teachers "go through an extensive Orton-Gillingham (OG) regimen."
14. The District required instructional staff to implement the Lexia Core5 Reading program with fidelity until November 2020, at which time staff was given the flexibility to use professional judgment based on student needs, and multiple tools were utilized. Per staff interviews, additional instructional tools that were utilized specifically with the Student for pre-teaching or re-teaching concepts included materials from the Blosser Center, the Dyslexia Toolkit, Orton-Gillingham instructional strategies, and Spelling Success. Instructional staff provided multi-sensory instruction with auditory prompts, visual cues, dictation, and writing.
15. The Student's April 20, 2020, and April 13, 2021 IEPs both include the accommodation of providing weekly progress reports to the Parent. There is no evidence that the accommodation of a "weekly progress report sent home" was implemented during the 2020-21 school year. On November 8, 2021, the District confirmed that weekly progress reports were not being provided to the Parent.
16. DIBELS data collected on the Student's oral reading fluency (ORF) indicated that in January 2021, the Student was reading 56 wpm with 93% accuracy. The District's 4<sup>th</sup> grade standard for a student's ORF to be considered proficient is 166 wpm.

17. A private evaluation conducted on September 11, 2018, indicated the Student had dyslexia. For reading instruction, the examiner recommended two different approaches: the Structured Word Inquiry, or an Orton-Gillingham-based system, if the other one was not available.
18. The private evaluation report also indicated the Student's handwriting samples contained, "many of the classic signs of dysgraphia." The District conducted an Occupational Therapy evaluation in April 2019 and determined that neither SDI nor related services were needed. Rather, the Student's IEP included numerous accommodations to support the Student's handwriting such as encouraging handwriting practice, use of different writing utensils, and paper and games that incorporate the use of handwriting. The Student's reading goal does include instruction in encoding, which is the process of using letter and sound knowledge to write.
19. At the November 17, 2020 IEP meeting, the Parent requested a statement be included with the i-Ready reading assessment data that the assessments were read to the Student. The Parent also expressed concerns about the instructional materials, Lexia Reading, and whether the program provided explicit instruction. District staff stated the instructional materials currently being used would continue and instructional staff would supplement with other approaches.
20. At the December 15, 2020 IEP meeting, District instructional staff shared that when they were supporting the Student with the instructional materials the Student was asked to slow down and use a whiteboard. Staff also shared that instruction is reviewed, the Student spells out the words, and Orton-Gillingham approaches were being used. The Parent asked if they needed to request testing in math to get the Student support in math. District staff indicated math assessments would be completed in January of 2021. The team reviewed previous classroom-based assessment data in the area of math and it was noted the Student's math composite score was at grade level. The Student received a score of 3 for both numbers and operations, and measurement and data; the Student's geometry skills were scored as a 2.
21. The District conducted diagnostic assessments of the Student's reading skills on February 22, 2021, and April 9, 2021. Both assessments demonstrated the Student was making progress in vowel combinations, r-controlled vowels, advanced word chains, and multi-syllable words.
22. At the April 13, 2021 IEP meeting, the Parent requested the i-Ready assessment results be removed from the IEP. After a team discussion, it was agreed to omit these results. The IEP meeting continued into the next week. At the IEP meeting held on April 19, 2021, the Parent requested information on how the instructional materials were specifically addressing vowel-consonant 'ee' instruction. The District's instructional staff shared they were bringing in the Orton-Gillingham approach to make the instruction more explicit for the Student. A short-term objective for reading irregular words was added to the reading goal.
23. The Student's April 13, 2021 annual IEP reading goal was, "using a systematic, explicit, direct, and multi-sensory approach, the Student will improve reading skills in the area of accuracy, know and apply grade-level phonics and word analysis skills in decoding words, and read with sufficient accuracy and fluency to support comprehension." The annual goal does not include a numerical value. This reading goal also included three short-term



objectives for decoding and encoding one and two-syllable words, decoding and encoding multisyllabic words, and, reading irregular words. The short-term objectives were first and second-grade standards and all included numerical values.

24. At the May 25, 2021 IEP meeting, the Parent expressed concern about the instructional materials being used for the Student's SDI for reading. District staff shared anecdotal information that the Student was meeting grade-level standards and that systematic and sequential instruction was being used to address the Student's needs. Multiple team members expressed concern that the Student did not do as well on assessments as on classroom-based work. The IEP team discussed that there was inconsistent data between the Student's classroom performance and assessments. District staff reported that the Student's performance was at grade level in the classroom because the Student's IEP accommodations were being implemented. The District also indicated the Student's level of engagement declines when completing assessments or reviewing materials that were already provided during the Student's private tutoring sessions.
25. At the IEP meeting on September 29, 2021, the Parent expressed concern that the Student's literacy gap had widened over the past three years and the IEP goals from the last IEP had not been met. The Parent also requested that reading fluency and comprehension goals be re-established. The 2019, 2020 and 2021 IEP Language Arts/Literacy annual goals all included fluency and comprehension. The Parent did not want the Student to continue receiving special education services until they knew what the District going to do about the Student's widening literacy gap, and they also did not want to revoke consent for services. The District indicated they stood ready to provide services to the Student.
26. Diagnostic results from the i-Ready reading assessment completed on October 13, 2020, indicated the Student's reading skills 'tested out,' which means the Student's skills for phonological awareness, phonics, and high-frequency words were above the minimum benchmark. The Student's skills for vocabulary and comprehension were at the early 4th- grade level. The assessment was read to the Student.
27. Diagnostic results from the i-Ready reading assessment completed on February 4, 2021, indicated the Student's reading skill 'tested out' which means the Student's skills for phonological awareness, phonics, and high-frequency words were above the minimum benchmark. The Student's skills for vocabulary and comprehension were at the third grade level, and at the late fourth-grade level for comprehension of informational text. The assessment was read to the Student.
28. Diagnostic results from the i-Ready reading assessment completed on June 4, 2021 indicated the Student's reading skills 'tested out' which means the Student's skills for phonological awareness, phonics, and high-frequency words were above the minimum benchmark. The Student's skills were at the second grade level for vocabulary, and at the third grade level for comprehension. This assessment was not read to the Student and was completed independently.
29. Diagnostic results from the i-Ready reading assessment completed on September 22, 2021, indicated the Student's reading skills 'tested out' which means the Student's skills for phonological awareness, phonics, and high-frequency words were above the minimum benchmark. The Student's skills were at the third grade level for vocabulary and comprehension. This assessment was not read to the Student and was completed

independently.

30. The Student's ORF scores on the DIBELS Next assessment were 56 words correct and 93% accuracy in January 2021, and 73 words correct and 95% accuracy in May 2021.
31. The Student's fourth-grade progress report indicates the student was proficient in all English Language Arts Academic Learning Targets except one, in which the Student received a nearly proficient rating.
32. During the 2020-21 school year, the following instructional materials were used for the Student's SDI in the area of reading: Core5, Dyslexia Toolkit, Orton-Gillingham, and Spelling Success.
33. The Lexia Core5 Reading Program scope and sequence details the components included in the instruction. For example, the Student started at Level 9 (end of 1<sup>st</sup> grade) and would have received phonological awareness and phonics instruction in short and long vowels sounds, manipulating sounds, digraphs, reversible letters, word families, contractions, closed-open-silent e syllables, and timed silent reading at the word level.
34. Neither the April 22, 2020 IEP nor the April 13, 2021 IEP included the anticipated dates that progress reports were to be provided to the Parents.

### **Parent Participation**

35. During the Complaint window, the Student's IEP team met six times: November 17, 2020; December 15, 2020; April 13, 2021; April 19, 2021; May 25, 2021; and September 29, 2021. All of the IEP meetings, except the September 29, 2021 IEP meeting, were recorded.
36. The District provided the Parent with an electronic version of the Student's IEP progress reports along with the Student's report cards on February 12, 2021 and June 17, 2021.
37. The Parent provided the Student's IEP team with Parent Input Statements for the April 19, 2021; May 25, 2021; and September 29, 2021 IEP meetings. The Parent Input Statements included requests for:
  - a. Information on how the Student's dysgraphia was being addressed,
  - b. The addition of spelling and writing goals to the Student's IEP,
  - c. The addition of reading fluency and comprehension goals to the Student's IEP,
  - d. The use of a program other than Lexia Core5 Reading,
  - e. Information about the grade-level state standards the Student was performing,
  - f. Information on the progress monitoring tools being used, and
  - g. The addition of specific measurements to the annual reading goal.
38. IEP Meeting notes from November 17, 2020 indicated the IEP team reviewed i-Ready data. Lexia Core5 Reading data was reviewed at the December 15, 2020 IEP meeting. At the May 25, 2021 IEP meeting, the IEP team reviewed the phonics screener.
39. District staff met with the Student's private tutor and developed a short-term objective for multisyllabic words that were added to the Student's reading goal per a PWN dated June 4, 2021.

40. On September 14, 2021, the Parent requested that the District suspend IEP services to the Student until an IEP meeting could be scheduled to review the Student's IEP goals, intervention methods, and monitoring. The District issued a Prior Written Notice (PWN) on September 15, 2021, notifying the Parent that the Student's special education services would be available to the Student if the Parent would like to take advantage of the services.
41. On September 20, 2021, the Parent requested an IEP meeting, and the IEP team met on September 29, 2021.
42. The records provided by the District do not include PWNs addressing the following Parent requests made during the 2020-21 school year: how the Student's dysgraphia was being addressed, spelling and writing goals, reading fluency and reading comprehension goals, and that Lexia Core5 Reading not be used for the Student's instruction.

### **Free Appropriate Public Education (FAPE)**

43. The Student's 2020-21 Oregon Statewide Assessment Individual Student Report for Mathematics included the Student's overall score of 2520, which is a Level 3 and is considered to be meeting the State standards. The District did not administer the Statewide assessment for reading during the 2020-21 school year.
44. The Student's general education progress report for the 2020-21 school year indicated the Student was proficient in all reading skills except for retelling text details and making inferences, in which the Student was nearly proficient. The Student's writing skills were all scored as proficient. The Student's math skills were proficient in all areas except using multi-digit numbers, in which the Student was nearly proficient.
45. The Student's reading goal in the April 22, 2020 IEP included the following short-term objectives:
  - a. Accurately decode and encode (95%)
  - b. Short vowel words with consonant digraphs (baseline 6/10)
  - c. Vowel-consonant-e-words (baseline 1/4)
  - d. Soft c and g-word (no baseline)
  - e. Two syllable closed vowel words (baseline 0/10)
  - f. Two syllable with vowel words (0/10)
46. The Student's reading goal in the April 13, 2021 IEP included the following short-term objectives:
  - a. Accurately decode and encode (95%)
  - b. Vowel-consonant-e-words (baseline 3/4)
  - c. Two syllables closed vowel words (baseline 8/10)
  - d. Two syllables with long vowel words (7/10)
  - e. Vowel teams (no baseline)
47. The Student's June 25, 2020 Progress Report for the reading goal indicated:
  - a. 24/24(100%) vowel-consonant-e-words
  - b. 10/18 (55%) two-syllable closed vowel words
  - c. 18/26 (69%) vowel team words

- d. 92/100 (92%) irregular words
48. The Student's January 29, 2021 IEP Progress Report for the reading goal indicates the Student was making progress toward short-term objectives, although sometimes slowly:
- a. 16/20 (80%) vowel-consonant-e-words
  - b. 14/20 (70%) two-syllable closed vowel words
  - c. 5/10 (50%) two-syllable words with long vowels
  - d. 18/20 (90%) vowel team words
  - e. 93/100 (93%) irregular words
49. The Student's May 28, 2021 IEP Progress Report for the reading goal indicated progress toward the following short-term objectives:
- a. 95% accuracy soft c and g concept
  - b. 85% accuracy oi and oy vowel teams
50. Although the Classroom Teacher was not available for an interview, the District was able to secure a statement. In part, the Classroom Teacher reported "the Student was able to function as a typical 4<sup>th</sup> grader as the Student had many supports and accommodations in place. The Student was able to process information. Listening comprehension was strong...The Student's handwriting was poor, but with support, it was better. The Student often chose to type his work...or at times...would scribe if the Student requested."
51. The District provided four writing samples completed by the Student on September 25, 2020; November 18, 2020; January 15, 2021; and April 20, 2021. All the samples were typed and not scored to indicate if the Student's writing samples met grade-level standards. The Parent indicated some of the samples were typed by an adult so the samples were not necessarily an indication of the Student's skills in the area of conventions. During the April 19, 2021 IEP meeting the Classroom Teacher indicated the Student was proficient as the Student received a score of 3 for writing.
52. The District acknowledged that during the 2020-21 school year, student grades were assigned based on a sliding scale and classroom expectations were different given the pandemic.

#### **IV. DISCUSSION**

##### **Content of the IEP**

The Parent alleges that the District violated the IDEA when the District failed to sufficiently measure the Student's progress toward IEP goals and failed to provide IEP progress reports to the Parent during the 2020-21 school year. The Parent also alleges the District failed to develop IEP goals and short-term objectives aligned with state and grade-level standards. Further, the Parent alleges the District used pre-determined educational services with a lack of meaningful and consistent intervention, methodology, or instruction.

The Individualized Education Program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; a statement of measurable annual goals, including academic and functional goals and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives or benchmarks. The annual goals are designed to: meet the

child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability.<sup>4</sup>

The IEP must include a description of how the child'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 (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; a statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, and to be involved and progress in the general education curriculum.<sup>5</sup>

***The District Failed to Sufficiently Measure the Student's Progress Towards IEP Goals***

The Student's IEP annual reading goal and associated short-term objectives were aligned with state and grade-level standards. The annual reading goal cited 4th-grade state standards and the short-term objectives were aligned with 1<sup>st</sup> and 2<sup>nd</sup>-grade state standards. The IDEA does not require IEP teams to adopt short-term objectives that are at a student's grade level. The District developed an IEP goal with short-term objectives that were based on the unique needs of the Student. However, the Student's annual IEP reading goal was not measurable as there was no indication at what skill level the goal will be considered to be met. In this case, the District did not ensure the student had a measurable annual goal in reading, which precluded the District from sufficiently measuring the student's progress towards that goal.

The Department substantiates this portion of the allegation.

***The District Failed to Provide IEP Progress Reports to the Parent During the 2020-21 School Year***

The District met IDEA requirements for providing the Parent with IEP progress reports when the District emailed the reports to the Parent on February 12, 2021, and June 17, 2021. The Student's April 13, 2021 IEP included an accommodation that required the District to provide the Parent with a weekly progress report. The Parent asserts the District did not meet this requirement and the District did not have a record of progress reports being provided to the Parent every week. However, this is a failure to implement the IEP rather than a deficiency in the content of the IEP.

The Department does not substantiate this portion of the allegation.

***The District Failed to Develop IEP goals and Short-Term Objectives Aligned with State and Grade-Level Standards***

As previously noted, the Student's IEP annual reading goal and associated short-term objectives were aligned with state and grade-level standards. The annual reading goal cited 4th-grade state standards and the short-term objectives were aligned with 1<sup>st</sup> and 2<sup>nd</sup>-grade state standards. The IDEA does not require IEP teams to adopt short-term objectives that are at a student's grade level. The District developed an IEP goal with short-term objectives that were

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<sup>4</sup> OAR 581-015-2200; 34 CFR § 300.320

<sup>5</sup> OAR 581-015-2200; 34 CFR § 300.320

based on the unique needs of the Student..

The Department does not substantiate this portion of the allegation.

***The District Used Pre-Determined Educational Services with a Lack of Meaningful and Consistent Intervention, Methodology, or Instruction***

The Parent asserts that the Student did not receive the required instruction to make progress toward the Student's IEP goals, and grade and state-level standards because Lexia Core5 was not designed to provide systematic, explicit, direct, and multi-sensory instruction in reading. The instructional program does contain instructional features for students with dyslexia that are systematic, structured, explicit, and multi-sensory. The two evaluations conducted to determine the needs of the Student, including a private evaluation provided by the Parent, did not indicate only one methodology was required to support the Student's needs. The Parent's private evaluation recommended the use of either "Structured Word Inquiry" or an "Orton Gillingham-based system." This implied more than one tool or methodology could support the needs of the Student.

The District did provide the Student's instructors with instructional materials that met the Student's annual IEP goal of, "using a systematic, explicit, direct and multi-sensory approach, the Student will improve reading skills in the areas of accuracy." Under the IDEA, school districts are required to provide special education "based on peer-reviewed research to the extent practicable."<sup>6</sup> Research-based programs must be implemented with fidelity in order to be research-based. Therefore, requiring the Student's instructors to implement the Lexia Core5 program as intended is not, in itself, problematic. However, concurrent with the limitations on adaptations to the Lexia Core5 program, the District also restricted the Student's instructors from otherwise adapting instruction to meet the student's needs until after the November 2020 IEP meeting, at which point the District allowed the flexibility to use multiple tools to provide SDI.

The IDEA defines specially designed instruction as, "adapting, as appropriate to the needs of an eligible child...the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children."<sup>7</sup> In this case, although staff were required to implement the District's reading program with fidelity in order to provide SDI at the beginning of the school year, the IEP team revisited this decision. The Student made significant progress towards their goals and is functioning on or near grade level as a result. When a student is making adequate progress, there is no need for further adaptation of instructional approaches.

The Department does not substantiate this portion of the allegation.

**Parent Participation**

The Parent alleges that the District violated the IDEA when the District failed to provide adequate progress monitoring data for the Parent to consider and to meaningfully participate in the development of the Student's IEP. In addition, the Parent alleges the District failed to consider the Parent's input about the Student's performance, needs, individualized education, and IEP goals.

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<sup>6</sup> 34 CFR § 300.320(a)(4)

<sup>7</sup> CFR § 300.39(3)

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child, and the provision of a free appropriate public education to the child.<sup>8</sup>

The District failed to provide weekly progress reports to the Parent as required by the Student's IEP. This, in and of itself, would not violate IDEA's parent participation requirements. However, the Parent also made requests for the following at multiple IEP meetings during the Complaint period:

- a. Information on how the Student's dysgraphia was being addressed,
- b. The addition of spelling and writing goals to the Student's IEP,
- c. The addition of reading fluency and comprehension goals to the Student's IEP,
- d. The use of a program other than Lexia Core5 Reading,
- e. Information about the grade-level state standards the Student was performing,
- f. Information on the progress monitoring tools being used, and
- g. The addition of specific measurements to the annual reading goal.

The District failed to respond to the Parent's requests above by either agreeing to amend the IEP or providing the Parent with PWN with the District's refusal to amend the Student's IEP. Taken together, the lack of progress reporting as required by the Student's IEP and the District's failure to respond to the Parent's requests for information denied the Parent the opportunity to meaningfully participate in the Student's IEP.

The Department substantiates this allegation.

### **Free Appropriate Public Education (FAPE)**

The Parent alleges that the District violated the IDEA in ways that amounted to a denial of a FAPE when the District failed to provide an individualized education program that was designed to meet the Student's unique needs and support the Student in making meaningful progress toward IEP goals. The Parent further alleges the Student is several years below state and grade-level standards as a result of the District's failure to provide a FAPE.

As previously addressed, the District did not allow instructional staff permission to use professional judgment to make adjustments to the use of Lexia Core5 until November, 2020. However, there is evidence that the Student has shown significant progress. Multiple data sources indicate that the Student is currently functioning on or near grade level expectation when provided with appropriate accommodations. It should be noted that the Student has also received extensive private tutoring which could have contributed to this progress.

The District's significant procedural errors—failure to consider parental requests or to take action on these requests, prevented the Parent from meaningfully participating in the development of the Student's IEP, and failed to develop a measurable reading goal—combined with the inability to determine with certainty whether the Student's SDI, private tutoring, or a combination of the two resulted in the Student's progress amounts to a denial of FAPE.

The Department substantiates this allegation.

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<sup>8</sup> OAR 581-015-2190(1) and CFR §§ 300.322(a)

## V. ADDITIONAL FINDING

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

### **Failure to Implement IEP as Intended by the IEP Team**

The District failed to implement the IEP as intended by the IEP team when they did not provide the Parent with a weekly progress report.

As discussed above, the Student's April 13, 2021 IEP included an accommodation that required the District to provide the Parent with a weekly progress report. The Parent asserts the District did not meet this requirement and the District did not have a record of progress reports being provided to the Parent every week.

The District had an obligation to provide the Parent with a weekly progress report as required by the Student's IEP.

The Department substantiates this finding.

## VI. CORRECTIVE ACTION<sup>9</sup>

*In the Matter of Lake Oswego School District  
Case No. 21-054-034*

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
The District is to convene an IEP team meeting to develop measurable annual goals, in the Student's area(s) of need, based on quantifiable data and the Student's Present Levels of Academic and Functional Performance <sup>10</sup> .	The District shall submit the following: <ul style="list-style-type: none"><li>• Meeting Notice</li><li>• Data reviewed</li><li>• Annual IEP goals</li><li>• Meeting minutes</li><li>• Updated, IEP Service Summary, if needed</li><li>• PWN detailing the decision</li><li>• Copies of all progress reports for the 2021-22 school year</li></ul>	<b>January 15, 2022</b>


<sup>9</sup> 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)).

<sup>10</sup> The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email [ode.disputeresolution@ode.state.or.us](mailto:ode.disputeresolution@ode.state.or.us).



<p>The District is to respond to the Parent's outstanding requests for revisions to the IEP by either amending the IEP or issuing a PWN documenting the District's refusal to initiate the Parent requests. Outstanding Parent requests for information or amendments to the IEP include:</p> <ul style="list-style-type: none"> <li>• Information on how the Student's dysgraphia was being addressed,</li> <li>• The addition of spelling and writing goals to the Student's IEP,</li> <li>• The addition of reading fluency and comprehension goals to the Student's IEP, and</li> <li>• The use of a program other than Lexia Core5 Reading.</li> </ul>	<p>The District shall submit either an amended IEP or a PWN documenting refusal to initiate the Parent's requests in these areas.</p>	<p><b>January 15, 2022</b></p>
<p>The District is to conduct staff training for all members of the Student's IEP team in the areas of SDI, supplementary aids and services, writing measurable annual IEP goals, PWN, and IEP meeting facilitation, with an emphasis on parent participation requirements.</p>	<p>The District shall submit the following:</p> <ul style="list-style-type: none"> <li>• Training materials</li> <li>• Training agenda</li> <li>• Sign-in sheets</li> </ul>	<p><b>February 15, 2022</b> <b>April 15, 2022</b></p>

Dated: this 27<sup>th</sup> Day of April, 2022



x \_\_\_\_\_  
Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: April 27, 2022

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