

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School)
District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-003

I. BACKGROUND

On January 8, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Salem-Keizer Public Schools (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on January 11, 2010 and provided the District a copy of the complaint letter. On January 19, 2010, the parent submitted an amendment to the January 8, 2010 letter of complaint which included additional allegations. The Department provided the District a copy of the amendment on January 21, 2010.

On January 22, 2010, the Department sent an *Amended Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated with a *Response* due date of February 5, 2010.¹ The District submitted its timely *Response* to the Department and to the parent on February 5, 2010. The District's *Response* included three pages of narrative explanation and an additional 207 pages, many of which were double-sided, of documents and exhibits requested in the RFR.

The Department's complaint investigator determined that on-site interviews were necessary. On February 10, 2010, the Department's investigator interviewed the parent, the student's special education case manager, the student's math teacher, the student's reading teacher, a school psychologist, a student services program assistant, and the District's Student Services Coordinator. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act violations within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.² This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

¹ On January 13, 2010, the Department sent the District a *Request for Response* to the allegations in the parent's January 8, 2010 letter; the Department issued the *Amended Request for Response* following receipt of the parent's January 19, 2010 letter and included the additional allegations.

² OAR 581-015-2030(12).

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 (2009) and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This complaint investigation covers the one year period from January 9, 2009, to the filing of this complaint on January 8, 2010.³

	Allegations	Conclusions
1.	<p><u>Implementation of IEP:</u></p> <p>The parent alleges that the District has failed to appropriately implement the student's IEP. Specifically, the parent alleges:</p> <p>a) that the District has provided 7.5 to 8.0 grade level math instruction when the student's present level of academic achievement and functional performance was at a 3.7 grade level equivalent, and</p> <p>b) that the District has provided 8.5 grade level reading instruction when the student's present level of academic achievement and functional performance was at a 5.8 grade level equivalent.</p>	<p>Not Substantiated.</p> <p>The District provided specially designed instruction in math at the student's instructional level, as determined by individualized assessment and student specific data.</p> <p>The District provided specially designed instruction in reading at the student's instructional level, as determined by individualized assessment. The District also provided general education reading instruction that was tailored to the student's instructional level as determined by student-specific data and curriculum-based measures.</p>
2.	<p><u>Content of IEP:</u></p> <p>The parent alleges that the student's IEP does not include measurable annual goals in the areas of math and reading designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general educational curriculum.</p>	<p>Substantiated, in part.</p> <p>The progress reports the District provided to the parent did not inform the parent of the student's progress toward meeting the annual goals.</p>

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

III. FINDINGS OF FACT

Background

1. The student resides within the District and is enrolled in the tenth grade. The student is identified as eligible to receive special education and related services under the classification of Other Health Impairment, related to several diagnosed medical conditions. The parent home-schooled the student from January 2008 until January 2009, when the parent re-enrolled the student in the District. The student attended school in the District until November 2009. At that time, the Parent withdrew the student, informing the District that the parent intended to home-school the student.
2. The parent reports removing the student from the District due to his concern that the level of math and reading instruction the District was providing was too advanced for the student. The parent asserts that the difficulty of the material provided had a harmful impact on his child's well being both at school and at home, required an increase in the student's medication, affected the student's ability to socialize, affected the student's ability to perform in other classes, and affected the student's behavior at home.

March 31, 2009 IEP

3. On March 31, 2009, the District developed an IEP for the student that remained in effect for the remainder of the 2008-09 school year (ninth grade), through the fall of the 2009-10 school year (tenth grade), and up until the parent withdrew the student from the District in November 2009 for home-schooling. The parent participated at the meeting, which was attended by several district staff members including the student's special education case manager and the student services program assistant.
4. The March 2009 IEP included specially designed instruction in:
Behavioral (60 minutes/day; anticipated location: EGC⁴/regular education);
Math (180 minutes/week; anticipated location: EGC/regular education);
Reading (180 minutes/week; anticipated location: EGC/regular education);
Social Skills (30 minutes/week; anticipated location: EGC/regular education);
Study Skills (60 minutes/week; anticipated location: EGC/regular education); and
Written Language (30 minutes/week; anticipated location: EGC/regular education).
5. Among the supplementary aids/services, modifications and accommodations, included on the student's March 2009 IEP were frequent breaks, access to the EGC for test and assignment assistance, extended time on tests, a behavior support plan, and use of a computer for written assignments.

⁴ The "EGC" refers to Emotional Growth Center. The EGC is a self-contained special education class operated by the District that provides academic and behavior support for eligible students.

6. The March 2009 IEP's Nonparticipation Justification statement indicated that the student continued to benefit from and demonstrate a need for special education class pull out in order to progress toward IEP goals and to improve the student's performance in regular education classes. The Special Factors section indicated that the student needed assistive technology services, addressed elsewhere in the IEP, and that the student exhibited behavior that impeded the student's learning and the learning of others, also addressed elsewhere in the IEP.
7. The Present Levels of Academic Achievement and Functional Performance statement on the student's March 2009 IEP described math as the student's strongest academic skill, noting that the student understood what to do with problems and calculated them quickly. The statement also described spelling as a strength for the student and noted that the student stays focused on the computer. The statement noted that the student strives to be friends with others and to fit in. The statement also described several concerns of the parent, including that the parent would like for the student to behave more appropriately in his general education classes and that the parent would like for the student to complete work on paper and turn in it after completion. The parent expressed that the number of students in the class and the resulting level of distraction makes it hard for the student to focus and complete work.
8. The Present Levels of Academic Achievement and Functional Performance statement on the student's March 2009 IEP reported that the student's scores on the reading portion of a standardized academic achievement test administered in February 2007 were: Broad Reading – 86 SS; Letter-Word Identification – 98 SS; Reading Fluency – 84 SS; and Passage Comprehension – 78 SS. The statement described the student as reading at the high 6th/low 7th grade level in class and able to access science and social studies texts at the 7th grade level with minimal assistance. The statement reported that the student had not met standard on the TESA reading test after two attempts.
9. The Present Levels of Academic Achievement and Functional Performance statement reported that the student's scores on the math portion of the standardized academic achievement test administered in February 2007 were: Broad Math – 88 SS; Calculation – 92 SS; Math Fluency – 69 SS; and Applied Problems – 93 SS. The statement reported that the student was doing independent math at the mid-4th grade level in class and was able to access the regular math 1 class with some support, demonstrating increasing speed and progressing with various math operations. The statement reported that the student had not met standard on the TESA math test after two attempts.
10. The student's March 2009 IEP had annual goals and short-term objectives for each area of specially designed instruction. In the area of math, the annual goal stated that the student would "continue to improve his math computation skills to approximate 7.5 to 8.0 grade level." The criteria for measuring the student's progress were "70%" as measured by "curriculum-based measure." There were

several short-term objectives related to the math goal, including these examples: “Given multiplication or division problems involving 2 – 4 digit numbers, compute the product or quotient with remainder;” “Given problems involving addition or subtraction of decimals, compute the sum or difference;” and, “Given various polygons, compute the perimeter and/or area.”

11. The student’s March 2009 IEP had this annual goal for the specially designed instruction in reading: “[To] continue to increase [the student’s] reading and comprehension skills to approximate 8.5 – 9.0 grade level as demonstrated through reading narrative and informational text fluently and accurately with effective pacing, intonation, and expression; with a reading rate of 125 – 150 wpm.” The criteria for measuring the student’s progress were identified as “70%” to be measured by “curriculum-based measure.” There were several short-term objectives related to the math goal, including these examples: “Given a Reading Passage at the 9th grade level use a variety of strategies, including context and knowledge of roots, prefixes and suffixes, to read the passage;” “Given a reading passage at the 9th grade level, reconstruct the sequence of events in the passage;” and, “Given a Reading Passage at the 9th grade level, read 150 words in one minute.”
12. The student’s placement options identified consideration of placement in the general education class with less than 21% special education support. This option was rejected as not meeting the student’s current needs. The team also considered and rejected placing the student in the general education class with less than 40% special education support, with a travel card, behavior support plan, and increased time, again rejecting the placement as not meeting the student’s current needs. The team considered and selected placement in the general education class with 21% to 60% resource room or special education class, noting benefits of grade appropriate curriculum and socialization with typical peers and providing several modifications and accommodations to reduce identified harmful effects such as the large class size, multiple transitions, and fewer opportunities to individualize.
13. The District kept detailed notes from the March 31, 2009 meeting showing discussion of the various components of the IEP and discussion of the student’s academic, social, and behavioral needs. The District held another meeting with the parent on May 13, 2009 to review the student’s eligibility (determined in May 2008) and plan additional evaluations to aid in program planning for the student. The District kept detailed notes of the May 2009 meeting, showing discussion of the student’s eligibility and the items discussed.
14. The student’s special education case manager is a special education teacher and operates the District’s EGC program at the student’s school. She provided all of the student’s academic services in the EGC program during the 2008-09 school year, when the student attended school for only 1/2 days.
15. The District provided a March 6, 2009 progress report for the student, showing that the student was receiving a “D” in general education reading, a “D” in general education math, a “C” in special education study skills, and a “C” in special

education reading/writing. The District provided an April 24, 2009 report card for the student, showing that the student received a "C" in general education reading, a "D" in general education math, a "C" in special education study skills, and a "D" in special education reading/writing. The District also provided an April 24, 2009 report concerning the student's progress towards the annual goals on the student's IEP. In the area of reading, the report stated: "Progressing toward goal/objective." In the area of math, the report stated: "Progressing toward goal/objective."

2009-10 School Year (Tenth Grade)

16. The student's schedule changed at the beginning of the 2009-10 academic year, and the case manager scheduled the student in two general education classes, Read 180 and Intro to Math. The case manager supervised adult assistants who worked with the student in general education classes and provided adult assistance during transitions. The case manager described the Read 180 class as a general education class geared for students with lower reading achievement and designed to build skills in a remedial-type program individually tailored for students. She described the Intro to Math also as a general education class designed to prepare students to succeed in the regular, required general education math class. In each of these classes, the students take an individual assessment to determine a baseline for their achievement, and each student receives individualized assignments based on identified individual needs.
17. The case manager reported that the change was made because the team felt that, based on the skills these two general education classes taught, the student could successfully participate. The case manager reported that she continued to provide the student with specially designed instruction in the EGC classroom in the areas of reading and math, using a combined curriculum from these classes together with materials she selected for the student's use in the EGC. The case manager reported that she looked to the state standards in developing goals for the student and measured progress by talking to the student's teachers and looking at a portfolio of completed work.
18. The student's general education math teacher is a special education teacher, but the Intro to Math class is a general education class. The teacher reported that approximately 90% of the students in the Intro to Math class are eligible students with IEPs. The teacher described the Intro to Math class as a general math class designed to promote readiness for the regular 9th grade math class. The teacher has each student complete a placement test and reported that the student initially had only a few of the questions correct. The teacher indicated that the student was withdrawn from her class after the first 2-3 weeks of the school year, noting that the student was frequently absent from school and had not completed make-up work. The teacher also stated that the parent made the decision, in consultation with the case manager, that the student would return to the EGC program for math instruction.

19. In the area of math, the case manager described the student as, "Progressing." She explained that the student could do the work and had provided her with work samples supporting that conclusion. The case manager also reported that the student was absent from school more than half of the time and that the student's behavior at school negatively impacted progress 95% to 98% of the time. The case manager asserted, however, that the math goals were reasonable and that the student was capable of reaching the goals.
20. The student's general education reading teacher described the "Read 180" class as a class for students struggling with reading and two or more grade levels behind. He described the Read 180 program as technology-based, using computers to target instruction at individual levels and individual reading assignments based on his selection and under his supervision. The reading teacher reported that the student always had an adult assistant, was escorted to class, and received assistance during class. The reading teacher used a daily reading log in class to assess progress, noting that the student did not complete written work or do the reading logs. The reading teacher gave the student a grade of "F" in Read 180 based on poor attendance (less than 50%), missing assignments and reading logs, and a missing book report and quiz. The reading teacher also described the student as capable of doing fine in class and able to participate fairly well in small group reading and discussion. The reading teacher's primary concern was the student's attendance.
21. In the area of reading, the case manager conferred with the student's general education teacher in measuring the student's progress. The case manager noted that the work the student completed was actually closer to a 6th grade level than a 9th grade level. The case manager also reported that the student was progressing through the levels in the individualized program being provided; the student progressed consistently, moving from level to level in each series.
22. On September 30, 2009, the District held a meeting with the parent to address parent concerns, discuss assessments completed over the summer, and review the student's program.
23. The District completed a psychological assessment of the student in October 2009, including the student's existing records and outside assessments conducted over the summer break. The evaluation also included standardized academic assessments yielding standard scores of: Broad Reading – 78; Reading Fluency – 69; Brief Math – 57; and Calculation – 64. The evaluator summarized the results of the evaluation, describing the student's reading skills as a strength, with the student performing at approximately a fifth grade eight month level, and describing the student's math skills as continuing to be a struggle, with the student performing at approximately a third grade seventh month level. The District held an October 15, 2009 meeting to review the results of the evaluation, but the parent did not attend this meeting.

24. The District provided an October 16, 2009 progress report for the student, showing that the student was receiving an “F” in the general education art class, an “F” in the general education writing class, a “C” in the special education reading class, and an “A” in the special education study hall class. The District also provided an October 16, 2009 report concerning the student’s progress towards the annual goals on the student’s IEP. In the area of reading, the report stated: “Progressing: Not quite 9th grade level yet...” In the area of math, the report stated: “Progressing.”
25. The school psychologist also reported that the student was frequently absent from school. She described difficulties in completing the assessments of the student, noting that the student received an outside evaluation over the summer. The school psychologist described the student as uncooperative during the testing, with the student’s scores negatively impacted by the student’s behavior.
26. The District’s student services program assistant participated in development of the student’s March 2009 IEP and the student’s education program. The program assistant also reported that the student was absent from school approximately half of the time and that the primary focus of the student’s program at school was on behavior, building success, improving attendance, and providing consistency. The program assistant noted that the student was removed from the Math 180 class for inappropriate behavior and social issues that were exacerbated by the larger group environment and that the student was more successful in participating in the Intro to Reading class that had small groups and individualized, computer-based instruction.
27. The parent points out that staff took notes of all the meetings and that there was never a discussion that the student’s performance on the evaluations discussed at the October 2009 meeting did not accurately reflect the student’s achievement. The parent points to the March 2009 IEP, indicating that the student’s reading was at a high 6th grade/low 7th grade level, in contrast to the October 2009 evaluation describing the student’s reading at a high 5th grade level. Similarly, the parent points to the March 2009 IEP, indicating that the student was performing at a mid-4th grade level in math, in contrast to the October 2009 evaluation describing the student’s math at a high 3rd grade level. The parent contends that the goals on the student’s IEP were not reachable and that the District should have revised the goals to make them achievable. The parent also contends that the District should have informed him that the student was not going to achieve the goals by March 2010.
28. At the time of the issuance of this final order, the student has not reenrolled in the District. The Department understands that the student continues to be home-schooled by the parent.

IV. DISCUSSION

1. Implementation of IEP:

A written IEP must be in effect for each eligible child at the beginning of each school year.⁵ School districts must implement the services, modifications, and accommodations identified on each student's IEP.⁶

The parent alleges that, during the 2009-10 school year, the District did not appropriately implement the student's March 2009 IEP. Specifically, the parent alleges that the District provided the student with math instruction at a 7.5 to 8.0 grade level when the student's achievement was at a 3.7 grade level equivalent and that the District provided the student with reading instruction at an 8.5 grade level when the student's achievement was at a 5.8 grade level equivalent.

The parent's perception of the level of instruction that the student was receiving in reading and math was reasonably based on the statement of Measurable Annual Goals included on the student's March 2009 IEP and the progress reports provided by the District related to those goals. Despite the inflated representation of the student's skills in reading and math, the District developed a program individually tailored to meet the student's needs in reading and math. The District provided instruction based on student-specific data obtained by the case manager, the Read 180 general education teacher, and, for a few weeks, the Intro to Math general education teacher.

Although the March 2009 IEP stated annual goals for the math and reading instruction of 7.5 to 8.0 grade equivalent and 8.5 to 9.0 grade equivalent, respectively, the actual instruction the student's teachers provided was at the student's instructional level, as determined through the baseline assessments each teacher administered. Thus, the District developed and implemented a program for the student that included specially designed instruction in math and reading based on student-specific data. The Department does not find persuasive evidence that the District violated the IDEA by failing to implement the student's IEP.

2. Content of IEP:

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.⁷ Each student's IEP must describe how a student's progress towards meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the

⁵ OAR 581-015-0064(1).

⁶ OAR 581-015-0064(2).

⁷ OAR 581-015-2200(d).

issuance of report cards) will be provided.⁸ School districts also must timely reconvene IEP teams to review and revise a student's IEP to address any lack of expected progress towards the annual goals.⁹

The parent alleges that the student's IEP does not include measurable goals, designed to meet the student's needs resulting from the student's disability and to enable the student to be involved in and progress in the general education curriculum in the areas of math and reading. Specifically, the parent points to the discrepancy between the annual goals in reading and math included in the student's March 2009 IEP and the October 2009 evaluation report. The annual goals in the March 2009 IEP indicate that the IEP Team believed that the student could reasonably be expected to perform at a 7.5 to 8.0 grade level in math and an 8.5 to 9.0 grade level in reading. However, the October 2009 evaluation report indicated that the student was performing at much lower levels in those two areas.

The District responds by pointing to concerns of staff that the assessment levels for the student in reading and math may not be accurate and that the student may have higher skills than indicated. This reasoning is unpersuasive. Even if the results contained in the October 2009 evaluation report were invalid as a result of the student's lack of cooperation with assessments reported therein, the March 2009 goals are still out of alignment with the student's levels of academic achievement and functional performance contained in the March 2009 IEP. The present levels statement on the student's March 2009 IEP indicate that the student was performing at a 6 to 7 grade level in reading and at a 4 grade level in math. Therefore, the Department finds that the student's IEP failed to include measurable annual goals designed to meet the student's needs.

Additionally, the Department finds that the failure to include appropriate annual goals in the student's March 2009 IEP created difficulties with regard to measuring the student's progress in the areas in reading and math. Because the expected levels of achievement contained in the March 2009 annual goals were not reasonable yardsticks for measuring the student's progress, the reports issued by the District did not provide the parent with a clear understanding of the student's progress in reading and math. The Department believes that the deficiencies related to progress monitoring and reporting will be remedied by the inclusion of reasonable annual goals in the student's future IEPs.

⁸ OAR 581-015-2200(1)(c).

⁹ OAR 581-015-2225.

V. CORRECTIVE ACTION¹⁰

In the Matter of Salem-Keizer School District
Case No. 10-054-003

Action Required	Submissions ¹¹	Due Date
(1) IEP Revision		
a) The District shall communicate to the parent that it stands ready to implement a revised IEP in the event that the parent chooses to re-enroll the student in the District or in a public charter school. The District must also communicate that, in the event that the parent chooses to continue home-schooling the student, the IEP Team will determine whether the District can provide FAPE to the student in conjunction with home-schooling.	A letter to the parent consistent with the requirements of section (1)(a).	March 19, 2010
b) The District shall offer to hold an IEP Team meeting to review and revise the student's IEP consistent with section (1)(c) below.	Meeting notices regarding the IEP Team meeting required by section (1)(b).	April 9, 2010
c) The IEP Team must, at a minimum, address: (i) revision of the student's present levels of academic achievement and functional performance based on the District's October 2009 assessment and any subsequent formal measures;	A copy of the completed IEP and any associated meeting minutes or notes.	April 9, 2010
	Any prior written notices associated with the IEP.	April 9, 2010

¹⁰ 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).

¹¹ Corrective action plans and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

<p>(ii) selection and development of measurable annual goals, including those for transition-age students;</p> <p>(iii) description of how the student's progress toward meeting the revised annual goals will be measured, consistent with this Order; and,</p> <p>(iv) when the parent may expect those reports to be issued.</p> <p>(2) Progress Monitoring</p> <p>The District shall provide the parent with reports, consistent with the student's revised IEP, detailing the student's progress towards IEP goals.</p>	<p>Copies of progress reports provided to the parent.</p> <p>In the event that the parent revokes consent for the provision of special education and related services or that the IEP Team determines that a FAPE cannot be provided in conjunction with home-schooling, the District need not submit progress reports.</p>	<p>Through December 31, 2010 – within 10 days of the date of issue of the report</p>
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Dated: March 9, 2010

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

Mailing Date: March 9, 2010

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