

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Klamath Falls City Schools )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 011-054-006

**I. BACKGROUND**

On February 22, 2011, the Oregon Department of Education (Department) received a letter of complaint from a parent on behalf of her child. The parent and the child reside in the Klamath Falls City School District (“District”). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2011). The Department confirmed receipt of this complaint on February 23, 2011 and provided the District a copy of the complaint letter.

On February 28, 2011, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of March 14, 2011. The District submitted its timely *Response* to the Department and to the parent on March 14, 2011. The District’s *Response* included a narrative response; copies of the student’s two most recent IEP’s; copies of assessments and evaluations conducted with the student over the last two years; copies of Prior Written Notices sent to the parent during the last year; copies of progress and grade reports; copies of data tracking systems used to track student progress; and copies of email and other written correspondence conducted with the parent over the last year. On March 31 and April 1, 2011, during the interview with the Department’s complaint investigator, both the parent and the District staff submitted materials in support of the complaint.

The Department’s complaint investigator determined that on-site interviews were required. On March 31 the Department’s investigator interviewed the parents, the student’s grandmother and a representative of a local mental health support group. On March 31 and April 1, the Department’s investigator interviewed the following District staff: special education director; an elementary principal; two of the student’s regular education teachers; three special education teachers, and a special education paraprofessional. The Department’s complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

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<sup>1</sup> OAR 581-015-2030(12).

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 (2010) and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from February 23, 2010 to the filing of this complaint on February 22, 2011<sup>2</sup>

	Allegations	Conclusions
	<p><b>Allegations to be investigated.</b> The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p><b><u>Review and Revision of IEPs:</u></b></p> <p>a. Failing to review and consider possible revisions to the child's IEP in the areas of reading and written language when assessment data indicated the child might need different, more, or revised instruction and services;</p> <p>b. Failing to provide specially designed instruction in math even though the child's test results indicate skills two years below grade level;</p> <p>c. Failing to discontinue occupational therapy services even though team members agreed during the IEP meeting that the services were not appropriate and recorded on the IEP form that the services would be discontinued;</p> <p>d. Refusing to rewrite the IEP to reflect 5th grade standards; and,</p> <p>e. Failing to consider a written outline of information the parent provided to the IEP team.</p>	<p>Not Substantiated.</p> <p>a. The District provided appropriate services to the student in the areas of reading and written language and adjusted the student's goals and services in response to student-specific data.</p> <p>b. The student is above or at grade level in all areas of math except fluency and does not demonstrate a need for specially designed instruction to progress in the general education math curriculum.</p> <p>c. The team discontinued the typing instruction, which was not part of the occupational therapy support and instruction, after the team and the parent agreed that the parent would provide typing instruction at home. The IEP Team never decided to discontinue the two hours of occupational therapy per year.</p> <p>d. See Conclusion "a," above.</p> <p>e. District staff met multiple times with the parent and considered all information provided by the parent.</p>

<sup>2</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

2.	<p><b><u>IEP Implementation:</u></b></p> <p>Failing to monitor the student’s progress and to report the student’s progress to the parents as required by the student’s IEP.</p>	<p>Not Substantiated.</p> <p>The District sent IEP progress reports consistent with the IEP and the student’s progress was carefully monitored by the school’s “Effective Behavior and Instructional Support Team”—part of the District’s Response to Intervention Program. This information was also shared regularly with the parent.</p>
3.	<p><b><u>Content of the IEP:</u></b></p> <p>a. Refusing to consider and possibly include such services that would support the child in the general education classroom (classroom assistant and tutor); and,</p> <p>b. Failing to include in the IEP measurable annual goals, including academic and functional goals 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 to meet each of the child's other educational needs that result from the child's disability.</p>	<p>Not Substantiated.</p> <p>a. The team considered whether or not the student needed more assistance than was already being provided in the classroom and concluded that additional assistance was not needed.</p> <p>b. The IEP includes measureable annual goals.</p>
4.	<p><b><u>Prior Written Notice:</u></b></p> <p>Failing to provide the parent with Prior Written Notice when the District refused to:</p> <p>a. Review and revise the IEP goals, objectives and services summary;</p> <p>b. Provide Extended School Year services; and,</p> <p>c. Provide a classroom assistant or tutor for the child.</p>	<p>Not Contested.</p> <p>The District did not send Prior Written Notices because it believed the notices were not necessary when the parent attended the meeting and agreed with the decision. The District has asked the Department to provide guidance on the use of Prior Written Notices.</p>
5.	<p><b><u>Least Restrictive Environment:</u></b></p> <p>Failing to educate the student in the least restrictive environment by excessively removing the student from classroom instruction to receive pull-out services.</p>	<p>Not Substantiated.</p> <p>The student’s IEP includes an accommodation to allow the student to go to the Resource Room when the student needs help with classroom</p>

		work, but the student does not overuse this accommodation. Otherwise, the student is removed from the general education classroom appropriately as per the statement in the student's IEP.
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	<p><b>Requested Corrective Action.</b> The parents are requesting that the District provide:</p> <ol style="list-style-type: none"> <li>1. A written statement explaining why a particular group of services for the child have been denied;</li> <li>2. A rewritten and updated IEP that reflects appropriate standards for the 5<sup>th</sup> grade and outlines services specially designed to meet the child's needs in all appropriate areas;</li> <li>3. Occupational Therapy services removed from the child's IEP and the child's schedule;</li> <li>4. District oversight to verify that IEP services are being provided as outlined on the IEP;</li> <li>5. Provision of routine progress monitoring and the adjustment of services as necessary;</li> <li>6. Quarterly testing used as the benchmark measure rather than grades; and,</li> <li>7. If an individualized program is not provided for the child that meets all of the child's needs, the parent is requesting that the District pay for placement in a private school.</li> </ol>	See <i>Corrective Action</i> , below.
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### III. FINDINGS OF FACT

#### Background

1. The student is eleven years old, lives in the District, and is in the fifth grade at one of the District's elementary schools.
2. The student is eligible for special education under the eligibility category of Other Health Impairment.
3. In November, 2007, the student's second grade teacher referred the student for a special education evaluation after the parent expressed concern about the student demonstrating behaviors that were consistent with an attention deficit disorder. The student was evaluated

and found not eligible for special education. Following this, in February of 2008, the District established a Section 504 plan for the student which included accommodations in the general education setting.

4. In November of 2009, the parent expressed concerns about the student's progress in the fourth grade and asked the District to conduct another evaluation for special education eligibility. The parent granted consent for a special education evaluation on December 4, 2009. The parent informed the District that the student had been diagnosed with Attention Deficit/Hyperactivity Disorder by a local medical doctor on November 5, 2007.
5. District staff tested the student using the Woodcock-Johnson III Test of Achievement on December 17, 2009. The student was in the fourth month of the fourth grade at the time, and scored a grade equivalency of 3.7 in Broad Reading, 4.3 in Broad Math, and 2.6 in Broad Written Language. In subtests evaluating the student's fluency in reading, math, and written language, the student scored a grade equivalency of 2.6 in Reading Fluency, 2.0 in Math Fluency, and 2.1 in Writing Fluency. The examiner reported that although the student appeared to be "at ease and comfortable during the examination, the student often seemed distracted."
6. District staff and parents also completed the Brown Attention Deficit Disorder Scales for Children. On these scales, a T Score of more than 70 indicates a very significant problem. The parent rated the student at a Total T Score of 71, with the highest T Score rating of 73 in Managing Frustration and Modulating Emotions. District staff rated the student at a Total T Score of 65 with the highest T Score rating of 73 in Organizing, Prioritizing, and Activating to Work.
7. The team met on March 1, 2010 and found the student eligible for special education and created an IEP for the student.
8. In the March 1, 2010 IEP, the team identified two goals for the student. The student's Language Arts goal indicated that the student would analyze words, recognize words, and learn to read grade level text fluently across subject areas. The other goal on the IEP indicated that the student would use sensory strategies to facilitate success in the general education classroom. The team agreed that the criteria for the language arts goal was 85% mastery of the skills and that the student would be evaluated using daily work samples and tests. The criteria for the Sensory Strategies goal was established as use of appropriate strategies in four out of five trials based on teacher, staff, or occupational therapist observations.
9. At the March 1, 2010 meeting, the team also agreed that the District would report progress to parents on the IEP goals using written progress reports distributed quarterly with report cards. The team decided that the student needed specially designed instruction in Language Arts for 160 minutes per week in the Resource Room; in a Sensory Motor Program for 60 minutes per week in the Resource Room and General Education classroom; and in Typing for 100 minutes per week in the Resource Room. In addition, the team decided that the student needed related services of a friendship group one time per week and occupational therapy for two hours per year. In addition, the team decided that the student needed the following supplementary aids and services and modifications and accommodations:
  - a. Breaking tasks into small steps;
  - b. Preferential seating away from heavy traffic and reduced stimuli;
  - c. Communication log between parents and teacher;

- d. Extended time on tests;
  - e. Instructions to be read to the student and then have the student repeat instructions to an adult;
  - f. Allowing the student to go to the Resource Room to complete work;
  - g. Peer tutor opportunity;
  - h. Visual cues for behavior;
  - i. Tally marks;
  - j. Storage of school supplies in a bucket out of the student's reach; and,
  - k. Time to complete desk cleaning.
10. The team also decided at the March 1 meeting that consultation with the occupational therapist would be provided as support for the school staff. Finally the team decided that the student would be removed from the general education setting for 160 minutes per week for instruction in Language Arts because the student needed reduced stimulus to focus and that the student's placement would be in the "general education setting with pull-out for specially designed instruction in language arts."
11. Also at this IEP meeting, the District asked the parent to sign a "Written Agreement between the Parent and the District." District staff explained that this would allow the District and the Parent to discuss changes to the IEP in a more informal way without a formal IEP meeting.<sup>3</sup> The parent signed the agreement.
12. During April of 2010,<sup>4</sup> the student's grandmother began coming to the school and working with the student in class to help the student focus on the work.
13. On May 4, 2010, the District asked for and obtained permission from the parent to evaluate the student to obtain a sensory profile to use to determine accommodation needs for the student. The Occupational Therapist completed the evaluation and found that the student was often visually and auditorily distracted and frequently fidgeted with hair and picked at skin. In addition, the student had difficulty tracking with [ ] eyes and had difficulty consistently crossing the midline with movement based activities. The Occupational Therapist observed that staff reported the student was more attentive since the grandmother had begun working in the classroom. The Occupational Therapist concluded that the student demonstrated sensory processing needs and recommended trials of a compression vest; ear buds; an air disc on the chair; use of more appropriate fidgets than hair or skin; a visual timer; and, use of movement based activities like "Brain Gym."<sup>5</sup>
14. At the end of the 2009-2010 school year (the student was in fourth grade), the District reported the following progress on the student's goal in Language Arts:

"The student is currently reading 116 correct words per minute at the fourth grade level. The student ended the year reading 141 correct words per minute on the reading checkout test with 98% accuracy. The student is working in the SRA Corrective Reading Decoding B2 program, and is able to produce a fourth grade

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<sup>3</sup> The District uses this agreement in an open-ended way to give the team more flexibility to adjust the IEP as the student makes progress.

<sup>4</sup> None of the individuals interviewed remembered exactly what date the grandmother began doing this. It was voluntary on the grandmother's part.

<sup>5</sup> Brain Gym describes a specific set of movements, processes, programs, materials, and educational philosophy. It is a registered trademark of the Educational Kinesiology Foundation (Brain Gym® International) in Ventura, California, USA. <http://braingym.org/index>

writing sample given ample time. The student continues to need support with editing and spelling.”

15. The student scored 213 on the OAKS math test while in the fourth grade. 212 was the benchmark for that year. The student scored 222 on the OAKS reading test while in the fourth grade. The benchmark for that year was 211.
16. On July 27, 2010, the parent took the student to a neuropsychologist for an evaluation. The neuropsychologist diagnosed the student with a learning disability in written expression, a Not Otherwise Specified Cognitive Disorder, a Not Otherwise Specified Pervasive Developmental Disorder, and Attention Deficit/Hyperactivity Disorder. The neuropsychologist recommended continued accommodations at school.
17. At the start of the 2010-2011 school year, the District informed the parent that the student was placed in a split fifth/sixth grade classroom, rather than the fifth grade classroom originally identified for the student.<sup>6</sup> The parent was not happy about the change. The student’s IEP was still in effect, and the grandmother continued to volunteer in the classroom to assist the student. The student’s day begins in the general education classroom, and the student participates in PE, library, music, literature, science, social studies and lunch in the general education program. The school divides the students in each grade up by skill level in math, and the student is in a different general education class for math instruction. The student goes daily to the Resource Room for specially designed instruction in reading and written language and for a 15 minute sensory break.
18. At the beginning of the student’s fifth grade year, the student was placed in a small group of students in the Resource Room and worked in the Corrective Reading Program Level B. The student also received specially designed instruction in the Resource Room using the SRA Language for Writing and practiced typing in the Resource Room. The student’s sensory motor instruction is also provided in the Resource Room. The student does Brain Gym activities such as tracing 8’s in the air and on paper to help with visual tracking for five minutes, brushes arms with various brushes for calming for five minutes, and uses various fidgets for five minutes for calming and relaxation. The team originally instituted these activities to help the student refocus on academics during the school day. Although the team agrees that there is very little observable data that indicates the activities focus the student, they also agree that the student appears to use the time and activities profitably to relax and to increase sensory skills. The paraprofessional, the resource room teacher and the occupational therapist all agreed that the student is on time for the sensory break, never has to be prompted to begin, and completes each of the activities appropriately every day. The parent believes that the sensory break is unproductive and that the student should be engaged in academic activities during the 15 minutes.
19. The District uses the Response to Intervention system in reading and uses the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) system to measure the student’s fluency in reading. The school has an “Effective Behavior and Instructional Support Team” consisting of the principal, instructional coach, two special education teachers, and the school counselor. This team meets twice a month and reviews the progress of all students who are struggling with reading. As part of this progress review, teachers share data on a student’s progress in reading fluency (number of words read correctly per minute) as indicated by the DIBELS. DIBELS data on reading fluency is collected weekly. At the beginning of the fifth

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<sup>6</sup> District staffing changes and a significant change in the number of fifth and sixth grade students prompted the change.

grade year, the student read 87 words per minute accurately. From September 7, 2010 to February 21, 2011, the student's reading fluency checks ranged from a low of 67 on January 3, 2011 to a high of 124 on February 7, 2011. During this period of time, 15 reading fluency checks were taken and the average of all 15 is 90.8 words read correctly per minute.

20. On September 18, 2010, the IEP team held the first of a series of monthly meetings.<sup>7</sup> At each of these meetings, as changes to the IEP were made, the student's case manager noted the changes on the actual IEP forms, but did not send Prior Written Notices.<sup>8</sup> At the September 18<sup>th</sup> meeting, the parent presented a document outlining the student's current accommodations, and the team reviewed these. The parent noted in this document that the student had an active IEP and was receiving sensory, writing, and social instruction and support. The parent also outlined all of the student's activities at home:

- a. Tang Soo Do 2000;
- b. 112 Youth Group;
- c. Girl Scouts;
- d. After School Schedule of Homework, Family Dinner, Daily Chores, Family Time, Bedtime stories;
- e. Sylvan Learning System for 20 minutes per day, three times or more per week;
- f. Reading at grade level, 30 minutes per day;
- g. Homework daily;
- h. Sessions with a behavioral therapist; and,
- i. Medication and asthma management as well as development and nutrition monitoring by a pediatrician.

21. The team met again on October 1, 2010, and according to interviews and the written agenda, the team discussed the student's classes, test data (DIBELS, STAR, and OAKS<sup>9</sup>), and the typing program.

22. On October 11, 2010, the District placed a paraprofessional<sup>10</sup> in the student's general education classroom to assist the teacher with the large class size.<sup>11</sup> Although not specifically assigned to the student, the paraprofessional was trained by the Occupational Therapist to work with the student on the sensory motor program and on organizing tasks (weekly desk and supply bucket cleaning, etc.). The paraprofessional estimates that she spends approximately 25% of her time with the student when the grandmother is not in the classroom.

23. All staff interviewed, as well as the grandmother, noted that the student needs the most support to get started on work assignments. All also noted that if the task is timed, the student demonstrates great reluctance to even try to do the task.

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<sup>7</sup> There are agendas for each of these meetings, but no minutes as the District's attorney has advised the District not to keep minutes of IEP meetings.

<sup>8</sup> The District's attorney has advised the District that such notices are not necessary if the parent is there and helps make the decision. The District is not contesting this issue and has asked the Department for guidance on the use of Prior Written Notices.

<sup>9</sup> DIBELS is Dynamic Indicators of Basic Early Literacy Skills; STAR tests are diagnostic skill tests in the areas of reading and math that are part of the Accelerated Reading and Math curriculum programs; and, OAKS is the Oregon Assessment of Knowledge and Skills, again in the areas of reading and math. The District uses the Response to Intervention program in reading and uses the DIBELS system to measure the student's fluency in reading.

<sup>10</sup> This paraprofessional is a licensed elementary teacher who teaches half day and works as a paraprofessional in another classroom half day.

<sup>11</sup> There are 35 fifth and sixth grade students in the class.

24. On October 25, 2010, the parent sent a letter to the Superintendent. In the letter, the parent outlined several concerns, including a lack of collaboration between teachers, District staff's refusal to test the student before school started, the amount of time that the student was removed from of the general education setting to receive services, and the need for an instructional assistant for the child. The parent asked for a written response to the letter to be sent by November 5, 2010. The Superintendent routed the letter to the special education director and asked for an update on the situation. The director set up a meeting with the parent and the IEP team for November 8, 2010.
25. The District sent IEP goal progress reports with the report card on November 5, 2010. Staff wrote that:
- a. On the sensory strategy goal, the student "enjoys movement based activities in Resource however staff have not seen carryover of improved attention/focus when the student returns to the classroom," and the student "needs some movement breaks to help sit in the chair during seatwork. The student has an air-disc on the seat for trial to see if this tool promotes better focus. The student tried a weighted vest for deep pressure/calming but the student did not like it and it was stopped. The student enjoys a variety of fidgets in Resource for tactile exploration/break and reward."
  - b. On the Language Arts goal, the "student is continuing to work in the SRA Corrective Reading Decoding B2 program...is able to read 87 words per minute at the 5<sup>th</sup> grade level...is reading an average of 100 words per minute at the 4<sup>th</sup> grade level in progress monitoring. The student's last reading check out test in the B2 program was 129 correct words per minute. The student is working at the sentence level in writing...on subject/predicate agreement and creating complete sentences with proper grammar, punctuation, spelling and capitalization...was able to complete 5 grammatically correct sentences on a given topic in 7 minutes."
26. The team met again on November 18, 2010. The parent presented the other members of the team with a packet of information that included the student's skill levels as reflected by the Woodcock-Johnson III Test of Achievement administered to the student on December 17, 2009, OAKS and STAR Reading and Math Scores, and a list of sample reading, writing, speech and listening, math, and typing goals. The packet also included questions about short term objectives, work completion, a paraprofessional for the student, and occupational therapy. Team members agreed that many of these issues were discussed at the meeting although the District did not reply to any of the questions in writing.
27. On November 18, 2010, the parent sent a follow-up letter to the principal that recapped the decisions made at the meeting. The parent acknowledged the following in the letter:
- a. Typing would be removed from the IEP and from the student's schedule, and the student would practice typing at home;
  - b. No math intervention would be put in place at that time, but the student would be given an untimed math test to assess skills;
  - c. The student would transition directly to the Resource Room for the sensory break time from the general education math class instead of going back to the other general education class and then to the Resource Room;
  - d. Timed tests were not appropriate for the student, and the team will explore other options;

- e. The student's grandmother would come to the classroom during writing time to support the student and to ensure that the student's desk stays organized;
  - f. The family would hire a tutor for the student;
  - g. The team would reinstitute the communication log between home and school and would institute positive reinforcement programs in all of the student's classrooms;
  - h. The parent signed a release form to allow the school counselor to communicate with an outside behavioral specialist; and,
  - i. The parent expressed concern about the student moving to sixth grade and on to junior high school at the student's current skill level.
28. The team met again on December 2, 2010 and reviewed the parent's concerns from the previous meeting.
29. The team met again on January 13, 2011. The team discussed the recent OAKS scores and the DIBLES progress monitoring on reading fluency. The special education teacher informed the parent that the student had tested out of the B2 Corrective Reading Level and had moved to the Corrective Reading Level C. The team also discussed issues such as helping the student remember to turn in homework, cleaning the desk and the supply bucket, spelling, and the sticker chart and communication log. The District asked for and received the parent's written permission to conduct an evaluation in preparation for the annual IEP meeting scheduled for February 25, 2011.
30. The District sent a progress report on the goals on January 28, 2011. Staff wrote that:
  - a. On the sensory strategy goal, the student "continues to enjoy and seek out the sensory break in Resource. Staff have not seen significant improvements in attention/focus in the classroom but notice more negative behaviors if time does not allow sensory break. The student will work on structured cross-lateral movements but mostly seeks out tactile exploration. The student is progressing with all midline crossing activities."
  - b. On the Language Arts goal, the "student is working in the SRA Corrective Reading Decoding C program. The student is able to read 90 correct words per minute at the 5<sup>th</sup> grade level...read 124 correct words in one minute at the 5<sup>th</sup> grade level on most recent progress monitoring test. The student was able to read 143 correct words per minute on the most recent lesson in Corrective Reading Decoding C. The student is completing the final draft on the red panda animal report...has completed research information and a rough draft. The report is 5 paragraphs in length. The student benefited from using the Franklin speller in class, the revision was primarily spelling errors."
31. The student took the OAKS test in reading and math in January of 2011. The student scored 221 on the fifth grade reading test—benchmark is 218. In math, the student scored 223 on the fifth grade math test—benchmark is 225. The student has two more opportunities to retake the math test to meet the benchmark.
32. The team met again on February 10, 2011. At this meeting the team discussed the possibility of retaining the student in fifth grade for the next year and reviewed the student's progress in both general education classes.
33. District staff tested the student using the Woodcock-Johnson III Test of Achievement on February 10, 2011. The student was in the fifth month of the fifth grade and scored a grade equivalency of 4.5 in Broad Reading, 5.2 in Broad Math, and 4.1 in Broad Written Language.

In subtests evaluating the student's fluency in reading, math and written language, the student scored a grade equivalency of 3.2 in Reading Fluency, 1.8 in Math Fluency, and 4.5 in Writing Fluency. The examiner reported that the student appeared to be "fidgety or restless at times, tense and very slow and hesitant in responding". However, a comparison of the subtests, as shown below, indicates a strong growth pattern.

Subtest	Date Test Given	Date Test Given	Growth in grade equivalency scores over 13 months
	12/17/2009	2/10/2011	13 months
WJ Broad Reading	3.7	4.5	8 months
WJ Broad Math	4.3	5.2	9 months
WJ Broad Written Language	2.6	4.1	1.5 year
WJ Brief Reading	4	4.9	9 months
WJ Brief Math	4.9	6.2	1.3 year
WJ Brief Calculation Skills	3.9	4.5	6 months
WJ Brief Writing	2.9	3.9	1 year
WJ Written Expression	2.9	4.7	1.8 year
WJ Letter -Word Identification	3.8	4.7	9 months
WJ Reading Fluency	2.6	3.2	6 months
WJ Calculation	4.7	5.9	1.2 year
WJ Math Fluency	2	1.8	-2 months
WJ Spelling	2.4	3.4	1 year
WJ Writing Fluency	2.1	4.5	2.4 years
WJ Passage Comprehension	4.8	5.4	6 months
WJ Applied Problems - Math	5	6.6	1.6 year
WJ Writing Samples	4.4	4.9	5 months

34. On February 18, 2011, the parent took the student to the Sylvan Learning Center for a diagnostic assessment. In a written report, the Sylvan Center noted the student's vocabulary skills were at the 4.4 grade equivalency as tested on the California Achievement Test, Fifth Edition, Form A. The report noted that the student was in the 84 percentile in receptive vocabulary with an age equivalency of 12.9 and that the student's learning channel preferences were 29.7 % visual, 32.8% auditory, and 37.5% tactile.

35. The team met again on February 25, 2011, and revised the student's IEP.

36. In the February 25, 2011 IEP, the team identified three goals for the student. The student's Language Arts goal indicated that the student would be able to write a narrative passage

with correct spelling, grammar, punctuation, and capitalization in four out of five sentences. The student's Reading goal indicated that the student would be able to read an average of 125 correct words per minute in a fifth grade reading text and correctly decode words containing affixes with 90% accuracy in both factual and fictional reading selections. The final goal indicated that the student would use Sensory Strategies to facilitate success in the general education classroom. The team agreed that the criteria for the language arts goal was correct conventions in four out of five sentences and that the student would be evaluated using daily work samples, writing probes and tests. The criteria for the Reading goal was set at 125 words correct per minute at the fifth grade level and 90% accuracy with words containing affixes and the evaluation procedures were defined as daily work, reading check outs, and tests. The criteria for the Sensory Strategies goal was established as use of appropriate strategies in four of five trials, as evaluated by teacher, staff, or occupational therapist observations.

37. The team also agreed that the District would report progress to parents on all of these goals using written progress reports distributed quarterly with report cards. The team decided that the student needed specially designed instruction in Language Arts and Reading for 160 minutes per week each in the Resource Room and in a Sensory Motor Program for 60 minutes per week in the Resource Room. In addition, the team decided that the student needed related services of a friendship group one time per week and occupational therapy for two hours per year. The team decided the student needed the following supplementary aids and services and modifications and accommodations:

- a. Breaking tasks into small steps;
- b. Preferential seating away from heavy traffic and reduced stimuli;
- c. Communication log between parents and teacher;
- d. Extended time on tests;
- e. Instructions to be read to the student and then have the student repeat instructions to an adult;
- f. Allowing the student to go to the Resource Room to complete work;
- g. Peer tutor opportunity;
- h. Access to individual Franklin like speller;
- i. Storage of school supplies in a bucket out of the student's reach; and,
- j. Time to complete desk cleaning.

38. The team decided that consultation with the occupational therapist would be provided as support for the school staff. Finally, the team decided that the student would be removed from the general education setting for 240 minutes per week for instruction in Language Arts because the student needed reduced stimulus to focus and that the student's placement would be in the "general education setting with pull-out for specially designed instruction in language arts."

39. Again, the District asked the parent to sign a "Written Agreement between the Parent and the District." District staff explained that this would allow the District and the Parent to discuss changes to the IEP in a more informal way, in other words, without a formal IEP meeting.<sup>12</sup> The parent signed the agreement.

40. The parent filed the complaint on February 22, 2011.

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<sup>12</sup> The District uses this agreement in an open-ended way to give the team more flexibility to adjust the IEP as the student makes progress.

## IV. DISCUSSION

### **Review and Revision of IEPs:**

The parent alleges that the District did not properly keep the student's IEP up-to-date and reflective of the student's progress in a variety of areas. Specifically, the parent alleges that the District failed to review and revise the student's goals in reading and written language when assessment data indicated the student might need different, more, or revised instruction and services in reading and written language. Similarly, the parent alleges that the District refused to write goals for reading and written language that reflected fifth grade standards and skill levels and that the District refused to provide specially designed instruction in math. The parent also alleges that the District failed to discontinue occupational therapy after the team agreed the student did not need such services and that the District failed to consider information the parent provided to the IEP team. In accordance with OAR 581-015-2225, a District meets its obligations to review and revise the IEP in accordance with the student's changing needs when it reviews the IEP periodically but not less than once every 365 days.

The Department does not substantiate these allegations for the following reasons:

1. The District uses a Response to Intervention model and closely monitored the student's progress in reading. This monitoring, along with testing conducted in February of 2011, indicates that the student was making consistent progress in reading and in written language.
2. The goals for written language and reading reflect fifth grade standards. It is not necessary, and in fact, it would be cumbersome for the team to write a goal that names every skill a student needs in any particular curriculum. The goals on this student's IEP are global enough to define the scope of the specially designed instruction the student needs.
3. Testing data clearly indicate that the student does not need specially designed instruction in math because the student is making consistent progress in the general education math program. Fluency is the most difficult skill for the student in math, but all parties agree that timed tasks are globally difficult for the student.
4. The student's IEP team agreed that the parent would provide typing practice and instruction at home and that they would remove the specially designed instruction in typing from the student's IEP. This agreement was put into effect in November of 2010.
5. The IEP team met seven times between September of 2010 and February of 2011, and reviewed the parents concerns at each meeting.

### **IEP Implementation:**

The parent alleges that the District failed to monitor and report the student's progress to the parents as required by the IEP. Under OAR 581-015-2200 (1)(B)(c), the District must include in the IEP a statement that explains how and when the student's progress will be reported to the parents. In this case, the parent, consistent with the student's IEP, received IEP progress reports with the student's quarterly report cards. In addition, the parent was given the DIBELS reading fluency check information on a regular basis. Finally, both general education teachers send progress reports weekly that outline work completion and the team used a home—school communication log at various times during the year. For these reasons, the Department does not substantiate this allegation.

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

The parent alleges that the District refused to consider and provide a paraprofessional to support the student in the general education classroom and that the District did not write measurable annual goals for the student. Under OAR 581-015-2220, the District must include in the IEP goals that are measurable and must provide services either to the child, or on behalf of the child, that are designed to help the child make progress in the general education curriculum.

In this case, the team identified two goals in the student's first IEP, one in the area of Language Arts and one concerning the student's use of Sensory Strategies. The Language Arts goal specifies that the student will learn the skills of analyzing words, recognizing words, and reading grade level text fluently with 85% accuracy. The District specified that the staff would measure the student's progress by using daily work samples and tests and followed through on this by using a reading curriculum that requires daily and weekly checks on the student's reading. In addition, the staff measured the student's fluency weekly using DIBELS techniques. For the second goal, the District specified that the student's appropriate use of sensory strategies would be measured on a trial basis: in other words, observing what percentage of time the student used the strategies correctly in four of five opportunities. The three goals identified in the student's second IEP also provided reasonable measures of the student's annual progress.

The parent asked the District to provide a one-to-one paraprofessional to support the student in the general education classroom. The team discussed this several times, but agreed that the student did not need such close supervision or support to make progress. The Department concludes that, based on the information available to the IEP team at the time this decision was made, the team's decision was reasonable. This conclusion is supported by the student's consistent academic and functional progress in the time that the student has been receiving special education and related services. Therefore, the Department does not substantiate this allegation.

### **Prior Written Notice:**

The District does not contest this allegation. The District did not send Prior Written Notices because it believed the notices were not necessary when the parent attended the meeting and agreed with the decision. The District had received this guidance from its attorney. The District has asked the Department to provide guidance on the use of Prior Written Notices. The Department will provide the requested guidance prior to the initiation of corrective actions by the District.

### **Least Restrictive Environment:**

The parent alleged that the District removed the student from the general education program more than was specified on the student's IEP. Under OAR 581-015-2240 and 2250, the District must ensure that the student is placed in a setting with children without disabilities to the maximum extent possible. Here, the student's IEP specified that the student would be removed from the general education program to receive specially designed instruction in reading, written language and the use of sensory strategies. The IEP also includes an accommodation that allows the student to go to the Resource Room by choice to get help with assignments. The facts in this case indicate that the student does not overuse this accommodation. Because the student is removed from the general education classroom appropriately as per the statement in the student's IEP, the Department does not substantiate this allegation.

## V. CORRECTIVE ACTION<sup>13</sup>

*In the Matter of Klamath Falls City Schools*  
Case No. 011-054-006

Action Required	Submissions <sup>14</sup>	Due Date
<p>Prior Written Notice</p> <ol style="list-style-type: none"> <li>1. Consistent with the guidance provided by the Department, the District shall provide training to special education staff on the appropriate use of prior written notice when proposing or refusing to change the provision of FAPE to a student, proposing or refusing to conduct an evaluation, or proposing or refusing a change in placement for a student.</li> <li>2. The plan for staff training shall include the date, time, and location of the training, who will present, and who will participate, and a description and timeline for follow-up activities.</li> </ol>	<p>The District shall submit its plan for conducting staff training.</p> <p>Upon completion, the District shall submit a signed roster of training participants indicating name, school, and position.</p>	<p><b>June 3, 2011</b></p> <p><b>September 30, 2011</b></p>

Dated: April 19, 2011

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

Mailing Date: April 19, 2011

**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.

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<sup>13</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. OAR 581-015-2030(15). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction. OAR 581-015-2030(17), (18).

<sup>14</sup> 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.