

The District submitted its timely *Response* to the Department and to the parent and Advocate on June 6, 2011. The District's *Response* included a narrative response; copies of the student's five most recent and revised IEPs; 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 two years; 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. It also included copies of Independent Educational Evaluations given to District staff; documents pertaining to a Functional Behavioral Investigation and a Behavior Support Plan; disciplinary and suspension records; and student class schedules, transcripts, and attendance records. During interviews with the Department's complaint investigator, District staff submitted additional materials in response to the complaint.

Between June 8, 2011 and June 13, 2011, the Advocate submitted additional materials to the Department's complaint investigator and to the District. These included articles, charts and references to reading instruction strategies; a response to various District assessments and summaries; copies of reading assessments conducted with the student by a private Reading Clinic; responses to the District's description of how services were provided and to the content of the IEP. The materials also included a narrative on the District's alleged failure to supply information; a global narrative to the District's response as a whole; information about technical assistance as requested in the proposed Corrective Action; a list of suggested witnesses; and a summary. During interviews with the Department's complaint investigator, the Advocate submitted additional materials.

The Department's complaint investigator determined that on-site interviews were required. On June 20, 2011, the Department's investigator interviewed the Advocate. On June 22-24, 2011, the Department's investigator interviewed the following District staff: two Educational Support Services (ESS) Administrators; a middle school principal; a middle school assistant principal; a Behavior Consultant; a middle school special education teacher; a middle school language arts teacher; and, a middle school science teacher. In addition, the Department's investigator interviewed a Home Instruction Coordinator; a Home Instruction Tutor; and an Alternative Education Instructor. On July 12, 2011, the Department's investigator interviewed the parent and the student.

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 sixty 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.³ Due to the complexity of the issues in this case, the Department extended the complaint timelines by 25 calendar days. This order is timely.

3 OAR 581-015-2030(12) (2008)

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. 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 May 6, 2010 to the filing of this complaint on May 5, 2011.⁴

	Allegations	Conclusions
	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p><u>Content of the IEP:</u></p> <p>1.1 Failing to include in the IEP measurable annual goals, based on peer-reviewed research to the extent practicable, and 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, specifically in the areas of reading, writing and spelling;</p> <p>1.2 Failing to include measurable annual goals and specially designed instruction 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, specifically in the areas of math, science and physical education;</p> <p>1.3 Failing to include "interim" goals in reading fluency and basic reading skills in the IEP developed after the November 2010 mediation;</p> <p>1.4 Failing to include in the IEP 1:1 tutoring in targeted reading skills for one hour per day; and,</p> <p>1.5 Failing to consider whether or not the child's</p>	<p><u>Substantiated in part.</u></p> <p>The District included reasonable goals in reading, writing, spelling and math. The student did not need goals for Specially Designed Instruction (SDI) in science and PE. There was no need to include "interim" goals after the November 2010 mediation as the current goals were appropriate. The District considered the student's behavioral needs, completed a Functional Behavioral Assessment (FBA) and wrote a Behavior Intervention Plan.</p> <p>However, when the District met on November 19, 2010, and decided to change the student's placement and include one hour per day of reading instruction with the Home Instruction Tutor, the District should have changed the description of services on the services page of the IEP to reflect this, because the written IEP and the implemented IEP should be the same.</p> <p>Given these facts, the Department substantiates only allegation 1.4 and orders corrective action.</p>

⁴ See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

	<p>behavior impeded the student's learning or the learning of others or to consider including a Behavior Intervention Program or other interventions to address the student's behavioral needs.</p>	
2.	<p><u>Review and Revision of IEPs:</u></p> <p>2.1 Failing to hold the annual review within the appropriate 365 day timeline when it delayed the annual IEP meeting date from March 10, 2011 to April 8, 2011;</p> <p>2.2 Failing to review and revise the child's IEP when the parent provided information from the student's Advocate in May and June 2010.</p>	<p><u>Not Contested:</u></p> <p>2.1 The District does not contest this part of the allegation. The District held an IEP meeting on April 8, 2011 as soon as staff discovered that the team had exceeded the 365 day timeline for annual review. The District has reviewed OAR 581-015-2220 with staff, but it does not address the 365 day timeline. See Corrective Action Plan.</p> <p><u>Not Substantiated:</u></p> <p>2.2 Given the fact that the District considered the reports the parent's Advocate provided, held a substantive discussion on the concerns during the IEP meeting and completed the FBA following the meeting; the Department does not substantiate this allegation and orders no corrective action.</p>
3.	<p><u>IEP Implementation:</u></p> <p>3.1 Failing to provide specially designed instruction in reading fluency (speed and accuracy) and basic reading skills (phonics and vocabulary) that was based on peer-reviewed research-based curriculum and strategies and that were designed to allow the student to make adequate progress on the IEP goals;</p> <p>3.2 Failing to monitor reading fluency progress from November of 2010 through March of 2011;</p> <p>3.3 Failing to provide an additional one hour per day of 1:1 tutoring instruction in reading skills conducted by a certified teacher as per the</p>	<p><u>Not Substantiated:</u></p> <p>The Department finds that the District provided SDI using research based reading programs; provided the ten minutes of phonics instruction and spelling lists; and, used a different but equal designation for measuring reading fluency. In addition, the Department finds that over the course of the school day, in the home instruction program and the alternative program, the District provided the 1:1 tutoring instruction in reading. Given these facts, the Department</p>

	<p>mediation agreement reached on November 18, 2010. Specifically, the District placed the student in a small group with two other students for this instruction rather than having the student work 1:1 with the teacher;</p> <p>3.4 Failing to offer services to the student so that the student could participate in school on multiple days following the mediation held on November 18, 2010;</p> <p>3.5 Failing to appropriately monitor the student's progress in reading fluency when it reported the student's fluency to the parent only in "percentage of words read per minute" as opposed to "percentage of correct number of words read per minute"; and,</p> <p>3.6 Failing to implement portions of the May 25, 2010 IEP, specifically:</p> <p>3.6.1 Ten minutes per day of 1:1 specially designed instruction focusing on phonics;</p> <p>3.6.2 Provision of spelling lists to the student for practice; and,</p> <p>3.6.3 Teacher selection components of the May 25, 2010 IEP.</p>	<p>does not substantiate any of the allegations and orders no corrective action.</p>
<p>4.</p>	<p><u>Rights of Inspection and Review of Educational Records:</u></p> <p>4.1 Failing to provide educational records requested by the parent's representative before the IEP meeting.</p>	<p><u>Not Substantiated:</u></p> <p>The District sent the Advocate a draft of the IEP and some additional information before the April 8th IEP meeting. Between the two meetings, the Advocate made multiple requests for a wide variety of information. The District responded to all of the Advocate's requests. Given the facts, the Department does not substantiate the allegation and orders no corrective action.</p>
<p>5.</p>	<p><u>Independent Educational Evaluation:</u></p> <p>5.1 Failing to consider two separate Independent Educational Evaluations from the University of</p>	<p><u>Not Substantiated:</u></p> <p>The District noted that it considered the information in these reports and</p>

	<p>Oregon submitted to the District in September 2010; and,</p> <p>5.2 Failing to consider an Independent Educational Evaluation submitted to the District at the April 8, 2011 IEP meeting by the parent's representative.</p>	<p>incorporated the recommendations as it evaluated the student throughout the school year. This is evident in the changes in the student's IEP goals written for the April 8, 2011 IEP.</p> <p>Given the fact that the District considered and used the information in the reports, the Department does not substantiate the allegations and orders no corrective action.</p>
6.	<p><u>Parent Participation - General:</u></p> <p>6.1 Failing to provide the parent with information that would allow the parent to reasonably participate in the student's IEP meetings when the District did not share reading assessment information with the parent.</p>	<p><u>Not Substantiated:</u></p> <p>Given the fact that the District sent a multiplicity of documents, with the parent's consent, to the Advocate (to be shared with the parent), before both IEP meetings, the Department does not substantiate this allegation and orders no corrective action.</p>
7.	<p><u>Additional Parent Participation Requirements for IEP and Placement Meetings:</u></p> <p>7.1 Failing to provide the parent and the parent's representative a copy of the IEP written on April 8, 2011 within a reasonable time period.</p>	<p><u>Not Substantiated:</u></p> <p>The ESS administrator sent a copy of the revised IEP draft, which reflected the decisions made at the April 8th meeting, and included the report the Advocate requested, on May 14th. This gave the Advocate and the parent 19 days to review the draft IEP before the meeting at which it would be finalized. Given the facts, the Department does not substantiate the allegation and orders no corrective action.</p>
8.	<p><u>Accessible Materials:</u></p> <p>8.1 Failing to provide the student with accessible materials for use in science and math classes.</p>	<p><u>Not Substantiated:</u></p> <p>On balance, given the district implemented the IEP through the efforts made by the middle school science and math teachers, and the provision of materials in the alternative education setting the</p>

		student attended from late November 2010 through the end of the school year the Department does not substantiate the allegation and orders no corrective action.
9.	<p><u>Requirements for Least Restrictive Environment and Placement of the Child:</u></p> <p>9.1 Failing to involve the parent or the rest of the IEP team in a decision to remove the child from the general education placements in science and math in the fall of 2010.</p>	<p><u>Not Substantiated:</u></p> <p>General education staff moved the student into a different class period of science in order to diffuse a potential behavioral problem; and moved the student into a more intensive "Half-Algebra" class in order to provide the student with more appropriate instruction. Given the facts, the Department does not substantiate this allegation and orders no corrective action.</p>
10.	<p><u>Disciplinary Removals of More than 10 Days (Pattern or Consecutive)</u></p> <p>10.2 Failing to implement appropriate disciplinary procedures when it removed the student from science and math classes multiple times for disciplinary reasons.</p>	<p><u>Not Substantiated:</u></p> <p>Both the parent and the Advocate intended that the Department investigate the amount of time the student was actually removed from specific science and math classes and the reasons for the removals. When a teacher removes a student from a class for behavioral reasons, such a removal does not constitute a disciplinary removal under the context of OAR 581-015-2415, Disciplinary Removals of More than 10 Days (Pattern or Consecutive). Therefore, the Department does not substantiate this allegation under this OAR and orders no corrective action.</p>
11.	<p><u>General Evaluation and Reevaluation Procedures:</u></p> <p>11.1 Failing to conduct an additional assessment of oral reading fluency to clarify the discrepancy between the District's assessment and the</p>	<p><u>Not Substantiated:</u></p> <p>11.1 In this case, the Advocate suggested that the District might want to investigate the</p>

<p>Independent Educational Evaluation provided to the District by the parent's representative; and,</p> <p>11.2 Failing to conduct and implement a Functional Behavior Assessment as agreed to in the Facilitated IEP meeting held on May 25, 2010.</p>	<p>discrepancy in fluency reading tests given to the student by both the District and the local reading clinic. A district must respond to, but is not required to conduct, all evaluations or assessments requested by a parent. Therefore, based on the facts, the Department does not substantiate the allegation and orders no corrective action.</p> <p><u>Not Substantiated:</u></p> <p>11.2 The District did complete the FBA as mandated by the team at the May 25, 2010 IEP meeting. The Department does not substantiate the allegation and orders no corrective action.</p>
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<p>Requested Corrective Action. The parents are requesting that the District:</p> <ol style="list-style-type: none"> 1. Placement for the student in an appropriate alternative placement, at District expense, so that the student can receive the appropriate and compensatory education. <ol style="list-style-type: none"> a. Specifically we request that the oral decision at the recent IEP meeting to approve placing the student at Wellsprings High School in the fall of 2011 is confirmed in writing. The district will be responsible for supplying transportation to and from the school. b. That the oral decision at the IEP meeting to supply the student with Kurzweil 3000 reading software and Dragon NaturallySpeaking speech-to-text software be confirmed and enforced immediately. The student will need instruction in how to use this software, along with opportunities to practice and ask for further assistance. This should occur before the end of this school year so as not to detract from the student's high school placement. c. That specially designed instruction in the area of reading and writing be offered. We request that the student receive 8 hours/week of one-on-one time with a certified special education teacher trained and certified in direct instruction, the methods that have been demonstrated to work with the student. This one-on-one time will be done in a room with no other students present, and the teacher having no other responsibilities. The teacher will spend six of these hours focused on reading instruction using the curriculum and research-based strategies outlined in the independent report from the reading clinic in April 2011. The remaining two hours will focus on writing, using research-based strategies to promote spelling, as well as strategies to teach appropriate writing strategies while the student is able

to use the text-to-speech assistive technology. When school resumes again in the fall, this eight hours of one-on-one instruction will occur Monday to Thursday during the 2nd and 3rd periods of the morning at Wellsprings Friends School (10:15 am to 12:15 am) (sic). The district will arrange with Wellsprings High School that the student will receive language arts credits for this time.

- d. That the student's progress be evaluated using the DIBELS, a nationally normed oral reading fluency measure used to evaluate reading throughout Oregon. The student will complete a one-minute oral reading fluency assessment once per week using passages at the appropriate instructional level (currently grade 3). When the student meets the criteria for the grade level benchmark the first time (e.g. 110 cwpm⁵ with 97% accuracy for 3rd grade), the student will also be evaluated with an oral reading fluency measure at the next higher grade. When the student has met the grade level benchmark three consecutive times, passages at that level will no longer be used to evaluate progress, only the higher grade level passages. This will be repeated with each grade level. Additionally, three times per year (beginning of the year, mid-way through the year, and (sic) end of the year) normed one-minute assessments will be conducted using grade-level passages. For all assessments cwpm and accuracy will be reported.
 - e. Given that the district has repeatedly been unable to supply and appropriately supervise someone with appropriate experience in the instructional approaches that have proven to be successful with the student, the district be required to purchase the services of a special education teacher trained in direct instruction for students with reading difficulties from the other school district in Eugene, the Bethel School District. Bethel School District has extensive experience with research-based methods of corrective reading instruction, including implementing them school-wide in Cascade Middle School. The qualifications and experience of the teacher assigned will be reviewed and approved as appropriate by either Dr. Taylor or the Reading Clinic at the University of Oregon. Bethel School District will supply supervision and replacements for this teacher if the teacher is away. The 4J school district will be responsible for paying whatever costs the Bethel School District identifies are appropriate for this to occur.
2. Purchase for the student's school, at District expense, the appropriate technology for the student's school placement to assist the student with the effect the student's disability has on learning. Specifically, the student will be supplied with an "ultra light" laptop with extended battery life with adequate hardware to support the latest versions of Dragon Naturally Speaking software and Kurzweil 3000 reading software. The computer will have built-in Bluetooth. At this time the most appropriate computer appears to be the Portege 830-S8320. The Bluetooth headset recommended by Dragon Naturally Speaking will also be purchased. The computer will be for use only at school. The District will also supply the school with a compatible color scanner to scan written materials into Kurzweil 3000. The District purchase (sic) a 4-year on-site warrantee, ensuring the computer will be available to the student throughout high school, without ambiguity concerning how the cost of repairs will be covered. At the end of the four years, we request that the ownership of the computer transfer to the student, allowing the student to continue to use appropriate assistive technology.

⁵ The abbreviation "cwpm" means correct words per minute.

3. Purchase, at District expense, the appropriate technology to be used at home to assist the student with the effect the student's disability has on learning.
 - a. Kurzweil 3000 reading software, dragon Naturally Speaking software, and a color scanner.
 - b. Purchase a new iPod Touch with built-in microphone and speaker (minimum memory is fine—if the student wishes additional memory, the student will be responsible for paying the difference in cost prior to purchase). With wireless access, this is able to receive and send texts for free. Additionally, there is a free speech-to-text program from Nuance that can help the student to be able to write texts.
 - c. Purchase high speed internet for the student's home, including a wireless router. This would allow the student to access the internet, increasing the student's reading based on interests, such as bike repair, etc. This will promote reading and researching topics of interest, stimulating further improvement in reading and increase in general knowledge.
 - d. Purchase a limited portable wireless router and plan (e.g. a 4GMobile Micro, 200MB/month for \$20/month). This would allow the student to bring the wireless router with the student outside of the home, and be able to use the voice-recognition technology to send and receive texts. At present, the student is excluded from this common peer activity, as a direct result of the school district's failure to supply appropriate instruction in reading and writing. This technology will allow the student access to this medium of communication, and increase the student's skills in using it. This will help to mitigate the psychological effects that result from the student perceiving self as different from peers.
4. Compensatory experiences, at District expense, for specific supplemental education opportunities to allow the student to compensate for lost opportunities; encourage improved self-efficacy, and reduce psychological harm. Specifically I request:
 - a. That the student be allowed to participate in organized physical activities outside of school time at District expense, such as taking a gymnastics class. The district will be responsible for paying for sufficient experience to equal a full credit in Physical Education, and will grant the student such a high school credit. This will compensate for missed physical education opportunities. Additionally, since the student will be doing double credits in language arts, the student will have less opportunity to take elective courses, such as physical education. By allowing the student to get credit for this experience, the student will be able to choose elective courses more freely, increasing enjoyment of school.
5. Compensatory education for the student should the student wish to take advantage of it.
 - a. Pay any costs associated with receiving any tutoring that can be arranged at the Reading Clinic, either during the summer, or outside of school hours during the school year.

- b. Pay the peer tutor who has tutored the student in the past, \$15/hour, and transportation for the student for any tutoring that the two of them are able to do. The tutor will be required to keep a record of dates, and times, and a general description of the curriculum readings, or strategies used.
 - c. Pay for additional tutoring, up to a total of 20 hours/week in the summer and school vacations, and up to 6 hours/week during the school year for outside of school tutoring, if the student is willing. Tutors will be selected from a list of approved, experienced tutors prepared by the Reading Clinic.
 - d. Pay for the student's transportation to and from any of the above tutoring.
 - e. Pay the student \$5 per hour for each hour of one-on-one language arts the student attends during school hours. Research has demonstrated that paying at-risk students to stay in school increases the likelihood of them completing high school. The district's failure to offer a free and appropriate public education has increased the level of risk of the student failing to complete high school. This will not only act to motivator (sic) to the student, but should help to increase the student's attendance and decrease the likelihood that the student will miss these classes, thus ensuring that teacher time is not wasted.
 - f. Pay the student \$10 per hour of one-on-one or small group reading tutoring in which the student participates during the summer or outside of school hours. This will apply for hours at the Reading Clinic, hours with the peer tutor, or hours with another approved tutor. It would also count for hours of one-on-one reading tutoring by a member of the junior youth group as part of their "Helping each other read" service project. (The junior youth tutor will not be paid.) This will motivate the student to spend additional time on this, accelerating efforts to improve the student's reading ability and make up for the that (sic) resulted due to the district's failure to offer a free and appropriate public education. It will also mitigate against the lost economic opportunities that have likely resulted from the District's refusal to offer a free and appropriate public education over a 3-year period.
6. Require that the student's IEP state that all of the student's teachers are required to read and implement the strategies described in the report by Dr. Taylor, dated April 28, 2011. The IEP will also state that all of the student's language arts teachers are also required to read and implement strategies described in the report from the Reading Clinic, dated April 7, 2011.
 7. In recognition of the fact that the behavioral referrals that the student received were in response to chronic frustration and desire to escape from an unpleasant teaching environment, erase all referrals and suspension from the student's record, so the student gets to start high school with a clean slate.
 8. In addition, I would like to request that if the allegation is founded, that the district is required to pay for an independent assessment, arranged by us, to evaluate [] writing and math skills, including specific gaps that may exist, and to offer recommendations. Those could be arranged over the summer. Then at the beginning of the fall, another facilitated IEP could occur to set appropriate goals and intervention plans in those

areas.

9. That, based on [] having fallen behind in math, [] receive two one-hour one-on-one tutoring sessions during [] math period at Wellsprings, either Monday/Wednesday or Tuesday/Thursday. The math class at Wellsprings is completely individualized, where the teacher goes around and works with students at their level, but must divide his time among the 12 students in the class. By offering one-on-one tutoring in the class time every other day, [] will be able to catch up on skills [] missed due to lack of specially designed instruction in math, allowing the alternate day to be where [] works on work assigned the previous day in preparation for [] next one-on-one tutoring session.

III. FINDINGS OF FACT

The findings of fact are grouped in categories for organizational purposes. The categories are: Background; Content of the IEP; Review and Revision of IEPs; Rights of Inspection and Review of Educational Records; Independent Educational Evaluation; Parent Participation--General; Additional Parent Participation Requirements for IEP and Placement Meetings; Accessible Materials; Requirements for Least Restrictive Environment and Placement of the Child; Disciplinary Removals of More than Ten Days (Pattern or Consecutive); General Evaluation and Reevaluation Procedures. After each category of findings of fact there is a Discussion Section.

Background

1. The student is fourteen years old, lives in the District, and will enter the 9th grade in fall 2011 at an alternative private high school located in the District.
2. The student is eligible for special education as a student with a Specific Learning Disability. The student's eligibility was originally established on May 26, 2004 in another district, and was reestablished on March 10, 2010 in this District.

The student's IEP for the time period under investigation was originally written on 3/10/2010. It was reconsidered or revised on 5/25/2010; 11/19/2010; and 4/8/2011. The chart below outlines the original provisions of the 3/20/2010 IEP and the changes made at each subsequent meeting:

Date of IEP	Reading Goal	Math Goal	Written Language	Behavior Goal	SDI	Placement
3/10/2010	In one instructional year the student will orally read 90 wpm with 2 errors or less on grade level materials. The student will complete a comprehension task that includes: identifying fact/opinion, main idea, sequencing events, map skills, categorizing, cause/effect, and drawing conclusions.	The student will work to master pre-algebra math skills at a level of proficiency that will allow the student to advance to the next level after one year of instruction. The student will also select, apply, and translate among mathematical representations to solve multi-step problems.	In one instructional year the student will write a narrative expository and persuasive texts (sic) using a variety of appropriate to audience and purpose across subject areas. The student will demonstrate knowledge of grammar, spelling, punctuation, capitalization, and penmanship across subject areas.	The student will work to stay in class, follow all directions without having an attitude, and have appropriate interactions.	Reading: 45 min per day Written Language 45 min per day Mathematics 45 min per day Behavior 15 min per day	General Ed & Resource Room General Ed & Resource Room General Ed & Resource Room <u>Total Non Participation in General Education: 45 minutes per day to work on strengthening reading, writing, & behavioral skills.</u>
5/25/2010	<i>Same as above</i>	<i>Same as above</i>	<i>Same as above</i>	<i>Same as above</i>	<i>Same as above</i>	<i>Same as above</i> <u>Total Non Participation in General Education: 45 minutes per day to work on strengthening reading, writing, & behavioral skills.</u>

Date of IEP	Reading Goal	Math Goal	Written Language	Behavior Goal	SDI	Placement
11/19/2010	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above <u>Total Non Participation in General Education: 60 minutes per day to work on strengthening reading, writing, & behavioral skills.</u>
4/8/2011 ⁶	Reading Comprehension: Given specially designed instruction the student will increase reading comprehension by accurately determining the main characters, main thought and supporting events/details, cause and effect and drawing conclusions. The student will identify key vocabulary and	The student will, with specifically designed instruction, learn and understand algebraic concepts (such as solving and graphing linear equations, inequalities and functions; quadratic equations; and polynomials).	The student, with practice and specially designed instruction, will write in a variety of forms including narrative, persuasive, and expository that include a well-focused main points (sic); clear organization; specific development of ideas; and demonstrate control of sentence	<u>No Behavior Goal: instead the team added a:</u> <u>2nd Written Language Goal:</u> The student, with practice, will increase the use of multi-syllabic (more than 2 syllables) words to 5 within a 3 min. timed writing sample.	Written Language: 60 min per week; Reading: 60 min per week; Math: 60 min per week; Reading: 120 min per week	Resource Room Resource Room General Ed Class Resource Room

⁶ The team decided everything except location at this IEP meeting; and then met again on June 3, 2011 and finalized the location.

Date of IEP	Reading Goal	Math Goal	Written Language	Behavior Goal	SDI	Placement
	meanings as a pre-reading strategy to increase understanding.		structure, punctuation, grammar, word choice and spelling.	<p><u>And a 2nd goal in Reading for Oral Reading Fluency:</u> Given practice and support, the student will increase oral reading fluency to 150 CWPM at the 6th grade level.</p>		<p><u>Total Non Participation in General Education: 4 hours of a 30 hour school week to receive specially designed instruction in Language Arts and to make progress towards IEP goals and to meet educational needs.</u></p>

3. On the 3/10/2010 and the 5/25/2010 IEPs, the team noted that the student exhibited behavior that impeded learning; and included Supplementary Services, Modifications and Accommodations as follows:
 - a. "Preferential seating, away from high distractions;
 - b. Positive reinforcement;
 - c. Positive motivation and reminders to stay on task;
 - d. Modify grading;
 - e. Provide opportunities for drill and practice;
 - f. Reduce quantity of material;
 - g. Break tasks into small segments;
 - h. Reduce spelling lists;
 - i. Multiplication chart or calculator;
 - j. Read directions to student;
 - k. Time Extension for assignments;
 - l. Encourage student to stay organized, ask questions and seek help;
 - m. Use planner
 - n. Clear expectations up front;
 - o. Daily schedule on board;
 - p. Give assignments orally and visually;
 - q. Books on tape; and,
 - r. Peer Readers.⁷ & ⁸"

4. On the 11/19/2010 IEP, the team noted that the student exhibited behavior that impeded learning; and included the same list of Supplementary Services, Modifications and Accommodations as in the previous two IEPs. In addition, the team added transportation as a related service.

5. On the 4/08/2011 IEP, the team noted that the student did not exhibit behavior that impeded learning; and included Supplementary Services, Modifications and Accommodations as follows: "word prediction software for written assignments; option to word process written assignments; digital access to instructional material for reading; extended due dates for written and/or reading assignments/tests as arranged with the teacher; access to speech to text software for creating written assignments; and provision of a bus pass if necessary."

6. The student attended a District middle school from September 9, 2010 until November 19, 2010. During that time the student's daily schedule consisted of one period of language arts, one period of social studies, one period of science, one period of math, and three periods of special education support.

7. The parent filed a complaint with the Department on October 30, 2010 and participated in mediation with the District on November 18, 2010.

⁷ These modifications are on a single sheet of paper attached to the IEP. The student's name is at the top and the subject area line says, "Across all areas". There is no information about location, start and end date, and provider as on the IEP services page and in OAR 581-015-2200(e). There is a menu of accommodations and modifications in the areas of Environment, Motivational Strategies, Curriculum Strategies, Organizational Strategies and Presentation Strategies. There is also a blank section titled Other, for additional notes. In each section there is a menu of possible strategies, and the ones for each student are check marked.

⁸ The District provides home instruction services to students via a program that is located in an old school building.

8. On November 19, 2010, the student began a new schedule in a different placement as a result of the mediation conducted on November 18, 2010. This schedule began as one hour per-day of home instruction, specifically focused on reading skills. However, by December 6, 2010, the student's schedule changed to: One hour with a home instruction teacher focused on reading instruction; one hour of math in a general education math class; two hours in an alternative general education class focusing on written language, social studies, science, and reading. Additionally, one afternoon per week the student attended a bicycle repair class at another location. Finally, several times per week the student participated in PE with the alternative education class. The student finished the 2010-2011 school year in this program.
9. In this alternative education program, the staff provides instruction to students using a wide variety of instructional techniques, materials, and, when providing reading instruction, either a 1:1 or, a 1:2 staff to student ratio⁹. Students are paired with instructional assistants, teachers, program staff and others to complete reading assignments.
10. By state regulation, during the 2010-2011 school year, school districts were required to test student's skills in Science and Social Studies at the 8th grade level. In these and in the state benchmark testing in Reading, Mathematics and Written Language the District must test at the 8th grade level regardless of the student's current reading level.
11. The District uses an Instruction Intervention and Progress Monitoring (IEPM) model to measure, provide remediation if necessary, and monitor progress for students in reading. The District describes itself as a strengths and weaknesses model when evaluating for specific learning disabilities. The IEPM model is not yet totally operational at all grade levels, but it was in effect during the student's time at the middle school from September through November, 2010.
12. The parent and student have an Advocate. This individual is a licensed psychologist but does not provide psychological services to either the student or parent in the traditional sense. The Advocate conducts a junior youth spiritual empowerment group through a local church and the student participates in the group. The parent has authorized the Advocate to speak on the parent's behalf, to see student records and to attend IEP and other meetings. Since August, 2009, the Advocate has arranged for the student to receive tutoring, primarily in reading decoding and fluency skills, from both a local reading clinic, and from the Advocate's son. The parent signed a statement giving the Advocate "co-rights to act on behalf of my child with respect to educational needs, to help safeguard rights in the special education decision-making process."¹⁰ Additionally, the parent authorizes the Advocate to receive copies of all information sent to the parent and to attend meetings; but retains the parent's right to make decisions. The parent grants these permissions until October 1, 2011. Before this written statement, the parent had given the Advocate verbal permission to act on the parent's behalf.
13. The District has not appointed the Advocate as an educational surrogate for the student.
14. The time period specifically under investigation of this complaint is May 5, 2010 to the last day the student attended school in June 2011.

⁹ This SDI component is part of the structure of the program.

¹⁰ Date unknown.

Content of the IEP:

15. As stated in Fact #3, the student's IEP as written on 3/10/2010 and reconsidered on 5/25/2010, and 11/19/2010, contains goals in reading (oral reading fluency and comprehension—70% criteria on performance measures, class participation, teacher observations and daily assignments). It also contains a goal in Writing (narrative, expository and persuasive--70% criteria on performance measures, class participation, teacher observations and daily assignments). There is no specific goal for spelling; "knowledge of spelling" is included in the written language goal. Progress reports on all of the goals are scheduled to be reported using a grade report system at progress reporting time and parent meetings.
16. The IEP team decided that the student did not need specially designed instruction on science concepts. Rather, the student demonstrated good understanding of the concepts; but needed accommodations for reading skills in science.
17. As stated in Fact #3, the student's IEP as written on 3/10/2010 and reconsidered on 5/25/2010, and 11/19/2010 contains a goal in math (master pre-algebra 70% criteria on performance measures, class participation, teacher observations and daily assignments). Progress reports on the goal are scheduled to be reported using a grade report system at progress reporting time and parent meetings.
18. None of the IEPs in effect during the period under investigation contain goals for specially designed instruction in PE. In interviews the parent and the Advocate clarified this allegation. Their concern was that the student did not take any PE classes in the 7th or the beginning of the 8th grade. They clarified that the student did not need specially designed instruction in PE; but rather the opportunity to take PE classes¹¹.
19. On the 11/19/2010 IEP the team increased the amount of time the student was to be removed from the general education setting from 45 to 60 minutes per day.
20. The IEP revised on 11/19/2010 contains no reference to 1:1 reading tutoring, although the team had agreed to this during the meeting. The specially designed instruction in reading is described as 45 minutes per day, in the general education/resource room setting.
21. The 3/10/2010; 5/25/2010; and, 11/19/2010 IEPs contain a behavior goal. (Fact #3.) On May 25, 2010, the team decided to complete a Functional Behavioral Analysis and did so. (Facts #74-75)

¹¹ This particular middle school focuses strongly on academic achievement and preparation for high school, and as a result, often removes students from PE or elective classes to attend "booster classes" in academic subjects. The state does not require PE for students at the middle school level. 34 CFR § 300.108 The State must ensure that public agencies in the State comply with the following: a) General. Physical education services, specifically designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

Discussion:

The parent alleged the District violated IDEA when it:

- 1.1 failed to include in the IEP measurable annual goals, based on peer-reviewed research to the extent practicable, and 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, specifically in the areas of reading, writing and spelling;
- 1.2 failed to include measureable annual goals and specially designed instruction 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, specifically in the areas of math, science and physical education;
- 1.3 failed to include "interim" goals in reading fluency and basic reading skills in the IEP developed after the November 2010 mediation;
- 1.4 failed to include in the IEP 1:1 tutoring in targeted reading skills for one hour per day; and,
- 1.5 failed to consider whether or not the child's behavior impeded the student's learning or the learning of others or to consider including a Behavior Intervention Program or other interventions to address the student's behavioral needs.

OAR 581-015-2200 and -2205 contain IEP content requirements and considerations. Under *Rowley et al v. Board of Education*, a District meets its responsibility when it crafts an IEP "reasonably calculated to confer benefit" for a child with a disability. The definition of reasonably calculated to confer benefit is partially based on the inclusion in the IEP of goals that are measureable; academic and functional in nature; and, designed to meet the child's needs so that the child can make progress in the general education curriculum. The goal statement must include information on how the goals will be measured and how and when the child's progress on the goals will be reported to the parent(s). The IEP must also include statements describing the specially designed instruction, related services, supplementary aids and services, accommodations and supports that will be provided to or on behalf of the child.

- 1.1 The District wrote and used goals that met the criteria described for goals in the above administrative rule. The District wrote goals for behavior, reading, math and written language and incorporated spelling into the written language. The District included criteria, a description of how the goal would be measured and how the student's progress would be communicated to the parent. The student's progress on reading fluency and math verifies that the goals, although fairly global, were appropriate.
- 1.2 The student did not need a goal in PE; or a goal in science. The student's needs in science curriculum were based on below grade level reading skills, not on a lack of understanding of the subject.
- 1.3 There was no need to write "interim" reading goals as appropriate goals were already included in the IEP.
- 1.4 When the District met on November 19, 2010, and decided to change the student's placement and include one hour per day of reading instruction with the Home Instruction Tutor, the District should have changed the description of services on the services page of the IEP to reflect this, because the written IEP and the implemented IEP should be the same.

- 1.5 The District did consider the student's behavior and did implement a Functional Behavioral Analysis.

Given these facts, the Department substantiates allegation 1.4 and orders corrective action. The Department does not substantiate 1.1, 1.2, 1.3, or 1.5 and orders no corrective action for these allegations.

22.

Review and Revision of IEPs:

23. The student's IEP for the time period under investigation was originally written on 3/10/2010. It was reconsidered or revised on 5/25/2010; and on 11/19/2010.
24. Sometime after March 10, 2011, and District staff are not exactly sure when, team members realized the student's IEP was due for the annual review. The District scheduled an IEP meeting for April 8, 2011, and sent the parent meeting notices on 3/30/2011 and 4/4/2011. The student continued to receive special education services as per the 3/10/2010 IEP during the period of 3/10/2011 to 4/8/2011.
25. At the May 25, 2010 IEP meeting, the Advocate presented parts of a report titled "Psychological Report: Implications of a review of the current Individual Education Plan and extra-curricular tutoring services." The report included information the Advocate had gathered from the following sources: record review; personal meeting notes; summary reports of testing completed by the District school psychologist; IEP meeting minutes from the District; notes from the student's outside tutor; and notes from the Advocate's work with the student in a church youth group.
26. The Advocate and the parent raised questions at the May 25, 2010 meeting about the student's reading skills and the team held a discussion on the subject. During one point in the discussion, a staff member stated that it was difficult to digest the report during the meeting and to make comments on it. The team discussed how phonics instruction could be provided to the student during the course of the school day, and how the focus on reading instruction at the middle school level is on comprehension.
27. During the interview process, all parties agreed that while there was significant discussion about varying philosophies and strategies for teaching the reading skills of decoding and fluency at the May 25, 2010 meeting; there was little substantive agreement about changing the IEP at that time. The meeting notes reflect this.
28. On June 15, 2010, the Advocate sent a letter to the District's Special Education Director. In the letter, the Advocate suggested questions to ask when evaluating the student's behavior¹²; asked some questions about avoidant behavior during reading instruction; asked whether the accommodations that were being provided to the student during content area instruction were sufficient; and offered suggestions for working positively with the student.

¹² The team had decided at the May 25th IEP meeting to do a Functional Behavioral Evaluation.

Discussion:

The parent alleged that the District failed to hold the annual IEP review within the appropriate 365 day timeline when it delayed the IEP meeting from March 10, 2011 to April 8, 2011. The District does not dispute this allegation. When the District discovered that the IEP review date had passed, it organized a meeting, sent appropriate notices to the parent and held the meeting on April 8, 2011. In addition, the parent alleged that the District failed to review and revise the student's IEP after the parent provided information from the student's Advocate in May and June, 2010. According to OAR 581-015-2225 (1), the District must ensure that the IEP team reviews the student's IEP at least once every 365 days to determine whether the goals are being achieved and revise the IEP, as appropriate to address any lack of expected progress the student is making in the goals and in the general education curriculum. Further, the team must review and address, as appropriate, the results of a re-evaluation; information provided by the parents; the child's anticipated needs; and/or other matters.

- 2.1 The District has suggested the following as a Corrective Action Plan: "The District has reviewed with staff members the Procedural Compliance Rules related to IEP Timelines and Implementation (OAR 581-015-2220). Additionally staff members involved will be placed on the District's SPR&I team for 2011—2012 and will participate in file reviews for procedural compliance". However, OAR 581-015-2220 does not address the 365 day timeline. See Corrective Action Plan.
- 2.2 In this situation, the Advocate presented a report reviewing a wide variety of issues concerning the student. As noted in the meeting minutes, the team focused on three issues; absenteeism, reading instruction, and behavioral concerns. The team decided to focus on the behavioral issues and conduct a Functional Behavioral Assessment. Given the fact that the District considered the information the parent's Advocate provided the Department does not substantiate this allegation, and orders no corrective action.

IEP Implementation:

29. The District used a variety of reading programs to teach the student reading skills (phonics, fluency and comprehension). During the period under investigation these programs included: Read Naturally, Rewards, Rewards Plus, SRA Corrective Reading, Accelerating Maximum Potential Reading Intervention (AMPS); and KidBiz. All of these programs have components of five essential reading skills (phonemic awareness, phonics, fluency, vocabulary and comprehension). Not all of the programs provide equal amounts of instruction in each of the skills; and some emphasize content reading skills in addition. Each of the programs has built-in assessment systems that place the student at an appropriate level in the program and assess the student's progress as the student moves through the program. Again, the assessment systems vary slightly. All are District adopted texts and are research based¹³.
30. The student worked in the Read Naturally, Rewards, and Corrective Reading at the middle school. At the alternative education program, and in the home instruction tutoring program the student worked on Rewards, Rewards Plus, Corrective Reading and KidBiz.

¹³ As verified by a review of the information provided by the publishers on the program websites. Read Naturally and KidBiz are computer based programs on which student's work individually, but the other three are designed to be used in a small group.

31. During the last month of 7th grade, the student worked with the special education teacher on the Rewards program at the middle school. This instruction was provided in a small group in the resource room for one period per day. In addition, the student also went to the resource room at the end of the day for help with assignments, and occasionally the student worked on the Read Naturally Program. However, at some point in the year the student was no longer able to use the Read Naturally Program because the computer on which the program was loaded broke down.
32. When the student went to the home instruction center the student worked with the tutor on the Rewards program; Corrective Reading; and the AMPS Reading Program. In the AMPS Reading Program, the student listened to a narrator read non-fiction material of the student's choice and then read along with the narrator. The tutor did not use these programs every day, but rotated them throughout the week. In addition, the tutor worked on sight reading using a list of 800 common non-phonetic words; on spelling using phonetically regular, i.e. consonant vowel consonant word lists; and required the student to do 15 minutes of homework each day copying these words, using them in sentences, etc.
33. In the alternative program, the student worked on the KidBiz program. This is a computer program which establishes the student's lexile¹⁴ reading level at the beginning of the program and then, using an account with a log-in system, the student chooses content area materials to read. After reading them, the student answers comprehension questions. The system measures the student's lexile reading level several times during the school year and readjusts the reading difficulty level. The teacher read aloud to students every day; and when the students were given materials to read individually, they were paired with adults in the program so that the adult could instruct the student.
34. The District measured the student's oral reading fluency in a variety of ways and throughout the November 2010 to March 2011 time period. At the beginning and end of the 2010-2011 school year, the District used the EASY CBM Benchmark Testing system to test the student on 8th grade level reading. In the fall of 2010, the student read 66 words correctly per minute (cwpm) on a timed fluency test. In the spring of 2011, the student read 109 cwpm.
35. Further, the District measured the student's reading fluency on passages outside of the student's grade level twice during the 2010-2011 school year. On 11/29/2010, the student read a fourth grade passage at 82 cwpm; and on 5/11/2011, the student read a fourth grade passage at 105 cwpm. On the same dates, the student read a fifth grade passage at 52 and 116 cwpm.
36. From January 18, 2011 until May 26, 2011, the District measured the student's reading fluency on one minute timings using the Rewards and Rewards Plus Reading Program Assessment System. The District did this 2 times in January; 5 times in February; 1 time in March; 6 times in April; and 6 times in May. The student's cwpm ranged from a low of 96 to a high of 138 with the final score being 114.
37. From November 19, 2010, to the end of the 2010-2011 school year, the student spent one hour per day with the home instruction reading tutor. This teacher worked with the student in the essential reading skills and included instruction in spelling and content area reading.

¹⁴ A lexile measure is a measurement of the difficulty of a reading book based on word frequency and sentence length. Using the lexile measurement system, teachers can place readers in books at the student's appropriate level of difficulty.

(Fact #34) The program is located in a classroom in an old elementary school. The classroom has been organized to allow for students to work individually or in a small group. The students vary widely in their levels of academic achievement. During this time, only once were there more than three students total in the classroom including this student. In this instance, there were 4 students.

38. Both the student and the Home Instruction Tutor agreed that the tutor spent at least 45 minutes working directly with the student and no one else every day. Both agreed that the teacher would then move around the classroom to check other student's work; but that the teacher was always available to the student for help.
39. The student was scheduled to begin attending the Home Instruction Tutoring Program on November 19th following the mediation on November 18th. District staff responsible for setting up an intake meeting tried several times on the 18th and 19th but was unable to reach the parent. The meeting was held on the 22nd, but a snow day intervened on the 23rd. The student attended for the first time on November 24th, but on November 30th; December 2nd and 3rd there was confusion about transportation arrangements, and the student did not attend.
40. On December 6th, the coordinator for the Home Instruction Program set up a compensatory education program to provide instruction for the days the student had missed. The coordinator sent the proposed schedule to the Advocate, who refused the services.
41. As noted in Facts #37 & 38, the District used varying measurements to track the student's reading fluency. On some of these measures, the system reports the data as "Correct Words Per Minute"; and on others the system reports the data as "Words Per Minute minus Errors" which results in a Correct Words Per Minute total score.
42. At the May 25, 2010 IEP meeting, the team agreed that the special education teacher would spend 10 minutes per day providing 1:1 phonics instruction in study hall to the student. This was implemented during the last month of 7th grade and again in a study hall during the beginning of 8th grade while the student was still at the middle school. This instruction continued during the time the student worked with the Home Instruction Tutor.
43. During the last month of the 2010 school year and during the beginning of 8th grade at the middle school the Language Arts teacher provided the student with spelling lists. The teacher used a phonetically based word bank that taught spelling by using the phonetic components of compound words, i.e., digraphs, blends, etc. As noted in Fact #34, the Home Instruction Tutor also provided spelling lists to the student.
44. The Advocate agreed that the allegation that the District failed to implement teacher selection components of the May 25, 2010 IEP was a mistake and should not have been included in the complaint.

Discussion:

Under OAR 581-015-2220 (1)(b), a District must provide special education and related services to a child with a disability in accordance with the child's IEP. Here the parent alleges that the District failed to implement the child's IEP in a number of ways.

- 3.1 Failed to provide specially designed instruction in reading fluency (speed and accuracy) and basic reading skills (phonics and vocabulary) that was based on peer-reviewed research-based curriculum and strategies and that were designed to allow the student to make adequate progress on the IEP goals;
- 3.2 Failed to monitor reading fluency progress from November of 2010 through March of 2011;
- 3.3 Failed to provide an additional one hour per day of 1:1 tutoring instruction in reading skills conducted by a certified teacher as per the mediation agreement reached on November 18, 2010. Specifically, the District placed the student in a small of group with two other students for this instruction rather than having the student work 1:1 with the teacher;
- 3.4 Failed to offer services to the student so that the student could participate in school on multiple days following the mediation held on November 18, 2010;
- 3.5 Failed to appropriately monitor the student's progress in reading fluency when it reported the student's fluency only in "number of words read per minute" as opposed to "correct number of words read per minute"; and,
- 3.6 Failed to implement portions of the May 25, 2010 IEP, specifically:
 - 3.6.1 Ten minutes per day of 1:1 specially designed instruction focusing on phonics;
 - 3.6.2 Provision of spelling lists to the student for practice; and,
 - 3.6.3 Teacher selection components of the May 25, 2010 IEP.

The Department finds that the District used a wide variety of research based programs to provide reading instruction to the student. The programs are designed to meet the student's reading needs at appropriate levels. The Department also finds that the District monitored the student's reading levels again using multiple measures and frequencies over 2010-2011 school year.

In commentary to the IDEA regulations the U.S. Department of Education explains that an IEP is to include information about the amount of services to be provided to the child so that the level of the agency's commitment to resources will be clear to parents and other IEP team members.¹⁵ While the District explained to the parent that 1:1 instruction often means the teacher works with the student in the presence of other students and often gives the student an individual task during that time while the teacher attends to the others; the parent clearly did not understand it that way. The question here is whether the IEP, without the services of an individually assigned assistant for 1:1 instruction, provides educational benefit. Because the student received at least 45 minutes of reading instruction from the tutor, and because the student often received 1:1 instruction in reading (See Fact 10) in the alternative program, the Department finds no substantive failure to implement the IEP or provide a free appropriate public education (FAPE). The Department finds it matters little, whether or not the district used the cwpm designation or the words per minute minus errors. The end result is the same. The Department finds the District did provide the 10 minutes per day of phonics instruction as promised, and did provide spelling lists.

Given these facts, the Department does not substantiate any of the allegations related to IEP implementation and orders no corrective action.

Rights of Inspection and Review of Educational Records:

45. The IEP team met on April 8, 2011 to complete the annual review of the student's IEP. On April 5, 2011, the ESS Administrator sent a draft copy of the IEP to the Advocate. The next

¹⁵ 71 Fed. Reg. 46667 (Aug. 16, 2006).

day the ESS Administrator realized the email had been sent to the wrong address, and re-sent it.

46. During the interview the Advocate told the complaint investigator that after receiving the draft, the Advocate wanted more information. On April 7th, the Advocate requested, through the meeting facilitator, additional information about the student's academic assessments in the areas of oral reading fluency and reading comprehension.
47. On April 8th, at 12:59 A.M., the ESS Administrator sent additional information to the Advocate.
48. On April 10, 2011, the Advocate wrote to the ESS Administrator and requested that the District immediately implement the recommendations¹⁶ from the local reading clinic about collecting weekly oral reading fluency measures at the student's reading level. The Advocate also complimented District staff on the positive atmosphere at the meeting and offered to work directly with the ESS Administrator on the reading monitoring.
49. The IEP team met again on June 3, 2011 to finalize the location at which the student would receive general education and special education services. Between April 10, 2011 and June 3, 2011, the Advocate wrote to the District Director, the District's attorney and the ESS Administrator 17 times. In these emails, the Advocate:
 - a. requested assessment information;
 - b. informed the District and the attorney that the mediated agreement was not being followed;
 - c. requested a copy of the IEP drafted on 4/8/11;
 - d. suggested that the Advocate give the school the reading testing passages used by the local reading clinic. And, that every Monday the Advocate be allowed to observe the student reading these passages in a timed format;
 - e. submitted a report on the student's strengths and opportunities and requested this be shared with all current staff and the staff who would be working with the student in 9th grade;
 - f. requested a copy of the minutes of the 4/8/11 meeting;
 - g. requested a list of all IEP items not decided at the 4/8/11 meeting;
 - h. questioned the meeting facilitator about the value of holding a June 3rd IEP meeting because the parent had filed a new complaint;
 - i. informed the District that the parent and the Advocate would attend the June 3rd IEP meeting;
 - j. requested that the District complete a table documenting the student's oral reading fluency over the current school year;
 - k. questioned the necessity of the presence of several District administrators and other staff at the June 3rd IEP meeting. The Advocate also asked that other specific individuals not attend because the parent felt negatively about them;
 - l. asked the meeting facilitator what the facilitator thought about the District's provision of accessible technology;
 - m. disagreed with the District's request to extend the timeline for investigation of the new complaint;

¹⁶ In this letter, the Advocate noted that the Advocate had chosen not to read the report during the IEP meeting because of the potential negative effect on the student's psychological well-being.

- n. asked that the June 3rd meeting time be rearranged so that an expert from the local reading clinic could attend;
- o. asked for a written description of the standard administration procedures for the Oregon Assessment of Knowledge and Skills (OAKS) test;
- p. sent copies of tables showing the student's progress on oral reading fluency on District assessments and asked these be reviewed with staff; and,
- q. offered suggestions and opinions on the various reading assessment results that the Advocate had both sent to and received from the District.

50. In the same time period, the District Director, the ESS Administrator, and the District's attorney answered all of the emails. Collectively, they provided copies of all materials requested, answered the questions asked, and completed the tables. They refused the Advocate's offer to observe the oral reading fluency testing sessions, or to use the materials for the testing that the Advocate offered. They also refused to rearrange the meeting time for the June 3rd IEP meeting, and to change the composition of the IEP team itself. They provided such meeting minutes as were available, and sent a copy of the IEP from the April 8th IEP meeting.

Discussion:

The parent alleged that the District violated the parent's right to the inspection and review of educational records when it failed to provide educational records requested by the parent's representative before the June 3, 2011 IEP meeting. Under OAR 581-021-0270 Rights of Inspection and Review of Educational Records; and OAR 581-015-2300 Access to Student Records; a district must allow parents access to and the opportunity to review the student's records, most specifically before an IEP meeting. In this case, the team met twice (April 8, 2011 and June 3, 2011) to write the student's IEP. The District sent the Advocate a draft of the IEP and some additional information before the April 8th IEP meeting. Between the two meetings, the Advocate made multiple requests for a wide variety of information. The District responded to all of the Advocate's requests. Given the facts, the Department does not substantiate the allegation and orders no corrective action.

Independent Educational Evaluation:

- 51. On September 15, 2010, the District received a report from the local reading clinic. The report summarized the reading instruction the clinic provided to the student from July 19 through August 10, 2010; and reported on the student's progress. There is also a second report from the reading clinic written on the same date and titled Confidential Educational Assessment Report. The Advocate arranged for both reports to be sent to the District.
- 52. The Advocate did not tell the District that these reports were an Independent Educational Evaluation conducted in response to the District's previous evaluations (eligibility or otherwise).
- 53. On June 8th, at 9:55 a.m., the Advocate sent a copy of another report from the local reading clinic to the District. This report was dated April 7, 2011, and summarized the student's performance "on a number of standardized and informal measures of decoding and fluency" administered at the clinic in the spring of 2011. During the IEP meeting that day, the District offered the Advocate the opportunity to discuss the report with the IEP team. The Advocate declined this offer because of concerns as to how it might affect the student and the parent.

54. In its response letter, the District stated that it considered the information in the reports and incorporated the recommendations as it evaluated the student throughout the 2010-2011 school year.

Discussion:

The parent alleged that the District violated IDEA when it: (a) failed to consider two separate Independent Educational Evaluations from the University of Oregon submitted to the District in September 2010; and, (b) failed to consider an Independent Educational Evaluation submitted to the District at the April 8, 2011 IEP meeting by the parent's representative. Under OAR 581-015-2305, a parent has the right to obtain an Independent Educational Evaluation if the parent disagrees with an evaluation conducted by the school district. Once the parent has obtained the Independent Educational Evaluation, the District must consider the results of the evaluation "in any decision made with respect to the provision of a free appropriate public education to the child". Likewise, if the parent shares with the district an evaluation obtained at private expense, the district must consider the results of the evaluation in any decision made with respect to the provision of FAPE, if the evaluation meets the district's criteria.¹⁷

In this case, the parent's Advocate arranged for the student to receive tutoring at a local reading clinic and then asked the clinic to send the District the results of both the tutoring and assessments conducted during the tutoring period. The Advocate again presented an evaluation from the reading clinic at the April 8, 2011 IEP meeting. When offered the opportunity to discuss this report at the meeting, the Advocate declined. The District noted that it considered the information in these reports and incorporated the recommendations as it evaluated the student throughout the school year. This is evident in the changes in the student's IEP goals written for the April 8, 2011 IEP. Given the fact that the District considered and used some of the information in the reports, the Department does not substantiate the allegations and orders no corrective action.

Parent Participation – General:

55. At the mediation on November 18, 2010, the Advocate requested the District send a number of documents to the parent. The District sent a letter with the requested documents on November 23, 2010¹⁸.

56. The District sent a copy of the draft IEP to the Advocate on April 5, 2011.

57. The District Director emailed the Advocate on April 22, 2011, and answered questions the Advocate asked about the District's reading assessment practices.

58. On May 2, 13, 19, 2011; the District sent information to the Advocate about the student's scores in the Rewards reading program.

59. The Advocate had consistently asked the District to send information directly to the Advocate to share with the parent.

¹⁷ 581-015-2305(7)

¹⁸ The list of actual documents sent is part of the confidential mediation agreement and thus is not listed here.

Discussion:

The parent alleged that the District violated IDEA when it failed to provide the parent with information that would allow the parent to reasonably participate in the student's IEP meetings when the District did not share reading assessment information with the parent. Under OAR 581-015-2190 Parent Participation—General; the District must take whatever action is necessary to ensure the parent understands the proceedings at an IEP meeting. In this case, the parent's Advocate had consistently asked the District to send the information directly to the Advocate so that the Advocate could explain it to the parent. This was particularly true about the documentation of the student's progress in reading skills. The District sent a draft of the IEP on April 5th before the April 8th IEP meeting; and continued to send documents as requested until the June 3rd IEP meeting. Given the fact that the District, with the parent's consent sent a multiplicity of documents to the Advocate (to be shared with the parent), before both IEP meetings, the Department does not substantiate this allegation and orders no corrective action.

Additional Parent Participation Requirements for IEP and Placement Meetings:

60. The District sent a draft copy of the IEP to the Advocate on April 5, 2011. At the April 8, 2011 meeting the team worked on the draft and made all decisions except the location at which services were to be provided.
61. On May 3, 2011, the Advocate requested that a report on the student's strengths and opportunities be added to the IEP.
62. On May 14, 2011, the ESS Administrator sent the Advocate draft of the IEP reflecting the decisions made at the 4/8/11 meeting, and including the strengths and opportunities report.

Discussion:

The parent alleged that the District violated IDEA when it failed to provide the parent and the parent's representative a copy of the IEP written on April 8, 2011 within a reasonable time period. Under OAR 581-015-2195 Additional Parent Participation Requirements for IEP and Placement Meetings, the District must give the parent a copy of the IEP. Even though this administrative rule does not specify a timeline to guide Districts in fulfilling this rule, a generally accepted standard is ten days. However, in this case, the Advocate requested an addition to the IEP on May 3, 2011. In addition, the team had scheduled another meeting for June 3, 2011 in which they agreed it would finalize the IEP. The ESS administrator sent a copy of the revised draft, which reflected the decisions made at the April 8th meeting, and included the report the Advocate requested, on May 14th. This gave the Advocate and the parent 19 days to review the draft IEP before the meeting at which it would be finalized. Given the facts, the Department does not substantiate the allegation and orders no corrective action.

Accessible Materials:

63. In the past several years the District has used grant monies to purchase a scanner and digitize text for students to use with a variety of software programs that turn text to speech, etc. This has been a two year process and during the 2009-2010 and 2010-11 school years most of the digitized text was available at the high school level. Currently, the District is

working to extend this to District middle schools. Students who have reading goals on an IEP have access to these materials.

64. In the student's math classes at the general education middle school, the math teacher made materials accessible to the student by reading to the student individually, using a smart board to pre-teach vocabulary, and minimizing the amount of reading required in the homework assignments.
65. When the student moved to the alternative education setting in November 2010, the District provided math instruction using a program which individualized the work for each student. There were also college students in the classroom to work with the students and to help facilitate the individualized instruction. The teacher used a video program which provided visual instruction to students.
66. In the middle school science classes, the teacher encouraged students to read aloud and to read in pairs to one another. The student felt "self-conscious" about this. The assistant principal encouraged the teacher not to pair the best readers with the worst readers, but instead to use a system where students paired with others who read just slightly above or below each other. The science teacher also used videos and provided students with lab work to teach concepts.
67. In the alternative education program, the student worked on science using a science high interest low vocabulary curriculum as well as a video program using clips that ran for 15 minutes. The student was asked to watch the videos all the way through the first time, and then watch it a second time to copy the spelling of vocabulary words displayed on the screen and to draw an illustration of the concept being taught, i.e., body systems. The student worked on this approximately one time per week when working with the Home Instruction Tutor for one hour.
68. The District also provided instruction in geography in the alternative education setting one time per week using the "Google Earth" program.

Discussion:

The parent alleged that the District violated the IDEA when it failed to provide the student with accessible materials for use in science and math classes. Under OAR 581-015-2060, a district must ensure the "timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats". Accessible materials include such formats as large print materials, audio materials and digital text. Print materials can also be adapted for accessibility by using guided work sheets, highlighting texts in print material, and providing a peer or other reader. During the 2010-2011 school year the student attended school in two different settings. In the first, a general education middle school, both the science and math teachers made efforts to provide instruction using strategies to make the text more accessible. Both of them knew the student did not have strong reading skills and worked to accommodate that. After the student transferred to the home instruction and alternative education setting the very nature of the programs ensured more accessible materials. On balance, given the efforts made by the middle school science and math teachers, and the fact that the student attended the alternative education setting from late November 2010 through the end of the school year where accessible materials were readily available, the Department does not substantiate the allegation and orders no corrective action.

Requirements for Least Restrictive Environment and Placement of the Child:

69. The student took Pre-Algebra during the 7th grade year and passed the class with a “C –” grade.
70. At the start of the 2010-2011 school year, the student was placed in an Algebra class. After several weeks, the Algebra teacher felt the student was struggling to the point where it would not be profitable for the student to continue in the class. In addition, the student was missing school and experiencing behavioral difficulties in other classes. Because there were other students having similar difficulties, the Algebra teacher created a new class called “Half-Algebra”, designed to teach 16 basic algebraic concepts over the course of a full-year¹⁹. The student was placed in this class along with 9 other students.
71. The math teacher called the parent and explained the reason for the change. The parent agreed with the change; but the student was very disappointed in this change, and felt it to be a “put-down”.
72. When the school year started, the student was assigned to a science class to which several of the student’s friends were also assigned. Since this group of two or three had difficulty concentrating on the work when they were in class together; the staff moved the student to a different class period of science in order to separate the group.

Discussion:

A school district meets its responsibility to provide a student with a disability with a free and appropriate public education when it provides such education in the least restrictive environment possible. A setting is considered to be least restrictive when the student is able to be educated with students who do not have disabilities to the maximum extent possible. In this situation, the parent alleged that the student was removed from the general education science and math classrooms. Actually, the middle school staff simply changed the class period of science in order to manage a developing behavior situation among two or three students. The student was moved from an Algebra class to a “Half-Algebra” class in the general education setting. This class was designed to help a group of 10 students to study and practice 16 basic concepts over a whole year of instruction; so that they would be better prepared for Algebra at the high school level. Neither of these decisions needed to be reviewed with the student’s IEP team. The math teacher discussed the math change with the parent; and the vice principal discussed the science change with the parent. General education staff made these decisions in order to provide the student with more appropriate instruction in the science and math. It is their responsibility to do so. Given the facts, the Department does not substantiate this allegation and orders no corrective action.

Disciplinary Removals of More than 10 Days (Pattern or Consecutive):

73. The student was assigned one in-school suspension on 10/18/2010 (half-day); and received the specially designed instruction outlined on the IEP during that half-day. In-school suspensions do not count as Disciplinary Removals if the student receives his or her SDI.

¹⁹ The idea was students would be more successful in Algebra if they studied and practiced these concepts over a longer period of time.

74. During the 2010-2011 school year, the student was suspended out of school only one time for 5 days for having possession of marijuana on campus. This suspension was in effect for the week of November 15, 2010.
75. The team held a Manifestation Determination meeting on November 17, 2010 and decided that the student's actions were not a result of either the district's failure to implement the IEP nor the student's disability. On that same date, the team gave the parent Prior Written Notice that the District intended to move the student to a 45 day alternative education setting. Two days later, in mediation, the team formalized that placement.
76. During the interview process, both the parent and the Advocate stated that they were actually referring to the student's removal from individual math and science classes for disciplinary infractions. However, such removals are not included in the definition of disciplinary removals in this context.

Discussion:

Under OAR 581-015-2415, "a disciplinary removal is considered a change in educational placement, and the school district must follow special education due process procedures if: (a) The removal will be for more than 10 consecutive school days (e.g.) expulsion; or (b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2)". In this case, the student was suspended for only five days during the 2010-2011 school year. Second, during the interview process, both the parent and the Advocate stated that they were actually referring to the student's removal from individual math and science classes for behavioral infractions. When a teacher removes a student from a class for behavioral reasons, such a removal does not constitute a disciplinary removal under the context of OAR 581-015-2415. Therefore, the Department does not substantiate this allegation under the rules of Disciplinary Removals of More than 10 Days (Pattern or Consecutive) and orders no corrective action.

General Evaluation and Reevaluation Procedures:

77. On April 10, 2011, the Advocate wrote to the ESS Administrator about a number of items that had been discussed at the April 8th IEP meeting. In particular, the Advocate expressed concern about the discrepancy between reading fluency testing conducted by the local reading clinic and the District. The Advocate stated: "You may want to investigate that (the discrepancy in the scores²⁰). Over the next several days, the Advocate forwarded the letter to the facilitator and to the District Director.
78. On April 13, 2011, the Advocate forwarded the April 10th letter to the District's attorney and included a second letter. In the second letter, the Advocate again expressed concern that there was a significant discrepancy in oral reading fluency results coupled with concerns in a number of other areas.
79. On April 20, 2011, the Advocate sent an email to the ESS Administrator. In the letter, the Advocate suggested that the Advocate give the school the reading testing passages used by the local reading clinic, and additionally, that every Monday the Advocate be allowed to

²⁰ The local reading clinic had administered 7 oral reading fluency tests and the Advocate compared the results of these to District tests conducted in November, 2010, and clinic results from August and September 2010.

observe the student reading these passages in a timed format. Specifically, the Advocate suggested this be done using multiple standardized and nationally normed 8th grade and 3rd grade passages supplied by the local reading clinic. Finally, the Advocate suggested the student be given 6 more oral reading fluency tests at the end of the school year.

80. At the May 25, 2010 meeting, the team decided to do a Functional Behavioral Assessment (FBA). The District obtained parental consent for the FBA on May 26, 2010, and the assessment was completed during the period of June 3 - 18, 2010. The District Behavioral Consultant interviewed teachers, the parent and the student and observed the student in the Language Arts/Social Studies and Language Arts Booster class, and attempted observations in both science and math classes. However, the student was not attending science and there were some scheduling conflicts with the math class so the consultant was not able to observe in either. The interview with the student included a review of the student's schedule in which the student rated each class as to whether or not the student liked the class and where the class ranked on a schedule of really hard to easy. The student also completed a reinforcer questionnaire and spoke with the Behavioral Consultant generally about school.
81. On September 13, 2010, the Behavioral Consultant and the special education teacher met and reviewed the results of the FBA and wrote a Behavior Intervention Plan. As a result, the special education teacher implemented a daily point card system for the student to take to every class.

Discussion:

The parent alleged that the District violated IDEA when it failed to conduct an additional assessment of oral reading fluency to clarify the discrepancy between the District's assessment and the Independent Educational Evaluation provided to the District by the parent's representative. The parent alleged that the District also violated IDEA when it failed to conduct and implement a Functional Behavior Assessment as agreed to in the Facilitated IEP meeting held on May 25, 2010. Under 581-015-2105 the public agency must ensure that a reevaluation of each child is conducted if the public agency determines that the educational or related services needs of the child warrant a reevaluation or if the child's parents or teacher requests a reevaluation, a reevaluation may occur not more than once a year, unless the parent and public agency agree otherwise OAR 581-015-2110 General Evaluation and Reevaluation Procedures, specify a range of criteria for evaluations.

- 11.1 In this case, the Advocate suggested that the District might want to investigate the discrepancy in fluency reading tests given to the student by both the District and the local reading clinic. A district must respond to, but is not required to conduct, all evaluations or assessments requested by a parent. Therefore, based on the facts, Department does not substantiate the allegation and orders no corrective action.
- 11.2 Secondly, the District did complete the FBA as mandated by the team at the May 25, 2010 IEP meeting. The Department does not substantiate the allegation and orders no corrective action.

<p>participated in IEP meetings at schools attended by the student during the time period covered by this complaint. This may be done by e-mail, requesting a "read receipt."</p>	<p>district staff on distribution list or the link to district web page that identifies these assignments.</p>	
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Dated: July 29, 2011



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

Mailing Date: July 29, 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.