

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Sherwood School District )  
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FINDINGS OF FACT,  
 CONCLUSIONS,  
 AND FINAL ORDER  
 Case No. 12-054-008

**I. BACKGROUND**

On April 9, 2012, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parents) of a student (Student) residing in the Sherwood School District (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on April 10, 2012 and provided the District a copy of the complaint letter.

On April 13, 2012 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 April 27, 2012. The District submitted its timely *Response* to the Department and to the parents on April 27, 2012. The District's *Response* included IEPs; IEP meeting minutes; Prior Written Notices; current three-year evaluation; statewide and district-wide evaluation results; progress monitoring data and reports; emails and other correspondence; attendance records; and district calendar.

The Department's complaint investigator determined that on-site interviews were required. On May 9, 2012, the Department's investigator interviewed the Parents and Student. On May 11, 2012, the Department's investigator interviewed the following District staff: special education program director and special education teachers. The District's special education director was present during the interviews. The Department considered all these interviews and documents in the investigation findings.

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 local resolution or if exceptional circumstances require an extension.<sup>1</sup> This order is timely.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. 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 April 10, 2011 to the filing of this complaint on April 9, 2012.<sup>2</sup>

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

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

	<b>Allegations</b>	<b>Conclusions</b>
	<b>Allegations to be investigated.</b> <sup>3</sup> The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><b><u>Assistive Technology:</u></b></p> <p>Failing to provide appropriate assistive technology (AT) like books on tape and other technology that reads to the student.</p> <p><b><u>Relevant Rules and Regulations:</u></b>  OAR 581-015-2205(2)(b) and 34 CFR § 300.324 and OAR 581-015-2055 and 34 CFR § 300.105</p>	<p><b><u>Not Substantiated:</u></b></p> <p>There is insufficient evidence to conclude that the Student's IEPs did not address the need for AT. Sufficient student progress was also a factor in this determination.</p>
2.	<p><b><u>Reading Instruction:</u></b></p> <p>Failing to provide appropriate reading instruction.</p> <p><b><u>Relevant Rules and Regulations:</u></b>  OAR 581-015-2040 and 34 CFR § 300.101</p>	<p><b><u>Not Substantiated:</u></b></p> <p>Despite the Student's struggles in reading, the Student made sufficient progress towards the reading goals.</p>
3.	<p><b><u>Secondary Transition Plan:</u></b></p> <p>Failing to provide an appropriate secondary Transition Plan.</p> <p><b><u>Relevant Rules and Regulations:</u></b>  OAR 581-015-2200(2) and 34 CFR § 300.320(b)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The IEPs in question addressed Transition requirements. The District used the Cadet and Access classes to provide the student with training as a transition service.</p>
	<p><b>Requested Corrective Action.</b> The parents request the following:</p> <p>"The District needs to award (Student) the three credits [ ] is due, reimburse for the tuition, and pay the tuition for (Student) to</p>	<p><b>Not ordered.</b></p> <p>1. The Student's tutoring services (November, 2009 to October, 2010) were before the complaint's one-year</p>

<sup>3</sup> The complaint as filed also contained an issue regarding general education credits and credit recovery. These issues will not be addressed here because it is not a special education issue that pertains to the IDEA or 34 CFR § Part 300. See OAR Chapter 581, Division 22 Rules for credit information and OAR 581-022-1131, Credit Options, for applicable legal standards.

<p>complete [ ] work at the NW Reading Clinic. Or we will consider monetary compensation for the credits (Student) is entitled to (\$150,000 per credit = \$450,000 plus tuition expenses of \$17,500 at a minimum. For a total of \$467,000.”</p>	<p>timeline and therefore, beyond the scope of this investigation.<sup>4</sup></p> <p>2. Progress data indicates the Student has made satisfactory progress in reading.</p>
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### III. FINDINGS OF FACT

#### Background

1. The Student is a 17 year old 11<sup>th</sup> grader who is a resident and attendee of the District. The Student is currently eligible for special education services under the category of Specific Learning Disability in math. The Student’s current Individualized Education Program (IEP) dated February 2, 2012 states that the Student is receiving Specially Designed Instruction (SDI) in the areas of reading, math, and written language.

2. The Student was last comprehensively evaluated in February, 2010. The evaluation was summarized by the following:

Student is a 9<sup>th</sup> grade student who has a history of struggling in school. Student has consistently demonstrated low-to-low average achievement and abilities. Student is below grade level in reading and writing, and well below in mathematics. Cognitively, long-term retrieval and fluid reasoning are particular areas of weakness for Student. A score of 84 on the Verbal Ability cluster also indicates that Student will find grade-level work to be very difficult. Performing visual-spatial tasks is a relative strength for Student.

3. The parents, by their own accord, paid for 245 hours of tutoring for reading through the NW Reading Clinic from November, 2009 through October, 2010. The bill totaled \$10,346.00.

#### 2010-2011 School Year

4. The IEP team, which included the Parents and the Student, conducted an IEP meeting on February 7, 2011. According the Present Levels of Academic Achievement and Functional Performance (PLAAPF), the Student was taking two year-long classes, English and Algebra, which are normally one semester. These year-long classes break down the curriculum into smaller segments, making it easier to learn. The Student had a 79% average in math and performed at the 8<sup>th</sup> grade level with 96% accuracy in reading. The 9<sup>th</sup> grade State Benchmark test scores were Reading-228 D and Math-221 D (236 meets criteria). The Student had a 1.75 GPA. Assistive Technology (AT) and behavior were not marked for concern on the IEP.

5. The IEP lists the frequency and amount of SDI as follows:
  - Reading-160 minutes/month
  - Writing-160 minutes/month
  - Math-200 minutes/month

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<sup>4</sup> OAR 581-015-2030

6. The IEP contains the following accommodations:
  - accommodate tests (2X) time, quiet setting, Student own notes, word bank, reduce to 3 choices
  - assistance with breaking large assignments into steps and planning a timeline;
  - test read to if needed
  - *books on tape if needed*
7. The IEP reading goal states: "Given specially designed instruction and preparing for post secondary schooling, (Student) will read at the 9<sup>th</sup> grade level text focusing on literal and inferential comprehension with 95% accuracy and 80% comprehension."
8. The IEP's Secondary Transition Plan indicated that the Student's post secondary transition goals were to attend a community college and transfer to a 4-year college. The Student's employment goal was to be an elementary teacher. Course of study lists, "Classes needed for graduation and cadet tutor classes." A regular diploma was anticipated.
9. Regarding functional and independent living skills, the IEP states, "(Student) is equal to (Student) peers in this area. There is no need for services in this area."
10. The IEP states, "Parent concerns: Continues to be successful in school" and "Student concerns: To have Access again and be able to have notes for tests." The IEP notes state, in part, "Showed real growth in comprehension, but still trouble with recall-short term memorization Everyone agreed that (Student) has improved a lot in both (the Student's) comprehension but as well in (the Student's) work ethic."
11. The special education reading progress report dated June 11, 2011 states, "(Student) was able to read at the **10<sup>th</sup> grade** (emphasis added) level on an IRI with 99% accuracy. (Student) had 2 words that (Student) self-corrected. (Student) was able to read with 30% recall and (Student's) comprehension was at 40%. (Student) read 114 WPM with 1 error.
12. The Student's GPA for the 2010-2011 school year was 2.67. Grades were not modified in any way.

### 2011-2012 School Year

13. The special education reading progress report dated December 11, 2011 states, "(Student) was able to read at the 9<sup>th</sup> grade level. (Student) read with 95% accuracy and self-corrected 7 words. (Student's) recall was 13% and (Student) comprehension was at 75%. (Student) was able to read 85 WPM with 0 errors."
14. On February 2, 2012, the District conducted an annual review of the IEP. The Parents and Student did not attend. The PLAAFP statement describes the Student as demonstrating grade level performance in reading and writing with grades of B's and C's in Student's English class and C's in Student's math class. The Student's GPA was 2.09 and was on track to graduate. Student was reading at the 9<sup>th</sup> grade level with 95% accuracy with 27 self-corrections, 50% recall, and 88% comprehension. This accomplished the reading goal from the previous 2010-2011 IEP. AT and behavior were again not marked for concern.
15. The IEP lists the frequency and amount of SDI as follows:
  - Reading-160 minutes/month

- Writing-160 minutes/month
- Math-200 minutes/month

16. The IEP lists the following accommodations:

- accommodate tests (2X) time, quiet setting, Student own notes, word bank, reduce to 3 choices
- assistance with breaking large assignments into steps and planning a timeline;
- test read to Student if needed
- student own notes for tests
- *books on tape if needed*

17. The new reading goal states, "Given specially designed instruction and preparing for post secondary schooling, (Student) will read at the 10<sup>th</sup> grade level passage and be able to identify the main ideas with the supporting details, draw appropriate conclusions, make inferences and understand the vocabulary with 80% comprehension questions correct."

18. The Secondary Transition Plan indicates that the Student is still interested in attending a community college and then a 4-year college. The Student was unsure what to study although there remains some interest in still becoming an elementary school teacher. Course of study states, "Classes needed for graduation and cadet tutor classes." This information was based on the Explore Inventory and the Transition-to-Work Inventory. A regular diploma continues to be anticipated.

19. Regarding functional and independent living skills, the IEP again states, "(Student) is equal to (Student's) peers in this area. There is no need for services in this area."

20. The special education reading progress report dated March 11, 2012 states that it was too soon after the new IEP to determine progress. As of the April 9, 2012, (Student's) GPA was 2.10. Again, grades were not modified.

21. District staff reported to this investigator that the Student, although struggling, has made significant progress academically and could be successful in college. This staff member's biggest perceived barrier to the Student's future success in college, which was stated during the investigation, is the Student's work ethic. This teacher stated that, "Work ethic involves working independently and turning in assignments on time and without prompting." The staff also reported that the (S)tudent had improved (Student's) initiative and work ethic drastically over the past school year.

22. The Student has attended the Access Class, which includes instruction in the following areas: understanding your disability; understanding your IEP and legal rights; exploring post-secondary living; drawing up a budget/money management; and exploring post-secondary options and benefits for students with disabilities.

#### IV. DISCUSSION

##### 1. Assistive Technology

The Parents allege that the District failed to provide the Student with appropriate AT, such as books on tapes and other technology that reads to the Student. The Parents were not specific

about what “other technology” meant. The basis for the complaint issue is that the Student has continued to struggle in reading despite SDI in reading and private reading tutoring. The District states that AT was addressed in both the 2010-2011 and 2011-2012 IEPs and the IEP team, including the Parents, expressed no need of AT for the Student. Books on tape, listed as an accommodation, were already being provided. The District states that a Free Appropriate Public Education has been provided to the Student without AT.

In developing, reviewing, and revising the IEP, the IEP team must consider whether AT devices and services are needed by the student.<sup>5</sup> AT is defined as any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability.<sup>6</sup>

Both the 2010-2011 and 2011-2012 IEPs did not indicate a need for AT within the consideration of special factors, although books on tape (and reading the test to the Student) are both listed under accommodations. Having established that the IEP had at least contained books on tape, the next question is whether the accommodation was implemented according to the IEP. Implementation of the accommodation in the manner prescribed on the IEP, “as needed,” complicates the issue. Here the IEP team made a procedural error by not identifying the use of the accommodation according to the guidelines of the Oregon Standard IEP<sup>7</sup>. It is not clear who decides when it is needed or under what conditions. Progress reports indicate the Student has continually made progress towards the reading goals according to the special education progress reports.

Regarding other AT to assist the Student, the District did not pursue assistive technology no AT beyond the identification of the use of books on tape as an accommodation. No evaluation has either been requested by the Parents or conducted by the District. Without an AT evaluation or other evidence to the contrary, there is no basis for determining that the IEP team’s decisions regarding AT were not made in light of the Student’s abilities and needs.<sup>8</sup> Based on the evidence that the Student has made progress toward reading goals and no evidence indicating that other AT should have been provided, the allegation is found to be **not substantiated**.

## 2. Reading Instruction

The Parents allege that the District failed to provide the Student with appropriate reading instruction based on the Student continuing to struggle in reading and Student’s failing grades. The District states that the Student has received appropriate SDI in reading and has continually made progress toward the reading goals.<sup>9</sup>

The IDEA requires districts to review and revise IEPs periodically—at least once a year but, more frequently if necessary to address:

- Any lack of expected progress toward IEP goals and in the general curriculum;
- The results of any reevaluation;

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<sup>5</sup> OAR 581-015-2205(2)(b)

<sup>6</sup> OAR 581-015-2000(2)

<sup>7</sup> OAR 581-015-581-015-2200 Content of IEP and Standard Oregon IEP and Guidance:

<http://www.ode.state.or.us/search/page/?=1163>

<sup>8</sup> It is beyond the purview of this investigation to determine what is an *appropriate* education for the Student. The standard by which the District’s decision is judged is based on whether the public agency has reached a decision that is consistent with the requirements of Part B of IDEA in light of the individual child’s needs and abilities. [34 CFR § Part 300, Analysis and Comments, p. 46601]

<sup>9</sup> Reading was not found to be an area of disability according the evaluation of February, 2010.

- Information provided by the parents;
- The child's anticipated needs; or
- Other matters.<sup>10</sup>

The Student's IEP goals in reading in the 2010-2011 and 2011-2012 IEPs are uncontested.

The IEPs provide the Student 160 minutes a month of SDI, along with accommodations addressing the Student's reading needs. Progress reports demonstrate that the Student has made sufficient progress toward the annual reading goals. Also, the Student's GPA during the 2010-2011 school year was 2.67 and in the initial part of the 2011-2012 school year was 2.10. Grades are not always valid indicators of progress, but in this case, the Student's grades are unmodified. These grades are indicative of progress in the general curriculum despite the Student's academic struggles. The District had a sufficient basis to continue to provide the special education services as specified in the Student's IEPs; therefore, the allegation is found to be **not substantiated**.

### **3. Secondary Transition Plan**

The Parents allege that the District has failed to provide an appropriate Secondary Transition Plan [services]. The Parents did not specify their reasons for their allegation. The District states it has appropriately addressed the Student's Secondary Transition components in both the 2010-2011 and 2011-2012 IEPs.

Beginning not later than the first IEP that will be in effect when a student turns 16 (or younger if determined appropriate by the student's IEP team), a student's IEP must also include: (A) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (B) the transitions services (including courses of study) needed to assist the student in reaching those goals.<sup>11</sup>

The Student was assessed with age appropriate, post-secondary transition assessments that identified Student's interests in attending community college and transferring to a four year college. The Student also expressed some interest in working as a teacher. These preferences are reflected along with the Student's measureable post-secondary goals in the areas of education and employment, respectively, but omitted training. The annual IEP goals in reading, math, and writing address the Student's current academic needs.

While the IEPs<sup>12</sup> did not clearly identify the Student's course of study needed to reach those goals, or how the annual academic goals in reading, math, and writing addressed those requirements in the transition services section, the Department does not substantiate this allegation due to the academic courses which met the student's transition needs. According to the Department's state standards and administrative rules, the course of study should include courses as needed to "assist the child in reaching their post-secondary goals."<sup>13</sup> The IEP transition course of study section notes the student will take "classes needed for graduation." The IEP also lists the cadet tutor class as a course of study, which is a class related to

<sup>10</sup> OAR 581-015-2225(1)(b)

<sup>11</sup> OAR 581-015-2200(2)

<sup>12</sup> Pursuant to OAR 581-015-2030(5) the Department may investigate matters alleged to have occurred "not more than one year before the date the complaint is received by the Department." Due to this requirement, only the 2012 annual IEP is investigated here.

<sup>13</sup> OAR 581-015-2200(2)(B)

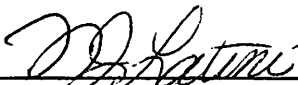
education and child development. This is a course appropriate to address the interest in elementary education and the goal of attending college. Additionally, the District reported that the Student was enrolled in an Access class for specially designed instruction purposes, which provides students with training related to reaching post-secondary goals. This includes: study skills, organizational habits, budgeting, creating deadlines for assignments, and paying bills. The allegation is found to be **not substantiated**.

#### V. CORRECTIVE ACTION

*In the Matter of*  
*Sherwood School District*  
Case No. 12-054-008

No Corrective Action is ordered due to the lack of substantiated allegations.

Dated: June 6, 2012



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

Mailing Date: June 6, 2012

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.

Additionally, the Department of Education will not reconsider complaints after the Final Order has been issued pursuant to OAR 581-015-2030(14)(b).