

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland Public School
District

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 13-054-014

I. BACKGROUND

On April 17, 2013, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Portland Public School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on April 17, 2013 and provided the District a copy of the complaint letter.

On April 22, 2013, 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 May 6, 2013. The District submitted its timely *Response* to the Department and to the Parent on April 29, 2013. The District's *Response* included a narrative response, the Student's IEPs from February 29, 2012 and from February 28, 2013 as well as the Student's attendance records, grades for the school year 2011-2012, the Student's most recent grades for school year 2012-2013, and the Student's evaluations/standardized test scores. On May 13, 2013 the District remitted, in further response to the RFR, emails between the District and Parent. On May 20, 2013, the Parent submitted a written narrative and also remitted a copy of the Student's October 29, 2012 IEP in support of the complaint.

The Department's complaint investigator determined that on-site interviews were required. On May 20, 2013, the Department's investigator interviewed the following District staff: a Special Education Teacher and a 7th grade math teacher, an Assistant Principal was also present and assisted in providing information. On May 25, 2013, the Department's complaint investigator interviewed the Parent. The investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

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

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 18, 2012 to the filing of this complaint on April 17, 2013.²

¹ OAR 581-015-2030(12) (2013)

² See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5)

	Allegations	Conclusions
	<p>Allegations to be investigated.</p> <p>The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1.	<p><u>IEP Content</u></p> <p>a. Parent alleges that the District failed to give progress reports to the Parent from September, 2011 to the present.</p> <p>(OAR 581-2200(1)(c), CFR 300.320(a)(3))</p> <p>b. Parent alleges the content of the IEP was insufficient to address the Student's academic needs (specifically in math) and was insufficient to address the Student's need for organizational skills regarding homework and class assignments.</p> <p>c. Parent alleges that District did not provide adequate meaningful annual measurable goals upon which to base the Student's progress in the IEP.</p> <p>(OAR 581-015-2200, CFR 300.320)</p>	<p>Unsubstantiated</p> <p>a. The IEP does contain information on how and when progress related to the IEP goals will be reported and the District complied with the relevant IEPs.</p> <p>b. The relevant IEPs are sufficient to address the Student's needs in that they implement specially designed instruction, that was suggested based on the Student's last evaluation, the Student's prior IEP progress, and the Student's current IEP goals.</p> <p>c. The IEPs contain measurable annual goals based on the individual needs of the Student.</p>
2.	<p><u>Parent Participation</u></p> <p>Parent alleges the District discontinued IDEA services to the Student without notice to or consent from her and that the District did not convene an IEP meeting or allow for parental participation before terminating IDEA services for the Student.</p> <p>(OAR 581-15-2205(1)(b), 34 CFR 300.503)</p>	<p>Unsubstantiated</p> <p>This allegation falls outside the one-year investigation limitation period as the math goal was removed between February 3, 2012 and February 28, 2012; hence the Department cannot investigate this matter under OAR 581-015-2030.</p>
3.	<p><u>Prior Written Notice (PWN)</u></p> <p>Parent alleges that on March 31,</p>	<p>Unsubstantiated</p> <p>No Prior Written Notice was required</p>

	<p>2013 she requested that the IEP again include math, but she did not receive a response.</p> <p>(OAR 581-015-2310, 34 CFR 300.503)</p>	<p>after the March 31, 2013 request.</p>
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	<p><u>Requested Corrective Action</u></p> <p>The Parent is requesting that the District:</p> <p>Provide progress reports directly to the Parent,</p> <p>Reinstate the math accommodation on the Student's IEP and establish a system to allow for Student to recover Student's grades,</p> <p>Reimburse parent for past and future tutoring and counseling costs, and</p> <p>Address issues of honesty and responsibility for removal of math accommodation from IEP.</p>	<p><i>No corrective action is ordered.</i></p>
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III. FINDINGS OF FACT

1. The Student is 14 years old and currently completing 8th grade.
2. The Student is diagnosed with ADHD and has a prescription for Concerta.
3. Parent reported that the Student does not take the medication.
4. The Student has been receiving special education services under the categories of Specific Learning Disability and Other Health Impairment.
5. The Student briefly lived in the US Virgin Islands and had been evaluated for special education services there as well. During the 2009 evaluation conducted in the U.S. Virgin Islands, the evaluator said the following of the Student's math ability: "[The Student's] skills in mathematics are diverse and may not be adequately summarized by a single number. [The Student] performed much higher on tasks that evaluated [the Student's] ability to understand number, consumer math concepts, geometric measurement, basic graphs and sole one-step work problems (Math Reasoning standard score = 97) than on tasks that required him to add, subtract, multiply, and divide on-to three- digit numbers (Numerical Operations standard score =75). Because of this variability in [the Student's] performance, the Mathematic Composite standard score (84) may not be the best summary of [the

Student's] overall skills in mathematics. [The Student's] skills in Numerical Operations are within the Borderline range and better than those of only approximately 5% of the children [the Student's] age. [The Student's] Math Reasoning subtest score is above that of approximately 42% of [the Student's] peers, placing these skills in the Average Range."

6. The District performed the Student's most recent behavioral and academic evaluations in January 2011.
7. The record indicated that Student has deficiencies in the following areas: Difficulty with some aspects of problem solving, problems with sustained working memory, difficulty with planning and problems with organization and organizing problem solving approaches.
8. The School Psychologist recommended the following to assist the Student with Working Memory: preteaching new information, establishing eye contact, providing short breaks, reduce distractions in the environment.
9. The School Psychologist also recommended (1) building routines for everyday activities and providing additional external structure, (2) prompting and cuing and (3) help with organization and planning to assist the Student with Organizing Skills and Planning.
10. On February 5, 2011, the Student had an academic evaluation by the District. The Student ranked average in most all academic areas but was noted as "limited" in several areas of math functioning. The Student's inconsistency and problems with math were also noted in a separate evaluation from December 2009 when the Student was residing in the U.S. Virgin Islands.
11. The Student received math services throughout the sixth grade which was the academic school year 2010-2011.
12. The District discontinued the math services prior to the Student's February 29, 2012 IEP. The Student's progress notes contain math information throughout the 2011-2012 school year, but end with a notation on the March 2011 IEP that is dated February 3, 2012. This progress note indicates that Student had overall test scores of 92% in math class.
13. Parent noticed the discontinuation of math services during the school year 2012-2013 and voiced that concern during the February 28, 2013 IEP meeting. Parent reported that she questioned the removal of math at that time.
14. During the February 28, 2013 IEP meeting, the District explained to Parent that the math goal was removed because the Student has passed the math portion of the OAKS test and this was used as the annual measurable goal. In fact, the Student had made a gain of 8 points in the math portion of that specific test. Since the Student met the annual measurable goal, the goal was removed.
15. Parent raised her concerns because of the Student's math grades and because of the Student failing assignments and quizzes during the fall of 2012.
16. The District did not give Parent a Prior Written Notice regarding the discontinuation of math services for the Student during the 2011-2012 school year.³

³ District noted this mistake, and is training the involved staff on this issue. Note this failure occurred outside of the one year period defined in OAR 581-015-2030.

17. In the fall of 2012, Parent had become alarmed as she reviewed the Student's first semester grades as evidenced by the "Ed Box" online tool provided by the District. Parent witnessed a block of failing grades during the fall of 2012 in math. The Student had achieved math grades for the seventh grade year (2011-2012) for the four quarters of the year of "B" quarter one, "A" quarter two, "B" quarter three and "C" quarter four.
18. On November 29, 2012, an IEP meeting took place to address Parent's concerns with the Student's failing grades in math and continued lack of organization and incompleteness of work.
19. The District was aware and noted during the November 29, 2012 IEP meeting, that the Student was often forgetful and confused about some assignments.
20. During the November 29, 2012 IEP meeting, Parent suggested using an assignment tracking sheet. The District refused to implement any assignment tracking as the District believed it would be just another thing for the Student to remember as noted in the meeting minutes.
21. The IEP team, during the November 29, 2012 meeting decided that the Student would be offered more time in the Learning Center rather than participating in Physical Education during 8th period. All parties agreed upon this change according to the IEP document.
22. There was no change to the Student's IEP as a result of the November 29, 2012 IEP meeting.
23. Parent did not receive the IEP from November 29, 2012 or the meeting minutes after the meeting. Parent received the notes at a later date with the copy of the Student's IEP after Parent contacted the principal at the Student's school. The Student's Special Ed teacher and case manager simply forgot to send them to Parent.
24. The Student's regular annual IEP meeting was held on February 28, 2013.
25. The Student's Special Services were revised during the February 28, 2013 IEP to include the new services of:

Extend due dates by one day for daily work/ two days for larger projects	General Ed	LA/SS, Math	2/28/13
Extend due dates to "last call" date for missing assignments w/out 20% penalty	General Ed	Science	2/28/13
Preferential seating near teacher & w/less distractions	General Ed/ Spec Ed	All academics	2/28/13

26. At the February 28, 2013 IEP meeting, Parent questioned the District's removal of the math goal that the Student had previously, because the Student has historically had limited abilities in math, especially calculations.

27. The Student's grades through the first three quarters of the 2012-2013 School year are as follows:

Math 8		71.6/C	62.3/D	82.87/B
Earth Science		70.6/C	75.07/C	72.7/C
Study Skills		P	P	P
Language Arts		58.6/F	70.3/C	72.7/C
Writing 8		75.1/C	83.0/B	84.7/B
U.S. Studies		81.8/B	70.0/C	71.9/C

28. Parent alleged that she had not received any progress reports from the District since approximately 2011.

29. The District alleges it had given the Student's progress reports to the Student to take home. Parent alleges upon learning from the District that progress reports were being sent home with the Student, she went through all backpacks, homework and all school documentation and stated that she could not find any progress reports.

30. The March 1, 2011 IEP states that progress will be reported to parents as "progress on goals" and the "When it will be reported to parents" box states "with report cards."

31. The February 29, 2012 IEP states that progress reports will be reported to the parent on the IEP goal page quarterly.

32. The February 28, 2013 IEP states that progress will be reported to parents on the IEP goal page and it will be reported to parents quarterly.

33. After the February 28, 2013 IEP meeting, Parent received an emailed copy of the meeting minutes from the District wherein it was specifically stated that the Student's progress reports would be mailed home rather than given to the Student.

IV. DISCUSSION

IEP Content

a. **Parent alleges that the District failed to give progress reports to the parent from September 2011 to the present. (OAR 581-15-2200(1)(c), CFR 300.320(a)(3).**

An IEP must include a description of how the child's progress toward meeting annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. OAR 581-15-2200(1)(c) and 34 CFR 300.320(a)(3). Federal and state law dictates neither the form nor the precise content of the documentation of progress toward IEP goals. Those decisions therefore rest

within the discretion of school districts and educators based upon the individual circumstances of each student with a disability. It is the student's IEP team that must decide how to measure progress toward the identified annual goals, and by extension, what type of reporting will adequately inform the parents of the student's progress toward meeting the individual goals. 34 CFR 300.320(a)(3). There is no prescribed remedy for parents when a school district fails to inform them of a student's progress toward IEP goals as required under 34 CFR 300.320(a)(3). Oregon has viewed a failure to inform parents in this regard as a procedural as opposed to substantive violation of the IDEA, which may or may not deny a student a Free Appropriate Public Education (FAPE).⁴ Additionally, courts nationwide have refused to find IDEA violations based on a district's failure to give progress reports at IEP meetings, where parents otherwise fully participated in the development of their child's IEP.⁵

In this case, the Student's current IEP states that the progress will be reported to parent quarterly on the "IEP goal page." This information for progress reporting is consistent on the February 28, 2013 IEP; the November 29, 2012 IEP; and the February 29, 2012 IEP. There is no comment or indication that the goal page will be given to the Student to take home or that the goal page will be emailed, mailed by regular mail, or faxed. However, the District did add an accommodation to the February 28, 2013 IEP to mail quarterly progress reports for the Student starting February 28, 2013 and ending September 30, 2014.

The District alleges that it gave the Student's IEP progress reports directly to the Student to take home to Parent prior to the February 28, 2013 IEP meeting. However, Parent alleges she never received any IEP progress reports. Parent also alleges she has never found any IEP progress reports amongst the Student's backpack or binder. There is nothing in the record to indicate that the District did or did not send home the progress notes with the Student. The District also claims to be mailing progress reports per the accommodation on the current IEP via regular US mail. However, the District does not use certified mail, so there is no evidence to indicate if the progress reports are mailed or not. While these practices may not be the best to ensure that parents are receiving progress notes regularly, especially in light of this student's ADD and memory and executive functioning issues, there is no state or federal requirement to ensure that parents *receive* these notes. Rather, the IDEA's IEP Content requirements indicate that Districts must comply with the IEP's "how" and "when" statements for IEP goal progress monitoring. The relevant IEPs in question for this complaint included statements of both how and when progress would be measured for the IEP goals. As such, this allegation is not substantiated.

b. Parent alleges the content of the IEP was insufficient to address the Student's academic needs (specifically in math) and was insufficient to address the Student's need for organizational skills regarding homework and class assignments.

The IDEA requires that each IEP must include a statement of measurable annual goals designed to meet the child's disability-related needs. Each IEP developed for a child with a disability must include a statement of measurable annual goals, including academic and functional goals designed to: 1) 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 2) meet each of the child's other educational needs that result from the child's disability. 34 CFR 300.320(a)(2). Districts are not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect performance. If a child with a disability needs only modifications or accommodations to progress in an

⁴ Beaverton Sch. Dist., 30 IDELR 740 (SEA OR 1999)

⁵ *Alexis v. Board of Educ. for Board of Educ. for Baltimore Pub. Schools*, 40 IDELR 7 (D. Md. 2003)

area of the general curriculum, the IEP does not need to include a goal for that area. However, the IEP would have to specify those modifications or accommodations. See generally 34 CFR 300.320(a)(4). The standard for determining if a student has received a Free Appropriate Public Education (FAPE) is whether the IEP was reasonably calculated to provide educational benefit.⁶

In this case, the IEPs that may be considered are the three (3) IEPs dated February 29, 2013, November 29, 2012 and February 28, 2013. Any other IEPs fall outside the purview of this investigation's one year time frame; hence, the 2011 IEP that provided for a math goal cannot be included in this investigation. Therefore, the Parent's allegations that the content of the 2011 IEP was insufficient to address the Student's math needs are not discussed, because they fall outside the scope of this investigation. However, the allegations regarding the Student's needs in the 2012 and 2013 IEPs are ripe for investigation and review.

The Student had a Psycho-Educational assessment/re-evaluation by the District dated March 2, 2011 to determine the current level of functioning, eligibility for special education services under IDEA, and to plan for the school year. This report noted the Student had been receiving special education services under the categories of Specific Learning Disability and Other Health Impairment. It also noted that the Student met state benchmarks in math in the fourth and fifth grades. The report also noted teacher interviews that said "math skills are low." The summary and recommendations of this report note that the Student had problems with aspects of problem solving and working memory. None of the recommendations on this report noted that the Student needed assistance with math. An academic evaluation report dated February 5, 2011 noted Woodcock-Johnson (WJIII-ACH) scores that showed two subtests of math with limited skill level and two subtests of math with limited to average skill level. The summary and recommendation from this test noted that the Student had "math calculation skills in the limited range, and math reasoning skills in the average range." When the February 28, 2013 IEP was written, one of the recommendations from the March 2, 2011 re-evaluation was implemented in the February 28, 2013 IEP i.e., preferential seating to reduce distractions in the environment. The February 28, 2013 IEP also made specific allowance for the Student to have extended time to remit homework and called for specific prompts for long term assignments. This external prompting was in accordance with the recommendation in the re-evaluation for additional external structure, prompting and cuing. Further, by reviewing the Student's grades, there is a record of progress in math and slight progress in language arts in the third quarter of 2013. The February 28, 2013 IEP does state that "parent is concerned that math computation skills are below grade level." However, the Student met state testing standards for grade level and had a B average in math at the time the parent emailed District staff to request that math goals be added back into the IEP. Additionally, the District explained that students are allowed to use calculators in general education math classes to address computation concerns.

The Student's need for accommodations and goals for the Student's organizational skills and working memory were adequately addressed in the February 28, 2013 IEP. Additionally, there is no record that the Student displayed a need for specially designed instruction in mathematics or an accompanying math goal on the 2013 IEP. Therefore, this allegation is not substantiated.

- c. Parent alleges that District did not provide adequate meaningful annual measurable goals upon which to base the student's progress in the IEP. (OAR 581-015-2200, 34**

⁶ *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982)

CFR 300.320).

A district must establish academic and functional goals in the IEP upon which the Student's progress can be measured. These goals must be designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. OAR 581-015-2200(1)(b).

The Parent has alleged that the 2013 IEP did not provide adequate and measurable annual goals. The February 28, 2013 IEP has the following annual goals: Student will increase writing skills to a proficient eighth grade level in the areas of Organization as measured by a state scoring guide analysis of writing samples with the criteria of Level 4 proficiency at the eighth grade level and writing samples for evaluation procedures; and Student will use organizational and time management skills with increased frequency as measured by an analysis of teacher observation, self-evaluation, and classroom performance with a criteria of 9 of 10 opportunities. These goals are designed to meet the Student's needs that result from the disability, as noted on the most recent re-evaluation and the Student's performance in school and on assessments. The goals are clearly measurable with valid criteria. As such, this allegation is not substantiated.

Parent Participation

Parent alleges the District discontinued IDEA services to the Student without notice to or consent from her and that the District did not convene an IEP meeting or allow for parental participation before terminating IDEA services for the Student. (OAR 581-15-2205(1)(b), 34 CFR 300.503).

A Prior Written Notice must be sent to the parent of a child receiving services under the IDEA before the school district proposes to initiate or change or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (OAR 581-015-2310). Additionally, the concerns of the parents for enhancing the education of their child are necessary considerations when the IEP team develops, reviews, or revises the child's IEP. OAR 581-015-2205(1)(b).

For purposes of this complaint, the facts and allegations that date from April 18, 2012 through April 17, 2013 are considered under this investigation. The District discontinued the math services for the Student sometime between February 3, 2012 and February 28, 2012 which is beyond the permissible scope of this investigation. Therefore, as noted above, complaints occurring outside of the scope of the one year period cannot be investigated pursuant to OAR 581-015-2030. Therefore, this allegation is not substantiated.

Prior Written Notice (PWN)

Parent alleges that on March 31, 2013, she requested that the IEP again include math, but she did not receive a response. (OAR 581-015-2310, 34 CFR 300.503).

When a parent requests an IEP be revised or that an IEP meeting occur, the District must respond in a reasonable time with a Prior Written Notice regarding any proposal to initiate a change or refusal to initiate the identification, evaluation, or educational placement of the child or the provision of a Free Appropriate Public Education (FAPE) to the child. (OAR 581-015-2310). A Free Appropriate Public Education is defined as special education and related services that are provided at public expense, meet the standards of the State Education

agency, and are provided in conformity with the IEP.⁷

In the instant case, Parent requested that math be reinstated on the Student's IEP via email on March 31, 2013. At the time of this request, math was not listed as a goal on the Student's annual IEP. On April 2, 2013, the District contacted Parent via email and requested more information regarding the re-establishment of math services for the Student. On this day, Parent responded with concerns about the removal of the math goal in 2012. Parent said "I would prefer to have it in writing on [the Student's] IEP, so everyone is clear." The message did not clarify what precisely was being requested for the IEP nor did it ask for an IEP team meeting to convene to discuss FAPE or placement concerns. After one week, Parent contacted the District via email saying "I am waiting for a response to my request." District responded this same day by saying that they were trying to connect with members of the IEP team to discuss the request and that Student had access to math services during third period. On April 17, 2013, Parent filed the complaint with the Department.

The question here is what is "reasonable" under the IDEA regarding giving the parent a Prior Written Notice (PWN) after a refusal to provide a parentally proposed IEP goal related to FAPE. PWN must be sent "within a reasonable period of time before" a district proposes or refuses to initiate changes regarding the provision of FAPE. There is no clearly defined standard regarding what is a "reasonable time" under the IDEA.⁸ Additionally, a parent's proposed goal that is not listed on the IEP is not considered a provision of FAPE. As there is evidence that the District worked with the parent regarding her request, and the math help specifically requested was not related to the child's FAPE needs, as indicated by the current IEP, no PWN was necessary under OAR 581-015-2310. Therefore, the allegation is not substantiated.

⁷ 34 CFR 300.17 and 34 CFR 300.320-300.324

⁸ W.B. v. Matula, 67 F.3d 484 (1995)

V. CORRECTIVE ACTION⁹

In the Matter of Portland School District
Case No. 13-054-014

The Department does not order any Corrective Action resulting from this investigation.

Dated this 17th Day of June 2013



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: June 17, 2013

⁹ The Department's order shall include corrective action. -Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13).- The Department requires timely completion. OAR 581-015-2030(15). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction.- OAR 581-015-2030(17), (18).