

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)
Oregon Department of Education)

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 15-054-003

I. BACKGROUND

On January 15, 2015, the Oregon Department of Education (Department) received a letter of complaint from a parent (Parent) of a student (Student) residing in Parkrose Public School District (District). The Parent requested that the Department conduct a special education investigation of the Oregon Department of Education under OAR 581-015-2030 due to the Department's dismissal of three complaints filed by Parent against the District in October 2014.

Under federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.² A complaint must allege a violation that that occurred not more than one year before the date the Department received the complaint. At the time this complaint was filed and processed, Parent also filed a Due Process request with similar allegations posed against the Department. The Department confirmed receipt of this complaint and the concurrent due process hearing on January 27, 2015. In this letter, the Department notified the complainant of an extension due to exceptional circumstances, specifically the concurrent Due Process Hearing Request with overlapping issues, which was also on file with the Office of Administrative Hearing (OAH). The Department and Complainant received a letter from the OAH dated February 5, 2015, stating that the OAH had agreed to withdraw this hearing referral sent to the OAH by the Department on January 21, 2015. As there were then no longer any pending concurrent IDEA allegations, which could be heard by an Administrative Law Judge, the Department, commenced the complaint investigation timeline for state complaint 15-054-003. On February 5, 2015, the Parent faxed a new request for complaint investigation, which was a repetition of prior allegations and a clarification of Parent's allegation in the January 15, 2015 complaint request. Specifically, Parent states that the only allegation to be investigated for this complaint would be related to the Parent's Procedural Safeguards, and the state complaint process. Therefore the investigation was limited to those issues. Also, on February 5, 2015 the Office of Administrative Hearings (OAH) sent a letter evidencing the Department's withdrawal of the referral of the Due Process Hearing Request. Accordingly, the state complaint investigation for this case commenced at that time.

On February 13, 2015, the Department's complaint investigator sent a *Request for Response*

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

to the Parent identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of February 23, 2015.

On February 20, 2015, the Department submitted a timely *Response* explaining the Department's rationale for dismissing the three state IDEA complaints filed by Parent. The Department submitted the following items:

- A. Oregon Department of Education's narrative response, 2/20/2015;
- B. First narrative complaint and documents filed with ODE: 14-054-036;
- C. Amendment to complaint 14-054-036;
- D. First Dismissal Letter: 14-054-036;
- E. Second narrative complaint/amendment and documents filed with ODE: 14-054-038;
- F. Second dismissal letter: 14-054-038;
- G. Third narrative complaint and documents filed with ODE: 14-054-039;
- H. Third dismissal letter: 14-054-039;
- I. Email correspondence between ODE and Complainant;
- J. Oregon Department of Education's Special Education Complaint Resolution Process, Questions and Answers Document;
- K. U.S. Department of Education, Office of Special Education Programs (OSEP) Questions and Answers on IDEA Part B-Dispute Resolution Procedures, Questions B-15;
- L. Oregon Department of Education's IDEA Complaint Standard Operating Procedures;
- M. Oregon Department of Education's Procedural Safeguards Notice, K-21.

The Parent submitted materials for consideration on March 1, 2015. The Parent submitted the following items:

- A. Parent Response to ODE Response;
- B. Copy of ODE's IDEA Complaint Form;
- C. Copy of ODE Standard IEP Form;
- D. Copy of OAR 581-015-2030;
- E. Copy of ODE Letter dated 1/27/2015;
- F. Copy of OAH Letter dated 2/5/2015;
- G. ODE Dismissal Letter dated 2/13/15;
- H. Parent Request for Complaint Investigation dated 2/10/15;
- I. ODE letter dismissing complaint 15-054-007;
- J. US Department of Education Model Form - Individualized Education Program;
- K. New York State Complaint Procedures Questions and Answers;
- L. IEP Meeting Notes Checklist/ Notes, Parkrose School District IEP Meeting for Student;
- M. Report of Inquiry, Bureau Resolution Determination, Conduct by Bureau of Exceptional Education and Student Services, Involving the Okaloosa County School District;
- N. Complaint Resolution Procedures, Part B of the IDEA;
- O. Complaint 15-054-003, 01/15/2015

The Department's complaint investigator determined that on-site interviews were needed. On March 6, 2015, the complaint investigator interviewed the Parent. Following the interview Parent submitted additional materials for review. On March 10, 2015 the complaint investigator interviewed staff from the Department; specifically, the Department's Legal

Specialist. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. 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 allegation 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 January 15, 2014 to the filing of this complaint on January 15, 2015.

	<u>Allegation:</u>	<u>Conclusion:</u>
1.	<p><u>Procedural Safeguard Rights— Complaint Investigation Process:</u></p> <p>The Parent alleges that the Department of Education erred in dismissing three state complaints filed against Parkrose School District, which were filed with the Department in October of 2014.</p> <p>(OAR 581-015-2300 & 34 CFR 300.151 to 300.153)</p>	<p><u>Not Substantiated:</u></p> <p>The Department concludes that the Department did not err in dismissing these three state complaints filed against the District.</p>

III. FINDINGS OF FACT

- 1) The Student in this case is 13 years old and resides in the Parkrose School District.
- 2) Student is eligible for special education services under the category of Specific Learning Disability.
- 3) Student currently participates in general education with accommodations for testing, access to spelling tools, and various accommodations and assistance for reading. **(D31)**
- 4) On October 18, 2014 Parent filed a request for complaint investigation, with additional materials which were received on October 20, 2014. The complaint stated that, "The District is violating IDEA 1414(d)(4)(A) by indicating on periodic IEP progress reports the progress or achievement of annual goals. IDEA gives that authority to the IEP team." Parent amended the complaint on October 20, 2014 with additional narrative information. This filing and the materials submitted would become complaint 14-054-036.

- 5) Parent included with this complaint a copy of the IEP Progress Report. That form indicated that Student's annual goal was, "[Student] will increase [] reading fluency to read a 6th grade level test as measured by a CBM probe to a rate of 127 cwpm with 100% accuracy within one year's time." The report indicated that Student's pre score was "...a 6th grade CBM passage at a rate of 102 cwpm with 99% accuracy." The report indicates that Student's performance as of January 15, 2014 was "mastery level 3" on a scale of 1-5 with a score of "102 cwpm on a 6th grade level reading passage."
- 6) The progress report notes that the mastery level numbers for progress toward goals are defined as:
 - a) "1. - Your child did not work on this goal during the reporting period (see explanation below)."
 - b) "2. - Progress is not sufficient to meet this goal by the time the IEP is reviewed. An IEP review will be held immediately."
 - c) "3. - Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed."
 - d) "4. - Progress has been made towards the goal. It appears that the goal will be met by the next IEP review."
 - e) "5. - Performance is at or above what is required to meet the goal by the next review."
- 7) The report was received by Parent along with Student's report card, as indicated in Student's IEP.
- 8) On October 21, 2014, the Department dismissed complaint 14-054-036. The letter dismissing the complaint notes that the complaint "...alleged that the Parkrose School District violated the IDEA by not convening an IEP team meeting to determine, collectively, Student progress for the purpose of reporting progress toward annual IEP goals." The letter goes on to note that, "There is no requirement in the IDEA that the IEP team meet to collectively determine progress toward annual goals."
- 9) During the complaint investigator's interview with Parent, Parent acknowledged that the first complaint was vague and that the Department's dismissal letter aided Parent toward crafting a complaint that alleged a violation.
- 10) On October 23, 2014 Parent filed a request for complaint investigation. Parent states in the second complaint: "The Parkrose School District has violated the IDEA 300.320(c)(3)(I) by not including in Student's IEP, dated 01/15/2014, the requirement to include '(h)ow the child's progress toward meeting the annual goals...will be *measured*.'" Parent goes on to note that the IEP provided with the request for complaint investigation, "...does not include the requirements of measurement of progress in achieving the Annual Goals. Section J specifically addresses 'Measurable Annual Goals'. In that section is a statement 'How will progress be *reported*?' Below that is written 'Included with report cards mailed.'" This would become complaint 14-054-038. (Emphasis added by Parent).
- 11) Parent felt this complaint was adequate and should not have been dismissed without an investigation.

- 12) On October 27, 2015, the Department dismissed complaint 14-054-038, noting that “The IDEA requirement here has been met, as the IEP details when the progress will be reported to parents, and how it will be reported to the parents. Additionally, for IDEA purposes, the ‘measurement’ requirement for the period reports is directly tied to the measurable annual goals listed on a student’s IEP. In this case, the IEP does include goals that are clearly measurable which may accordingly be reported to parents in progress monitoring materials as prescribed by the IEP.”
- 13) On October 29, 2014, Parent filed a third request for complaint investigation. Parent asked for reconsideration of the Department’s rationale for dismissing complaint 14-054-038. In support of this request, Parent wrote, “I respectfully ask for reconsideration concerning the following allegation, for that the Department erred in its determination in finding ‘for IDEA purposes, the measurement requirement for periodic reports is directly tied to the measurable annual goals listed on a student’s IEP’ and ‘(I)n this case, the IEP does include goals that are clearly measurable which may accordingly be reported to the parents in progress monitoring materials. As prescribed by the IEP.” (Emphasis added by Parent.

Parent goes on to write:

- a) “Page 46661, Federal Register / Vol. 71 No. 156, records ‘Discussion: The word **‘must’** is used in § 300.320(a) to clarify that an IEP is required to include the items listed in §300.320(a). We believe it is important to retain this language in §300.320.”
- b) “Page 46661, Federal Register / Vol. 71 No. 156, records “Discussion: Section 300.320(a)(2)(I), consistent with section 614(d)(1)(A)(i)(II) of the Act, requires the IEP to include **measurable** annual goals. Further, §300.320(a)(3)(i), consistent with section 614(d)(1)(A)(i)(II) of the Act, **requires the IEP to include a statement of how the child’s progress toward meeting the annual goals will be measured.**”
- c) “There is no statement in the Student’s IEP dated 01/15/2014 (attached), that satisfies the requirement in 300.320(a)(3)(i). It can’t be deduced from another part of the IEP either. There’s no provision in IDEA or its regulations, to allow that 300.320(a)(3) mandates a written statement, on its own, in the IEP, for describing how the child’s progress toward meeting the Annual Goals will be measured.”
- d) “IDEA requires two separate components in 300.320(a). A **‘statement of measurable annual goals’** and (a) **description of how the child’s progress toward meeting the annuals goals described in paragraph (2) of this section will be measured.**”

This would become complaint 14-054-039. (Emphasis added by Parent)

- 14) On October 30, 2014, the Department dismissed complaint 14-054-039, noting that the complaint did “...not include sufficient facts of an allegation of a violation of the IDEA for investigation purposes.” The dismissal goes on to state that, “...the IDEA does require a description of how the child’s progress toward meeting the annual goals will be measured...” and “...does require periodic reporting of a child’s progress toward IEP goals, so that parents may review the IEP and make adjustments if necessary...You have indicated that you are receiving progress monitoring materials, as outlined in the IEP, related to your child’s IEP goals and progress. As such, the allegation in your complaint does not rise to the standards set forth in OAR 581-015-2030 for

investigations of alleged violations of the IDEA.”

- 15) On January 15, 2015 the Parent filed a request for complaint investigation. Parent writes, “Parent of a child with a disability, that qualifies for Special Education under the Individuals with Disabilities Education act (IDEA), and its implementing Regulations, was unlawfully denied Parent’s right to a Procedural Safeguard when the Department dismissed Complaint by the Parent, the conformed to the requirements of IDEA Part B, and its regulations.”
- 16) Parent provided a copy of Student’s IEP to Department. The IEP contains the following information regarding Student’s goal, progress, and reporting:
 - a) “When will progress be reported to Parent? *Three times yearly*”
 - b) “How will progress be reported? *Included with report cards mailed*”
 - c) Goal: *[Student] will increase [] reading fluency to read a 6th grade level text as measure by a CBM probe to a rate of 127 cwpm with 100% accuracy within one year’s time.*”
- 17) During the complaint investigator’s interview with Parent, Parent explained their understanding of how this goal violated the IDEA and the Parent cited 34 CFR 300.151-300.153. Specifically, Parent asserted that the goal, “*[Student] will increase [] reading fluency to read a 6th grade level text as measure by a CBM probe to a rate of 127 cwpm with 100% accuracy within one year’s time,*” is vague and lacks sufficient specificity regarding the specific type of CBM probe used, frequency, and manner of testing to result in a reliable result capable of accurately tracking Student’s progress.
- 18) Parent explained that the IEP goal should specify which exact curriculum based measurement (CBM) probe, would be used, how it would be administered, what time of day the test would be administered to Student, how it would be compared against other measurements, so that any data generated could be reported in time to tweak Student’s annual goal prior to the end of the school year.

IV. DISCUSSION

1. Procedural Safeguard Rights—Complaint Investigation Process

The Parent alleges that the Department erred in dismissing three state complaints filed in October 2014, against Parkrose School District. The IDEA State Complaint Process governs the manner and requirements whereby a parent may seek redress of a local education agency’s violation of the Individuals with Disabilities Education Act (IDEA) or regulations under that Act.³ OAR 584-015-2030 & 34 CFR 300.151-153 include the requirements of the complaint, required contents of the complaint, and the method by which the Department will determine whether the facts alleged amount to a violation of the Individuals with Disabilities Education Act.⁴

³ OAR 581-015-2030(1) & 34 CFR § 300.151-153

⁴ OAR 581-015-2030(1)-(13)

The Department dismissed the three complaints filed by Parent alleging the District violated the IDEA in October of 2014. This case examines whether the Department violated Parent's Procedural Safeguard rights by dismissing the three complaints filed in the fall of 2014. In order to answer this question, the three dismissed complaints will first be examined in turn along with an overview of the legal requirements for IDEA complaints and the state complaint investigation process.

IDEA complaint procedures are set forth in Oregon Administrative Rule 581-015-2030.⁵ These rules detail what persons or entities may file a complaint, what steps the Department must take upon receipt of a complaint, and information that must be contained in the complaint.⁶ A complainant must allege a violation of the Individuals with Disabilities Education Act or regulations under the Act.⁷

Parent filed the first complaint on October 18, 2014, which would become IDEA complaint 14-054-036. Parent provided additional information on October 19, 2014 to supplement the complaint as filed. The substance of the complaint was stated, "The district is violating IDEA 1414(d)(4)(A) by indicating on periodic IEP progress reports the progress or achievement of annual goals. IDEA gives that authority to the IEP team. See attached report date 1-15-2104." Attached with the narrative complaint was an IEP Progress Report-Annual Goal form for the Student that indicated the annual goal and Student's progress toward that goal. The form notes that Student is performing at level 3, which is described as "Progress has been made toward the goal, but the goal may not be met. Instructional strategies may need to be changed." The report was sent with Student's report card, as indicated in Student's IEP. Parent alleged that the information contained in the report violated IDEA 1414(d)(4)(A)⁸ which requires that,

"The local educational agency shall ensure that, subject to subparagraph (B), the IEP team - (i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and (ii) revises the IEP as appropriate to address - (I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (II) the results of any reevaluation conducted under this section; (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B); (IV) the child's identified needs; or (V) other matters."

Parent appears to suggest in this filing that the reporting of Student's progress toward the IEP goal violated this portion of the IEP, or that Parent should participate in IEP progress reporting with District. The IDEA does anticipate the need for, and requires that Parent's be included as part of the IEP team in developing an IEP.⁹ Parent fully participated in the development of Student's IEP, there is no dispute on that matter. This report was received following the first grading period of the 2014-2015 school year. Parent does not contend that the report was not received, was not timely, or is inaccurate; nor that District failed to include a goal, or its manner or time of reporting in the Student's IEP.

⁵ See also: 34 CFR § 300.151-153; 34 CFR § 300.504

⁶ OAR 581-015-2030

⁷ OAR 581-015-2030(1)

⁸ 20 U.S. Code § 1414(d)(4)(A)

⁹ 34 CFR § 300.321(a), & 34 CFR § 300.322

Generally speaking, if a complainant alleges violations outside the scope of the Individuals with Disabilities Education Act (IDEA), the complainant will be informed of alternative procedures that are available to address the complainant's allegations.¹⁰ The Department's October 21, 2014 letter dismissing the complaint noted that the information in the complaint failed to allege a violation of the standards set forth in OAR 581-015-2030, and included information on refiling the complaint. During the complaint investigator's interview with Parent, Parent acknowledged that this first complaint submitted to the Department was vague, and that the Department's written discussion in the dismissal aided Parent in providing clearer information used to file the second complaint.

On October 23, 2014 Parent submitted a second complaint to the Department that would become IDEA complaint 14-054-038. In this complaint Parent wrote:

"The Parkrose School District has violated the IDEA 300.320(c)(3)(I) by not including in Student's IEP, dated 01/15/2014, the requirement to include '(h)ow the child's progress toward meeting the annual goals...will be *measured*.'"

Parent went on to note that:

"The attached IEP, dated 01/15/2014, does not include the requirements of measurement of progress in achieving the Annual Goals. Section J specifically addresses 'Measurable Annual Goals'. In that section is a statement 'How will progress be *reported*?' Below that is written 'Included with report cards mailed.'"

With the narrative complaint that was filed, the Parent also included a copy of the Student's IEP. There is no section 300.320(c)(3)(I) in the regulations to implement IDEA, so the citation used in this filing is incorrect. However, based on the previous complaint and substantive text, Parent likely meant to quote 34 CFR 300.320(a)(3)(i) which requires that an IEP must include:

"A description of (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured."

The included IEP is dated January 15, 2014 and notes that both Parents attended the IEP meeting to generate the IEP. Page five of the IEP includes a page titled, "J. Measurable Annual Goals." This page includes when progress will be reported to parents, how progress will be reported, and Student's present level and goal. Parent included an additional page consisting of an enlarged portion of page 5 of the IEP with the submitted complaint materials. This text focused on the following information which was taken from the IEP document page and submitted again in isolation:

"How will progress be reported?"
Included with report cards mailed"

¹⁰ OAR 581-015-2030(4)

On October 27, 2014, the Department dismissed the complaint working with the understanding that Parent's complaint was that Student's IEP did not include information regarding how progress toward meeting annual goals would be measured. 34 CFR 300.320(a)(3)(i) requires that the IEP include a statement of measurable annual goals,¹¹ a description of how the child's progress toward meeting the goal will be measured,¹² and when periodic reports on progress will be provided.¹³ The IEP included with the complaint information includes all of these required elements. The IEP includes the following measurable annual goal statement: "[Student] will increase [] reading fluency to read a 6th grade level text as measured by a CBM probe to a rate of 127 cwpm with 100% accuracy within one year's time." The IEP also notes that progress will be reported to Parent three times yearly, and that reports will be mailed with report cards. Accordingly, Parent's second complaint did fail to allege a violation of a requirement of the IDEA sufficient for investigation. Furthermore, the specific information Parent alleged was missing from the IEP was included in the IEP document provided to the Department by the Parent at the time of the filing.

On October 29, 2014, Parent submitted a third complaint that would become IDEA complaint 14-054-039. In this complaint Parent wrote the following quote from the Department's letter dismissing the second case:

"I respectfully ask for reconsideration concerning the following allegation, for that the Department erred in its determination in finding 'for IDEA purposes, the measurement requirement for periodic reports is directly tied to the measurable annual goals listed on a student's IEP' and '(I)n this case, the IEP does include goals that are clearly measurable which may accordingly be reported to the parents in progress monitoring materials. As prescribed by the IEP."

Parent points to numerous areas in the comments of the IDEA legislation, as well as other legislation and IDEA commentary to bring the reader's attention to specific elements that Parent presumably finds lacking in the Student's IEP, specifically "measurability." Parent restates the alleged violations of the IDEA at the end of the complaint as follows:

"1. The District violated a requirement of Section 300.320(a) of the Individuals with Disabilities Education Act of 2004 (IDEA) by not including, as required in 300.320(a)(3), 'a description of how the (Student's) progress toward meeting the annual goals described in paragraph (2) 300.320(a), will be measured' in Student's IEP, date January 15, 2014 (attached).

And

"2. As evidenced by the IEP also without the required statement that must be included per 300.320(a)(3) for a separate student in the District, [Teacher], IEP dated 05/15/2014 (attached). It's alleged the violation is common practice for the District, and likely systemic."

Parent included a copy of Student's IEP, with additional pages not included with complaint 14-054-038.

¹¹ 34 CFR § 300.320(a)(2)(i)

¹² 34 CFR § 300.320(a)(3)(i)

¹³ 34 CFR § 300.320(a)(3)(ii)

On October 30, 2014, the Department dismissed the third complaint for failing to allege a violation of the IDEA for investigation purposes. During this investigation, the complaint investigator clarified Parent's intended focus of the three dismissed complaints; therefore the bulk of the discussion will be reserved for that analysis.

On January 15, 2015 Parent filed this complaint against the Department of Education (Department) alleging that the Department, in dismissing Parent's three complaints filed against District in fall of 2014, violated procedural rights of parents under IDEA. Parent asserts that in dismissing the complaints the Department misstated the law, misunderstood what authority is granted to the IEP team, misstated the reach of the Parent Participation requirements, and failed to appreciate the authority granted to the IEP team.

First, Parent asserts that the Department misstated the law in the October 30, 2014 dismissal letter. Parent focuses on the quote in the letter that reads, "The IDEA does have IEP Content requirements for both how and when a child's progress will be measured in addition to requirements related to measurable annual goals for students." Parent asserts that this is incorrect and that 34 CFR 300.320(3) only includes the language "...must include a description of (h)ow the child's progress toward meeting the annual goals...will be measured; and (w)hen periodic reports on the progress the child is making toward meeting the annual goal will be provided." However 300.320(3) actually reads:

"A description of - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress of 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 reports cards) will be provided."

Paragraph 2 of the regulation addresses the specific statement of measurable annual goals required in the IEP.¹⁴ The Department is correct; IEP Content requirements for how and when a child's progress will be measured are included in the IDEA. Those content requirements are contained in 34 CFR 300.320(a), precisely where Parent asserts they are absent. Furthermore, Student's IEP, which Parent included with the complaints when they were filed, contains this required information.

Second, Parent points to the Department's language in the same October 30, 2014 dismissal letter, agreeing that, "While the IDEA does require a description of how the child's progress toward meeting the annual goals will be measured..." but disagreeing with the second portion of the sentence, "... it does not specify what is entailed precisely in quantitative terms nor list prescriptive requirements for local education agencies and state education agencies with respect to this portion of the IEP." Parent asserts that there is no IEP Content requirement for when a child's progress will be measured. The IDEA requires that the IEP include a description of how the child's progress toward meeting the annual goals will be measured,¹⁵ and when periodic reports on the progress the child is making toward meeting the annuals

¹⁴ 34 CFR § 300.320(a)(2)

¹⁵ 34 CFR § 300.320(a)(3)(i)

goals will be provided.¹⁶ While it is unclear in the language of the complaint which aspect of data gathering and reporting Parent objects to, the Department is correct in noting that IDEA does not establish a specific schedule for gathering measurement data that would then be provided to a parent. However, here again, Student's IEP contains the statutorily required elements. Parent could be understood to suggest that the District failed to include information regarding how and when specifically the measurement data would be gathered. However, there is nothing in the IDEA that requires the IEP to include information to this effect or the specific instructional methodologies.¹⁷

Third, Parent asserts that the Department misstated the reach of Parent Participation requirements when, in the 14-054-039 dismissal letter the Department noted that "...there are no express Parent Participation requirements found in 34 CFR 300.320(a)." Parent challenges this statement by noting that 34 CFR 300.320(a) includes the language, "...in accordance with §§ 300.320 through 300.324," where §300.322 is the Parent Participation portion of the law. A full quotation of the § 300.320 notes that the IEP is "...developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324." 34 CFR 300.322 requires that all steps necessary are taken to "...ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded to opportunity to participate..." In this case, the IEP provided by Parent to the Department indicates that both Parents attended and participated in the IEP meeting. Parent has thus far focused on the IEP goal and reporting Student's progress toward the goal. Nothing in 34 CFR 300.320 through 300.324 requires that the parent or the IEP team participate in periodic progress reporting. Again, the IEP meeting is for developing, reviewing, and revising the IEP.¹⁸

Fourth, Parent states that the October 30, 2014 dismissal letter misquotes the Federal Register when the Department wrote, "The US Department of Education has clarified that, the specific times that progress reports are provided to parents and the specific manner and format in which a child's progress toward meeting annual goals is reported is best left to State and local officials to determine (71 Fed. Reg. at 4664)." Parent writes that a "...true reading of the Register is, 'Comment: On commenter suggested requiring SEAs to ensure that LEAs receive professional development in writing measurable annual goals and effective methods of measuring progress towards achieving those goals. Discussion: We do not believe that the requested requirement should be included in the regulations. State and local officials are in the best positions to determine the training and professional development needs of their personnel.' (Emphasis added by Parent) Parent suggests that the Department created the comments referred to in order to "deceive the reader." On the same page of the Federal Register, a reader will note that the commentary's discussion continues to read that:

"Discussion: Section 300.320(a)(3)(ii) follows the language in section 614(d)(1)(A)(i)(III) of the Act and requires the IEP to include a description of when periodic reports on the child's progress toward meeting the annual goals will be provided. The Act does not require report cards or quarterly report cards. Report cards and quarterly report cards are used as examples in § 300.320(a)(3)(ii) of when

¹⁶ 34 CFR § 300.320(a)(3)(ii)

¹⁷ 71 Fed. Reg. 156,46665 (August 14, 2006) (to be codified at 34 CFR § 300.320(a))

¹⁸ 34 CFR § 300.320(a)

periodic reports on the child's progress toward meeting the annual goals might be provided. The specific times that progress reports are provided to parents and the specific manner and format in which a child's progress toward meeting the annual goals is reported is **best left to State and local officials to determine.**"¹⁹ (Emphasis added)

The language utilized by the Department in the dismissal letter therefore did paraphrase the Federal Register and is not deceptive.

On March 6, 2015, the Department's complaint investigator interviewed Parent. During the conversation Parent explained that the complaints intended to express dissatisfaction with the goal stated on the Student's IEP. Parent's position is that the goal is so vague it does not function to sufficiently measure how Student's progress toward meeting the annual goal will be measured. Parent specifically pointed to the language of the goal which states that progress would be measured by "...a CBM probe to a rate of 127 cwpm." Parent explained that this goal does not specify which specific curriculum based measurement (CBM) probe will be utilized, how it will be utilized, and how specifically that information will be communicated to Parent. Parent further explained that without such specific information, the resulting periodic reports, especially the ones used by the District with a ranking of 1-5, are not useful gauges of Student's progress.

With this understanding of Parent's focus of the complaints, it can be better understood how Parent and the Department had significantly different portions of the IEP in mind when communicating regarding complaints, IDEA requirements, and the subsequent dismissals. However, Parent's desire to address the language of the IEP goal through the IDEA complaint process related to progress monitoring, remains ineffective for the following reasons. First, the IDEA considered requiring additional detail regarding the IEP goal requirements, and determined that additional specificity was not required for the IEP goal.

"Comment: A few commenters state that the regulations should be more specific about what must be included in an IEP goal if benchmarks or short-term objectives are not required in every child's IEP. *Discussion:* The regulations are clear on the requirements of IEP goals...We do not believe that additional specificity is needed."²⁰

Second, as correctly noted by the Department, the specific manner and format of reporting a child's progress toward meeting an annual IEP goal is best left to the State and local officials to determine, rather than convening additional IEP team meetings.²¹ The option of providing the parent or IEP team with an opportunity to revise the IEP goal at this time was also rejected in the federal commentary,²² however, the District's progress ranking system does anticipate a means to address a student's failure to progress toward IEP goals by convening an IEP meeting to address the lack of progress toward annual goals.

Parent's concerns regarding the annual goal contained in the IEP are of a qualitative nature. Parent orally asserted in the interview a District violation of the IDEA by a lack of detail and

¹⁹ 71 Fed. Reg. 156,46664 (August 14, 2006) (to be codified at 34 CFR § 300.320(a)(3)(ii))

²⁰ 71 Fed. Reg. 156,46663-46664 (August 14, 2006) (to be codified at 34 CFR § 300.320(a)(2)(ii))

²¹ 71 Fed. Reg. 156,46664 (August 14, 2006) (to be codified at 34 CFR § 300.320(a)(3)(ii))

²² *Id.*

specificity in Student's annual goal. The IDEA provides a basic definition of a Free Appropriate Public Education (FAPE) as those services that: (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program...²³ Courts were left to determine the extent of the services provided in the individualized education program, and determined that Congress intended to provide a "basic floor of opportunity" rather than to maximize the potential of students.²⁴ In the pivotal IDEA legal opinion, *Rowley v. Bd. of Educ.*,²⁵ the United States Supreme Court held that "...if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act." While the student or parent may desire a Cadillac education the local education agency is required only to provide a serviceable Chevrolet.²⁶ This case has been broadly applied by the IDEA legal community to clarify that a District need not provide all of a parent's demands for their student when the District has in fact met the letter of the law, as we see here. In this case, the Student's IEP contains all of the required elements of the law, so Parent's three complaints filed with the State failed to successfully allege a violation of the IDEA. The complaints were therefore properly dismissed.

In closing, Parent's allegations that the prior three dismissals by the Department were based on factually incorrect citations of the IDEA are unsubstantiated. The Parent and Department decided to quote from differing sections of the IDEA or to paraphrase voluminous materials. The complaint investigation further clarified Parent's specific concern, which was not articulated in the three narrative complaints filed with the Department in the fall of 2014. However, that concern also does not amount to a violation of the IDEA as described above.

For the above stated reasons this allegation is not substantiated.

²³ 20 U.S. Code § 1401(9)

²⁴ *Rowley v. Bd. Of Educ.*, 485 U.S. at 192, 200 (1982).

²⁵ *Id.*

²⁶ *Doe ex rel. Doe v. Bd. Of Educ.*, 9 F3d 455, 459-460 (6th Cir. 1993)

V. CORRECTIVE ACTION²⁷

*In the Matter of Oregon Department of Education
Case No. 15-054-003*

No corrective action is ordered in this case.

Dated: this 27th day of March 2015



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Learning - Student Services

Mailing Date: March 27, 2015

²⁷ The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).