

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of St. Helens School)
District # 502)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 15-054-037

I. BACKGROUND

On October 22, 2015, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parents (Parents) of a student (Student) residing in the St. Helens School District (District). The Student attends school in the District. The Parent requested that the Department conduct a Special Education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District by email on October 23, 2015.

Under state and 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 unless exceptional circumstances require an extension.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 This order is timely.

On October 28, 2015, the Department's Complaint Investigator sent a *Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 12, 2015.

The District submitted a timely response indicating it disputed all of the allegations in the Parents' Complaint. The District submitted the following items with its *Response*:

1. All IEPs and placement documents in effect during the 2014-2015 and 2015-2016 school years.
2. All IEP progress reports for the time periods that were provided to the Parents.
3. All IEP Meeting notices, meeting minutes or records, prior written notices and signed parental consents for the 2014-2015 and 2015-2016 school years.
4. The most recent eligibility evaluations for the Student, current assessments, other eligibility evaluations and/or reevaluations that document the Student's disability and current levels of academic achievement and functional performance in the District's possession.
5. Documentation of the provision of Special Education and the type and amount of services and related services the Student has received and the Student's class schedules for the 2014-2015 and 2015-2016 school years including the documentation of the progress the Student has made.

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

² OAR 581-015-2030 (12)

6. All communications between the Parents and the District that were relevant to this matter.
7. All Student grade and credit transcripts relevant to the Student's course of study and credit accrual relevant to diploma and graduation requirements.
8. Any other documentation related to the allegations that the District believes may be helpful in resolving this complaint.
9. A list of staff or others who are knowledgeable about the circumstances in this Complaint and their contact information.

The Parents submitted documentation to the Investigator via email on November 1, 2015. The Parents did not submit further documentation in regards to the *Response* from the District. The District had already submitted copies of the same pages submitted by the Parents.

During the in-person interview process the District submitted the following supplemental documents at the request of the Investigator:

1. The inventory list of Assistive Technology and Supplies available to all students on an IEP in the high school Learning Center.
2. An email of clarification regarding software updates for upgrading Student's text to audio accommodations and any District complications.
3. The current class grades for the Student as of November 20, 2015.
4. The Student's current attendance profile sheet.
5. The Student's current schedule of classes.
6. Documentation of credits earned and in progress by the Student for graduation and regular Oregon diploma requirements.
7. Information made available to parents in the District regarding statewide tests.
8. The District's Independent Educational Evaluation (IEE) process and procedures and a (partial) list of independent evaluators.
9. Clarification of the Student's PSAT Math scores.

The District also submitted on its own volition:

10. The District's 2015-2016 Curriculum Guide.
11. District School Board policies related to: Graduation Requirements, Credits for Proficiency, District Assessment Program, and Assessment Exemptions.
12. ODE State Standards for Second Language Acquisition and clarification of an accommodation versus a modification on Second Language Proficiency for Stage 1.
13. The Student's list of accommodations used by the Student in the Learning Center for the 2014-2015 and the 2015-2016 school years.
14. Youth Transitions Program (YTP) Transition Planning and Accommodation notes from the YTP staff member.

The Department's Complaint Investigator determined that on-site interviews were necessary. On November 18, 2015 the Complaint Investigator interviewed the District's Special Education Director (Director of Student Services) and the Student's Case Manager. On November 19 and November 20, 2015 the Complaint Investigator interviewed the District Superintendent, the High School Vice Principal and several of the

Student's regular education teachers, the Youth Transitions Program teacher, the Student's Father, the Student's Mother (by phone) and the Student. On November 30, 2015 the Principal was interviewed by phone. The Complaint Investigator reviewed and considered all of these documents and interviews in reaching the findings of fact and conclusion of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.152-153 and OAR 581-015-2300. The Parents' 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 October 23, 2014 to October 22, 2015.

	Allegations	Conclusions
1.	<p><u>General Evaluation and Reevaluation Procedures:</u></p> <p>The Complaint alleges that the District violated IDEA when it did not: a) evaluate the Student's strengths, weaknesses and true abilities during the triennial reevaluation; b) assess the Student in all areas related to the suspected disability; c) gather enough relevant functional, developmental and/or academic information to enable the Student to make progress in general education curriculum in Reading, Writing and Language and on state assessments required for graduation; d) conduct a sufficiently comprehensive evaluation to identify all the Student's Special Education, related services and accommodation needs on the IEP that enable the Student to be involved and make progress in the general education curriculum, and e) complete an agreed upon evaluation in a timely fashion within 60 school days, as per the Mediation Agreement.</p> <p>34 CFR 302; 34 CFR 300.304; 34 CFR 300.305; OAR 581-015-2015; OAR 581-015-2110.</p>	<p><u>Not Substantiated:</u></p> <p>The District evaluated the Student's strengths, weaknesses and true abilities during the triennial reevaluation. This reevaluation was completed within 60 days as required by the Mediation Agreement dated January 8, 2015. The District was able to obtain sufficient information to determine the areas of strengths and weaknesses and accommodations necessary for the Student to make continued educational progress.</p>

<p>2.</p>	<p><u>Independent Educational Evaluation (IEE):</u></p> <p>The Complaint alleges that the District violated the IDEA when the District did not: a) provide an outside evaluation upon the Parents' requests for an evaluation as recently as August, 2015; b) give the Parents information about where an Independent Educational Evaluation could be obtained; c) email the list of outside evaluators to the Parents after saying it would; d) give the Parents a means for seeking an Independent Educational Evaluation; e) provide such resources in a timely manner, and f) notify the Parents via a Prior Written Notice (PWN) that there would not be an IEE done.</p> <p>34 CFR 300.502; OAR 581-015-2305; OAR 581-015-2310</p>	<p><u>Substantiated:</u></p> <p>The Mediation Agreement executed on January 8, 2015 called for the District to work with the Parents to discuss further evaluations and testing if either the District or the Parents wanted additional testing. However, once the Parent requested an Independent Educational Evaluation contesting the findings of the May 18, 2015 Educational Evaluation, which served as the basis for the Student's triennial reevaluation, the District, without unnecessary delay, was required to either fund the Independent Educational Evaluation or initiate a Due Process Hearing to show that its evaluation is appropriate. There is no Prior Written Notice requirement in this process. The District was also required to provide information to the Parents about where an Independent Educational Evaluation could be obtained.</p>
<p>3.</p>	<p><u>Content of the IEP:</u></p> <p>The Complaint alleges the District violated the IDEA when the District did not: a) provide goals and objectives written at the Student's ability level, and b) provide goals and objectives that enable the Student to make progress in the general education curriculum in Reading and Writing and on state standards and assessments.</p> <p>34 CFR §300.320; OAR 581-015-2200</p>	<p><u>Not Substantiated:</u></p> <p>The District revised the 2014-2015 IEP in May 2015 based upon the reevaluation information, and also wrote a new IEP at the annual review in September 2015. The goals and objectives in the Student's IEP are appropriate. While the Parents did not agree with the changes in the areas of the IEP and the accommodations, the District included all necessary elements in each IEP and followed through with Prior Written Notices explaining any changes.</p>
<p>4.</p>	<p><u>When IEPs Must Be in Effect:</u></p> <p>The Complaint alleges the District violated the IDEA when: a) staff is not always available to provide accommodations; b) staff is not willing to provide or implement accommodations; c) equipment is not</p>	<p><u>Not Substantiated:</u></p> <p>The District provided all accommodations specifically included in the IEP in both the Special Education and general education settings. The Parents requested that the Student be provided a "word list" for a</p>

	<p>updated; d) required textbook reading is not updated in audio text format, and e) staff does not provide copies of Power Point lectures or student notes nor remedial spelling, writing skills and grammar supports.</p> <p>34 CFR §300.323; OAR 581-015-2220</p>	<p>Spanish exam. However, providing a “word list” for an exam in a Spanish class ultimately changes the standards or skills being assessed, which is a modification rather than an accommodation. The Student’s IEP did not provide for modifications, nor is a “word list” listed as an accommodation in the Student’s IEP. The District explained to the Parent in January 2015 that an IEP Meeting would be required to change the Student’s accommodations in the Student’s Spanish class; however, the Parent stated that she did not want an IEP Meeting at that time.</p>
5.	<p><u>Review and Revision of the IEP:</u></p> <p>The Complaint alleges the District violated the IDEA when: (a) Parents disagreed with the District findings and the September 2015 IEP, (b) the IEP was not based on an appropriate reevaluation conducted by the District, and (c) the Student continues to struggle with academic assignments and assessments due to the District’s enforcement of state standard requirements.</p> <p>34 CFR 300.324; OAR 581-015-2225</p>	<p><u>Not Substantiated:</u></p> <p>The District provided information in the triennial reevaluation that demonstrated the Student was making progress in the IEP goals, the general education curriculum and on state assessments. There is no evidence that the IEP Team did not consider the Parents’ wishes in the September 2015 IEP Meeting.</p>

	<p>Proposed Corrective Action:</p> <p>The Parents request:</p> <ol style="list-style-type: none"> 1) An outside evaluation by specialists in Reading, Writing and Language disabilities. 2) Outside remedial services. 3) Updated equipment to provide for remedial services and accommodations. 4) Staff to evaluate and provide remedial services and accommodations.
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III. FINDINGS OF FACT

Background

1. The Student is 17 years old and resides in the District. The Student currently attends St. Helens High School.
2. The Student entered the St. Helens School District with a 504 Plan for accommodations for Dysgraphia from the previously attended school district.
3. The St. Helens School District did an initial evaluation for Special Education eligibility and qualified the Student in the 7th grade in October 2012 as a student with a Learning Disability in the areas of basic Reading Skills, Reading Fluency Skills, Reading Comprehension, Math Calculation, Math Problem Solving and Written Expression at that time.
4. The Student is on track for graduation with a regular Oregon diploma.
5. The Student's current Grade Point Average (GPA) is 3.77 out of a 4.0 scale.
6. The Student's class rank as of September 2015 is 24 out of 221 students.
7. The Student's most recent 3 year reevaluation eligibility was determined on May 27, 2015 under the category of Learning Disabled (90) in the area of Writing.
8. The Student's current IEP (dated September 8, 2015) contains 100 minutes per week of Specially Designed Instruction (SDI) in the area of Writing with the Local Education Agency (LEA) responsible for the provision of the SDI. Additionally, the IEP includes 21 accommodations and 30 minutes per month of consultation with staff and no Related Services.
9. The Student's previous IEP (dated September 23, 2014) contained 100 minutes per week of SDI in the area of Writing, 100 minutes per week of SDI in the area of Reading and 60 minutes per week of SDI in the area of Math, all to be provided within the Special Education setting location provided by the LEA. Additionally, the IEP included 29 accommodations and 30 minutes per month consultation with staff.
10. The Student's September 23, 2014 IEP was revised on May 27, 2015 upon completion of eligibility redetermination in the category of Specific Learning Disability in the area of Writing, with continued SDI services for 100 minutes per week until the next reevaluation date of October 16, 2015. The revision included the elimination of SDI in the areas of Reading and Math as of May 29, 2015, with accommodations on the revised IEP remaining the same until reconsideration at the next IEP Meeting (which occurred on September 8, 2015).

General Evaluation and Reevaluation Procedures:

11. The parties previously resolved a Special Education dispute by reaching a Mediation Agreement on January 8, 2015. This Mediation Agreement provided that the parties would base future evaluations upon a review of Student records and on curriculum based assignments and that if additional testing appeared necessary, the parties would attempt to agree on this process to reduce the Student's stress.
12. The School Psychologist, the Case Manager and the Special Education Director discussed the Student's reevaluation on March 2, 2015 and agreed to utilize assessments based upon a review of the Student's records, Teacher and Parent input and work samples. On March 11, 2015, the Special Education Director discussed the reevaluation with the Parent and the Parent agreed with informal assessments being

completed. The Parent signed the Prior Notice about Evaluation/Consent for Evaluation on March 11, 2015, giving consent for the type of evaluation proposed, which was consistent with the Mediation Agreement specifications for the triennial reevaluation.

13. During the March 2, 2015 meeting it was determined that "Additional information is needed to address the Student's needs regarding his/her educational performance, Special Education and related service needs and/or placement" and "What assessments are recommended: file review, work samples, teacher and parent input."
14. The School Psychologist conducted the May 2015 Educational Evaluation within 47 school days as required in the Mediation Agreement. This report included curriculum based assessment results administered by the staff as requested by the Parent in mediation.
15. The Parent was given a copy of the report prior to the scheduled Eligibility Meeting and requested that additional information be added into it. The District complied with the request and presented a revised edition of the report that was reviewed at the meeting.
16. The May 18, 2015 School Psychologist's report included a review of all previous psycho-educational evaluations done by previous school and private evaluators, state assessment scores, Transcript and Grade Reviews, IEP Plan review, Informal Writing Sample Review from Classroom Samples, Formal Writing Sample Reviews, Informal Writing Review from Typed Sample, Informal Writing Review from Handwritten Sample, an Informal Reading Assessment, an Accommodation Review, Teacher Input, Parent Interview, Student Interview and a final Summary of Evaluation Results.
17. Based on the results of the May 2015 reevaluation, the IEP Team met on May 27, 2015 and determined that the Student continued to have a learning disability in the area of Written Language and continued to need accommodations in the areas of Math and Reading and Writing but no longer qualified for SDI services in the areas of Reading or Math.
18. The revised IEP noted the changes in SDI (the removal of Reading and Math SDI) and stated under Supplementary Aids/Services that "Accommodations remain the same until the next IEP."
19. The eligibility statement was signed and checked as "Agree" by both Parents, the Student, the Parent Advocate, the Special Education Teacher, the Vice Principal and a general education teacher familiar with the Student.
20. Following the May 27, 2015 Eligibility and IEP Meeting, the District sent the Parent a Prior Notice of Special Education Action that documented that the Student qualifies, as per that day's Eligibility Meeting, as a student with a learning disability in the area of Written Expression, that SDI in Reading and Mathematics will be discontinued and that an accommodation of Speech to Text was added to the Accommodations section.

Over the summer the District provided 10 hours (4 sessions at 2.5 hours each) of one to one tutoring for the Student in the area of Writing with a Highly Qualified Special Education Teacher as per the Mediation Agreement. Originally, the tutoring was scheduled for 5 two hour sessions but the Parent cancelled one of the sessions and so the schedule was readjusted to allow the Student to still receive 10 hours of private tutoring via a District Special Education teacher.

21. Mother sent an email to the Special Education Director on July 29, 2015 stating that the family is not in agreement with the test results from May 2015, that the family did not see physical results and that the family did not get enough time to express concerns at the Eligibility and IEP Meeting on May 27, 2015.
22. The Director responded via email asking the Mother what the Mother meant by "physical results" and reminding Mother that the Parents had been given a copy of the report and had requested some changes to it, which were done by the District as per the Parents' request.
23. Between the end of July and the start of school, emails occurred between Mother and the Special Education Director regarding Mother's concerns about the IEP in the areas of SDI, accommodations and questions about the previous spring's Eligibility Meeting.
24. Mother requested an IEP Meeting to be held prior to the start of the 2015-2016 school year. The District responded that a meeting would be set up once staff had returned on contract (August 30th) and the schedules for students were created (sometime at the end of August) so that the appropriate staff could be invited to the meeting.
25. The IEP Meeting was held on September 8, 2015, the day before the Student started school. In attendance were Father, the Student, the Special Education Director, the YTP Specialist, the Special Education Teacher/Case Manager, the Parent Advocate, the Vice Principal and the Language Arts Teacher. Mother was unable to attend due to an out-of-state commitment.
26. The Special Education Director shared with the IEP Team Mother's request via a phone message from Mother on September 3, 2015 to have Reading and Math SDI added back on to the IEP and to keep all accommodations listed on the IEP. Mother's phone message also indicated that Mother disagreed with the results of the assessment conducted in May 2015. At that time it was explained that those services had been removed by the IEP Team due to data showing that the Student was performing at or above grade level. It was agreed that accommodations in those subjects would still be provided on the IEP. The Parents' concerns were noted in the Present Level of Performance on the IEP.
27. The IEP Team discussed the difference between accommodations and modifications and reiterated that the Student would continue to receive the necessary supports and accommodations in the course work.
28. After a discussion about the rationale for removing, changing or rewording the accommodations, Father, the Student, the Parent Advocate and the other IEP Team members agreed that condensing, aligning and rewording the accommodations would align the Student's current educational needs to the IEP.
29. Father and the Parent Advocate requested that past accommodations, no longer used by the Student or redundant, would be archived in the Present Level of Performance so that if the Student needed any of them in the future the Team would have immediate access to what was used in the past.
30. The IEP Team discussed Special Factors and agreed that the Student requires access to assistive technology devices and services and that those needs are addressed in the accommodations section of the IEP.
31. Father requested that the tutoring services from the summer continue in the 2015-2016 school year. The Special Education Director explained that the tutoring occurred as a part of the January 2015 Mediation Agreement. Therefore, it will be necessary to have the Student transition back into school with regular instruction, SDI and

- accommodation services being provided in order to determine if that additional level of support is still warranted. The IEP Team also brainstormed ways to provide extra tutoring support within the school day schedule for Math and Language Arts and came up with a solution for extra support that the Student approved of and liked.
32. Three Prior Written Notices were sent to the Parents immediately following the September 8, 2015 IEP Meeting to notify them that:
 - a) The District did not believe the Student needed to have SDI in the areas of Math and Reading on the IEP due to evaluation results and the Student's current academic performance. The Student's skills in those subjects are currently at grade level;
 - b) Tutoring services were not considered necessary for the Student during the 2015-2016 school year. The Student would receive 100 minutes a week of SDI in Reading plus additional time during the school day to meet with the Language Arts Teacher and would also receive extra help in the Learning Center to support educational needs;
 - c) The IEP Team developed and updated the IEP and adjusted the accommodations to align with those the Student is currently using. The Student's placement was also determined. A cross walk of the current accommodation changes was attached to a final copy of the IEP revisions and any accommodations that were removed or changed would be detailed in the Present Level of Performance.
 33. District records indicate that Mother called and left a message for the Special Education Director on September 8, 2015. The Director returned the call and left messages at 8:15 and 8:30 am and again called Mother back on September 9th and left messages for Mother at 8:30 am and 1:00 pm.
 34. On September 16, 2015 the Special Education Director spoke to Mother on the phone. Mother requested outside testing, remedial services in Reading and Math, all accommodations put back on the IEP, and tutoring progress notes.
 35. Mother called the Special Education Director on September 21, 2015 requesting that tutoring be reinstated and that a vision evaluation be conducted.
 36. On September 24, 2015 the District sent the Parents a Prior Written Notice acknowledging that the Parents currently disagreed with the evaluation results and possibly the eligibility decisions that were made on May 27, 2015 and as a result were requesting an Independent Educational Evaluation (IEE) to assess the Student's current level of academic performance. The District reminded the Parents that they had negotiated and signed in the January 2015 Mediation Agreement clear guidelines on the types of evaluations that were to be conducted during the most recent evaluation. These guidelines state: *"The evaluation will be based as much as possible on review of student records (including past medical reports on file, and on curriculum-based assessments; if additional testing appears necessary, the parties will discuss and attempt to reach the agreement to reduce the degree of stress on student."*
 37. The District proposed, due to the Parents' dissatisfaction with the May 2015 evaluation results, that an Evaluation Planning Meeting be held to discuss the Parents' concerns and to develop an Evaluation Plan. The District informed the Parents that it was ready to provide additional assessments as agreed upon by an Evaluation Planning Team. The District also offered to discuss the Parents' requests for tutoring and IEP content areas that the District had discussed at the most recent IEP Meeting.

38. On September 30, 2015, Mother sent the Director an email requesting a list of outside assessors. The Director asked for clarification from Mother as to what the Parents were specifically disagreeing with in the most recent evaluation. Mother responded at 9:27 pm on the same day with a lengthy email of concerns regarding the Student's disability and how it impacted the Student's school achievement.
39. On October 1, 2015 the District sent a second Prior Written Notice acknowledging the Parents' request for an IEE and explaining that the Parents are entitled to an IEE at the District's expense when the Parents disagree with the District's evaluation. Further, the District stated that the most recent evaluation was limited by the Mediation Agreement so that the District has not had the opportunity to fully evaluate the Student in the manner in which the Parents are currently requesting. The District informed the Parents that it must be given the opportunity to evaluate the Student before the Parents can disagree with the evaluation and be entitled to an IEE at public expense. The letter also said that the District would schedule a meeting to identify the additional assessments the Parents wanted to be done and would then ask the Parents for consent to test the Student as soon as possible. It was explained that if the Parents disagreed with the District's evaluation, an IEE would be provided at the District's expense.
40. Mother responded in email to the District's letter on October 3, 2015, reiterating the request for an outside evaluation and refusing to allow the District to conduct its own evaluation due to the District's lack of knowledge about the Student's disability. Mother also indicated that the Parents had filed a state and federal complaint due to the District's inability to recognize the Student's disability.
41. The School Psychologist, the Special Education Teacher, the Director of Student Services/Special Education and the Student's Language Arts Teacher met on October 7, 2015 to discuss what assessments would be appropriate to evaluate the Student in order to satisfy the Parents' request for additional new formal standardized testing to determine the Student's current level of academic functioning. They decided to utilize the Wechsler Individual Achievement Test-3, the Woodcock Johnson III Tests of Achievement (WJ-4) and a file review of most recent academic performance indicators.
42. A Prior Notice about Evaluation/Consent for Evaluation was prepared to be sent to the Parents for the Parents' consent to give the Student these assessments.
43. The Director called Father on Friday, October 16, 2015 and asked if the District's letter had been received by the Parents and if the Parents wanted to have an Evaluation Planning Meeting. Father indicated the District would be called back by Monday or Tuesday (October 19 or 20) with an answer.
44. Father called back on Thursday, October 22nd and left a message indicating the Parents would meet for an Evaluation Planning Meeting. Father apologized for not calling back sooner but stated that he had been ill. Father asked the District to please call back about the meeting.
45. On Friday, October 23, 2015 the District was notified by the Department of Education that it had received a Complaint from the Parents and would be formally investigating the Complaint.

IV. DISCUSSION

1. General Evaluation and Reevaluation Procedures

The Complaint alleges the District violated the IDEA when it did not: a) evaluate the Student's strengths, weaknesses and true abilities during the triennial reevaluation; b) assess the Student in all areas of suspected disability; c) gather enough relevant functional, developmental and/or academic information to enable the Student to make progress in general education curriculum in Reading, Writing and Language and on state assessments required for graduation; d) conduct a sufficiently comprehensive evaluation to identify all the Student's Special Education and related services and accommodation needs on the IEP that enable the Student to be involved and make progress in the general education curriculum, and; e) complete an agreed upon evaluation in a timely way within 60 school days, as per the Mediation Agreement.

The process for evaluation and reevaluation is set forth in OAR 581-015-2110, which requires the District to provide Notice to the Parent and get the Parent's consent prior to evaluating or reevaluating the Student, use a variety of assessment tools and strategies in order to gather information, and appropriately administer these assessments. The District is also required to evaluate or reevaluate the Student in all suspected areas of disability. This reevaluation must be completed within 60 school days from the time the District receives written consent from the Parent.

There is no evidence that the District failed to satisfy these requirements. The District received consent from the Parent prior to conducting the reevaluation in May 2015. The District examined the overall academic performance of the Student; analyzed feedback received from the Student, the Parents and the Student's teachers and considered the results of standardized assessments. The District also completed the reevaluation within 60 days of receiving signed consent from the Parents, as required by the January 8, 2015 Mediation Agreement.

The overall academic performance of this Student also indicates that this Student does not have any unrecognized areas of disability. During the 2014-2015 school year, the Student received grades of A's and B's without modifications to the coursework. Data and progress monitoring of the Student indicate that the Student continues to make progress in the general education curriculum and on the IEP goals and objectives. Teacher interviews support the finding that FAPE is being provided to this Student and that the Student has made measureable gains and progress towards graduation with a regular Oregon diploma.

This allegation is not substantiated.

2. Independent Education Evaluation (IEE)

The Complaint alleges the District violated the IDEA when it did not: a) provide an outside evaluation upon the Parents' request; b) give the Parents information about where an Independent Educational Evaluation could be obtained; c) email the list of outside evaluators to the Parents after saying it would; d) give the Parents a means for seeking an

IEE; e) provide resources in a timely way; and f) notify the Parents via a Prior Written Notice that there would not be an IEE done.

The process for requesting and granting or denying an IEE at public expense is set forth in OAR 581-015-2305. This allows the parent of a child with a disability to obtain an Independent Educational Evaluation "if the parent disagrees with an evaluation obtained by the school district."

On September 16, 2015, the Parents requested that the District provide an Independent Educational Evaluation. The District responded by sending a letter to the Parents on September 24, 2015 requesting an Evaluation Planning Meeting with the Parents, stating that the District "stands ready to provide additional assessments as agreed upon by an Evaluation Planning Team" should the Parents agree to this proposal. The District sent another letter to the Parents on October 1, 2015 noting that one of the prerequisites for an IEE at public expense is that the Parent disagrees with the evaluation conducted by the District and that, "Due to the evaluation limitations agreed upon in mediation, the District has not yet had the opportunity to fully evaluate the Student in Reading and Writing. The District has other evaluations that can be administered to assess the Student's functioning in those areas and is willing and able to do them at this time. The District must be given an opportunity to complete those assessments before an IEE may be conducted at public expense."

The District went on to say that it would, "schedule a meeting of an Evaluation Planning Team which will include the Parent, to identify appropriate additional assessments in Reading and Writing. We will then ask for your consent to the proposed evaluation. If you give your consent, the evaluation will be conducted promptly and a follow-up meeting will be scheduled to discuss the results. At that point, if you disagree with results of the District's evaluation you will be entitled to request an IEE at District expense." The School Psychologist, the Special Education Teacher, the Director of Student Services and the Student's Language Arts Teacher met on October 7, 2015 and prepared documents for consent to send to the Parents one day prior to the Department's notification of the Parents' complaint filing.

However, the District's position is unfounded. The May 18, 2015 Educational Evaluation, written by the School Psychologist, is an evaluation of this Student and served as the basis for the Student's triennial reevaluation. The fact that it was somewhat limited in scope does not mean that it wasn't an evaluation. Parents have the right to an Independent Educational Evaluation under OAR 581-015-2305 if the Parents disagree with an evaluation obtained by the school district (in this case, the triennial reevaluation). Once the Parents requested an Independent Educational Evaluation, the District had to, within a reasonable time, ensure that an Independent Educational Evaluation was funded at public expense, or, in the alternative, initiate a Due Process Hearing to show that its evaluation is appropriate. The District did neither.

This allegation is substantiated.

3. Content of the IEP

The Complaint alleges that the District violated the IDEA when it did not: a) provide goals and objectives written at the Student's ability level and b) provide goals and objectives that enable the Student to make progress in the general education curriculum in Reading and Writing and on state standards and assessments.

The requirements for IEP Content are set forth in 34 CFR 300.324, and OAR 581-015-2200. The IEP must include a statement of the child's present levels of academic achievement and functional performance as well as a statement of measurable annual goals that are designed to meet the child's needs resulting from the child's disability. The IEP must also include a description of how the child's progress toward reaching the goals will be measured. The IEP must also include a statement of Special Education and related services and supplementary aids and services as well as a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child.

An IEP is not defective merely because it fails to include the Special Education services requested by parents if those services are not necessary for the child to receive a Free Appropriate Public Education (FAPE). The Parents' request for reinstatement of SDI in the areas of Reading and Math and all previous accommodations were not warranted given the academic functioning level of the Student in those areas with the current accommodations offered. The goals in the IEP are also appropriate.

The District included all elements necessary in an IEP that is reasonably calculated to confer benefit. A review of teacher input from staff involved with the Student, the Student's Parents, scored work samples, summer tutoring information, past evaluation reports and the Student's grades, transcripts, progress notes, and assessment results revealed that the Student was receiving a Free and Appropriate Public Education. The goals and objectives were created and specially designed instruction was provided which allowed the Student to make continued progress in the general education curriculum.

This allegation is not substantiated.

4. When IEPs must be in Effect

The Complaint alleges the District violated the IDEA when: a) staff was not available to provide accommodations; b) staff was not willing to provide or implement accommodations; c) equipment was not updated; d) required textbook reading was not provided in audio text format; and e) staff did not provide copies of Power Point lectures, student notes or remedial Spelling, Writing Skills and Grammar Supports.

Under OAR 581-015-2220, a District is responsible to ensure that all accommodations, modifications, and supplementary aids and services are provided as defined on the IEP. The IEP must be in effect at the start of each school year and the services must be provided.

The District provided the accommodations listed in the IEP for the Student in all settings. The staff members that were involved with the Student were aware of and knowledgeable about the Student's IEP accommodations. These staff members were at all times willing, able and available to provide the support. The Student had a universal pass to leave the general education classroom at any time to seek help from specialists in the Learning Center.

The Mother alleges that Student's Spanish Teacher was required to provide a "word list" to Student for use during the exam. There is no such accommodation listed in the Student's IEP. Providing such a list would ultimately be a modification rather than an accommodation, as it would change the standards or skills being assessed during the exam. Although not required by the IEP, the Student was provided an unlimited number of test retakes in the Spanish class.

Allegations that the equipment was not updated, that texts were not available in audio format and that the staff was not providing the Student with course notes or remedial support in Spelling, Writing and Remedial Grammar are not founded. The Student was provided with both a laptop and a Kindle device. These were available throughout the school year as well as the summer break. Any delays due to necessary technology updates or repairs, alignment between purchased software and the District's security sensors, and the search for audio sources for necessary textbooks were conducted and resolved in a reasonable time period.

This allegation is not substantiated.

5. Review and Revision of the IEP

The Complaint alleges the District violated the IDEA when: a) Parents disagreed with the findings of the IEP Team and the September 2015 IEP; b) the IEP was not based on an appropriate reevaluation conducted by the District, and c) the Student continues to struggle with academic assignments and assessments due to the District's enforcement of state required standards.

34 CFR 324 and OAR 581-015-2225 require that the IEP Team review the child's IEP at least once a year, and that the IEP be revised as appropriate to address any lack of progress towards the child's annual goals.

The IEP Team met on May 27, 2015, including both Parents. At that time, outcomes of the evaluation results were clearly articulated and discussed by the IEP Team. The Parents signed the Eligibility Statement indicating they "agreed" with the outcome of the evaluation results. The IEP Team revised the IEP to reflect agreed-upon changes and discontinued services in Reading and Math based on the evaluation. Prior Written Notices were sent on May 31, 2015 with notifications that changes would be implemented on May 31, 2015.

Once Mother expressed her disagreement with the revisions that took place during the IEP Meeting in May, 2015, the IEP Team reconvened and drafted a new IEP on September 8, 2015. In doing so, the IEP Team relied on the following: 1) a review of outside reports, 2) grades, 3) progress notes, 4) work samples and 5) statewide assessments. The IEP

Team also utilized curriculum based measurements and interviews with the Parents, the Student and the Student's teachers.

There is no evidence that the IEP was based upon an inappropriate evaluation of the Student. The fact that the Parents disagrees with a decision made during an IEP Meeting does not mean that the decision was made inappropriately. There is no indication that Father's input was not considered by the IEP Team during this meeting. Most importantly, there is no evidence that this Student is struggling with academic assessments and assignments. As previously discussed, this Student is making appropriate progress.

This allegation is not substantiated.

V. CORRECTIVE ACTION³
In the Matter of St. Helens School District
Case No. 15-054-037

No.	Action Required	Submissions ⁴	Due Date
1.	The District is ordered to either ensure that an Independent Educational Evaluation is provided under OAR 581-015-2305, at public expense, or initiate a Due Process Hearing under OAR 581-015-2345.	District will submit documentation of the decision to either: 1) fund an Independent Educational Evaluation, or 2) initiate a Due Process Hearing to show its evaluation is appropriate. (The documentation could include the letter/notice to the Parents to fund an IEE or the formal request for a Due Process Hearing.)	January 8, 2016

Dated: this 18th Day of December, 2015



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

Mailing Date: December 18th, 2015

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.

³ 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).

⁴ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.