

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Canby SD 86

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 17-054-008

I. BACKGROUND:

On March 21, 2017, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parent (Parent) of a student (Student) residing 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 March 21, 2017.

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. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint; or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.¹ Based on the date the Department received the complaint, the relevant period for this Complaint is March 22, 2016 through March 21, 2017. The Final Order is due May 20, 2017.

On March 24, 2017, the Department's Complaint Investigator sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a Response due date of April 14, 2017.

On April 17, 2017, the District submitted a packet of materials for the Department's Investigator to review. On April 21, 2017, the District submitted some additional materials. Finally on May 2, 2017, at the Complaint Investigator's request, the District submitted a final packet of materials. All of these materials are listed in the chart below:

Letter of Response and Table Of Contents	4/14/2017
Prior Written Notice	11/7/2016
IEP Progress Reports	10/20/2016
Meeting Notice	9/29/2016
IEP	5/10/2016
IEP Progress Reports	3/24/2017
IEP Progress Reports	12/2/2016
IEP Placement Page	5/10/2016
Meeting Minutes	5/10/2016
Prior Written Notice	5/10/2016
Meeting Notice	4/4/2016
IEP	6/3/2015
Emails	2/8/16 – 2/22/16

¹ OAR 581-015-2030 (5).

IEP Progress Reports	3/7/2016
Prior Written Notice	2/23/2016
Meeting Notice	2/10/2016
Meeting Notice	1/26/2016
IEP Amendment	6/3/2015
IEP Progress Reports	11/24/2015
IEP Placement Page	9/17/2015
Meeting Minutes	9/17/2015
Prior Written Notice	9/17/2015
Meeting Notice	9/10/2015
IEP	6/3/2015
IEP Progress Reports	6/10/2015
IEP Placement Page	6/3/2015
Meeting Minutes	6/3/2015
Prior Written Notice	6/3/2015
SLD Eligibility documents	6/3/2015
Achievement Evaluation	4/30/2015
Psychoeducational Evaluation	6/3/2015
Psychoeducational Evaluation	5/1/2009
Meeting Minutes	6/3/2015
Consent for Initial Provision of Special Education	6/3/2015
Meeting Notice	5/26/2015
Prior Written Notice	4/2/2015
Consent for Evaluation	4/2/2015
Meeting Minutes	4/2/2015
Meeting Notice	3/17/2015
Prior Written Notice	4/2/2015
MDT Packet	2/9/2015
Section 504 Plan	9/17/2014
Psychoeducational Evaluation	5/1/2009
MDT Notes	9/17/2014
Middle School Transcript	3/10/2015
Standards Based Report Card	2013 - 2014
Vision Screening Report	3/12/2015
Grade 8 Schedule	2015 - 2016
Grade 9 Schedule	3/23/2017
Emails	11/15/16 -- 2/23/17
Plan Book	10/3/16--5/9/17
Emails ²	5/7/15--3/23/17
Student's Grade Book scores in detail for the first and second trimesters of the 2016-2017 school year. ³	2016-2017

On April 19, 2017, the Parent submitted a packet of materials to the Department's Complaint Investigator. This packet consisted of copies of emails between the Parents and various District staff members, dated September 8, 2016 to April 19, 2017. On March 23, 2017, the Parent sent the Investigator a copy of the Student's IEP dated May 10, 2016.

² Emails were submitted on April 21, 2017.

³ These were submitted at the Investigator's request on May 2, 2017.

The Department's Complaint Investigator determined that on-site interviews were needed. On April 24, 2017, the Department's Complaint Investigator interviewed the Parents. On April 26, 2017, the Department's Complaint Investigator interviewed middle school staff who had worked with the Student; the Principal, a Middle School Learning Specialist, and a Middle School Language Arts/Social Studies teacher. On the same day, the Complaint Investigator interviewed the High School Assistant Principal who supervises the provision of Special Education; and one of the Student's Math teachers and one of the Student's Language Arts teachers. On April 27, 2017, the Department's Complaint Investigator interviewed general education teachers who have taught the Student during 9th grade: two Physics teachers, one Music teacher and one Math teacher. On May 1, 2017, the Department's Complaint Investigator interviewed the Student's 9th grade Special Education Case Manager.

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.

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.⁴ This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151 – 153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from March 22, 2016 through March 21, 2017.⁵

	Allegations	Conclusions
1.	<p><u>When IEP's Must Be in Effect:</u></p> <p>The Parents allege that the District violated the IDEA when it did not provide:</p> <ul style="list-style-type: none"> a. the Student with Specially Designed Instruction in Reading, Study and Organizational Skills, and Math that was designed to help the Student make progress in the general education curriculum; b. the Student with accommodations and modifications as outlined in the May 10, 2016 IEP. <p>(OAR 581-015-2220 (1) (b)) & 34 CFR 300.323, 300.324)</p>	<p><u>Not Substantiated:</u></p> <p>The data gathered and considered indicates that the District consistently provided Specially Designed Instruction (SDI) and the supplementary aids and services included in the IEP. The evidence also demonstrates that all required accommodations and modifications were provided to the Student in the manner described in the IEP.</p>

⁴ 34 CFR §300.1510(2010)

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

Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA):

The Parents allege the District discriminated against the Student when it made disparaging comments about the Student's work habits, attention and other school success skills related to the Student's areas of disability. Disability Discrimination is investigated by the Office of Civil Rights. The Parents may contact Winston Cornwall (503-947-5675) at the Department for information about how to file a complaint on this issue with the Civil Rights Division.

Requested Corrective Action:

The Parent requests the following actions be implemented as resolutions to the Complaint:

1. Teacher training on dyslexia and related disabilities;
2. Teacher training on accommodations/modifications and IDEA; and,
3. Teacher sensitivity training regarding disability.

III. FINDINGS OF FACT

1. The Student is sixteen years old, and is eligible for Special Education services as a student with a Specific Learning Disability in the area of Math calculation. This eligibility was established on June 2, 2015. The Student lives and attends 9th grade in the District.
2. The Student was first evaluated in 2009, when the family lived in another state. The Student was diagnosed with Specific Developmental Dyslexia, Dysgraphia and Dyscalculia. After the family moved to Oregon, the Parents requested that the District evaluate the Student for Special Education eligibility on February 9, 2015. The IEP Team wrote an IEP for the Student on June 3, 2015. In the Summary of Present Levels of Academic Achievement and Functional Performance, the team noted that the Student:
 - a. Is spirited, strong, motivated to learn, very social as well as compassionate;
 - b. Has math calculation skills well below grade age peers;
 - c. Generally scores in the 70%ile in math tasks;
 - d. Is able to create sentences, organize and sequence ideas, but writes at a rate slower than peers;
 - e. Uses correct conventions with 87% accuracy and writes paragraphs that score in the 85% range.
 - f. Needs special education and related services to progress in the general education curriculum.
3. The IEP Team established goals for the Student in Math and Reading and outlined a number of Supplementary Aids and Services as listed below:

<u>IEP Element⁶</u>	June 3, 2015 IEP
<u>Goals:</u>	Reading: After instruction from the classroom teacher and reading a grade level text or directions, the Student will demonstrate comprehension across content areas in multiple modalities including but not limited to the following examples, oral response, paraphrasing, multiple choice, writing short answer, etc. to increase

⁶ Because the allegation is focused on whether or not the District provided specially designed instruction and accommodations and modifications, only these elements are described in this order.

	<p>understanding of written material, with 80% accuracy on related assignments and assessments,</p> <p>Math: After instruction from the classroom teacher and using a calculator and strategies that have been taught, the Student will solve linear equations in one variable including the basic math calculations to increase understanding of mathematic concepts, with 80% or better on formative and summative assessments in core content classes.</p>
<u>Service Summary – Specially Designed Instruction (SDI)</u>	<p>Reading, Gen ED class, 50 min. per week</p> <p>Math, Gen ED class, 50 min per week</p>
<u>Service Summary -- Related Services</u>	None Needed
<u>Service Summary -- Supplementary Aids/Services; Modifications and Accommodations</u>	<ol style="list-style-type: none"> 1. Assessments may be read aloud at student request, INCLUDING STATE ASSESSMENTS; 2. Notes to be provided; 3. Separate setting for assessments, INCLUDING STATE ASSESSMENTS; 4. Audiobooks when available; 5. Calculator may be used; 6. Extended time on assessments and assignments, 50% more when necessary; 7. Simplified verbal and written directions 1 to 2 steps at a time, repeated as necessary; 8. Chunk larger assignments into smaller more manageable pieces maintaining grade level content; 9. Technology used as needed: word processing, dictation; 10. Prioritize assignments;
<u>Service Summary -- Program Modifications & Supports for School Personnel</u>	<ol style="list-style-type: none"> 1. Information about dyslexia: websites, articles, strategies, etc.; 2. Consultation from special education teacher.

4. From March, 2016 through the end of the 2015-2016 school year (grade 8), the Student took classes in Language Arts 8, Art, US History 8, Math 8, Science 8 and Academic Support. The Academic Support class was taught by the Student's Special Education Case Manager. In this class the Student received the SDI as outlined in the IEP. At the end of the trimester, the Student earned A's in Art and Academic Support; B's in Language Arts and US History; and C's in Science and Math. Teachers in the general education classes "chunked" work assignments by breaking large assignments down into smaller assignments, provided extra time, audio books, calculators, notes and reading aloud support. The Special Education Teacher provided consultation to the general education teachers about instructional methods and the Student's particular disability.
5. On May 10, 2016, the IEP Team met to review the Student's progress and make any necessary changes to the Student's IEP. The IEP Team added a goal in Organizational and

Study Skills to be provided in the Special Education classroom for 30 minutes per month by the Special Education Teacher. The goal, as written, is: "With support and prompting from adults, the Student will communicate with the teacher to give and receive feedback in a positive manner to increase ability to advocate for self for a minimum of twice a month." The IEP Team changed two other items in the Student's IEP. They changed the location for provision of SDI to the Special Education classroom, and added the location of Tutoring Labs to all of the Supplementary Aids and Services.

6. The May 10, 2016 IEP indicates that the Student will receive fifty minutes of SDI in reading each week, fifty minutes of SDI in math each week, and thirty minutes of SDI in study/organizational skills per month. However, the Statement of Nonparticipation Justification states that the Student "will be removed for one period per day to receive 130 minutes of specially designed instruction." The class periods at the High School are seventy minutes. It appears that the "130 minutes of specially designed instruction" was to be weekly rather than monthly, when looked at in the context of the rest of the IEP.
7. The High School operates on a trimester schedule. During the 2016-2017 school year, the Student has completed these classes:⁷ English 1A & 1B, Physics 1A & 1B, Algebra 1A (twice) & 1B, Academic Growth, trimesters one and two) Choir (trimesters one and two), and Advisory 9th grade (trimesters one and two). Each class period is 70 minutes long and students take five classes per day. The Student's cumulative GPA at this time is 1.70 and the Student has earned 4.50 of 5 possible credits year to date.
8. For trimester one, the Student earned a D in English 1A, a D in Physics 1A, an F in Algebra 1, a B in Choir, and a B in Academic Growth. For trimester two, the Student earned a C in Choir, a D in Physics 1B, a D in Algebra 1, and a C in Academic Growth.
9. In the Academic Growth class, the students receive Specially Designed Instruction (SDI) in a variety of skill areas for the first part of the class session. Topics covered over the year to date include such skills as reading comprehension, graphing, recalling facts, understanding ideas, math word problems, time reading and notebook organization and checks. The teacher provides instruction in these skills, students complete a task, and for the remainder of the class period the students may work on assignments from their other academic classes and receive help from the teacher. In addition, the High School has Math, Language Arts and Science Laboratories.
10. The software system used in the District allows teachers to access specific information about those students who are working with an IEP or other school support system. The teacher can click on the student's name and go to a menu to see the complete IEP. Teachers have immediate access to this system before the school year begins, throughout the year and at their desktops. All general education teachers interviewed for this Complaint explained exactly how to view the Student's IEP goals, supplementary aids and services, present level of performance and other IEP components. All general education teachers interviewed for this Complaint noted they checked the Student's IEP at the beginning of each trimester, and that they implemented specific supplementary aids and services as necessary in their individual classes. While the general education teachers noted varying

⁷ This is a complete list of all classes the Student has taken or is taking during the 2016-2017 school year. However, information is not provided in this order about the classes the Student is currently enrolled in, as they are outside of the complaint timeline.

levels of support from the Special Education staff, all knew who the Student's Case Manager was and several noted they had spoken over the year with the Case Manager.

11. In each Math class the Student had access to a calculator and was occasionally allowed to use the personal cell phone for calculations. However, teachers noted they prefer the Student to use the classroom calculators. Also in each Math class the Student was provided with an iPad which is loaded with several different algebra instruction software programs. The Math department has adopted a practice which mandates that when a student earns a grade lower than 60% on a given assessment, the student must then use the iPad or other materials to practice the skill until the student is able to demonstrate mastery of the skill above 60%. While such practices are not specific to this Student's IEP, the practices incorporate some of the IEP elements. These include: SDI in a Math skills, extended time on assignments or assessments, chunking of assignments, use of a calculator, use of technology, and prioritization of assignments. Finally, the Student was able to access the Math Lab for additional tutoring or read aloud assessments.
12. In the Student's first English class of the school year, the Student was allowed extended time on assignments and assessments, and also had access to the Language Lab for read aloud assessments and tutoring. The Student had access to an iPad for use in writing assignments. The teacher in this class also gave a completion grade to emphasize the importance of completing and submitting each assignment.
13. During the second trimester in the Choir class, the teacher was concerned that the Student was not paying enough attention during both instruction and practice sessions. The teacher held a conference with the Student and presented these concerns to the Student. The Student, according to the Parents and the teacher, agreed this was an accurate summary, and since the conference the teacher has seen good improvement in the Student's participation in class. The Parents reported the Student now feels very positive about the Choir class.
14. In the two Physics classes, the Student has also had access to varying types of technology as well as concrete materials to use in learning about the subject. The Student has a calculator and access to an iPad. Both Physics teachers noted that the Student can get read aloud assessments and tutoring in the Science Lab. In one of the Physics classes, the teacher writes the daily work schedule and assignment on the white board in the classroom and students are expected to copy this daily. This Student was not successful in copying this information on a daily basis.
15. Under the description section of the Supplementary Aids and Services, four of the accommodations listed include descriptors such as: "when necessary, repeated as necessary, when available, at student request, and as needed".

IV. DISCUSSION

When IEP's Must Be in Effect:

The Parents allege that the District violated the IDEA when it did not provide:

- a. the Student with Specially Designed Instruction in Reading, Study and Organizational Skills, and Math that was designed to help the Student make progress in the general education curriculum;
- b. the Student with accommodations and modifications as outlined in the May 10, 2016 IEP.

Under OAR 581-015-2220 (1) (b)) and 34 CFR 300.323, 300.324, a district meets its responsibilities to a student with disabilities when it has an IEP in place for the student at the beginning of a school year. Further, the district meets its responsibilities when it provides the "special education and related services" in accordance with the IEP.⁸ This includes the supplementary aids and services, accommodations, modifications and supports to school staff.

The Student was placed in four general education classes and one Special Education support class. The Student's Case Manager provided SDI in a wide variety of skill areas in Reading, Math and Study and Organizational skills. Teachers in the general education classes provided many different supplementary aids and services, some of which were in addition to those listed on the Student's IEP. Five of the services listed on the Student's IEP included subjective judgments about when the accommodation must be provided; i.e., when necessary, when requested by the student, etc.

The IEP was also written prior to the Student's entry into high school, therefore some of the specific elements of the IEP do not completely match up with the Student's schedule. This issue can be addressed in future cases by making necessary amendments to IEPs early in the freshman year for students receiving Special Education services.

The Department does not substantiate the allegation and orders no corrective action.

V. CORRECTIVE ACTION⁹

In the Matter of Canby District
Case No. 17-054-008

Based on the facts provided, no corrective action is ordered in this case.

Dated: this 11th day of May 2017



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

Mailing Date: May 11, 2017

⁸ OAR 581-015-2220 (1) (b)

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).