

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Portland Public School)
District 1J)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 20--054-009

I. BACKGROUND

On July 28, 2020, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Portland Public School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on July 28, 2020.

On August 3, 2020, the Department sent a Request for Response ("RFR") to the District identifying the specific allegations in the Complaint to be investigated and establishing a response timeline. Thereafter, the parties agreed in writing to extend the complaint timeline in this matter to attempt mediation or local resolution. The mediation was reported to be unsuccessful; hence, the Complaint Investigation process resumed on or about October 11, 2020.

On October 16, 2020, the Department sent an amended RFR to the District identifying the specific allegations in the Complaint to be investigated and re-establishing a *Response* due date of October 30, 2020. On October 30, 2020, the District remitted its response via first class mail to the Complaint Investigator ("Investigator"). The *Response* included a narrative, and the following documents upon which the Investigator relied:

1. New Leaves Clinic Confidential assessment dated April 19, 2018
2. Lindamood-Bell Learning Ability Evaluation Summary dated August 9, 2018
3. Notice of Team Meeting dated September 4, 2018
4. IEP Team Meeting Notes dated September 6, 2018
5. Notice of Team Meeting/Meeting Request dated February 11, 2019
6. IEP dated February 28, 2019
7. IEP Team Meeting Minutes dated February 28, 2019
8. Prior Written Notice dated February 28, 2019
9. Special Education Placement Determination dated February 28, 2019
10. Emails between Parent and District dated between August 28, 2019 and June 11, 2020
11. Emails between Parent Advocate and District's counsel between September 24, 2019 and July 7, 2020
12. Notice of Team Meeting dated September 26, 2019
13. Special Education Meeting Minutes dated September 27, 2019 (handwritten)
14. Prior Written Notice dated September 27, 2019
15. Consent for Individual Evaluation dated September 27, 2019 (unsigned)
16. Consent for Individual Evaluation, signed and dated September 27, 2019
17. Special Education Meeting Minutes dated September 27, 2019 (typewritten)
18. Amended IEP dated September 28, 2019
19. IEP Progress Report - Measurable Annual Goals (undated, baseline data)
20. Notice of Team Meeting -- Meeting Request dated December 20, 2019
21. Psycho Educational Assessment Report dated January 5, 2020
22. Prior Written Notice dated January 6, 2020
23. Academic Evaluation Report dated January 6, 2020
24. Prior Written Notice dated January 6, 2020
25. IEP dated January 6, 2020

26. Special Education Placement Determination dated January 6, 2020
27. Prior Written Notice - Notice of Eligibility dated January 6, 2020
28. Meeting Minutes dated January 6, 2020
29. Prior Written Notice -- Notice of Triennial dated January 6, 2020
30. Prior Written Notice -- Notice of Eligibility dated January 6, 2020
31. Eligibility Summary statement dated January 6, 2020
32. Disability Statement: Other Health Impairment (80) Criteria dated January 6, 2020
33. Disability Statement: Specific Learning Disability (90) Criteria dated January 6, 2020
34. Disability Statement: Emotional Disturbance (60) Criteria dated January 6, 2020
35. Academic Evaluation Report dated January 6, 2020
36. Meeting Minutes dated January 6, 2020
37. IEP Progress report dated February 4, 2020
38. IEP Progress Report dated June 11, 2020
39. District Special Education policies and procedures in response to the Covid-19 pandemic
40. Student's reports cards for academic years 2018-2019 and 2019-2020.
41. Student's attendance record for academic year 2019-2020
42. Student's class schedule for academic year 2019-2020

The District subsequently remitted the following amended documents via email on or about October 30, 2019

1. Notes dated June 5, 2020
2. Weekly Progress reports beginning January 21, 2020 and ending March 13, 2020
3. Three (3) writing samples authored by the Student

Initially, the Investigator did not receive any responsive materials from the Parent; however, upon request of the Investigator, the Parent remitted the following documents:

1. IEP dated February 28, 2019
2. Amended IEP dated September 27, 2019
3. IEP dated January 6, 2019

The Investigator determined that in person interviews were required. The Investigator interviewed Parents via Zoom conference on November 20, 2020. Subsequently, the Investigator interviewed District personnel on December 1, 2020.

The Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

The Department has jurisdiction to resolve this Complaint.¹ Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from July 29, 2019 to July 28, 2020. The Department must issue a final order within sixty days of receiving the Complaint, not counting the time period during which the investigation was paused for the parties to pursue mediation. This Order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV.

¹ 34 CFR §§ 300.151-153; OAR 581-015-2030.

Allegations	Conclusions
<p>1. IEP Implementation. The Parent alleges that the District violated the IDEA because it did not provide the Student with specially designed instruction ("SDI") in according with the Student's IEP including:</p> <ul style="list-style-type: none"> a. Failure to provide pull-out services during the fall term of the 2019-2020 school year; b. Failure to provide the Student with specific SDI in the area of "Classroom /School skills" in the fourth quarter of the 2019-2020 school year; c. Failure to provide the Student with specific SDI in Language Arts during the Spring of school year 2019-2020; d. Failure to provide Written Progress notes quarterly regarding the Student's measurable annual goals. <p>(34 CFR §§ 300.323, 300.324, OAR 581-015-2220)</p>	<p>a. Substantiated. The District failed to provide SPED services to the Student from August 28, 2019 to October 2, 2019, this portion of the allegation is substantiated for this time period only, not the entire fall semester.</p> <p>b. Not substantiated. The Student was still accessing Special Educational Services online during this time period and the online sessions with the SPED teacher addressed areas in which the Student needed assistance per the Student's IEP.</p> <p>c. Not substantiated. The Student continued to access the Language Arts Teacher as well as the SPED instructor during distance learning and because the Student worked on reading fluency and made progress on the language arts writing goal pursuant to the January 6, 2020 IEP.</p> <p>d. Substantiated Although the Parents received some IEP Progress Reports during the Complaint period, the District failed to produce an IEP Progress report during the third quarter of academic year 2019-2020 as mandated by the Student's IEP.</p>
<p>2. IEP Content. The Parent alleges the District violated the IDEA because it did not provide progress reports regarding the student's progress and/or did not specify on what dates the progress reports would be disseminated to Parents.</p>	<p>Not substantiated. The Student's IEP contained a time certain for sending out Progress Reports. See Section 1.d. above regarding provision of quarterly IEP progress reports.</p>

(34 CFR §300.320, OAR 581-015-2200)	
<p>3. Parent Participation.</p> <p>The Parents allege the District violated the IDEA because it thwarted the Parents' ability to participate in the IEP process when the District failed to remit progress reports to the Parents regarding the Student's annual measurable goals.</p> <p>(34 CFR §300.501, OAR 581-015-2190)</p>	<p>Not substantiated.</p> <p>The Parents fully participated in every team meeting and directed a portion of the IEP meetings as well as the services received by the Student.</p>
<p>4. FAPE.</p> <p>The Parents allege the District violated the IDEA because it failed to provide SDI to the Student in accordance with the Student's IEP and thus denied the Student a FAPE.</p> <p>(34 CFR §300.103, OAR 581-015-2040)</p>	<p>Partially substantiated</p> <p>Because the District failed to provide SPED services for the first month of academic school year 2019-2020, this portion of the allegation is substantiated. However, because the Student made progress appropriate in light of the circumstances, this allegation is not substantiated as the District did provide the Student with a FAPE beginning October 3, 2019 and continuing through the remainder of academic year 2019-2020</p>

REQUESTED CORRECTIVE ACTION
<ol style="list-style-type: none"> 1. The Department should issue and order finding that the District is in violation of the IDEA for failure to provide Student with Specially Designed Instruction as prescribed in the IDEA and OAR. 2. The Department should issue an order finding that the District is in violation of the IDEA for failure to provide meaningful progress notes as prescribe in the IDEA and OARS 3. The Department should require training for District special education staff regarding appropriate documentation of progress and progress reporting 4. The Department should require training for District special education staff regarding how to provide SDI in both push in and pull out models 5. The Department should order compensatory education for the Student's lost educational opportunities. The Department should order a facilitated IEP meeting to develop an IEP for the Student that is reasonably calculated to provide educational benefit the Student.

III. FINDINGS OF FACT

1. The Student is thirteen years old and is currently in the seventh grade. The Student is eligible for special education services under the categories of Specific Learning Disability ("SLD") and Other Health Impairment ("OHI").

Background Facts

2. The Student participated in the SBAC testing in 2018 and did not pass either math or language arts section of those assessments. At the end of sixth grade, the Student was passing all classes, earning Bs and Cs in all courses. The Student struggles with staying on task, organizing writing, reading, and most executive functions. Both the District and Parents were concerned that the Student was exhibiting signs of dyslexia when the Student was in sixth grade.
3. During the Complaint Period, the Student had three different IEPs: (1) IEP dated February 28, 2019, (2) Amended IEP dated September 27, 2019, and (3) IEP dated January 6, 2020. Beginning with the February 28, 2019 IEP, the Student was to receive Progress Reports on the Student's Measurable Annual Goals every quarter, the progress notes to be remitted in writing. The District remits Progress Reports when reports cards are sent home or through parentvue or via email.

Specially Designed Instruction ("SDI")

4. The Student was to be removed from general education classes ("gen ed") 17% of the school week to receive Specially Designed Instruction ("SDI"). To fulfill the IEP's requirements, the Student was to have one period per day spent in the learning center to complete the SDI requirement. The selected educational placement was "[g]eneral education classes all day with one period a day in the learning center for support with reading, writing, and mathematics." The Parents have historically been opposed to pull out services, expressing concern that the Student is pulled out of core classes and does not learn basics; the Parents have raised this issue repeatedly at IEP team meetings, voicing specific concern with the Student being pulled out of math. The use of the learning center allowed the Student to remain in core classes. (Parent interview, D1-64, 133)
5. The February 28, 2019 IEP contained four (4) goal areas: Reading/Language Arts, Math, Writing Skills, and Classroom/School Skills. The February 28, 2019 IEP Annual Measurable Goals also contained the Student's present levels for all the above-mentioned goals.
6. The Parents emailed the Assistant Principal on August 28, 2019 and expressed concerns that the Student needed extra math help. The Assistant Principal explained that the Student could receive SDI in a skills class, but the Parents expressed concern about that idea and requested an IEP team meeting. An IEP team meeting was held on September 27, 2019. During this meeting, the team agreed that the Student would be enrolled in a Classroom Skills to fulfill the Student's SDI requirements. On or about October 3, 2019, the Student began receiving SDI in a Classroom Skills class; prior to that time, the Student did not receive any SDI between August 28, 2019 and October 2, 2019.
7. At the time the Student began the Skills Development class, the Student was to receive the following SDI on a weekly basis: (1) Writing skills --45 minutes (2) Mathematics -- 100 minutes (3) Reading/Language Arts - 100 minutes, and (4) Classroom/School Skills -- 30 minutes. In total, the Student was to receive 275 minutes of SDI per week or 55 minutes of SDI per day assuming a five-day school week.
8. The Student was subsequently placed in a gen ed Language Arts class with an instructor who was SPED certified and who had taught SPED for nearly 10 years. The Student developed an extremely good rapport with the Language Arts teacher which continued through distance learning.
9. According to the Student's February 28, 2019 IEP, the Student was to have the following SDI:
Writing Skills - 80 Minutes per week

Mathematics- 180 Minute per week
Reading/Language Arts - 100 Minutes per week
Classroom/School Skills - 30 minutes per week
Total SDI per week = 390 minutes per week

10. When the Student's IEP was amended on September 27, 2019, the Student was to have the following SDI:

Writing Skills - 45 minutes per week
Mathematics - 100 minutes per week
Reading/Language Arts - 100 minutes per week
Classroom/School Skills - 30 minutes per week
Total SDI per week = 275 minutes per week

11. According to the Student's January 6, 2020 IEP, the Student was to have the following SDI:

Behavior -- 15 minutes per week
Writing Skills -- 100 minutes per week
Reading/Language Arts -- 100 minutes per week
Classroom/School Skills -- 60 minutes per week
Total SDI per week = 275 minutes per week

12. In January 2020, the Parent emailed the Assistant Principal again, concerned about the Student's schedule given that the Student was required to take health and would not be able to stay in Band if Classroom Skills (SDI) was to be the Student's remaining elective. The Student could drop the Band elective to remain in Skills Class during 3rd quarter, but the Parent did not want the Student to drop band because that was the "Student's only fun class". The Assistant Principal then proposed that if the Student forewent a Skills class during 3rd quarter, the Student could obtain SDI minutes based on a consult basis. The Student's schedule, with approval from the Parents and their advocate, was changed to Skills Class for 1st, 2nd, and 4th quarter.

13. Under the "consult model", the Student would do a check-in daily with staff (either the counselor or SPED teacher) and the result of the check-ins would be compiled to ascertain where the Student needed help especially with missing assignments and comprehension. The SPED teacher would check the Student's binder and assist with organization as well as with wellness and regulation, e.g. use of breaks to decompress from difficult situations. The SPED teacher would then provide weekly updates to the Parents to track the Student's progress with organization and executive functioning.

Because the Student had been intentionally placed in a Language Arts class with a certified SPED teacher, the District believed that the Language Arts teacher would be able to give the Student specific help according to the Student's January 6, 2020 IEP in the areas of Reading and Writing Skills. The Student was to have 100 minutes per week of Language Arts and 100 minutes per week of Writing Skills. The SDI for classroom skills totaled 60 minutes per week and the SDI for behavior totaled 15 minutes per week

14. During the portion of third quarter when school was physically in session, the Language Arts teacher helped the Student with organization and help with the Student's writing and use of a binder. The Language Arts teacher also helped with removing unnecessary items from the binder and helping the Student prioritize. The Language Arts teacher also helped the Student be mindful of everyday items needed to succeed in school and to keep those items close at hand in a pouch. The Student spent breaks or excess time with the LA teacher for both instruction and for social emotional support. On a normal day, the Student was in Language Arts for 50 minutes and would be in Social Studies for 50 minutes, both taught by

the same SPED qualified teacher.

15. The District entered into Distance Learning after the State mandated school closures due to the Covid-19 pandemic. Distance Learning began on or about March 14, 2020 and continued through the remainder of academic year 2019-2020. The Student engaged in distance learning and met regularly with the SPED teacher to receive help with organization, logging in protocols for assignments, and for social/emotional wellness assistance. The Student and the SPED teacher would have extended sessions on days that no other SPED students would log on for help when the SPED instructor had online "office hours".
16. During fourth quarter, the Student's SPED instructor continued to check in with Parents regarding the Student's needs during distance learning and continued "office hours" which the Student regularly attended to receive assistance with assignments. The SPED teacher's interactions with the Student regarding organization, logging in, and social/emotional well-being continued. The SPED teacher also physically travelled to the Student's home to deliver a "CPen" to assist the Student with reading.
17. The Student engaged continuously with the Language Arts teacher during distance learning. The Language Arts teacher continued to work with the Student on writing skills as well as reading fluency. The Student continued to make progress in both reading and writing but any progress in reading was quite slow. The Student thrived on proximity with the Language Arts teacher and teaching reading fluency in a distance environment became difficult. The Language Arts teacher did not test the Student on reading fluency during distance learning; testing reading fluency would require use of the Easy CBM timed test.

Neither the Language Arts teacher nor the SPED teacher were prepared to administer a timed test during distance learning especially if the Student was not making great progress. Distance learning had adversely affected all students, Pandemic and the SPED teacher made the choice to concentrate on the social/emotional wellness of the Student, making that the first priority with all students.

18. When the Student's last Annual Measurable Goals Progress Report was completed on June 11, 2020, the Student had two Reading/Language Arts goals. The Student made progress on the Language Arts goal regarding reading comprehension. However, the reading fluency goal noted, "[The Student's] schedule needed to accommodate for the required Health class for 7th grade. Due to this requirement [the Student] did not participate in skill Development class to work on this specific reading fluency goal. [The Student] will continue working towards this goal when distance learning due to COVID-19 ends."

IEP Progress Reports

19. The IEP team held a meeting on September 27, 2019 and modified the Student's IEP. At this meeting, the Student's present levels regarding the Student's Annual Measurable Goals were updated. The Amended IEP stated that the Student's progress would be reported quarterly in the form of Written Progress Reports. The Student's IEP contained a chart entitled "Anticipated Dates" for Progress Period 1,2, 3, and 4 to be reported. This chart was blank.

The Student's Annual Measurable Goals in Reading/Language Arts, Writing Skills, and Classroom Skills did not change between the Student's February 27, 2019 IEP and the Student's September 27, 2019 IEP meeting. However, the Amended September 27, 2019 IEP contained updated present levels for all these goals. More specifically, the Student's Easy CBM/Reading Comprehension was reported as 85% on the Progress Notes accompanying the Amended IEP dated September 27, 2019. The Student's Writing Skills updated the

Student's Present Level as "Ideas and Content: 4, Organization, 3; Fluency, 2; and Conventions, 3. Finally, the Student's Classroom Skills goal was updated to note that the Student turned in assignments with 50% frequency and used class time productively with 50% frequency.

20. The Student's Measurable Annual Goals were updated three more times during the 2019-2020 school year: November 1, 2019, February 4, 2020, and June 11, 2020. The Student had met one writing goal which was updated on the February 4, 2020 IEP Progress Report.
21. The SPED teacher remitted the Student's Annual Measurable Goal Progress Report to the Parents via email. Annual Measurable Goal Progress Reports for the Student were dated November 1, 2019, February 4, 2020, and June 11, 2020. The Student's present levels were updated in conjunction each IEP team meeting.
22. The Parents were concerned that they were not given data nor advised that the Student was not performing in class until the end of each quarter. The Parents opined that not knowing the Student was struggling until the end of the quarter prevented the Parents from taking action in regard to the Student's education. The Parents contend that historically, they did not receive IEP Progress Reports; however, after the Parents engaged an advocate in September 2019, they received IEP Progress Reports regarding the Student's annual measurable goals.
23. During third quarter of academic year 2019-2020, the Student's SPED teacher remitted, on a weekly basis, reports on the Student's progress in each of the Student's individual classes, focusing on the Student's grade and if assignments were due. These reports were sent to the Parents via email until schools began distance learning on or about March 14, 2020.
24. During the Complaint Period, the Students' grades for school year 2019-2020 were as follows:

Subject	Q1	Q2	Q3	Q4
Math 7: Common Core	C	C	n/a	P
Integrated Science	B	C	n/a	P
Skills Development	P	P	n/a	n/a
Skills Development	n/a	n/a	n/a	P
Band: Concert	F	B	n/a	P
Language Arts 7	B	B	n/a	P
Social Sciences	B	B	n/a	P

Parent Participation

25. During the Student's September 27, 2019 IEP meeting, the Student received new accommodations which included use of a Chromebook and limited reading aloud. The Parent and their advocate requested these changes as well as revisions to the IEP which were made by the District.
26. The Student's annual IEP meeting was held on January 6, 2020. During that meeting the

Student's annual measurable goals were updated with present levels in all goal areas except math. The Student's math goal was entirely eliminated as it was determined that the Student no longer required SDI in math. A behavioral annual measurable goal was also added to address the Student's anxiety and an accommodation allowing for re-taking tests was added at the Parent's request. After the January 6, 2020 IEP meeting was concluded, a draft of the IEP was remitted to the Parent's advocate. The Parent's advocate requested changes and the following were changed pursuant to the advocate's request: correct identification of meeting participants, modification of classroom skills goals, i.e. adding 80% turn-in rate as well as the added accommodations of separate testing areas and modification to timed tests.

27. The Student had to fulfill the District's health requirement during 7th grade. However, the Student's schedule did not allow for two electives plus the required health class. The Student and the Parents opted to keep the Student in band as an elective because it was the Student's "only fun class" and to forego the Classroom Skills elective that would have provided the Student with SDI.

FAPE

28. When the Student's last Annual Measurable Goals Progress Report was completed on June 11, 2020, the Student had two Reading/Language Arts goals. The Student made progress on the LA goal regarding reading comprehension. However, the reading fluency goal noted, "[The Student's] schedule needed to accommodate for the required Health class for 7th grade. Due to this requirement [the Student] did not participate in skill Development class to work on this specific reading fluency goal. [The Student] will continue working towards this goal when distance learning due to COVID-19 ends"

IV. DISCUSSION

1. IEP Implementation.

The Parent alleges that the District violated the IDEA because it did not provide the Student with Specially Designed Instruction ("SDI") in accord with the Student's IEP

a. Failure to provide pull-out services during the fall term of the 2019-2020 school year

Pursuant to OAR 581-015-2220, the IEP team must consider the academic, developmental, and functional needs of the child as well as parental concerns when formulating a child's IEP.

At the start of the 2019-2020 academic year, the Student was not participating in any type of Specially Designed Instruction ("SDI") SDI means **adapting**, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

- (a) To address the unique needs of the child that result from the child's disability; and
 - (b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- (OAR 581-015-200(37))

Historically, the Parents had voiced concern with any type of "pull-out" services because they believed the Student was missing valuable instruction time, especially in core classes such as math. Prior to the September 27, 2019 IEP Team Meeting, the Student was to receive 390 minutes of SDI which had been established in elementary school but never

revisited.²

In response to the Parent's concerns, the Student's school placed the Student on a "consult basis" for SDI. However, the Student did not receive any SDI during the first month of school. Subsequently, the September 27, 2019 IEP team meeting was held to address these concerns. The Student began receiving SDI services on October 3, 2019 according to a revised IEP, which mandated 275 minutes of SDI per week in an elective "Skills Classroom".

The Department substantiates this allegation for the time period of August 28, 2019 to October 2, 2019.

b. Failure to provide the Student with specific SDI in the area of "Classroom /School skills" in the fourth quarter of the 2019-2020 school year;

During the fourth quarter of academic year 2019-2020, the entire District was engaged in distance learning due to the Covid-19 pandemic. Although school was not in session, the US Dept of Education did not provide any waivers to alleviate Districts from providing SDI during this period. The Oregon Department of Education provided guidance to all Oregon Districts at this time stating that Districts were expected to continue services, however Districts could consider alternate delivery options for these services.³

The Student participated in online classes and would log on to attend "office hours" with the SPED teacher. Although the Student engaged in distance learning during the spring of 2020, the Student still met virtually with the SPED teacher to receive assistance with organization, logging in, use of platforms, and social/emotional well-being. At these times, the Student and SPED teacher would work together to ensure the Student could log on for lessons, understand how to turn in classwork, remain as mentally and emotionally healthy as possible, and stay as current as possible with assignments. Moreover, the SPED teacher visited the Student and ensured the Student had a CPen to access educational materials given the Student's dyslexia made reading difficult. In short, the Student was receiving SPED services for executive functioning as well as social/emotional well-being during the fourth quarter of academic year 2019-2020 in an on-line environment.

The Department does not substantiate this allegation.

c. Failure to provide the Student with specific SDI in Language Arts during the spring of school year 2019-2020;

The Parent alleges that because the Student's Progress Report states the Student did not work on one of the Student's annual measurable goal during the spring of academic year 2019-2020, the Student did not receive SDI in Language Arts.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP."⁴

When the District began distance learning after March 13, 2020, the Student still met with

² After the September 27, 2019 IEP Team meeting, the Student's SDI minutes were reduced to 275 minutes per week.

³ See, "Oregon's Extended School Closure Special Education Guidance"

⁴ *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F. 3d 811, 815 (9th Cir. 2007)

the Language Arts teacher as well as the SPED teacher and continued to work on writing, especially essays. The content and delivery of educational materials in Language Arts remained modified so the Student would access the general curriculum. Although the Student struggled with organization, the Student eventually began making progress on the writing goal.

The Student also continued working on reading fluency with the Language Arts teacher. However, because the reading fluency progress is generally tested using the Easy CBM time assessment, the Language Arts teacher did not access the Student in an online environment. The Student's fourth quarter progress report therefore reflects no measured progress related to this goal. The decision not to administer this assessment was made in order not to increase stress on the Student by administering an online, timed test during this time period. This is consistent with the Department's "Extended School Closure Guidance" document issued in March, 2020, which states, "*We urge school teams to focus first on the health, safety, and well-being of students and to prioritize this before compliance standards.*" The June 11, 2020 IEP Progress Report notes that the Student had made progress on the new writing goal and scored 3.5, just short of the IEP goal of 4 and that the scores 85% accuracy in reading comprehension. The Student's progress towards the reading fluency goal was slower, but the Student did receive SDI for the Student's Language Arts and Reading goals.

The Department does not substantiate this allegation.

d. Failure to provide Written Progress notes quarterly regarding the Student's measurable annual goals.

The SPED teacher disseminated the Student's Annual Measurable Progress Reports on November 2, 2019, February 4, 2020, and June 5, 2020 via email to the Parents. The record does not contain a third quarter progress report for school year 2019-2020. All grades were suspended during the third quarter of school year 2019-2020 due to the Covid-19 pandemic and state-wide shut down of schools. However, neither the US Department of Education nor this Department waive any requirements for District compliance with the IDEA, nor did the Student's IEP state that progress reports would be delivered when report cards were distributed.

The Department substantiates this allegation.

2. IEP Content

The Parents allege the District violated the IDEA because it did not provide progress reports regarding the student's progress and/or did not specify on what dates the progress reports would be disseminated to Parents.

Every IEP must contain a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided" OAR 581-015-2200(1)(c).

In the instant case, the Student's IEP has consistently stated that IEP Progress Reports would be remitted quarterly. The District remits Progress Reports when reports cards as sent home or through parentvue or via email, all IEP Progress Reports made in writing.

See Section 2, above regarding quarterly dissemination of IEP Progress Reports.

The Department does not substantiate this allegation.

3. Parent Participation

The Parents allege the District violated the IDEA because it thwarted the Parents' ability to participate in the IEP process when the District failed to remit progress reports to the Parents regarding the Student's annual measurable goals

OAR 581-015-2190 requires school districts to provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.

In the instant case, the Parents have fully participated in the placement of the Student. In fact, the Parents have been integral in removing the Student from required SDI pull out services and unilaterally demanding the Student remain in a "fun" elective course – band. The Parents and their advocate have suggested and received amendments to the Student's IEP as well.

The Department does not substantiate this allegation.

4. FAPE

The Parents allege the District violated the IDEA because it failed to provide SDI to the Student in accordance with the Student's IEP and thus denied the Student a FAPE.

OAR 581-015-2040 provides that "school districts must provide a free appropriate public education all school-age children with disabilities for whom the district is responsible." Further, as noted above, a district must also serve resident children with disabilities who attend a public charter school.

As previously discussed, the District did fail to provide the Student with SDI from August 22, 2019 through October 2, 2019.

The District is responsible for providing SPED services to all qualified children categorized as having a disability. Therefore, the District should have reviewed and planned appropriate consult time for the Student or should have immediately convened an IEP team meeting to revise the Student's IEP to more accurately reflect the Student's needs and the appropriate ways SDI could be provided to the Student at the beginning of academic year 2019-2020.

The Department substantiates this portion of the allegation.

The Parent further alleges that the Student was denied a FAPE because the District did not provide SDI during the spring semester of academic year 2019-2020. Although during distance learning, the SPED services delivered differently and not all IEP goals were equally addressed, the Student continued to make academic progress. In fact, the Student's writing skills progressed during distance learning.

The Department does not substantiate this portion of the allegation.

V. CORRECTIVE ACTION⁵

*In the Matter of Portland Public School District
Case No. 20-054-009*

Based on the facts provided, the following corrective action is ordered:

	Action Required	Submissions⁶	Due Date
1.	The District is to provide training to school special education staff members regarding the need to provide Specially Designed Instruction required in student IEPs.	Copy of proposed training agenda and materials to be provided to District's ODE county contact for review/input by March 1, 2021. Attendance sheet and training materials used to be provided to ODE.	Agenda/materials to be provided by May 1, 2021. Training to be provided by September 1, 2021.
2.	The District is to provide 23 hours of compensatory education to the Student. This compensatory education is to include all areas of Specially Designed Instruction identified in the Student's current IEP.	By March 1, 2021, the District is to provide to ODE a copy of the plan for provision of compensatory education to the student, to be developed in consultation with the Parents.	Plan due by March 1, 2021, provision of compensatory education to be completed by September 1, 2021.

Dated the 10th Day of December 2020



Cindy Hunt
Chief of Staff

E-mailing Date: December 10, 2020

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

⁵ The Department's order includes corrective action. The order includes documentation to be supplied to ensure the 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).)

⁶ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634; e-mail: mike.franklin@ode.state.or.us, fax number (503) 378-5156.