

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION**

In the Matter of Hermiston School)
District 8)
)

FINDINGS OF FACT
CONCLUSIONS
AND AMENDED¹
FINAL ORDER
CASE NO. 21-054-033

I. BACKGROUND

On September 27, 2021, 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 Hermiston School District (District). The Parents 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.

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.² This timeline may be extended if the Parents and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.³

On October 4, 2021, 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 October 26, 2021.

The District submitted a *Response* on October 18, 2021, denying all of the allegations, providing an explanation, and submitting supporting documents in support of the District's position. The Parents submitted supporting documents on or before October 25, 2021. In total, the District submitted the following items:

1. District Response, no date
2. Other IEP Checklist, 6/9/21
3. Meeting signature pages, dates vary
4. IEP, amended IEP, 6/9/21
5. Prior Written Notice, amended IEP, 6/15/21
6. Contact records, dates vary
7. Portions of IEP, 9/30/20
8. Special Education Notice of Team Meeting (for 6/9/21 IEP meeting), 5/24/21
9. Special Education Notice of Team Meeting (for 5/11/21 IEP meeting), 4/26/21
10. Special Education Notice of Team Meeting (for 1/25/21 IEP meeting), 1/13/21
11. Special Education Notice of Team Meeting (for 9/30/20 IEP meeting), 9/3/21
12. Special Education Notice of Team Meeting (for 9/30/20 IEP meeting), 9/10/21

¹ On November 23, 2021, the Department issued a final order in this matter. On December 13, 2021, the Parents requested reconsideration of the final order. On December 23, 2021, legal counsel for the District requested reconsideration of the final order. The Department accepted both of these requests. After reconsideration, the Department issues this amended final order.

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

³ OAR 581-015-2030(12) and 34 CFR § 300.152(b)

13. Special Education Notice of Team Meeting (for 10/21/21 IEP meeting), 10/21/21
14. Special Education Notice of Team Meeting (for 10/21/21 IEP meeting), 10/2/21
15. Special Education Notice of Team Meeting (for 10/14/21 IEP meeting), 10/2/21
16. Special Education Notice of Team Meeting (for 3/5/21 IEP meeting), 2/24/21
17. Special Education Notice of Team Meeting (for 2/24/21 IEP meeting), 2/8/21
18. Prior Written Notice, need second IEP meeting, 10/7/20
19. Prior Written Notice, no changes made to IEP, 1/27/21
20. Prior Written Notice, review evaluation and IEP goals, 2/8/21
21. Prior Written Notice, refusal to add services, 2/25/21
22. Prior Written Notice, revised IEP, 3/10/21
23. Prior Written Notice, refusal of parent request, 3/10/21
24. Prior Written Notice, eligibility, 5/12/21
25. Prior Written Notice, eligibility, 5/12/21
26. Prior Written Notice, refusal to provide comp ed, 7/27/21
27. Prior Written Notice, IEE, 9/1//21
28. Extended School Year Services, 9/30/20
29. Special Education Placement Determination, 9/30/20
30. Confidential Report, 4/19/21
31. Speech and Language Evaluation Report, 3/10/21
32. Medical Statement, 8/15/18
33. General Demographics, SY18-19
34. Statement of Eligibility, Specific Learning Disability, 1/28/19
35. Quick Lookup, SY20-21
36. CDL/Hybrid Progress Reports, Fall 2020 and Spring 2021
37. Report Card, 2020-2021
38. Historical School Names, SY20-21
39. State Assessment Data, no date
40. Comprehensive Distance Learning Schedules SY 20-21
41. 2020-21 School Year Information on SDI Delivery, no date
42. Attendance, 10/13/21
43. Email, re: math class, 10/30/20
44. Email, re: Sondag Testing, 9/9/20
45. Email, re: Phonics Screener, 10/6/20
46. Email, re: Math, 2/19/21
47. Email, re: Math, 11/5/20
48. Email, re: Math, 11/6/20
49. Email, re: Sondag Testing, 9/18/20
50. Email, re: Seesaw activity, 1/21/21
51. Email, re: Reading Skills Today, 9/21/20
52. Email, re: Math, 2/12/21
53. Email, re: Phonics Screener, 10/8/20
54. Student Pull Out Schedule, 10/12/21
55. Staff Statement, no date
56. Professional Goals/Teacher Consultation/Training, dates vary
57. Independent Educational Evaluation, no date
58. Staff Training Certificates, dates vary
59. Parent Contacts, dates vary
60. Email, re: signature pages, dates vary
61. Email, re: student IEP, 9/3/20
62. Email, re: records request, 9/9/21
63. Email, re: student, 9/10/20
64. Email, re: upcoming IEP meeting, 9/10/20
65. Special Education Team Meeting (9/30/20 meeting), 9/3/20

66. Email, re: question/schedule, 9/10/20
67. Email, re: upcoming meeting, 9/10/20
68. Email, re: a few quick questions, 9/10/20
69. Email, re: testing?, 9/18/20
70. Email, re: student, 9/18/20
71. Email, re: test explanation, 9/18/20
72. Email, re: student, 9/18/20
73. Email, re: reading/math quizzes, 9/19/20
74. Email, re: afternoon schedule, 9/21/20
75. Email, re: upcoming IEP meeting, 9/22/20
76. Email, re: Sunday, 9/22/20
77. Email, re: upcoming IEP meeting, 9/22/20
78. Email, re: 20-21 teacher input form, 9/23/20
79. Email, re: invitation annual IEP, 9/24/19
80. Email, re: student schedule, 9/24/20
81. Email, re: skills, 9/25/20
82. Email, re: student schedule, 9/26/20
83. Email, re: student, 9/28/20
84. Email, re: proposed goals
85. Email, re: today's IEP, 9/30/20
86. Email, re: invitation to collaborate, 10/1/20
87. Email, re: materials, 10/2/20
88. Email, re: proposed goals, 10/5/20
89. Email, re: student, 10/5/20
90. Email, re: phonics screener, 10/6/20
91. Email, re: upcoming IEP meeting, 10/6/20
92. Email, re: student/IEP, 10/13/20
93. Email, re: proposed goals and present levels for student, 10/13/20
94. Email, re: student writing sample, 10/14/20
95. Email, re: student, 10/15/20
96. Email, re: email address, 10/16/20
97. Email, re: quick writing question, 10/16/20
98. Email, re: invitation continued IEP, 10/19/20
99. Email, re: multi-step math problems, 10/20/20
100. Email, re: meeting tomorrow, 10/20/20
101. Email, re: multi-step math problems, 10/20/20
102. Email, re: quick phone call, 10/20/20
103. Email, re: meeting tomorrow, 10/20/20
104. Email, re: quick phone call, 10/20/20
105. Email, re: invitation continued IEP, 10/21/20
106. Email, re: no subject, 10/21/20
107. Email, re: Parent email, 10/23/20
108. Email, re: upcoming IEP meeting, 10/6/20
109. Email, re: student/writing, 10/26/20
110. Email, re: pickup, 10/28/20
111. Email, re: question, 10/30/20
112. Email, re: math skills group, 11/2/20
113. Email, re: math SDI, 11/2/20
114. Email, re: no subject, 11/5/20
115. Email, re: heads up/internet outage, 11/12/20
116. Email, re: math/lesson 4 quiz, 11/13/20
117. Email, re: internet outage, 11/13/20
118. Email, re: gratitude project, 11/17/20

119. Email, re: Rewards, 11/19/20
120. Email, re: IEP, 12/4/19
121. Email, re: rating scale, 12/4/19
122. Email, re: Rewards, 12/8/20
123. Email, re: Award, 12/10/20
124. Email, re: materials, 12/14/20
125. Email, re: Friday, 12/14/20
126. Email, re: student, 12/15/20
127. Email, re: fluency test level, 12/17/20
128. Email, re: mid-unit 2 quiz, 12/18/20
129. Email, re: follow up, 1/7/21
130. Email, re: writing support, 1/8/21
131. Email, re: follow up, 1/11/21
132. Email, re: diagnostic testing, 1/13/21
133. Email, re: IEP meeting request, 1/13/21
134. Email, re: student, 1/14/21
135. Email, re: invitation parent request meeting, 1/14/21
136. Email, re: dividing FYI, 1/14/20
137. Email, re: update, 1/15/21
138. Email, re: invitation parent request meeting, 1/15/21
139. Email, re: diagnostic testing, 1/19/21
140. Email, re: written summary, 1/19/21
141. Email, re: iready reading diagnostics, 1/21/21
142. Email/report, re: evaluation, 1/22/21
143. Email, re: PWN, 1/26/21
144. Email, re: math, 1/27/21
145. Email, re: phonics for reading, 11/12/20
146. Email, re: home number, 1/28/21
147. Email, re: math, 1/28/21
148. Email, re: release of information, 1/28/21
149. Email, re: PWN, 1/29/21
150. Email, re: eval, 2/1/21
151. Email, re: meeting follow up, 2/4/21
152. Email, re: student questions, 2/5/21
153. Email, re: meeting follow up, 2/5/21
154. Email, re: personal matter, 2/6/21
155. Email, re: meeting follow up
156. Email, re: evaluation planning meeting, 2/8/21
157. Prior Written Notice, schedule meeting per parent request, 2/8/21
158. Email, re: question, 2/24/21
159. Email, re: evaluation planning, 2/8/21
160. Email, re: meeting follow up, 28/8/21
161. Email, re: IEP review/parent request, 2/9/21
162. Email, re: progress monitoring, 2/10/20
163. Email, re: touching base, 2/11/21
164. Email, re: meeting follow up, 2/11/21
165. Email, re: progress monitoring, 2/14/20
166. Email, re: change time for tomorrow, 2/15/18
167. Email, re: new schedule, 2/17/21
168. Email, re: meeting follow up, 2/18/21
169. Email, re: student, 2/19/21
170. Email, re: meeting follow up, 2/20/21
171. Email, re: student, 2/22/21

172. Email, re: informational essay, 2/23/21
173. Email, re: question, 2/23/21
174. Email, re: Chromebook, 2/24/21
175. Student work samples, no dates
176. Email, re: IEP, 2/24/21
177. IEP and placement, 9/30/21
178. Special Education Notice of Team Meeting (10/21/20 meeting), 10/2/20
179. Prior Notice of Special Education Action, 10/2/19
180. IEP Snapshot, 2/24/21
181. Email, re: question, 2/24/21
182. Email: PWN, 2/24/21
183. Email, re: question, 2/24/21
184. Email, re: meeting, 2/24/21
185. Email, re: email address, 2/26/21
186. Email, re: schedule, 3/3/21
187. Email, re: concern, 3/4/21
188. Email, re: dyslexia resources, 3/5/21
189. Email, re: no subject, 3/5/21
190. Email, re: meeting today, 3/5/21
191. Email, re: PWN, 3/8/21
192. Prior Notice of Special Education Action, methodology, 3/10/21
193. Prior Notice of Special Education Action, IEP revisions 3/10/21
194. Email, re: phonogram video, 3/9/21
195. Email, re: article, 3/9/21
196. Email, re: IEP meeting, 3/13/20
197. Email, re: Nessy, 3/15/21
198. Email, re: student/IEP, 3/15/21
199. Email, re: Friday, 3/15/21
200. Email, re: fluency measure, 3/18/21
201. Email, re: conference, 3/29/21
202. Email, re: updated IEP in box, 4/1/21
203. Email, re: question/math, 4/2/21
204. Email, re: evaluation and placement procedures, 4/3/21
205. Email, re: pull out schedule, 4/12/21
206. Email, re: question/math, 4/12/21
207. Email, re: following up, 4/14/21
208. Email, re: question/math, 4/14/21
209. Email, re: documents/signatures, 4/16/21
210. Email, re: question/math, 4/16/21
211. Email, re: rating scales, 4/16/21
212. Email, re: question/math, 4/19/21
213. Email, re: student IEP, 4/19/21
214. Email, re: question/math, 4/19/21
215. Email, re: report, 4/19/21
216. Email, re: student, 4/20/21
217. Email, re: shared drive file, 4/20/21
218. Email, re: CCSS performance report, 4/20/21
219. Email, re: question/math, 4/20/21
220. Email, re: date for student IEP, 4/20/21
221. Email, re: homework, 4/21/21
222. Email, re: writing, 4/21/21
223. Email, re: date for student IEP, 4/22/21
224. Email, re: fluency, 4/24/21

225. Email, re: student, 4/26/21
226. Email, re: request, 5/6/21
227. Email, re: question, 5/7/21
228. Email, re: PWN, 5/12/21
229. Email, re: IEP drafting, 5/12/21
230. Email, re: Prior Notice of Special Education Action, 5/12/21
231. Email, re: meeting time option, 5/14/21
232. Email, re: request, 5/14/21
233. Email, re: update, 5/19/21
234. Email, re: following up, 5/21/21
235. Email, re: i-Ready, 5/24/21
236. Email, re: IEP meeting invitation, 5/24/21
237. Email, re: concern, 5/28/21
238. Email, re: request to amend record, 5/31/21
239. Email, re: meeting notes, 6/2/21
240. Email, re: IEE report, 6/3/21
241. Email, re: informational essay/rubric, 6/4/21
242. Email, re: student goals, 6/6/19
243. Email, re: student, 6/6/19
244. Email, re: student goals, 6/6/19
245. Email, re: IEP meeting/amendment, 6/7/21
246. Amended IEP, 6/9/21
247. Email, re: reading skills, 6/11/21
248. Email, re: IEP amendment meeting, 6/13/21
249. Email, re: PWN, 6/14/21
250. Prior Notice of Special Education Action, revised IEP, 6/15/21
251. Email, re: IEE request, 6/14/21
252. Email, re: IEP meeting/amendment, 6/14/21
253. Email, re: no subject, 6/17/21
254. Email, re: student comparison charts and graphs, 6/17/21
255. Email, re: response to Parent, 6/17/21
256. Email, re: IEP meeting, 6/17/21
257. Email, re: student reports, 6/17/21
258. Email, re: IEP meeting, 6/17/21
259. Email, re: IEP/progress/request, 6/21/21
260. Email, re: no subject, 6/21/21
261. Email, re: IEP meeting, 6/23/21
262. Email, re: no subject, 6/23/21
263. Email, re: IEP/progress/request, 6/29/21
264. Email, re: no subject, 6/29/21
265. Email, re: follow up, 6/30/21
266. Email, re: meeting notes, 7/7/21
267. Email, re: PWN, 7/7/21
268. Email, re: follow up, 7/12/21
269. Email, re: file to send, 7/12/21
270. Email, re: IEP meeting notes, 6/9/21
271. Email, re: IEP progress report, 2/17/21
272. Email, re: PWN, 7/12/21
273. Email, re: meeting notes, 7/12/21
274. Email, re: 3rd request/reminder, 7/16/21
275. Email, re: PWN Comp Ed, 7/19/21
276. Email, re: new email, 7/20/21
277. Email, re: phonics screener data, 7/20/21

278. Email, re: follow up, 7/12/21
279. Email, re: PWN Comp Ed, 7/26/21
280. Prior Notice of Special Education Action, comp ed, 7/27/21
281. Email, re: PWN Comp Ed, 7/27/21
282. Email, re: phonics screener data, 7/27/21
283. Email, re: IEP/progress/report, 7/27/21
284. Email, re: follow up, 8/3/21
285. Email, re: student progress reports, 8/10/21
286. IEP Progress Reports, various dates
287. i-Ready for Families, 6/12/19
288. Email, re: student progress report, 8/10/21
289. IEP Progress Reports, various dates
290. Kinder Conference Data Checklist, 21-22
291. Email, re: student progress reports, 8/11/21
292. Email, re: follow up, 8/12/21
293. Email, re: IEE response draft language, 8/30/21
294. Email, re: Adjusted IEE criteria, 9/1/21
295. Email, re: PWN for IEE, 9/1/21
296. Email, re: Prior Notice of Special Education, 9/1/21
297. Email, re: records request, 9/9/21
298. Email, re: amended IEP, 9/13/21
299. IEP, 9/13/21
300. Winston Center Diagnostic Language and Learning Report, 1/14/21
301. Email, re: phonics screener data, 9/14/21
302. Email, re: IDEA State Complaint, 9/26/21
303. Email, re: trained dyslexia staff, 9/28/21
304. Email, re: Answer to Q from general education teacher, 10/14/21
305. Email, re: Parent Complaint Response, 10/14/21
306. Email, re: student contact during CDL, dates vary
307. Email, re: signature pages, 5/17/21
308. Email, re: meeting participants, 4/21/21
309. Email, re: documents and signatures, 4/16/21
310. Email, re: IEP meeting, 6/13/21
311. Proposed goals for Student, 9/29/20
312. Authorization to use and/or disclose educational and protected health information, 2/8/21
313. Duplicates
314. Email, re: student meeting, 4/26/21
315. Meeting scheduling responses, various dates
316. List of Staff to Interview, no date
317. Text re: new address, 6/30/21
318. IEP Meeting Notes, 9/30/20, 10/14/20, 10/21/21, 2/24/21, 3/3/21, 5/11/21, 6/9/21
319. School board policy, Special Education-Procedural Safeguards, IGBAG-AR
320. Confidential Report, reading assessments, 6/10/19
321. Eligibility Statement, Other Health Impairment, 5/11/21
322. Eligibility Statement, Communication Disorder, 5/11/21
323. Student work samples, various dates
324. IEP Meeting Notes, 1/25/21
325. Prior Written Notice of Special Education Action, re: COVID closure 4/8/20
326. Contact log, re: classroom teacher email check-ins, dates vary
327. Progress Reporting Categories and Descriptions, no date
328. Email, re: fluency and comprehension instruction, 10/18/21
329. Email, re: one more question, 10/27/21
330. Email, re: TSPC licensed staff, 10/27/21

- 331. Email, re: eval. Spec. limitations, 10/27/21
- 332. Email, mailing home SpEd progress reports, 10/28/21
- 333. 2019 ESY Determination Page, 10/2/19
- 334. Teacher participating in Sunday training in 2020, 10/29/21
- 335. Records Request Response w/data, 10/29/21
- 336. 21-054-033, HSD Response to Parent Rebuttal, 11/2/21

In total, the Parents submitted the following items:

- 1. Request for Complaint Investigation, no date (received by ODE 9/27/21)
- 2. Parent Response, 10/26/21
- 3. DIBELS (blank), no date
- 4. DIBELS, parent analysis, no date
- 5. i-Ready national norms tables, 2020-2021
- 6. Email, re:20-21 teacher input form, 9/23/20
- 7. Email, re: personal matter, 2/6/21
- 8. Untitled document, re: IEE, no date
- 9. Confidential Report, 1/17/19
- 10. Email, re: materials, 10/2/20
- 11. Email, re: follow-up, 10/2/21
- 12. Parent input letter, no date
- 13. Proposed goals, 10/3/21
- 14. Email, re: Student proposed goals, 9/30/20
- 15. No name, re: Procedural safeguards, no date
- 16. Email, re: meeting today, 3/5/21
- 17. Email, Adjusted IEE Criteria, 9/1/21
- 18. Email, re: follow up, 8/17/21
- 19. Read Naturally, no date
- 20. Prior Written Notice, 2/25/21
- 21. Prior Written Notice, 3/10/21
- 22. IEP Progress Report, various
- 23. Texts, re: fluency, dyslexia resource, 2/18/21
- 24. IEP Progress Report, 1/26/21
- 25. Texts, re: writing conventions, 2/23/21
- 26. Aimsweb, 10/26/21
- 27. Email, re: student documentation, 10/26/21
- 28. Email, re: phonics screener data, no date
- 29. Parent Response (2), REWARDS Fidelity, received 10/29/21
- 30. 21-054-033 Parent Response (3), received 11/4/21

The Investigator included the following items:

- 1. Oregon Standard IEP, 10/17

The Complaint Investigator interviewed the Parents on October 25, 2021. On October 27, 2021, the Complaint Investigator interviewed the District's Special Education Program Administrators, the Student's Special Education Teacher/Case Manager, a School Psychologist, and a Speech- Language Pathologist regarding this matter. Virtual interviews were held instead of on-site interviews due to the COVID-19 pandemic. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The 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 September 28, 2020, to the filing of this Complaint on September 27, 2021.

The written Complaint alleges that the District violated the IDEA in the following ways:

Allegations	Conclusions
<p><u>Evaluations</u></p> <p>The Parents allege the District violated the IDEA when the District failed to conduct a comprehensive evaluation in the academic areas of mathematics and written language.</p> <p>(OAR 581-015-2105, OAR 581-015-2110; 34 CFR § 300.301 & 300.303, 34 CFR § 300.304 & 300.305)</p>	<p><u>Not Substantiated</u></p> <p>The 2019 evaluation, related to this allegation, falls outside the allowable Complaint window.</p>
<p><u>Content of IEP</u></p> <p>The Parents allege the District violated the IDEA when the District failed to provide evidence-based instruction, accurate and current IEP progress monitoring and evaluation data when making IEP decisions, staff training related to the Student's areas of disability, and alternative instruction in the IEP. In addition, the Parents allege the District re- used IEP goals from previous IEPs, did not develop IEP goals in all areas of identified need, failed to monitor progress toward IEP goals and make instructional adjustments, did not include the required components in the Student's IEP progress reports, and failed to offer an adequate amount of Specially Designed Instruction (SDI) in the area of mathematics.</p> <p>(OAR 581-015-2200; 34 CFR § 300.520)</p>	<p><u>Not Substantiated</u></p> <p>There is no requirement in the IDEA that school districts provide evidence-based instruction, nor does the IDEA specifically address staff training related to the needs of specific students. The Student's IEP did include a statement of the specific special education and related services based on peer- reviewed research to the extent practicable.</p> <p>The District reviewed and adjusted the Student's IEP goals as appropriate.</p> <p>The District satisfied all progress monitoring requirements and provided progress monitoring data and progress reports. The IEP team revised the SDI to be provided to the student based on the student's progress.</p>

<p><u>Extended School Year (ESY) Services</u></p> <p>The Parents allege the District violated the IDEA when the District failed to provide the Student with ESY Services.</p> <p>(OAR 581-015-2065; 34 CFR § 300.106)</p>	<p><u>Not Substantiated</u></p> <p>The Student did not experience skills regression as a result of an interruption in education services, such as summer break. Therefore, the District was not required to provide ESY services.</p>
<p><u>IEP Team</u></p> <p>The Parents allege the District violated the IDEA when the District failed to secure a written agreement excusing the Parents from an IEP meeting.</p> <p>(OAR 581-015-2210; 34 CFR § 300.344, 300.321. 300.324(a)(3) and (b)(3))</p>	<p><u>Not Substantiated</u></p> <p>The Written Agreement is not intended to excuse parents from an IEP meeting held on June 9, 2021.</p>
<p><u>Parent Participation</u></p> <p>The Parents allege the District violated the IDEA when the District failed to provide adequate data at IEP meetings for the Parents to consider and failed to provide the Parents the ability to participate in the decision-making process when District staff went through a voting process at IEP meetings. The Parents also allege the District failed to consider information provided by the Parents when developing the IEP goals and predetermined IEP goals were adopted at an IEP meeting. The Parents further allege the District failed to schedule an IEP meeting when requested by the Parents, held an IEP meeting without the Parents in attendance and made IEP and placement changes without the Parent's input, and failed to offer alternative means for the Parents to participate in the IEP meeting.</p>	<p><u>Substantiated in Part</u></p> <p>The District polled staff during the March 5, 2021 IEP meeting, however it is unclear whether this process was intended to make final decisions or simply to gather information from team members.</p> <p>The District took an unreasonable amount of time to hold an IEP meeting after the parent requested an IEP meeting.</p> <p>The District should have rescheduled the June 9, 2021 IEP meeting when the Parent indicated they were unable to attend given the level of concern expressed by the Parent about scheduling an IEP meeting. However, the IDEA does not prohibit IEP meetings from being held without a parent being present.</p> <p>The District did provide adequate data and conducted additional assessments due to inconsistency of data.</p> <p>The District considered information provided by the Parents and did not pre-determine IEP goals.</p>

<p>(OAR 581-015-2190 and CFR § 300.500, 300.327 & 300.501 (b), OAR 581-015-2195 and CFR § 300.322, 300.500, 300.327. 300.328 and 300.501 (c))</p>	<p>The District properly noticed the May 11, 2021 IEP meeting, including information on alternative participation.</p>
<p><u>Independent Educational Evaluation (IEE)</u></p> <p>The Parents allege the District violated the IDEA when the District failed to provide an IEE. The Parents allege the District delayed in providing the Parents information about how to obtain an IEE and that the parameters for obtaining an IEE were unreasonable.</p> <p>(OAR 581-015-2305; 34 CFR § 300.502)</p>	<p><u>Substantiated in Part</u></p> <p>The District did unreasonably delay providing the Parents with information on how to obtain an IEE when it took 89 days to provide the Parents with a list of qualified examiners.</p> <p>The District considered and adjusted the criteria for the IEE, based on the unique circumstances presented by the Parents. Having a similarly qualified examiner conduct the IEE is not unreasonable.</p>
<p><u>Free Appropriate Public Education (FAPE)</u></p> <p>The Parents allege the District violated the IDEA when the District failed to implement accommodations as outlined in the Student's IEP, provide appropriate instruction in reading, written language, and mathematics, ESY Services, and an Independent Educational Evaluation. In addition, the Parents allege the District failed to conduct comprehensive evaluations, develop and implement a legally compliant IEP, and afford the Parents the ability to meaningfully participate in the IEP process and decision-making. The Parents allege that these failures caused the Student to experience a lack of progress toward IEP goals and grade-level standards, and was a denial of FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p><u>Substantiated</u></p> <p>The District failed to implement two accommodations as described in the Student's IEP, failed to provide information on how to obtain an IEE in a timely manner, and failed to provide the Parents with the opportunity to meaningfully participate in the Student's June 9, 2021 IEP meeting. These failures resulted in a denial of FAPE.</p> <p>The Student received specially designed instruction exceeding that which was required by the Student's IEP.</p>

Issues Outside the Scope of This IDEA Investigation

The Parents allege that District staff retaliated against the Student and Parents due to a previously filed Complaint. These issues are not within the jurisdiction granted under OAR 581-015-2030 and were not investigated in the current investigative process. The Parents may utilize the District's complaint process and/or may file a complaint with the Teacher Standards and Practices Commission.

The Parents also allege that the District falsified the Student's assessment information. Whether the District falsified records was not central to the Department's investigation and was not investigated. The Parent may address these issues by filing a complaint following the District's complaint procedures.

REQUESTED CORRECTIVE ACTION

- The District should provide the Student with compensatory education in reading, written language, and mathematics.
- The District should reimburse the Parents for the IEE.
- The District should pay for counseling services for the Student.
- The District should provide staff training.
- The District should be issued a letter of reprimand for falsifying records.
- The District should provide compensatory education to any District student who did not receive fluency instruction.
- The Oregon Department of Education should conduct an audit of the District to correct systemic errors.

III. FINDINGS OF FACT

Background

1. The Student is 11 years old and is in the sixth grade. During the Complaint period, the Student attended an elementary school in the District. The Student has since moved to another state.
2. The Student is eligible for special education and related services due to a Specific Learning Disability in the areas of reading fluency and comprehension, math problem solving, and written expression, and was found initially eligible on January 28, 2019. A secondary eligibility of Other Health Impairment due to Attention Deficit Hyperactivity Disorder was established on May 11, 2021.
3. The Student is described as hardworking and cooperative, and thrives on positive feedback. The Student's interests include football, video games, and cooking.
4. The Student has not yet demonstrated mastery of grade-level standards for reading, writing, and math. The Student's ability to learn and apply new information is significantly impacted by a lack of focus.
5. During the 2020-21 school year, the Student received instruction through a combination of Comprehensive Distance Learning (CDL), hybrid and in-person instruction.
6. The Student received Specially Designed Instruction (SDI) in the areas of language arts and math.
7. The Student had supplementary aids and services for the 2020-21 school year that included the following accommodations: text to speech for assessments, frequent checks for understanding, directions provided visually and orally in 3-4 steps, hourly movement breaks, prompts to continue working/stay focused, visual supports, extended time, preferential seating, repetition of new concepts, and a study guide. Speech to text and read tests aloud in separate setting were added as accommodations on March 5, 2021 and June 9, 2021, respectively.
8. Supports for school personnel that were provided included consultation to teaching

staff from the Special Education Teacher and School Counselor.

9. The Student's special education placement determination, based on the September 30, 2020 IEP, is "most of the instructional time spent within the general education grade-level curriculum and with typical peers; specially designed instruction (pull-out or push-in) minimal areas of need."
10. The Parents report that one of them took a leave of absence in February of 2021 to stay home with the Student due to a decline in the Student's mental health. The Parents report the Student was hiding under the bed and begging to be homeschooled.
11. The Parents hired a private math tutor during the 2020-21 school year, based on the information they received from the District about the Student's math performance.
12. The Student had very good attendance and missed 12 homeroom periods throughout the 2020-21 school year. There were no other reported absences in the Student's other classes.

Evaluations

13. On August 24, 2021, the Parents communicated with the District that they became aware that the District had not completed a full evaluation to include assessments in the areas of math and writing during the January 2019 initial evaluation. During interviews, the Parents confirmed they made this discovery in June of 2021. This evaluation occurred outside of the Complaint period.

Content of IEP

14. The Student's annual IEP was due on October 2, 2021.
15. The September 30, 2020 IEP includes a math goal that is identical to a short-term objective in the 2019 math IEP goal. The writing goals for the 2019 and the 2020 IEP are not the same. The 2019 IEP included one reading goal with short-term objectives that ranged from phonics skills to comprehension. The 2020 IEP included two reading goals, one for phonics and one for reading comprehension. The reading comprehension goal in the 2020 IEP was slightly similar to a short-term reading objective in the 2019 IEP. The 2020 version included different reading and accuracy levels.
16. At the October 25, 2021 IEP meeting, the IEP team discussed the Student's reading fluency skills and determined that SDI was not needed and the District would progress monitor the Student's fluency skills.
17. At the time of the January 25, 2021 IEP meeting, in which the Parents provided the District with evaluation results from a private evaluator, the Student's IEP included an IEP goal for reading prefixes and suffixes and a related short-term objective for the Student to read multi-syllabic words. The Student's writing goal was to write a multi-paragraph essay at the 5th-grade proficiency level with the areas of organization and conventions being monitored. The Student also had a reading comprehension goal and a goal for encoding and decoding reading and spelling words.
18. On February 18, 2021, the District notified the Parents that progress monitoring of the Student's fluency skills had not been completed since the fall due to the

challenges of online instruction.

19. On March 5, 2021, the IEP team met and made revisions to the September 30, 2020 IEP. The revisions include adding two short-term objectives to the Student's annual writing goal and a speech-to-text accommodation. The District refused the Parents' request to add a fluency goal or short-term objective, instead adding a statement to the present levels statement that the Student's reading fluency would be monitored in the general education classroom. The Parents disagreement with this decision was not accurately noted on the PWN, dated March 10, 2021, which states, "the team agreed that fluency will be explicitly taught and monitored within general education."
20. At the March 5, 2021 IEP meeting the Student's reading fluency skills were discussed. The Student was reading 72 words per minute (wpm) and the fluency goal for the end of 5th grade is 137 wpm. The Classroom Teacher emailed the Parents on April 24, 2021, and provided progress monitoring data for the Student's oral reading fluency. The Student read a 5th grade 144 wpm with 5 errors.
21. On June 9, 2021, school staff from the Student's IEP team held an IEP meeting and made revisions to the IEP. The Parents did not attend this meeting. The Prior Written Notice (PWN) dated and mailed to the Parents on June 15, 2021 and the June 9, 2021 amended IEP indicated the IEP was amended in the following ways: the addition of evaluation data, reading, and executive functioning goals was added, the amount of SDI for Language Arts was increased, and a testing accommodation was added.
22. During the 2020-21 school year, the District used instructional materials and strategies titled *Sonday System* and *Rewards* to provide SDI in the area of reading; *RACE approach* and *Four Square Writing* to provide SDI in the area of writing; and teacher-selected word problems and graphic organizers to provide SDI in the area of math. Instructional adjustments made included a change in reading material, use of visuals, kinesthetic and sound activities, and breaking down the writing process.
23. All IEP progress reports included the following elements, as required by the Oregon Department of Education: the date progress was being reported, the IEP goal, a narrative section, and supporting data.
24. The January 26, 2021 progress report for the reading/phonics goal indicated the Student was "on target to meet annual goal" and included narrative and supporting data that is aligned with the annual goal. The progress report included the following statement, "When given the phonics screener, the Student has accurately read multi-syllabic words with 69% accuracy in 2 of 2 trials. When given the phonics screener, the Student has accurately read prefixes and suffixes with 82% accuracy in 2 of 2 trials."
25. The February 19, 2021 progress report for the reading/phonics goal indicated the Student was "on target to meet annual goal" and included narrative and supporting data that is aligned with the annual goal. The progress report included the following statement, "When given the phonics screener, the Student has increased scores to accurately read multi- syllabic words with 87% accuracy. As reported on the Student's most recent phonics screener, the Student is able to read prefixes and suffixes with 90% accuracy." During interviews, the District reported this progress report, for the Student's reading/phonics goal, was completed a second time in error and the January 26, 2021 progress report is considered the official report.

26. The June 16, 2021 progress report for the reading/phonics goal indicated the Student was “on target to meet annual goal” and included narrative and supporting data that is aligned with the annual goal. The progress report included the following statement, “The Student is able to accurately read multi-syllabic words with 80% accuracy. The Student is able to accurately read prefixes and suffixes with 87% accuracy.”
27. The February 17, 2021 progress report for the math goals indicated the Student was “making progress” and included narrative and supporting data that is aligned with the annual goal. The progress report included the following statement: “Given a 5th- grade single step real-world math problem, the Student was able to identify cue words, select proper operations, and solve problems with 100% accuracy in 1 of 1 trial. When given a 5th- grade multi-step equation, the Student was able to identify cue words with 50% accuracy, select proper operation(s) with 100% accuracy, and solve with 50% accuracy in 2 of 2 trials.”
28. The June 16, 2021 progress report for the math goal indicated the Student was “making progress” and includes narrative and supporting data that is aligned with the annual goal. The progress report included the following statement, “In 4 of 5 trials when given a 5th- grade word problem containing multiple steps, the Student is able to identify cue words such as ‘[sic] total,’ ‘how much,’ ‘how many,’ etc., however, is unable to single out cue words within a story that has an underlying meaning of divide, multiply, add, [sic] subtract. After reading the word problem, the Student is able to select the correct operation with approximately 38% accuracy. Given teacher assistance in setting up the equation, the Student is able to solve with 75% accuracy after receiving 1-2 prompts to check and correct work.”
29. The February 23, 2021 progress report for the writing goal indicated the Student was “on target to meet the annual goal.” The progress report included the following statement, “Given a 5th grade writing prompt, the Student crafted a multi-paragraph response and scored a 14/15 as measured by teacher created rubric in 1 of 1 trial. This writing sample was heavily supported in regards to organization/revision and the Student utilized speech- to-text supports.”
30. The June 16, 2021 progress report for the writing goal indicated the Student was “on target to meet the annual goal.” The progress report included the following statement, “Given a 5th grade writing prompt, the Student is able to craft a multi-paragraph response with an average score of 12.5/15 in 2 of 2 trials. The Student is able to encode single and multisyllabic words with closed, open, and a vowel -e syllable patterns with approximately 56% accuracy with data from 3 trials. When given a prompt and picture, the Student is able to write a paragraph handwritten response with an average of 74% accuracy in 3 of 3 trials. The Student showed no more than 2 errors in capitalization, semantics, and grammar. However, the Student did routinely have more than 2 errors in the areas of syntax, spelling, capitalization, and punctuation.”
31. The February 17, 2021 progress report for the reading comprehension goal indicated the Student was “making progress.” The progress report included the following statement, “Given a 5th-grade text, the Student was able to make inferences at an average accuracy of 38% in 4 of 4 opportunities as evidenced by curriculum-based measures. When given a 4th- grade text, the Student was able to identify context clues to help identify the meaning of words with 50% accuracy in 2 of 2 trials.”

32. The June 16, 2021 progress report for the reading comprehension goal dated, indicated the Student was “making progress.” The progress report included the following statement, “Given a 5th-grade text, the Student is able to make inferences from the text with an average accuracy of 39% in 7 of 7 opportunities. Given a 4th grade text, the Student is able to identify the meaning of unknown words with 63% accuracy in 8 of 10 opportunities.”
33. The Student’s SDI for reading included anchor charts, projected slides, and reading word lists. The Student was asked to trace under word parts with a finger or pencil, circle word parts, underline vowels, and loop under word parts. During spelling instruction, the Student would use hands to demonstrate each word part.

Extended School Year (ESY) Services

34. Meeting notes taken during the October 21, 2021 IEP meeting indicated that the team discussed ESY and determined that the Student did not require ESY services at that time. The parties disagree about the depth of this discussion. The ESY section of the 2020 IEP indicated the Student did not experience regression on IEP goals and objectives, nor was there a prolonged recoupment time to relearn previously learned skills. The Parent did express concerns that the Student’s math skills were regressing, based on the i-Ready data.

Parent Participation

35. During the 2020-21 school year, seven IEP meetings were held. These occurred on September 30, 2020; October 14, 2020; October 21, 2020; January 25, 2021; February 24, 2021; March 5, 2021; and June 9, 2021. The Parents attended six of seven meetings, and three of the IEP meetings were requested by the Parents.
36. The Student’s annual IEP meeting was originally scheduled for September 23, 2020 and was postponed until September 30, 2020 to allow the District to conduct the i-Ready assessment on September 28, 2021. The i-Ready data was used as baseline data for the Present Levels of Academic Achievement and Functional Performance (PLAAFP). The statewide assessment data that was presented at the September 30, 2020 IEP meeting was historical data.
37. The District provided the Parents with proposed IEP goals to consider for the Student’s 2020 IEP. The Parents were concerned that the IEP goals were not based on current baseline data. The writing goal that was included in the September 30, 2020 draft IEP remained the same as the District’s proposed goal. The IEP was not completed at this meeting, so the team met again on October 14, 2020 and October 21, 2020. The reading comprehension goal in 2020 was the same as the District’s proposed goals. The phonics goal remained largely the same, with a change to the accuracy level.
38. At the September 30, 2020 IEP meeting, the Parents presented academic assessment data that they had collected. The Parents requested that the IEP team consider this information when developing IEP goals for the Student. The assessment information provided by the Parents was included in the Present Levels of Academic Achievement section of the IEP. The IEP team also met to continue developing the annual IEP on October 14, 2020, and October 21, 2020. At the end of the October 21, 2020 IEP meeting, the meeting notes reflect the Parents stated they thought “the IEP had some

really good goals, based on good present levels.”

39. On January 25, 2021, the IEP team met to review the results of an evaluation conducted by an evaluator hired by the Parents. In the area of oral reading fluency, the Student scored in the low average range and the report noted the Student’s reading rate was unusually slow and the rate of reading errors was unusually high. The Student’s Orthographic Fluency was determined to be in the low average range and the Student’s decoding fluency was in the average range. The evaluator’s recommendation was for the Student to receive SDI from a speech-language pathologist in the areas of word reading, orthographic choice, fluency, reading comprehension, oral reading fluency, written expression including spelling, sentence composition, and essay composition.
40. The PWN dated January 27, 2021, indicates the IEP team made no changes to the IEP as a result of the new information presented by the Parents. The PWN further details the District’s refusal of the Parent’s request for specialized training in the Orton-Gillingham approach to reading instruction for District staff who instruct the Student.
41. On February 4, 2021, the Parents submitted a written request to the District requesting an amendment to the Student’s IEP to add SDI in the area of writing, a speech evaluation, and a records request for all the academic data collected by the District on the Student.
42. The District provided the Parents with the requested academic data on February 18, 2021.
43. On February 24, 2021, the IEP team met at the request of the Parents to review the Student’s IEP and consider the Parents’ request for additional SDI in the area of writing, and that this additional SDI be provided by someone trained in the Orton-Gillingham approach.
44. A PWN dated February 25, 2021 indicates that the District refused the Parents’ request to amend the IEP to add SDI in the area of writing. The PWN further states the Parents’ request was rejected because “through the team discussion and review of available data it was determined through team majority that the Student is currently making progress in the grade-level curriculum as well as towards reading and writing goals with the current services provided.”
45. On March 5, 2021, the IEP team continued the IEP meeting initiated on February 24, 2021. At the meeting, the Parents requested that the Student receive instruction for reading and writing IEP goals that was multi-sensory, systemic, and explicit, such as the Orton- Gillingham approach. The Parents report the meeting facilitator, who was also the Special Education Coordinator, requested all District staff state whether the Orton-Gillingham approach was the only approach that would support the Student’s instruction. The decision was made by taking a vote and documented as such in the PWN dated March 10, 2021.
46. A PWN dated March 5, 2021 indicates the District refused the Parents’ request for use of the Orton-Gillingham instructional approach. The PWN states the Parents’ request was rejected because “through the team discussion and review of available data it was determined through team majority that the Student is currently making progress in the grade-level curriculum as well as towards reading and writing goals and Orton-Gillingham [sic] instructional method is not the only method that can be used in order

for the Student to make progress.”

47. On April 14, 2021, the Parents emailed the District with concerns that the Student was not making progress in math, based on the District’s assessment data. The Parents requested that IEP amendments be considered and an IEP meeting scheduled if the requested changes needed to be considered at a meeting.
48. On April 20, 2021, the District had an internal communication about the intent of the next meeting to be scheduled with the Parents as an eligibility-only meeting. This meeting was scheduled for May 11, 2021.
49. The District sent a meeting notice for May 11, 2021. The Special Education Notice of Team Meeting indicates the purpose of the meeting was to review existing information about the Student and decide if the Student is eligible or continues to be eligible for Special Education, whether or not additional testing is needed, and to develop or review the IEP. The team completed the eligibility process at this meeting and did not develop or review the IEP due to running out of time, per the District’s report during interviews.
50. The District stated the intended purpose of the May 11, 2021 team meeting was to review the evaluation results and hold an IEP meeting but ran out of time. At the May 11, 2021 meeting, the IEP team reviewed evaluation information and completed the eligibility process for Other Health Impairment and Communication Disorder. Another meeting was scheduled for June 9, 2021 to review the IEP.
51. On May 19, 2021, the Parents requested an IEP meeting. The District made three attempts over the course of a week to obtain the Parents’ feedback about which of two days would work best for the IEP meeting. District records indicate the Parents were notified two times about the IEP meeting scheduled for June 9, 2021. The notifications included a Team Meeting Notice and electronic calendar invitation sent on May 24, 2021. The Special Education Notice of Team Meeting sent on May 24, 2021, includes the following statement, “We highly encourage you to participate in all meetings about your child’s education program. If you cannot attend this meeting but would be able to participate if the conference were rescheduled or conducted by phone, or if you have questions concerning your rights, please contact...If you choose not to participate, the meeting may be conducted without you. If you cannot attend this meeting, please contact the individual named above to provide them with information you wish to have considered as part of this meeting.”
52. On June 7, 2021, the Parents notified the District that they were not able to attend the June 9, 2021 IEP due to unexpected travel by one of the Parents. The Parents did not request that the meeting be rescheduled. On June 8, 2021, the District offered to reschedule the IEP meeting and offered two different starting times on June 14, 2021. On June 9, 2021, the District held the IEP meeting. The Parents responded to the District’s offer about rescheduling the IEP meeting on June 13, 2021.
53. On June 13, 2021, the Parents notified the District that they were in disagreement with portions of the IEP developed at the June 9, 2021 meeting.
54. On June 17, 2021, the Parents notified the District they were not informed that the District planned to proceed with the June 9, 2021 meeting without the Parents present. The Parents further stated that had they been informed the IEP meeting would proceed without them, they would have provided written input for the IEP team

to consider.

55. The Student and the Parents moved from the District's attendance area on June 20, 2021.
56. On August 3, 2021, the Parents communicated their concerns, in writing, to the District. The concerns they shared in this communication that do not appear in other facts included their disagreement with the decision to include an executive functioning goal at the June 9, 2021 IEP meeting and the Student's lack of progress and regression in the area of math.
57. District staff reported several elements of the IEP were developed specifically based on the Parents' input such as the parent input statement, information about functional performance, two short-term objectives with specific Parent preferred wording, and a speech-to-text accommodation.
58. The Parents generally recall receiving copies of the Special Education Notice of Team Meeting for the Special Education Meetings scheduled for the Student during the 2020-21 school year.
59. There is no record in the District's contact log that IEP progress reports were provided to the Parents at the required times of February 2020 and June 2021. District staff confirm that the school's progress reports for special education students were mailed, but there is no specific evidence that the reports were mailed to the Student's Parents.

Independent Educational Evaluation (IEE)

60. The District has an established school board policy and administrative rules that describe the independent educational evaluation (IEE) process for the District and how a parent can make a request for an IEE.
61. On June 14, 2021, the Parents made a written request to the District for an IEE paid for by the District.
62. The District's criteria for obtaining an IEE were provided to the Parents on June 23, 2021. The parameters included that the evaluator must be an Oregon-licensed school psychologist, the evaluation must be conducted within 100 miles of the District, the evaluation costs were limited to \$1,000, and the District must receive a copy of the report before payment. The results of the IEE were also to be considered in any educational decision made for the Student. This did not include a list of providers that could complete the IEE.
63. The District employs licensed school psychologists and TSPC-licensed evaluation specialists. These practitioners complete special education evaluations. All evaluations conducted by an evaluation specialist are reviewed by a licensed School Psychologist for validity, accuracy, cultural appropriateness, and comprehensiveness before being released for consideration by an IEP team.
64. On June 29, 2021 and June 30, 2021, the Parents requested a list of District-approved psychologists. The Parents also submitted a request for the District to consider the unique circumstances of the family moving out of state and the additional costs and distance associated with travel back to the District area.

65. On June 30, 2021, the Parents informed the District, in writing, that they disagreed “with the ADD eligibility.”
66. On July 7, 2021, the District notified the Parents that a list of School Psychologists within a 100-mile range of the District was not available.
67. On July 12, 2021, the District responded to the Parents’ request for the parameters to be reconsidered given their unique circumstances and asked the Parents what specific parameters they would like reconsidered.
68. On August 9, 2021, the District contacted the Parents to inquire about the Parent’s need for transportation arrangements for the IEE and what other parameters the Parents wanted the District to reconsider.
69. On August 10, 2021, the Parents requested travel expenses for the IEE in the amount of \$1,456, and that the examiner qualifications be amended to include evaluators located in the states of Washington or Idaho.
70. On September 1, 2021, the District provided the Parents with amended criteria for the IEE. The amended parameters included the removal of the school psychologist being licensed in Oregon, and the location was increased to within 250 miles of the District. The communication also included the names of five independent evaluators within Oregon. The District also provided the Parents with a PWN explaining the amendments to the IEE parameters.

Free Appropriate Public Education (FAPE)

71. The Student’s IEP dated September 30, 2020 included the accommodation of frequent checks for understanding to be implemented daily during instruction. The Student was also to be provided a study guide before assessments.
72. The Parents report that when CDL and portions of hybrid learning were occurring, the Student did not receive frequent checks for understanding as outlined in the September 30, 2020 IEP. The Parents report the virtual classroom often had the microphone and chat features turned off and there was not a way for the Student to get assistance or frequent checks for understanding during class time.
73. The General Education Teacher met with the Student in a small group three times a week and individually at the end of each week for 30 minutes to review the information and missed concepts. The Student was also paired with another small group of students, without a teacher, two days per week. The Student also received hard copies of the textbooks.
74. Records indicate that a writing scoring rubric was provided to the Parents on January 19, 2021. On June 4, 2021, the Parents requested a scoring rubric for informational essays from the General Education Teacher, which was provided to the Parents on the same day.
75. During interviews, District administrators stated that teacher notes served as a study guide. The District said that “sometimes” study guides and checks for understanding were provided. The District also speculated that the number of assessments may have been reduced due to CDL.

76. The Student's first-semester grades for the 2020-21 school year, when the Student was in 5th grade, were an A in Math, a B- in Reading, and a B+ in Writing. Grades were not recorded for Music, PE, Science, Social Studies, or Spelling. The General Education Teacher reported that the Student was participating in online classes and was starting to reach out for help. The Student was reminded to carefully use given rubrics, checklists, and printed materials to improve writing responses. The General Education Teacher comments encouraged the Student to go back into previous assignments (other than tests/quiz) to correct and resubmit to improve the score before the end of the semester.
77. The Student's second-semester grades for the 2020-21 school year were a B+ in Math, a B+ in Reading, an A+ in Science, and an A in Writing. Grades were not recorded for Music, PE, Social Studies, or Spelling. The end-of-year report card noted the Student scored a 548 on the i-Ready Reading Diagnostics and a 523 on the i-Ready Math Diagnostics. These scores placed the Student at the 4th-grade proficiency level.
78. The General Education Teacher for the Student during the 2020-21 school year was on leave at the time of the requested interview. However, the General Education Teacher did respond to questions posed by the District before going on leave. The General Education Teacher used "Simplify Writing" and the "RACE (Restate, Answer, Cite and Explain)" format for writing instruction. For reading fluency, "Wonder" and "Reading Naturally" were utilized. Throughout the year, the Student participated in the writing process of drafting, revising, editing, and publishing. The final drafts were used as assessments. Grammar was taught using the "Wonder" Curriculum.
79. The General Education Teacher reported providing the Student with rubrics, frequent check-ins, preferential seating, one-on-one time with the Teacher, access to class notes, and supports during testing and classwork. The Student's core instruction was monitored through classwork checks, i-Ready, and weekly quizzes for reading and math. The Student completed daily check-ins with the Teacher 3 times per week and other students 2 times per week. The General Education Teacher met with the Student for 30 minutes at the end of each week to review any missed skills.
80. District administrators shared that the general education instructional materials consisted of Ready Math and i-Ready lessons. Email communication was used between the General Education Teacher and the Student for checking in. A hand-raising feature also became available for online instruction at some point during the school year.
81. The District provided examples of the Student's work samples for both general and special education performance. The Student's reading scores in the general education classroom indicated the Student was performing above the class average for three quarters, and not the last quarter of the 2020-21 school year. The Student's specific reading scores were 66.7% on October 19, 2020, 41.7% on February 22, 2021, 41.7% on April 19, 2021, and 29.2% on May 7, 2021. The work samples included reading fluency and comprehension activities and writing samples.
82. According to the Student's September 30, 2021 IEP, the Student was to receive a total of 3,520 minutes per year of SDI in Language Arts, and 320 minutes per year of SDI in Math.
83. The District provided records that show the Student received 4,810 combined minutes

of SDI in reading and writing during the 2020-21 school year. This exceeds the amount in the IEP by 1,290 minutes. The District also reports it provided 730 minutes of SDI in Math during the 2020-21 school year, which is 410 minutes above the offered amount.

84. On August 3, 2021, the Parents provided to the District written concerns about their Student's special education services while attending the District. The Parents alleged the ongoing concerns, over the course of the 2020-21 school year, amounted to a denial of a FAPE for the Student and the Parents would be moving forward with the dispute resolution process.
85. On September 27, 2021, the Parents submitted a Complaint to the Department.

IV. DISCUSSION

Evaluations

The Parents allege the District violated the IDEA when the District failed to conduct a comprehensive initial evaluation in the academic areas of mathematics and written language.

During interviews, the Parents stated in June 2021 they became aware that the Student's initial evaluation conducted in January of 2019 for a Specific Learning Disability did not include academic achievement data for math and writing. Because the 2019 evaluation is outside the Complaint window of September 28, 2020 – September 27, 2021, this portion of the Complaint was not included in the investigation.

The Department does not substantiate this allegation.

Content of IEP

The Parents allege the District violated the IDEA when the District failed to provide evidence-based instruction, accurate and current IEP progress monitoring and evaluation data when making IEP decisions, staff training related to the Student's areas of disability, and alternative instruction in the IEP.

The individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability.⁴

Each IEP must also include 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; a statement

⁴ OAR 581-015-2200(1)(a)(b)(A)(B)

of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: to advance appropriately toward attaining the annual goals, and to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities.⁵

Failure to Provide Evidence-Based Instruction

The requirement for districts to use only evidence-based instructional materials is not included in the IDEA. The IDEA specifies that the IEP must include a statement of the specific special education and related services and supplementary aids and services, based on “peer-reviewed research to the extent practicable.” Specifically, the Parents requested that an Orton-Gillingham approach be used for the Student’s reading and spelling instruction. The Orton-Gillingham approach is described as a “direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy when reading, writing and spelling does not come easily to individuals, such as those with dyslexia.”⁶

The instructional programs used by the District for the Student’s reading and spelling instruction included the Sondag System and Rewards. The Sondag System is described as offering structured, systematic, multisensory reading intervention using Orton-Gillingham methods⁷ and Rewards is a “research-based, short-term, and specialized program for adolescent students in grades 4–12 who struggle reading long, multisyllabic words and comprehending content-area text. With explicit, systemic, teacher-led instruction, this intervention gives students new skills to unlock grade-level content-area text.”⁸

The Parents agree that the use of the Sondag System followed an Orton-Gillingham approach.

Their concerns arose from the District’s use of the Rewards program as it does not include an embedded multi-sensory approach and not all of the components were used. The District provided evidence that indicates the instructional staff providing reading and spelling instruction to the Student did receive training in the Sondag System, which follows an Orton-Gillingham approach. In addition, these instructional staff described the use of multi-sensory approaches that included the use of visuals, kinesthetic and auditory activities when using the Reward materials. The District’s instructional staff also report the comprehension and fluency elements of the Rewards program were used with the Student. The District did provide reading and spelling instruction, based on peer-reviewed research, to the extent practicable.

The Department does not substantiate this portion of the allegation.

Accurate and Current IEP Progress Monitoring and Evaluation Data when Making IEP Decisions

⁵ OAR 581-015-2200(c)(d)(A)(B)

⁶ Academy of Orton Gillingham Practitioners and Educators. What is the Orton-Gillingham Approach?

⁷ Sondag System. Overview. Available at: <https://www.winsorlearning.com/sonday-system-1> (Accessed: 29 October 2021)

⁸ Voyager Sopris. Welcome to the Rewards Family. Available at: <https://www.voyagersopris.com/literacy/rewards/overview>: 29 October 2021)

The District and the Parents agreed that the assessment information available to the IEP team about the Student's academic achievement was inconsistent, which could be the result of providing different types of supports to the Student during testing as well as the type of assessment being conducted. Both parties agreed to complete additional assessments at the evaluation planning meeting held on February 12, 2021. The Parents were concerned that the District would not make revisions to the Student's IEP based on the private evaluation information presented to the IEP team on January 25, 2021, but nevertheless provided consent for the evaluation. The District has a right to conduct its own evaluation when presented with additional information from a Parent. The District completed a comprehensive evaluation, within the required timelines, and presented the assessment results to the IEP team on May 11, 2021.

The Department does not substantiate this portion of the allegation.

Staff Training Related to the Student's Areas of Disability

The Parents requested that the District's instructional staff receive training in the Student's area of disability, dyslexia. The September 30, 2021 IEP includes 30 minutes per year of consultation to teaching staff by the Special Education Teacher, as Supports to School Personnel. The District provided staff training records that indicated special education staff met routinely with an instructional coach for training and support on progress monitoring and curriculum implementation. The District records indicate the special education staff had received training in the Student's area of disability, dyslexia. The District issued a Prior Written Notice refusing the Parent's request to change the Student's IEP to provide training to District staff. The IDEA does not specify how school districts are to conduct staff training.

The Department does not substantiate this portion of the allegation.

Alternative Instruction in the IEP

For the reasons previously identified in the "Failure to Provide Evidence-Based Instruction" section, the Department does not substantiate this portion of the allegation.

The District re-used IEP goals from previous IEPs and did not develop IEP goals in all areas of identified need

The District provided the Parents with draft IEP goals for the September 30, 2020 meeting. When comparing the 2019 and 2020 IEP goals, it is noted that the math goal is identical, and the reading and writing goals had adjustments. For example, the 2019 IEP reading goal was divided into two reading goals with the reading comprehension goals having a different reading and accuracy level. There is nothing in the IDEA that prohibits IEP teams from including portions of previous IEPs into a current IEP, as long as the IEP goals are based on the student's present levels of performance. At the time the annual IEP goals were being developed, at the end of September 2020 – October 2020, the IEP team did not have data to suggest the Student needed an IEP goal in the area of reading fluency. At the October 25, 2021 IEP meeting, a PWN was issued when the District chose not to develop an IEP goal in the area of fluency.

The Department does not substantiate this portion of the allegation.

Failed to Monitor Progress Toward IEP goals and Make Instructional Adjustments; Failed to Offer an Adequate Amount of Specially Designed Instruction (SDI) in the

area of Mathematics

The District did make instructional adjustments to the child's IEP based on the Student's progress. For the phonics and reading comprehension goals, materials were changed from the Soudy System to Rewards at the end of November 2020. The District noted the Rewards program provided more in-depth word analysis, comprehension, and focused on prefix/suffix and multisyllabic words. In the area of writing, the District included a four square graphic organizer in instruction and supports for the Student. Though there is no indication that there were any adjustments to the math instruction for the Student, it should be noted that mastery of the Student's math goals also requires reading comprehension skills.

At the October 14, 2020 IEP meeting, the District proposed removing the Student's math goal based on Student performance in the classroom. The Parent expressed concern that it was too soon to remove this support. The team agreed to maintain the goal. The service time for SDI in math was reduced at this meeting. At the June 9, 2021 IEP meeting, the IEP team reviewed the Student's math performance and determined not to increase the service time or add another goal, based on the Student's performance in the classroom. The Parent was not in attendance at this meeting.

The June 16, 2021, IEP progress report for the Student's math goal indicates the Student's progress declined from the previous progress report dated February 17, 2021. The Student's math goal included three main skills, identifying cue words, selecting the correct operation, and solving math word problems. For identifying cue words, the Student's performance went from 50% accuracy to "unable to identify cue words within a story that have the underlying meaning of divide, multiply, add, and subtract." The Student's progress on selecting the correct operations went from 100% accuracy to 38% accuracy. The Student's progress did increase from 50% accuracy to 75% accuracy for solving the math word problems. The Student's annual goal for math was to identify cue words, select the proper operations and solve problems with 80% accuracy in 4 of 5 trials. The Student's end-of-year IEP math goal progress for identifying cue words and selecting the proper operations was not on track to meet the annual goal of 80% by September 29, 2022. Each of the three main skills in the student's IEP require reading comprehension. The IEP team reviewed and adjusted the student's SDI in the area of phonics and reading comprehension based on their progress. Though it is possible that the IEP team should have also revised the Student's SDI in the area of math, it is also possible that the IEP team determined additional SDI in the area of reading comprehension would enable the student to demonstrate progress towards the reading-oriented math goals.

The Department does not substantiate this portion of the allegation.

Did Not Include the Required Components in the Student's IEP Progress Reports

The IEP progress reports included all required information. The District did progress monitor the Student's annual IEP goals, in all four goal areas, two times per year, in February and June of 2021. The IDEA requires districts to provide parents 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). The District is on a semester system and provides IEP progress reports twice per year, which meets the IDEA standard. The Student's revised March 5, 2021 PLAAFP indicated the Student's reading fluency skills would be progress monitored every two weeks in the general education program by the classroom teacher. There is not sufficient evidence in the record to verify that the progress monitoring for reading fluency occurred as described in

the PLAAFP. This is not, however, a violation of the IDEA as the Student did not have an IEP goal in this area and progress monitoring requirements are only applied to the Student's annual IEP goals.

The Department does not substantiate this portion of the allegation.

Extended School Year (ESY) Services

The Parents allege the District violated the IDEA when the District failed to provide the Student with ESY Services.

School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to a child with a disability. Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child. A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.⁹

School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team. For extended school year services, "regression" means a significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services. "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services. For this rule, "extended school year services" means special education and related services that are provided to a child with a disability beyond the normal school year of the school district; in accordance with the child's IEP; and at no cost to the parents of the child; and that meets the standards of the Department.¹⁰

At the October 21, 2021 IEP meeting, the meeting notes and the IEP document that the team discussed ESY services and the team determined the Student's skills had not regressed and ESY services were not required. Both the District and the Parents agree that there was a discussion and that i-Ready data was reviewed. The Parent's concern with the team discussion was that i-Ready data was the only data used to make this determination. Because the IEP team had previously determined that the Student's skills were not to be monitored for possible regression, the District was not required to produce more data for this discussion. Meeting notes indicate the Parents brought up concerns multiple times about the Student's skills

The notice further states that the IEP team will reconvene during the 2021-22 school year to determine recovery services due to the COVID-19 pandemic if the Student continues to reside in the District. The Department agrees that the Student's skills regression that may have resulted from the COVID-19 pandemic is best addressed through the Individualized COVID-19 Recovery Services process. This rule, OAR 581-015-2228, became effective on June 24, 2021, and applies to the 2021-22 and the 2022-23 school years.¹¹

⁹ OAR 581-015-2065(1)(2)(3)(a)(b)(4)

¹⁰ OAR 581-015-2065(5)(6)(a)(b)(7)(a)(A)(B)(C)(b)

¹¹ OAR 581-015-2228

The Department does not substantiate this allegation.

IEP Team

The Parents allege the District violated the IDEA when the District failed to secure a written agreement excusing the Parents from an IEP meeting.

School districts must ensure that the IEP Team for each child with a disability includes the following participants: one or both of the child's parents, except as provided in OAR 581-015- 2195; the child where appropriate; at least one regular education teacher of the child, if the child is or may be participating in the regular education environment; at least one special education teacher of the child or, if appropriate, at least one special education provider of the child; a representative of the school district, who may also be another member of the team, who is: qualified to provide, or supervise the provision of, specially designed instruction; knowledgeable about the general education curriculum; knowledgeable about district resources; and authorized to commit district resources and ensure that services set out in the IEP will be provided. An individual who can interpret the instructional implications of the evaluation results (who may also be another member of the team); other individuals, including related services personnel as appropriate, invited by: the parent, whom the parent determines to have knowledge or special expertise regarding the child; or the school district, or whom the school district determines to have knowledge or special expertise regarding the child.¹²

A member of the IEP team described in subsection (1)(c) through (1)(f) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if the parent and school district consent in writing to the excusal; and the member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.¹³

The intended purpose of the Written Agreement is for districts and the parents to agree to excuse District staff from IEP meetings. The regulation specifically excludes parents and students from this provision. Thus, the District would not need to have the Parents sign a Written Agreement excusing themselves.

The Department does not substantiate this allegation.

Parent Participation

The Parents allege the District violated the IDEA when the District failed to provide adequate data at IEP meetings for the Parents to consider and failed to provide the Parents the ability to participate in the decision-making process when District staff went through a voting process at IEP meetings. The Parents also allege the District failed to consider information provided by the Parents when developing the IEP goals and predetermined IEP goals were adopted at an IEP meeting. The Parents further allege the District failed to schedule an IEP meeting when requested by the Parents, held an IEP meeting without the Parents in attendance and made IEP and placement changes without the Parent's input, and failed to offer alternative means for the Parents to participate in the IEP meeting.

¹² OAR 581-015-2210(1)(a)(b)(c)(d)(e)(A)(B)(C)(D)(f)(g)(A)(B)

¹³ OAR 581-015-2210(3)(b)(A)(B)

School districts must 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. School districts must provide parents with written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend. The written notice must state the purpose, time, and place of the meeting and who will attend; inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child; inform the parent that the team may proceed with the meeting even if the parent is not in attendance, and inform the parent of whom to contact before the meeting to provide information if they are unable to attend. A meeting may be conducted without a parent in attendance if the school district has given the parent notice under subsection (2), or, for IEP or placement meetings, in accordance with OAR 581-015-2195.¹⁴

School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed upon time and place. If neither parent can attend, the school district must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits. An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed upon time and place such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.¹⁵

The Department considers school district attempts to convince parents to attend sufficient if the school district: communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2190(2) to confirm this arrangement; or sends written notice required under OAR 581-015-2190(2) proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice. "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.¹⁶

The District Failed to Provide Adequate Data at IEP Meetings for the Parents to Consider

During the 2020-21 school year, the Student's IEP team met a total of nine times. Seven meetings were to develop or review the Student's IEP and three of the meetings were requested by the Parents. The other two meetings were for evaluation planning and special education eligibility. In the fall, the IEP team met three times to develop the Student's annual IEP because the IEP team was not readily coming to a consensus, due to the Parent's concerns that there was not enough baseline data to develop strategic IEP goals. Meeting notes from the October 24, 2021 IEP meeting indicate the Parents thought "the IEP had some really good goals, based on good present levels." As the year progressed, the

¹⁴ OAR 581-015-2190(1)(2)(a)(b)(A)(B)(C)(D)(5)

¹⁵ OAR 581-015-2195(1)(a)(b)(2)(3)(a)(A)(B)(C)

¹⁶ OAR 581-015-2195 (b)(A)(B)(c)

Parents began to have concerns with the Student's phonemic awareness and elected to have a private evaluation completed. The District scheduled a parent-requested IEP meeting for January 25, 2021, in which the results of the private evaluation were reviewed. The District issued a PWN refusing to add services based on the private evaluation results.

On February 4, 2021, the Parents submitted a request for additional writing goals, a speech evaluation, and all academic data collected on the Student. An evaluation planning meeting was held on February 12, 2021 to determine what additional assessments would be needed to consider the Parents' request for additional services and a speech evaluation. At this meeting, the IEP team agreed to conduct an evaluation, as the District was in agreement that the different sets of data were inconsistent.

The Department does not substantiate this allegation.

The District Failed to Provide the Parents the Ability to Participate in the Decision-Making Process when District Staff Went Through a Voting Process at IEP Meetings

The Complaint includes an allegation that the District engaged in a voting process during IEP meetings. One meeting, in particular, was troubling for the Parents and both the Parents and their advocate informed the District of their concerns in writing. On March 5, 2021, the District went through a decision-making process that the Parents believe denied them an opportunity to meaningfully participate in the meeting. During interviews, IEP team members' recollection of the meeting was that everyone was asked their opinion about the subject, though an interviewee agreed that it seemed like a poll was being taken.

The PWN issued on March 10, 2021 states, "Through the team discussion and review of available data, it was determined through team majority that the Student is currently making progress in the grade-level curriculum, as well as towards reading and writing IEP goals and Orton-Gillingham instructional method is not the only method that can be used in order for the Student to make progress." The District's use of the phrase, "team majority" implies a vote took place.

The IDEA does not specifically address the use of team decisions being made through a vote. However, the Ninth Circuit Court of Appeals concluded that decisions made by a majority voting would be inconsistent with the IDEA regulations. The Court stated that "decisions by consensus are most consistent with the IDEA ideal of cooperative planning." In the Court's support of consensus reaching, it went on to say that "majority vote rule gives parties an incentive to select participants to attend the meeting in order to gain a voting majority." The Court acknowledged that reaching consensus is not always possible and that is why the Act includes a process for dispute resolution. In addition, generally, more District staff are in attendance at IEP meetings, and using a majority vote would never allow parent input equal consideration.¹⁷

In this instance, the evidence suggests that a voting process was included as part of the Student's IEP meeting. However, it is unclear from the evidence whether this voting process was used to make IEP decisions or to seek input from IEP team members related to IEP decisions. The evidence from interviews suggests that the voting process may have been to seek team member opinions. The PWN provided by the District indicates that the majority vote was related to the student's progress in the grade-level curriculum and towards their reading and writing IEP goals (and, accordingly, whether the student

¹⁷ Doe v. Mather., (9th cir. 1986).

could only progress in reading through Orton-Gillingham).

The Department does not substantiate this portion of the allegation.

The District Failed to Consider Information Provided by the Parents when Developing the IEP Goals and Predetermined IEP Goals Were Adopted at an IEP meeting.

The District considered information provided by the Parents when developing the Student's 2020 IEP. Information provided by the Parents was included in the Student's IEP, including a parent input statement, data the Parents' presented that they had collected themselves, results from a private evaluation, two short-term objectives, an accommodation, and the Parents' preferred language in goal development. The IDEA requires that districts consider information provided by the parents and does not require that all information and preferences of the parents become part of the student's IEP. In this case, the District did consider the Parents' input and included several of the Parent's requests. It should be noted that the PWN dated March 10, 2021, states the "team agreed that fluency will be explicitly taught and monitored within general education." The Parents did not agree with this decision and this disagreement is not accurately reflected in the PWN.

Nothing in the IDEA prevents districts from developing draft IEP goals before an IEP meeting. The District provided the Parents with the draft goals before the IEP meeting scheduled on September 30, 2020. The IEP team met three times to reach a consensus on the Student's IEP goals and the October 24, 2020, meeting notes reflect the Parent's agreement with the present levels and goals.

The Department does not substantiate this allegation.

The District Failed to Schedule an IEP Meeting when Requested by the Parents

On April 14, 2021, the Parents requested an IEP meeting to discuss their concerns for the Student's math progress. The District scheduled a meeting for May 11, 2021, to review the evaluation results and to review the IEP. At the May 11, 2021 meeting, the IEP team reviewed evaluation results, completed two eligibilities, and then the District ended the meeting and informed the Parents that the IEP portion of the meeting would be rescheduled. An internal communication exchange by the District on April 20, 2021, in regards to the Parents' request for an IEP meeting, discussed scheduling a meeting and having it be "an eligibility meeting only." However, when the District was queried as to the reason for ending the meeting, the District stated the team ran out of time. The communication suggests the District intended to only hold the eligibility portion of the meeting. On May 19, 2021, the Parents again requested an IEP meeting, and the District scheduled the meeting for June 9, 2021.

It took the District 56 days from the date the Parents made the request to hold the June 9, 2021 IEP meeting. This is an unreasonable amount of time to hold an IEP meeting after the Parent requested an IEP meeting.

The Department substantiates this portion of the allegation.

The District Held an IEP Meeting without the Parents in Attendance, Made IEP and Placement Changes without the Parents' Input, and Failed to Offer Alternative Means for the Parents to Participate in the IEP Meeting

The District scheduled an IEP meeting for June 9, 2021, and provided the Parents with a written and electronic notice on May 24, 2021. On June 7, 2021, the Parents notified the District they were not able to attend the meeting due to last-minute employment obligations. The District provided the Parents with another possible meeting date for the next day, June 8, 2021. The Parents responded to the District on June 13, 2021. Despite having knowledge that the Parents were unavailable due to an unexpected travel need, the District proceeded with the an IEP meeting on June 9, 2021. In their communication to the District on June 13, 2021, the Parents disagreed with portions of the IEP. On June 17, 2021, the Parents again contacted the District and said that, had they known the IEP meeting was to proceed without the Parents being present, they would have provided written input for the IEP team to consider. The Student and the Parents moved from the District's attendance area on June 30, 2021.

The Special Education Notice of Team Meeting was properly developed and issued, including information about rescheduling, alternate participation, and that the District could hold the IEP meeting if the Parents did not attend. Under the IDEA, the District holding the IEP meeting without the Parents in attendance is allowable. However, given that this meeting was being scheduled based on parent request, the Parents' level of involvement in the education of the Student, the District's knowledge of the Parents unexpected travel need, and the length of time from the Parent's request until the District sought to hold the meeting, the District should have postponed the meeting until they could establish a mutually agreed upon time.

The Department does not substantiate this portion of the allegation.

Independent Educational Evaluation (IEE)

The Parents allege the District violated the IDEA when the District failed to provide an IEE. The Parents allege the District delayed in providing the Parents information about how to obtain an IEE and that the parameters for obtaining an IEE were unreasonable.

A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child. "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.¹⁸

Except for the criteria in subsection (3), a school district may not impose conditions or timelines related to obtaining an independent education evaluation at public expense. The

¹⁸ OAR 581-015-2305(1)(a)(b)(2)(3)

school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria. If a parent requests an independent education evaluation at public expense, the school district must without unnecessary delay, either ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate. If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.¹⁹

The Parents Allege the District Delayed in Providing the Parents Information about How to Obtain an IEE

The Parents submitted a written request to the District for an IEE on June 14, 2021. The District's response of June 23, 2021, included the District's criteria for the IEE and included examiner qualifications, distance, cost, and report requirements. The District did not inform the Parents on where they could obtain the IEE, such as by providing a list of possible examiners. On June 29, 2021, the Parents requested a list of examiners from the District. On July 7, 2021, the District informed the Parents that a list of qualified examiners within 100 miles was not available. On September 1, 2021, the District provided the Parents with a list of qualified examiners. It took the District 89 days to inform the Parents on how to obtain an IEE.

The Department substantiates this portion of the allegation.

The Parents Allege the Parameters for Obtaining an IEE Were Unreasonable

The District established criteria for the IEE that included the requirement that the examiner is a School Psychologist licensed in the State of Oregon, the evaluation needed to occur within 100 miles of the District, the maximum cost was set at \$1,000, and the District required a copy of the report before payment. The Parents and the Student relocated to another neighboring state on June 20, 2021. As such, the Parents requested the District reconsider the established IEE parameters in light of their unique circumstances. The District adjusted the criteria to include licensed School Psychologists in Idaho and Washington, and the distance of the evaluation increased to 250 miles. While the Parents are amenable to the changes in state licensure requirements and an expanded distance, the Parents alleged the District has a past practice of having special education evaluations completed by staff other than licensed School Psychologists.

The District confirmed they do have other staff members conduct evaluations under the supervision of a licensed School Psychologist. Additionally, the evaluation that the Parents disagree with was completed by a licensed School Psychologist. The District's rationale for setting the examiner qualifications at the School Psychologist level is because the assessment that is being contested was completed by such an examiner.

The Department does not substantiate this portion of the allegation.

Free Appropriate Public Education (FAPE)

¹⁹ OAR 581-015-2305(a)(b)(4)(a)(b)(5)

The Parents allege the District violated the IDEA when the District failed to implement accommodations as outlined in the Student’s IEP, provide appropriate instruction in reading, written language, and mathematics, ESY Services, and an Independent Educational Evaluation. In addition, the Parents allege the District failed to conduct comprehensive evaluations, develop and implement a legally compliant IEP, and afford the Parents the ability to meaningfully participate in the IEP process and decision-making. The Parents allege that these failures caused the Student to experience a lack of progress toward IEP goals and grade-level standards, and was a denial of FAPE.

School districts must provide a free appropriate public education to all school-age children with disabilities for whom the district is responsible.²⁰ Procedural violations may only lead to finding that a child did not receive a FAPE if they: “(I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parent’s opportunity to participate in the decision- making process regarding the provision of a free appropriate public education to the parent’s child; or (III) cause a deprivation of educational benefit.”²¹

In order to determine whether a student has been denied a FAPE, the courts review a district’s compliance with the procedural and substantive components of the student’s education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.²²

The Department’s findings with respect to Independent Educational Evaluation and Parent Participation are addressed in the previous sections. The substantiated allegations in the previous sections resulted in the impeding of the parents’ opportunity to participate in the provision of a free appropriate public education to their child. In addition, during interviews with the Complaint Investigator, District staff indicated that the accommodations required in the Student’s IEP and deemed necessary by the IEP team were “sometimes” provided. That bolsters a conclusion that the District failed to fully implement the Student’s IEP, which negatively impacted the Student’s ability to access education.

The Department substantiates this allegation.

VI. CORRECTIVE ACTION²³

In the Matter of Hermiston School District Case No. 21-054-033

Action Required	Submissions	Due Date
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²⁰ OAR 581-015-2040(1)

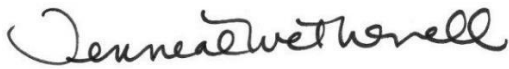
²¹ 20 U.S.C. § 1415(f)(3)(E)(ii)(2005)

²² *Endrew F.*, 137 S.Ct. at 999

²³ The Department’s order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<p>1. The District is to conduct training in the areas of IEP review/revision including IEP decision-making requirements, prior written notice, parent participation, and IEE requests for all members of this student's IEP team.</p>	<p>The District shall submit the following to the County Contact:</p> <ul style="list-style-type: none"> • Training materials • Training agenda • Sign-in sheets 	<p>March 15, 2022</p>
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Dated: this 7th Day of April 2022



x _____
 Tenneal Wetherell
 Assistant Superintendent
 Office of Enhancing Student Opportunities

E-mailing Date: April 7, 2022

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).)