

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Medford School District 549C

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 22-054-027

I. BACKGROUND

On August 8, 2022, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the attorney (Attorney) for the parent (Parent) of a student (Student) residing in Medford School District 549C (District). The Attorney 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.¹ 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.²

On August 15, 2022, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of August 29, 2022.

On August 23, 2022, the Attorney sent an addendum to the August 8, 2022, request for special education complaint investigation adding an additional issue for consideration. The Department's Complaint Investigator sent an Amended *Request for Response (RFR)* to the District on August 24, 2022. The District requested an extension until September 1, 2022 to respond.

The District submitted a *Response* on September 1, 2022, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District Response
2. IEP Progress Report—Annual Goal, 01/21/2022
3. IEP Progress Report—Annual Goal, 03/19/2021
4. IEP Progress Report—Annual Goal, 06/09/2021
5. Multidisciplinary Evaluation Report, 02/10/2022
6. Evaluation Report, 11/07/2016
7. Evaluation Report, 03/05/2020
8. Individual Student Safety Plan, 06/06/2022
9. IEP Meeting Attendance/Summary, 06/06/2022
10. Home/School Communication Plan
11. Notice of Team Meeting, 06/03/2021

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

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

12. Notice of Team Meeting, 06/05/2022
13. Parent/Guardian Consent for Individual Evaluation, 05/31/2022
14. Parent/Guardian Consent for Individual Evaluation, 10/12/2021
15. Parent/Guardian Consent for Individual Evaluation, 10/21/2021
16. Prior Written Notice, 08/24/2021
17. Prior Written Notice, 10/14/2021
18. Prior Written Notice, 11/16/2021
19. Prior Written Notice, 08/24/201
20. Meeting Attendance/Summary, 08/24/2021
21. Notice of Team Meeting, 09/22/2021
22. Notice of Team Meeting, 01/18/2022
23. Notice of Team Meeting, 09/30/2021
24. Medical Statement or Health Assessment Statement, 11/16/2021
25. Meeting Attendance/Summary, 08/24/2021
26. [Student's] Progress as measured by iReady
27. IEP Team Meeting Notes, 08/24/2021
28. Prior Written Notice, 05/05/2022
29. Prior Written Notice, 06/06/2022
30. Prior Written Notice, 08/05/2022
31. IEP Service Summary, 10/17/2019
32. Special Ed Student Contact Log, 09/03/2020—08/26/2022
33. IEP Progress Report, 01/21/2022
34. IEP Progress Report, 03/19/2021
35. IEP Progress Report, 06/09/2021
36. Threat Screening Meeting Notes, 05/31/2022
37. Multidisciplinary Evaluation Report, 02/10/2022
38. Student Evaluation Report, 11/07/2016
39. Student Evaluation Report, 03/05/2020
40. Individual Safety Plan, 06/06/2022
41. Student IEP, 03/31/2022
42. IEP Progress Report, 06/10/2022
43. Eligibility Summary Statement, 02/10/2022
44. Multidisciplinary Evaluation Report, 02/10/2022
45. Disability Statement, Specific Learning Disability, 02/10/2022
46. Prior Written Notice, 04/04/2022
47. Prior Written Notice, 03/07/2022
48. Prior Written Notice, 03/16/2022
49. Special Education Placement Determination, 03/31/2022
50. Prior Written Notice, 02/10/2022
51. Meeting Attendance/Summary, 10/11/2021
52. Meeting Attendance/Summary, 03/31/2022
53. Meeting Attendance/Summary, 02/10/2022
54. Meeting Attendance/Summary, 02/24/2022
55. Disability Statement, Other Health Impairment, 02/10/2022
56. Parent/Guardian Consent for Individual Evaluation, 10/12/2021
57. Notice of Team Meeting, 01/18/2022
58. Eligibility Summary Statement, 02/10/2022
59. Multidisciplinary Evaluation Report, 02/10/2022
60. IEP Team Meeting Notes, 02/10/2022
61. IEP Team Meeting Notes, 02/24/022
62. Parent/Guardian Consent for Individual Evaluation, 10/12/2021
63. IEP Team Meeting Notes, 10/11/2021
64. IEP Team Meeting Notes, 03/10/2022

65. IEP Team Meeting Notes, 03/31/2022
66. Meeting Attendance/Summary, 03/10/2022
67. Prior Written Notice, 03/31/2022
68. Meeting Attendance/Summary, 02/10/2022
69. Meeting Attendance/Summary, 02/24/2022
70. Meeting Attendance/Summary, 10/11/2021
71. Prior Written Notice, 03/31/2022
72. Manifestation Determination and Review, 06/06/2022
73. Meeting Attendance/Summary, 06/06/2022
74. Home/School Communication Plan
75. Notice of Team Meeting, 06/03/2021
76. Notice of Team Meeting, 06/05/2022
77. Parent/Guardian Consent for Individual Evaluation, 05/31/2022
78. Parent/Guardian Consent for Individual Evaluation, 10/12/2021
79. Prior Written Notice, 08/24/2021
80. Prior Written Notice, 10/14/2021
81. Prior Written Notice, 11/16/2021
82. Prior Written Notice, 08/24/2021
83. Meeting Attendance/Summary, 08/24/2021
84. Notice of Team Meeting, 09/22/2021
85. Notice of Team Meeting, 01/18/2022
86. Notice of Team Meeting, 09/30/2021
87. Medical Statement or Health Assessment Statement, 11/16/2021
88. Meeting Attendance/Summary, 08/24/2021
89. Prior Written Notice, 05/05/2022
90. Prior Written Notice, 06/06/2022
91. Prior Written Notice, 08/05/2022
92. IEP Service Summary, 10/17/2019
93. Special Ed Student Contact Log, 09/03/2020—08/26/2022

The Parent, through their Attorney, submitted the following items on September 7, 2022:

1. Parent Request for Complaint Investigation
2. Table of assessments and results
3. Statement of Eligibility for Special Education, 11/29/2016
4. IEP Progress Report, 10/23/2018 Goals
5. IEP Progress Report, 11/29/2016 Goals
6. Student Grade Report, 01/25/2018
7. Student Progress measured by iReady, 5th—7th grade
8. Student Grade Report, 03/19/2020
9. Student Report Card, 12/17/2020
10. Evaluation Report, 03/05/2020
11. Evaluation Report, 03/05/2020
12. Student IEP, 09/22/2020
13. Student Report Card, 12/17/2020
14. Student Report Card, 12/17/2020
15. Student Report Card, 03/18/2021
16. Student Report Card, 03/18/2021
17. Student Report Card, 06/09/2021
18. Student Report Card, 06/09/2021
19. iReady test results
20. Email: Re: [Student], 03/01/2021
21. Student IEP Amendment, 08/24/2021 (05/25/2021)

22. Student IEP, 05/25/2021
23. Student IEP Amendment, 08/24/2021 (05/25/2021)
24. Email: Re: IEP part 2 [Student], 06/14/2021
25. Prior Written Notice, 08/24/2021
26. Parent's IEP Meeting Notes, 08/24/2021
27. Student IEP Amendment, 08/24/2021 (05/25/2021)
28. Letter from Parent, 09/15/2021
29. Student Education Record 2015—2021
30. Student IEP, 10/11/2021
31. IEP Review and Revision, 10/11/2021
32. IEP Meeting Minutes, 10/11/2021
33. Student IEP, 10/11/2022
34. Meeting Attendance/Summary, 10/11/2021
35. Email: Re: [Student]-Medford_Parent list of requests, 10/11/2021
36. Evaluations for Educational needs, 10/21/2021
37. Prior Written Notice, 10/14/2021
38. Prior Written Notice, 10/14/2021
39. Prior Written Notice, 10/14/2021
40. Email: [Student]-Medford: Prior Written Notice and Consent for Evaluation, 10/18/2021
41. Prior Written Notice, 10/22/2021
42. Student IEP, 10/11/2021
43. Prior Written Notice, 11/16/2021
44. Meeting Attendance/Summary, 10/11/2021
45. Student IEP 10/11/2021
46. Email: [Student] and Medford SD, 11/27/2021
47. Email: [Student] and Medford SD, 11/27/2021
48. Email: [Student] and Medford SD, 11/27/2021
49. Email: iReady Results, 12/21/2021
50. [Student]_Assessment Results, 10/22/2021
51. Historical Results, iReady (Grade 5—7)
52. Diagnostic Growth
53. Historical Results, iReady (Grade 5—7)
54. Diagnostic Growth
55. Parent Letter of Complaint, 09/15/2021
56. IEP Progress Report—Annual Goal, 01/21/2022
57. IEP Team Meeting Notes, 02/10/2022
58. Multidisciplinary Evaluation Report, 02/10/2022
59. Multidisciplinary Evaluation Report, 02/10/2022
60. Disability Statement, 02/10/2022
61. Chart: Actual Grade vs Grade tested into
62. IEP Team Meeting Notes, 03/31/2022
63. Student IEP, 03/31/2022
64. IEP Progress Report—Annual Goal, 04/08/2022
65. Psychodiagnostic Testing Evaluation, 06/10/2022
66. IEP Progress Report—Annual Goal, 01/21/2022
67. [Student]-Medford_FIEP 02/10 Part 1, 03/10/2022
68. [Student]-Medford_FIEP 02/10 Part 2, 03/10/2022
69. [Student]-Medford_FIEP 02/10 Part 3, 03/10/2022
70. [Student]-Medford_FIEP 02/10 Part 4, 03/10/2022

The Complaint Investigator interviewed the Parent's Attorney on September 14, 2022, and the Student's Parent on September 16, 2022. On September 22, 2022, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews.

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 Parents' 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 August 9, 2021, to the filing of this Complaint on August 8, 2022.

Allegations	Conclusions
<p>Evaluation and Reevaluation Requirements</p> <p>The Parent alleged that the District violated the IDEA when it failed to conduct an appropriate educational evaluation for the Student prior to determining the Student's special education eligibility. Specifically, it is alleged that the District determined the Student's special education eligibility without fully considering all of the Student's exhibited academic difficulties, including in areas of written expression, math, and social skills/anxiety.</p> <p>(OAR 581-015-2105; 34 CFR 300.301 & 300.303)</p>	<p>Not Substantiated</p> <p>Two educational evaluations fall into the complaint period. The first was conducted in 2020 based on the Parent's concerns regarding the Student's reading ability. The District observed a lack of expected progress due to a reduction in in-person instruction caused by the COVID-19 pandemic and awarded recovery services. The District's 2022 evaluation evaluated the Student in the areas of written expression, math, and social skills and for anxiety as requested by the Parent.</p>
<p>General Evaluation and Reevaluation Procedures</p> <p>The Parent alleged that the District violated the IDEA when it failed to evaluate the Student in all areas of suspected disability, academic performance, and related services needs.</p> <p>(OAR 581-015-2110; 34 CFR 300.304 & 300.305)</p>	<p>Not Substantiated</p> <p>The District conducted a variety of evaluations to assess the Student's needs. The Parent and the District disagreed on which of those assessments would appropriately evaluate the Student. The evaluations conducted by the District did address the areas of concerns voiced by the Parent.</p>
<p>Content of IEP</p>	<p>Not Substantiated</p> <p>There is evidence in the record that the District documented the Student's present levels of</p>

<p>The Parent alleged that the District violated the IDEA when it failed to:</p> <ul style="list-style-type: none"> a) Maintain appropriate or accurate data regarding the Student's present levels of academic achievement and functional performance. Specifically, it is alleged that the Student's IEP did not contain baseline data for the Student's IEP goals thereby frustrating the Parent's and IEP Team's ability to determine and/or measure the Student's progress toward annual goals and short-term objectives; b) include in the Student's IEP a statement of annual goals that were measurable. Rather, it is alleged, that the District included a single goal that was not clear, did not state how the goals would be measured, nor details of the specific special education and related services that would be provided to the Student; c) include progress monitoring data in the Student's IEP or how the Student's progress toward IEP goals would be reported; and d) include within the IEP information regarding the specific curriculum utilized to meet the Student's unique needs. <p>(OAR 581-015-2200; 34 CFR 300.320)</p>	<p>academic achievement and functional performance.</p> <ul style="list-style-type: none"> a) The Student's IEP goals were tied to District testing rather than the Parent's preferred method of class grades. b) The Student's IEP described how the Student's progress would be monitored and measured. c) The IDEA does not require that the District describe the specific curriculum it will utilize in a student's IEP.
<p>IEP Team Considerations and Special Factors</p> <p>The Parent alleged that the District violated the IDEA when it failed to consider the Parent's concerns in the development of the Student's IEP. Specifically, it is alleged the Parent raised concerns regarding the Student's lack of progress in the academic program of instruction and that suggestions from evaluations by experts were not being implemented.</p> <p>(OAR 581-015-2205; 34 CFR 300.320, 300.324(a)(1) & (2) & (b)(2))</p>	<p>Not Substantiated</p> <p>The Student's IEP Team met numerous times, considering, and discussing the recommendations from evaluators. The Student's IEP Team eventually incorporated into the Student's March 31, 2022, IEP those accommodations that the team determined were appropriate for the Student. The Parent provided input during each of these meetings.</p>
<p>Additional Parent Participation Requirements for IEP and Placement Meetings</p> <p>The Parent alleged that the District violated the IDEA when it failed to appropriately evaluate the Student, which impeded both the Parent's opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the Student, and the</p>	<p>Not Substantiated</p> <p>The District's most recent evaluation included all of the areas of suspected concern raised by the Parent. Some areas of concern regarding the Student</p>

<p>Parent's ability to participate in the formulation of the Student's IEP.</p> <p>(OAR 581-015-2195; 34 CFR 300.322, 300.500, 300.327, 300.328 & 300.501(c))</p>	<p>could not be fully evaluated due to a lack of data provided.</p>
<p>When IEPs Must Be In Effect</p> <p>The Parent alleged that the District violated the IDEA when it failed provide special education and related services to the Student in conformity with the Student's IEP. Specifically, it is alleged that the District,</p> <ul style="list-style-type: none"> a) did not conduct frequent checks for understanding, reduce volume of writing/copying tasks, shorten assignments, or provide time limits for task completion in conformity with the Student's May 25, 2021, IEP and August 24, 2021, IEP amendment. It is also alleged that other accommodations outlined in the May 25, 2021, and August 24, 2021, IEP were provided only when the Student requested them; b) did not conduct frequent checks for understanding, reduce volume of writing/copying tasks, shorten assignments, provide advance organizers, or copies of class notes and assignment models, in conformity with the Student's October 11, 2021, IEP; and c) did not conduct frequent checks for understanding for task and direction when assignments were given, reduce volume of writing/copying tasks, shorten assignments, provide preferential seating, provide daily communication sheet including status of work completed, provide repeated practice and review, or provide school/home communication, in conformity with the Student's March 31, 2022, IEP. <p>(OAR 581-015-2220; 34 CFR 300.323, 300.324)</p>	<p>Not Substantiated</p> <p>The record contains communications between the Parent and the District regarding the provision of accommodations to the Student. These communications largely consist of questions regarding the way accommodations were provided. The record supports that there was confusion regarding how accommodations may be provided rather than the accommodations not being provided.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>It is alleged that the District violated the IDEA when:</p> <ul style="list-style-type: none"> a) It failed to assess the Student in all areas of suspected disability; 	<p>Not Substantiated</p> <ul style="list-style-type: none"> a) The Department does not find evidence that the District failed to evaluate the Student in the areas of suspected disability.

<p>b) It deprived the Parent of a meaningful opportunity to participate in the development of the Student's IEP;</p> <p>c) it failed to develop an appropriate IEP for the Student as a result of the District not conducting appropriate assessments, including appropriate or accurate present levels statements, measurable annual goals, and progress monitoring data; and</p> <p>d) it failed to provide special education and related services as outlined in the Student's May 25, 2021, August 24, 2021, October 11, 2021, and March 31, 2022, IEPs, thereby denying the Student a FAPE.</p> <p>(OAR 581-015-2040; 34 CFR 300.101)</p>	<p>b) The Parent participated extensively in all IEP meetings and was provided with opportunities for training on accommodations offered to the Student;</p> <p>c) The Student's IEP included a present levels statement, measurable annual goals, and progress monitoring based on district assessments and evaluations.</p> <p>d) The record contains evidence of discussions regarding how accommodations and related services would be provided to the Student. There is insufficient evidence to conclude that related services were not provided.</p>
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<p>REQUESTED CORRECTIVE ACTION</p> <ul style="list-style-type: none"> • The Parent suggests that the District fund a diagnostic assessment of the Student's reading, writing, and math deficits designed to diagnose specific areas of deficit and make recommendations for research-based, targeted, direct instruction of those deficit areas. Such recommendations could include Orton-Gillingham, Lindamood Bell, or other intervention program as may be suggested by the third-party diagnostic assessment. The Parent suggest that the District fund two biennial diagnostic assessments to monitor the Student's progress and determined the effectiveness of the implemented diagnostic assessment. • Based on the diagnostic assessment and intervention, the Parent requests that the District fund the Student's enrollment in the recommended intervention for up to three hours per week. The Parent envisions this funding to include provision of a laptop computer, headphone/microphone, and access to high-speed internet at the District's expense. The Parent envisions the instructor for the interventions to be certified in all aspects of the targeted intervention, including evaluation, progress monitoring assessments, and instruction. The Parent seeks the District's funding for the Student's enrollment in the research-based, targeted, systematic reading, writing, and mathematics programs until the Student's skills in mathematics, fluency, vocabulary, spelling, and comprehension and writing are within normal ranges (45th percentile or higher) for the Student's enrolled grade on reading material presented at the mid-range Lexile level for the Student's enrolled

grade and math curriculum presented at the Common Core State Standards of the Student's enrolled grade.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before August 9, 2021. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

- 1) The Student is 15 years old and in the ninth grade.
- 2) The Student is eligible for special education as a child with a Specific Learning Disability. The Student is also diagnosed with dyslexia. The Student is very social, works hard, and takes responsibility for their schoolwork. Standardized assessments show the Student has weaknesses in mathematics, while curriculum-based measures indicate this is an area of academic strength. Standardized tests indicate that the Student demonstrates strengths on measures of comprehensive-knowledge, fluid reasoning, short-term working memory, and cognitive processing speed and auditory processing.
- 3) The Student had a prior evaluation from School Psychologist 1. The Student was then in third grade. The concerns raised at that time were the Student's difficulties in reading and writing, specifically their inability to respond adequately to academic interventions in the area of reading. School Psychologist 1 reviewed the Student's records including a developmental health history, conducted classroom observations, and administered the Woodcock-Johnson IV Test of Cognitive Abilities and Woodcock-Johnson IV Tests of Achievement. The Student displayed low achievement in the area of reading fluency and cognitive processing weakness in long term retrieval, while demonstrating average or better functioning in most other cognitive abilities
- 4) On March 5, 2020, School Psychologist 2 completed an evaluation of the Student. This evaluation arose out of concerns raised by the Parent regarding the Student's needs and academic progress. The evaluation was conducted in response to the Parent's concern regarding "long-standing difficulties with developing adequate reading skills." School Psychologist 2 administered the Reynolds Intellectual Assessment Scales 2nd Ed., and the Feifer Assessment of Reading (FAR). Examination results suggested mixed dyslexia "which involves a combination of poor phonological processing skills, slower rapid and automatic word-recognition skills, inconsistent language comprehension skills, and odd error patterns during reading."
 - a) As part of the evaluation School Psychologist 2 made such recommendation as encouraging the Student to ask questions and seek help if they do not understand.
 - b) School Psychologist 2 also recommended the use of repeating words, choral reading strategies, encouraging the Student to read aloud, and the use of classroom discussion to achieve the Student's attention.
 - c) The Student's math abilities were not raised as a concern at the time of the 2020 evaluation.

- 5) Later in March 2020, Students shifted to comprehensive distance learning due to the COVID-19 pandemic.
- 6) Based on the records provided, a review of the Student's grades indicates that the Student began 4th grade in 2018 and was meeting standards in all areas at that time. By the second reporting period of 4th grade the Student was showing mixed results in mathematics. By sixth grade, in the 2019-20 school year, the Student was not meeting standards, as measured by their class grade in math during the second reporting period.
- 7) During the 2020-21 school year, the Student was receiving incomplete marks, a notation of no grade at times, and at the end of the 2020-21 school year received a "below proficiency" grade in their math class.
- 8) On March 5, 2020, the District's evaluation found that the Student was moderately or significantly below same-aged peers in several critical reasoning skills and recommended "using a multi-sensory type of Orton-Gillingham program, coupled with a fluency model such as Read Naturally, and the computerized models of Read 180. School Psychologist 1 found the Student met the criteria for Specific Learning Disability as a result of this evaluation.
- 9) On October 12, 2020, an administrator at the Student's middle school sent an email to the Student's teachers explaining that the Student struggled with distance learning and required significant assistance from the Parent to complete assignments.
- 10) On May 25, 2021, the Student's IEP indicated that the Student was administered the iReady math diagnostic test on January 8, 2020. The Student scored an overall grade level 5. The Student obtained the following math scores: algebra and algebraic thinking, level 6; geometry, level 5; measurement and data, level 4; numbers and operations, level 3. The Student's IEP indicated that the Student would receive supports to assist growth in math.
- 11) The District provided assessment data as part of the record indicating that the Student's iReady math assessment from the 2020-21 school year showed they were working at the overall level of 2nd grade. Diagnostic testing from September 12, 2021, showed that the Student was working at a 5th grade level overall. An iReady math assessment dated January 20, 2022, showed better than typical growth, with a 21-point gain. The Student showed growth in all strand areas and was near grade level in number and operations, algebra and algebraic thinking, and geometry.
- 12) The Student's May 25, 2021, IEP noted that the Parent was very concerned regarding the Student's progress in reading. The Parent was especially concerned that the Student may not be prepared for the pace of reading at the high school level.
 - a) The Student gained 36 points during the 2020-21 school year on their iReady reading diagnostic. The Student received a passing grade of "C" in their 7th grade English class 2nd trimester. On an iReady diagnostic reading assessment in a comprehensive distance learning education setting (administered January 29, 2021), the Student scored an overall level 4 (547). The Student's overall score places them at the 18th percentile. The Student had a Lexile Measure of 770. The Student tested out of Phonological Awareness, Phonics, and High-Frequency Words.
 - b) In vocabulary, the Student scored a level 5 (580) showing an ability to use prefixes, suffixes, and base words and understand word relationships.
 - c) In Literature Comprehension, the Student scored a level 4 (552) showing an ability to connect text and visuals and identify points of view in literary text.
 - d) In Informational Text Comprehension, the Student scored a level 3 (509) and was developing proficiency with below-grade informational texts in skills such as

demonstrating understanding of key ideas and details and using text features to locate information.

- e) The Student scored overall 466 (level 5) on an iReady math diagnostic administered January 8, 2020. The Student scored the following in different domains: algebra and algebraic thinking, level 6; geometry, level 5; measurement and data, level 4; numbers and operations, level 3.
- 13) The Student's May 25, 2021, IEP included an annual goal in reading, with the expectation that by the end of the IEP cycle, the Student would be able to ask and answer questions and identify elements of informational text at the 5th grade level in 2 out of 3 opportunities as measured by iReady & curriculum-based measures.
- a) The Student's IEP also included specially designed instruction (SDI) in reading and study skills.
 - b) The Student's IEP further specified supplementary aids and services such as: frequent checks for understanding, providing copies of presentations, advance organizers, word processors, speech-to-text devices, shortened assignments, audio books or textbooks, time limits for task completion, reduction in volume of writing, repeating, simplifying, or clarifying directions, and word predictions, among others.
 - c) The Student's IEP also included accommodations in mathematics to include the use of text-to-speech, testing in separate settings, calculators, and multiplication tables. The Student was also afforded variety of accommodations in all general education settings, with access to charts and math tools for math courses.
- 14) On June 8, 2021, the Parent sent an email to the District inquiring about alternative curriculum supports for the Student, the Student's grades, and the Student's progress.
- 15) On July 21, 2021, Administrator 1 sent an email to the Parent responding to questions the Parent raised about the Student's IEP. During interviews with the Department's Complaint Investigator, Administrator 1 noted that the District had reached out to the Parent in February 2021 to schedule an IEP meeting to address the Parent's concerns about adding additional supports for the Student. Administrator 1 noted that the Parent declined that offer to meet. The Student's IEP Team later met in May 2021, where study skills were added to the Student's IEP. Administrator 1 clarified that the Student's Math Teacher stated during a May 2021 meeting that the Student received a passing grade because they were on an IEP. Administrator 1 clarified that Student was able to pass the course because of the IEP accommodations.
- 16) On August 24, 2021, the IEP Team met to review the Student's IEP. During the IEP Team meeting, the Parent expressed concerns regarding the Student's progress in reading and requested additional accommodations. During the meeting, the District explained that it measures student progress through state testing that occurs yearly, and District testing (iReady) that occurs monthly. The Student is afforded testing accommodations and takes tests in the special education environment. The team discussed testing options and accommodations with the Parent. Accommodations considered included addressing the impact of missing instruction time due to the Student's inability to follow lessons in class. The team discussed the Student's evaluation and agreed that the Student would benefit from hearing others read fluently. The team identified the need for the Student to buy into "advocating for [their] needs." The team discussed strategies to help the Student stay engaged with lessons. At the meeting, the Parent requested that the District conduct a full evaluation of the Student, with the District responding that the request would be decided within two weeks. The Parent also requested a 1:1 aide, with other IEP team members expressing the opinion that the Student was not demonstrating the need for a 1:1 aide. As part of this meeting,

the team reviewed the Student's iReady test scores, and noted an increase in skills historically.

- 17) On August 24, 2021, the District provided the Parent a Prior Written Notice (PWN) documenting the addition of services to the Student's IEP. The team added the accommodations of: a break card, providing a paper copy of presentations in advance, school to home communication, a separate setting for summative assessments arranged by the General Education Teacher with the Case Manager, encouraging initiation of tasks, providing assignments shortened before given to the Student, and providing a paper copy of notes and assignment instructions when available.
- 18) On August 24, 2021, the IEP Team met to amend the Student's IEP. The majority of the meeting was focused on the Student's struggles with reading and strategies to foster learning. The team discussed cognitive abilities, accommodations in general education, and the tools used by the District to assess the Student's progress, including the specific assessments utilized. At the meeting, the District explained that District testing is conducted monthly to monitor the Student's progress. There was further conversation at the meeting on the difference between curriculum-based measurements and district assessments.
- 19) On September 1, 2021, the Case Manager sent the Parent an email inquiring about a form created by the Parent that the Student presented to the Case Manager and other teachers. The Case Manager indicated their understanding of the IEP accommodation was that the Case Manager would check in with the Student's teachers and then send the Parent an email weekly. The Case Manager then inquired whether the Parent preferred that the District utilize the form the Parent created, seeking agreement from all parties to use that form rather than the weekly check-ins the Case Manager was then utilizing.
- 20) On September 2, 2021, the Parent sent the Case Manager an email requesting that the Case Manager complete a form to support the Student in remembering to complete assignments. The Parent also encouraged the Student to self-advocate when in need of assistance and reiterated that this was discussed at a previous IEP team meeting.
- 21) On September 2, 2021, the Parent sent the Case Manager an email agreeing that the Student benefitted from identifying when the Student needed help and self-advocating for assistance.
- 22) On September 15, 2021, the Parent sent a letter to the District regarding concerns about teachers' ability to implement interventions to assist the Student. The Parent raised specific concerns regarding interventions to assist children with dyslexia. The Parent suggested that the District's inability to provide appropriate supports led to the Student's reading difficulties.
- 23) On October 11, 2021, the Student's IEP Team met to discuss the Student's IEP and accommodations provided to the Student. As part of this meeting, the District discussed with the Parent the Student's accommodations, including shortening assignments and providing advance organizers provided to the Student. During the meeting the Case Manager discussed having checked in with general education teachers who reported shortening the Student's assignments. The team also discussed with the Parent the option to provide examples of advance organizers.
- 24) On October 11, 2021, the Student's IEP team met to continue discussions regarding formulating an IEP. During this meeting, the Parent's Attorney expressed that the Parent was interested in the team formulating an IEP that addressed the Student's dyslexia. The Parent's Attorney requested that the District conduct a full reevaluation of the Student, observing that the District used existing data to evaluate the Student in 2019. The District responded that the

Student was evaluated by the School Psychologist on March 5, 2020. The Parent's Attorney requested that the District report scores in the IEP's present levels section both as raw/scaled scores and grade level equivalency. The Parent's Attorney also requested that the Student's dyslexia diagnosis be included in the IEP as well as how dyslexia may impact the Student's education. The Parent requested, and the Student's IEP Team discussed, whether to include the specific curriculum that would be delivered to the Student in the IEP. The Team also reviewed the Student's accommodations and their implementation. The Team agreed to reconvene to continue discussions toward the formulation of an IEP for the Student.

- a) As part of the October 11, 2021 meeting, the General Education Teacher discussed the shortening of assignments. The Case Manager noted that they had spoken with other teachers who were aware of the accommodation and were shortening assignments for the Student. The General Education Teacher further stated that assignments were being shortened for the Student. It was further observed that the Student often lacked the stamina to complete assignments, even those that were shortened.
- 25) On October 12, 2021, the District sent the Parent a consent for evaluation. Among the tests to be administered were tests for achievement, intelligence, and behavior. The tests administered would include: Wechsler Individual Achievement Test, 3rd Ed., Wechsler Intelligence Scale for Children, 5th Ed., Behavior Rating Inventory of Executive Function, and the Multidimensional Anxiety Scale for Children, 2nd Ed.
 - 26) On October 14, 2021, the District sent the Parent a PWN stating that the IEP team continued to formulate a final IEP for the Student, and that in the meantime the District would begin providing SDI to the Student.
 - 27) On October 28, 2021, the Parent signed a consent for evaluation. The District sought to evaluate the Student by administering the Wechsler Individual Achievement Text, 3rd Ed., Wechsler Intelligence Scale for Children, 5th Ed., Behavior Rating Inventory of Executive Function, and Multidimensional Anxiety Scale for Children, 2nd Ed. The Parent granted consent for the evaluations while expressing some reservations. The Parent specified on the consent that the administration of the Wechsler Intelligence Scale should conform to the manner in which the evaluation was described in an October 22, 2021 email from the District. The Parent further stated their preference that the Student be evaluated with the same protocols used in 2016 evaluation, and expressed disagreement with the District that certain tests intended to be administered could serve as a progress monitoring tool.
 - 28) On November 16, 2021, the District sent the Parent a PWN of its intent to perform a series of evaluations on the Student. This PWN was in part a response to the additions made to the October 12, 2021, consent form where the Parent indicated their preference for the type and manner of evaluations that School Psychologist 3 would perform. That PWN indicated that the Parent has given consent for the evaluations, but that School Psychologist 3 would determine if the full assessment or portions of the assessment would be administered.
 - 29) On January 18, 2022, the District sent the Parent a meeting notice for the upcoming February 10, 2022, IEP team meeting.
 - 30) On February 1, 2022, the Parent sent an email to the Case Manager inquiring about whether IEP accommodations such as shortening assignments were being implemented for the Student. The Parent observed that the Student had a folder with numerous incomplete assignments. The Parent interpreted this as homework, though their understanding was that the Student was not given homework pursuant to their IEP. The Case Manager responded by email on February 2, 2022, explaining that many assignments are verbally shortened for the

Student, and that the incomplete work observed was not then intended to be homework for the Student. The Case Manager went on to explain that the Student was encouraged to turn in all work at the end of class regardless of the degree of completion.

- 31) On February 10, 2022, School Psychologist 3 completed their evaluation of the Student. School Psychologist 3 reviewed the evaluations performed by School Psychologist 1 in 2016 and School Psychologist 2 in 2020. School Psychologist 3 performed a variety of tests evaluating the Student's potential special education eligibility under the categories of Specific Learning Disability and Other Health Impairment.
- a) Evaluation measures employed for the evaluation included: Wechsler intelligence Scale for Children-5th Ed., Wechsler Individual Achievement-4th Ed., Feifer Assessment of Mathematics (FAR), Multidimensional Anxiety Scale for Children-2nd Ed., Beck Youth Inventories For Children and Adolescents-2nd Ed., and the Behavior Rating Inventory of Executive Function 2nd Ed.
 - b) As part of the evaluation, School Psychologist 3 reviewed the Student's district wide assessment data through iReady. The Student's math ability was also evaluated as part of the evaluation.
 - c) School Psychologist 3 observed that the Student demonstrates cognitive processing weaknesses that are related to their weakness in achievement. "Such cognitive deficits are specific and exists [*sic*] within an 'otherwise normal ability' profile. The Student demonstrates average or better functioning in most broad cognitive abilities, including those most important to acquiring the academic skills at [their] grade level. This pattern of cognitive strengths suggests at least average overall cognitive ability."
 - d) School Psychologist 3 noted that the Student displayed significant concerns in the areas of emotional regulation, anxiety, academic difficulties, depression, and self-concept. School Psychologist 3 observed that they were not provided with relevant medical information to fully assess the Student's potential eligibility for Other Health Impairment but that the IEP Team should give consideration to this eligibility category once provided with that information.
 - e) School Psychologist 3 made a variety of suggestions and recommendations for supporting the Student for the IEP Team to consider.
- 32) On February 10, 2022, the IEP Team met again to continue formulating the Student's IEP. During the meeting, the Parent and the Parent's Attorney requested an Independent Educational Evaluation (IEE). The District requested that the Parent submit a medical statement for OHI eligibility. The Parent and Attorney also asked to obtain clarification on the Lexile measurement from iReady and how it might be the same or different than the other current present level reading information. The District stated its intent to add additional explanation to behavior special factors to clarify that the Student's social-emotional struggles impact their education, and are not conduct related. The District also planned to investigate PSAT requirements for documentation within an IEP for the Student to access accommodations on that assessment. The District agreed to provide clarification on IEP dates related to status of annual IEP Team meetings and amendments from previous meetings. The Team further agreed to continue to work on the formulation of the IEP during a future meeting.
- 33) On February 10, 2022, School Psychologist 3 completed a Multidisciplinary Evaluation Report on the Student. This evaluation considered the results of the Wechsler Intelligence Scale for Children 5th Ed. (12/14/21), The Wechsler Individual Achievement 4th Ed. (12/14/21), Feifer Assessment of Mathematics (01/28/22), Multidimensional Anxiety Scale for Children 2nd Ed. (12/14/2021), Beck Youth Inventories for Children and Adolescents, 2nd Ed. (01/25/2022), and Behavior Rating Inventory of Executive Function, 2nd Ed. (Parent 11/21, Teachers 12/06/21 & 12/13/21). The School Psychologist concluded that the Student exhibits "many more concerns than are typically reported for adolescents" of the Student's age "with regard to emotional

regulation, anxiety, academic difficulties, depression, and self-concept.” School Psychologist 3 noted that the Student would likely meet the requirements for special education eligibility under the category of Other Health Impairment. However, the School Psychologist 3 noted that they were not provided the requested medical information needed to fully evaluate the Student’s eligibility under this category.

- 34) On February 24, 2022, the IEP Team met to continue discussions around formulating the Student’s IEP. This meeting included School Psychologist 3 and a discussion of the Student’s previous evaluations.
- 35) On March 10, 2022, the IEP Team met to review the Student’s IEP. The meeting focused on the addition of the Student’s social/emotional goal. School Psychologist 3 provided input during this meeting and discussion. The Team discussed creating goals around the Student’s dyslexia, and whether engagement was hampered by the Student’s struggles with reading. The Parent and the Parent’s Attorney voiced a preference for an IEE to measure progress, as the Parent and Attorney preferred that the FAR test be repeated to compare the Student’s progress on the same evaluation over time. The District questioned whether the IEE would result in a repeat of the same evaluations conducted in 2019. During the meeting, the Parent expressed concern that teachers were not providing shortened assignments consistently. Teachers discussed examples of how assignments or lessons may be shortened in conformity with the Student’s accommodations. The team discussed a communication system to support the Parent in helping the Student complete work, and turn schoolwork in on time.
- 36) On March 31, 2022, the IEP team met to finalize the Student’s IEP. The Parent and the Parent’s Attorney expressed concern that they believed that the IEP would be flawed because it was not based on appropriate evaluations, nor was an IEE conducted. The team took direction from the Parent’s Attorney on rewriting some goals for the Student. The team discussed ways to address the Student’s anxiety around using assistive technology in class. The Student’s SDI in written language was discussed and adjusted. The team discussed and agreed to increase SDI in reading and create a separate high school schedule providing support in the special education setting that would be reevaluated halfway through the Student’s 9th grade year. The Parent’s Attorney voiced concern that the Student did not make progress in reading “because the gap between [Student] and [their] same age peers grew.” The District noted the Student’s progress is measured against their individual IEP goals, not a comparison against growth rates of typically developing peers.
- 37) On March 31, 2022, the District provided the Parent a PWN of the District’s intent to provide Individualized COVID-19 Recovery Services as a result of a lack of expected progress for the Student in the area of written language during Comprehensive Distance Learning/limited in-person instruction. The District intended to begin providing recovery services on April 1, 2022. The District planned to provide the Student with 300 minutes of recovery services in the special education setting and 300 minutes in the general education setting with the support of the special education provider, to be delivered over the summer. The Parent did not take advantage of the recovery services offered by the District for the Student.
- 38) On March 31, 2022, the District provided the Parent a PWN of the completion of the IEP.
- 39) The Student’s most recent IEP, March 31, 2022 notes in the Parent concerns section that the Parent expressed concerns that the District had not appropriately addressed the Student’s dyslexia. The Parent specifically referenced a March 31, 2020 District evaluation with specific recommendations to assist the Student with reading, noting that the District had not provided any evidence that those recommendations have been implemented.

- a) The Parent further expressed concern that the District's "present levels of performance" language indicates that the Student received a "C" in their 7th grade English class 2nd semester but ignores the teacher's statement that the teacher assigned a "C" only because the Student was on an IEP, and that Student had in fact not passed their English class because the Student had not completed sufficient work for the teacher to compute a grade. The Parent expressed that the letter grade of "C" was not "based on a reduced amount of work."
 - b) The Parent also requested that all statements of assessment scores be accompanied with a grade level equivalent to assist the Parent in understanding the Student's progress over time, even if assessments employed differed over time.
 - c) The Parent expressed concern that the Student's math skills show that the Student is below grade level expectations. The Parent observed that the Student scored in the 17th percentile of the Smarter Balance state math assessment in 5th grade, and suggested that the District had not assessed the Student's full academic achievement levels with a standardized test in more than four years. The Parent also expressed concern that the District was not fully informed regarding the areas of strengths and weakness in the Student's math skills as a result.
 - d) Regarding accommodations, the Parent expressed concern that the Student required specific accommodations, including those listed in the Student's May 25, 2021 IEP and the District's March 5, 2020 evaluation of the Student, were not implemented daily and consistently for the Student.
 - e) The Parent generally expressed concern that the Student's IEP was not implemented as written.
- 40) The Student's March 31, 2022, IEP indicates the following present levels of academic achievement:
- a) In the area of reading, (01/18/2022) the Student's iReady diagnostic placed the Student at the 15th percentile or 3rd to 4th grade level Lexile Measure. In a 09/23/2021 assessment, the Student scored in the 9th percentile. Observational data from the 09/23/2021 assessment suggested that the Student rushed the exam.
 - b) In the area of reading comprehension, on an 8th grade EasyCBM Comprehension assessment, the Student placed in the 37th percentile. The Student placed in the 45th percentile on the 6th grade EasyCBM Comprehension assessment given in the same setting.
 - c) In the area of reading fluency, the Student was assessed using the 8th grade level EasyCBM Comprehension assessment. In February 2022, the Student read 69 words correct per minute, placing them in the 5th percentile for fall of 8th grade. In October 2021, the Student scored in the 6th percentile. On the 7th grade level EasyCBM assessment in October 2021, the Student placed in the 11th percentile.
 - d) The Feifer Assessment of Reading suggests that the Student is significantly below average in overall reading speed and rapid recognition of words. The Student scored moderately below average in their ability to categorize the acoustical properties of words, understand the sequential arrangement of sound properties embedded within words, and deconstruct words into natural syllable breaks. Testing also suggested poor rapid word retrieval skills and limited ability to derive meaning from printed material.
 - e) As a result of testing performed on the Student, the Student's March 31, 2022, IEP included various instructional strategies to support the Student including: listening, previewing, repeated reading simultaneous or choral reading, stop and start technique directional questions, narrative retelling, read aloud, and classroom discussions.
 - f) In the area of mathematics, based on district wide assessments, the Student displays strength in the areas of number and operations, algebra and algebraic thinking, and geometry .

- g) On an iReady diagnostic math assessment administered on January 20, 2022, in a special education setting, the Student scored an overall level 6, placing the Student at the 6th grade level. The Student placed at the 7th grade level in Number and Operations, Algebra and Algebraic Thinking, and in Geometry, and a level 6 in Measurement and Data.
 - h) On an iReady diagnostic math assessment, administered September 14, 2021 in a special education setting, the Student scored an overall level 5. In Algebra and Algebraic Thinking, the Student scored at level 4, and can select the proper operation to solve real-world and mathematical problems, and solve problems involving sharing equal groups, including identifying the remainder.
 - i) On an Easy CBM Basic Math-Algebra assessment given in February 2022 in the special education setting, the Student placed at the 4th percentile. At that time, 8th graders had just started learning Algebra.
 - j) A February 2, 2022 evaluation of the Student included results from the Feifer Assessment of Math, which showed that the Student displays characteristics of a math learning disability (or dyscalculia). The District observed that the Student presents with core overall math skills below grade-level expectations. The District also found evidence of global math delays, though the Student did not necessarily present with a specific subtype of dyscalculia. The District noted that the Student has potential to make significant strides in math provided the Student has access to specific targeted math intervention programs.
- 41) The Student's March 31, 2022, IEP included the following instructional strategies: memory aids, layering instruction, graphic representations, student directed algorithms, use of mnemonics, and easy-to-learn rules.
- 42) The Student's March 31, 2022, IEP included the following goals:
- a) Reading literature: given specially designed instruction, by the end of the IEP cycle, the Student will be able to ask and answer questions and identify elements of literature they read themselves at the 6th grade level in 2 out of 4 opportunities, as measured by curriculum-based measures and district assessments.
 - b) Phonics and word decoding: given specially designed instruction, by the end of the IEP cycle, the Student will know and apply 5th grade-level phonics and word analysis skills in decoding words, with 80% accuracy of unfamiliar multisyllabic words, as measured by curriculum-based assessments using the same tool over time.
 - c) Mathematics: given specially designed instruction, the Student can demonstrate an understanding of expression and equation concepts at the 7th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.
 - d) Written language: given specially designed instruction, by the end of the IEP cycle, the Student can demonstrate planning and editing at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures.
- 43) The Student's March 31, 2022 IEP included SDI in the following areas: reading, mathematics, written language, and social-emotional. The Student was removed from the general education setting for SDI in the following areas: 900 minutes per month for reading, 250 minutes per month for math, 450 minute per month for written language, and 200 minutes per month for social emotional instruction.
- 44) On March 31, 2022, the IEP Team completed the formulation of the Student's March 31, 2022 IEP. The District's IEP Team meeting notes document lingering concerns and doubts about the IEP from the Parent. The District and the Parent planned to meet following the formulation of the IEP to develop the binder organization system, and school/home forms indicated in the Student's IEP.

- 45) On April 20, 2022, Administrator 1 sent an email to the Parent offering to meet to review the revised daily check in form for the Student as indicated at the March 31, 2022, IEP Team meeting.
- 46) On April 22, 2022, the Parent responded to Administrator 1 that their schedule did not allow them to meet during the time suggested by Administrator 1 to review the daily check-in form.
- 47) On May 12, 2022, the Parent sent an email to the District reporting that the Student reported that their assignments were not being shortened. Administrator 1 responded that they would investigate the concern.
- 48) On May 13, 2022, the Administrator 1 responded to the Parent's May 12, 2022, email explaining that the Student may perceive that assignments were not shortened because not all teachers overtly stated to the Student that the assignment was shortened. Rather, the general education teachers may effectively shorten an assignment by not holding the Student accountable for all components of the assignments. Administrator 1 reported having explained to teachers that the Student would benefit from being explicitly told that an assignment was shortened.
- 49) Between May 13, 2022 and May 16, 2022, the Parent and Administrator 1 exchanged emails. The Parent disputed Administrator 1's explanation. Administrator 1 reiterated that teachers would be instructed to provide more communication to the Student so that the Student understood when assignments were shortened.
- 50) The record included numerous emails documenting weekly check-ins between the District and the Parent regarding the Student's progress.
- 51) The record included numerous examples of daily check-in forms exchanged between the District and the Parent. The examples in the record were provided as part of the Parent's response in this matter.
- 52) On May 13, 2022, the Parent sent an email to the District with concerns that information observed in the District's online learning platform suggested that the District was not shortening the Student's assignments pursuant to the Student's IEP. Similar potential issues or misunderstandings regarding the District's online education systems were discussed at the Student's August 24, 2021 IEP Team meeting. As early as October 12, 2020, the District addressed similar concerns from the Parent, informing the Student's general education teachers that the Student had difficulties navigating and making use of the District's online learning platform.
- 53) On June 6, 2022, the IEP Team met to discuss additional issues related to the Student and the Student's educational needs.
- 54) Over the summer, the Parent obtained an IEE, at District expense, for the Student. The Parent provided a copy of this IEE to the District. The District reports having not received a response from the Parent or the Parent's Attorney to schedule a meeting to review the IEE.
- 55) On August 8, 2022, the Parent filed this Complaint.
- 56) As of the date of the interview with District staff and the Department's Complaint Investigator, the Student has yet to attend school during the 2022-23 school year. The District sent the

Parent notice of its intent to drop the Student from enrollment in the District in conformity with Oregon law, ORS 339.065.

- 57) On September 14, 2022, the Department's Complaint Investigator interviewed the Parent's Attorney. The Attorney provided significant background to the complaint. The Attorney focused on the Student's anxiety as an obstacle for their education, asserting that the District had not appropriately assessed or considered the impact of the Student's anxiety on their education. The Attorney expressed concern regarding the Student's reading progress since third grade. The Attorney objected to the evaluations completed by the District, and whether the District had sufficient data given that the precise evaluations conducted in 2020 were not repeated in the 2022 evaluation conducted by the District. The Attorney also asserted that the Student's dyslexia was not appropriately evaluated by the District, and also asserted that the Student's IEP goals were deficient because they were not formulated in measurable ways.
- 58) On September 16, 2022, the Department's Complaint Investigator interviewed the Parent. The Parent expressed concerns regarding the Student's progress in reading. The Parent explained their concerns with the Student's accommodations, specifically whether they were sufficient and whether the District appropriately implemented the accommodations. The Parent spoke to their concerns about the Student's anxiety, the degree to which that may be an obstacle to the Student, and their concern that the District had not given appropriate consideration to the Student's dyslexia.
- 59) On September 22, 2022, the Department's Complaint Investigator interviewed the Student's Case Manager and Administrator 1.
- a) The Department's Complaint Investigator interviewed the Case Manager regarding the Student's IEP accommodations. Regarding daily and weekly check-in forms and emails, the Case Manager noted that weekly check-ins were sent to the Parent by email. The Case Manager observed that in the fall of 2021, the Student brought a form, created by the Parent, for teachers to sign attesting to the completion of the Student's work for that day. The Case Manager observed that they had inquired by email with the Parent on September 1, 2021, whether the Parent wanted to use the form, and that the District could discuss adding the form as an IEP accommodation. The Case Manager further noted that the form was used, and that most of them went home with the Student, so the District was not in possession of the forms. The Case Manager also discussed their observations regarding the Student's anxiety, and how that manifested in practice. The Case Manager observed that, during their conversations with the Student's general education teachers, they reported that the Student frequently did not advocate for themselves. This resulted in the Student's IEP Team changing that accommodation so that general education teachers would check in with the Student, rather than have the Student request assistance.
 - b) The Department's Complaint investigator interviewed Administrator 1 regarding the Student's IEP accommodations. Administrator 1 observed that the Student's March 31, 2022 IEP did include an accommodation for school/home communication. The meeting notes from the meeting show that Administrator 1 and the Parent have agreed to collaborate on the design of the form utilized for this purpose. Regarding such accommodations as organizational systems and school/home communication forms, Administrator 1 denied that the District had not provided these services, and said that following the completion of the Student's March 31, 2022 IEP, Administrator 1 and the Parent had agreed to meet to develop these tools. Administrator 1 reports having been unable to secure a meeting time with the Parent to complete these tasks prior to the end of the 2021-22 school year. Administrator 1 reports that, despite the Student having not returned to the District for the 2022-23 school year, the District intended to convene an IEP Team meeting to consider the results of the IEE provided by the Parent.

- c) Administrator 1 and the Case Manager both discussed obstacles to obtaining the Student's "buy in" to SDI, issues potentially underlying this, and the impact on the Student's academic progress.

IV. DISCUSSION

Evaluation and Reevaluation Requirements

The Parent alleged that the District violated the IDEA when it failed to conduct an appropriate educational evaluation for the Student prior to determining the Student's special education eligibility. Specifically, it is alleged that the District determined the Student's special education eligibility without fully considering all of the Student's exhibited academic difficulties, including in areas of written expression, math, and social skills/anxiety.

School districts must conduct an evaluation or reevaluation before determining that a child is a child with a disability. An initial evaluation must be conducted to determine whether a child is eligible for special education services when a district suspects or has reason to suspect that the child has a disability with an adverse impact on the child's educational performance. Children must be reevaluated if the district determines that the educational or related services needs of the child warrant a reevaluation, or if the parents or teachers request a reevaluation. Reevaluations must not occur more than once per year unless the parent and district agree otherwise. Reevaluations must be conducted at least every three years.³

School Psychologist 2 concluded an evaluation of the Student on March 5, 2020. The Student's IEP Team was then concerned about the Student's reading ability. During the 2020-21 and 2021-22 school years, the Student's classroom math grades indicated the Student struggled in math. The Student's IEP indicated that the Student would be assessed based on iReady assessment data, not class grades. The Student's iReady assessments indicated that the Student showed growth in math skills over the same time. During the period covered by this complaint, the Student underwent an evaluation by School Psychologist 3. The concerns raised by the Parent ahead of that evaluation related to the Student's reading ability. That evaluation commenced following the Parent providing consent on October 28, 2021.

School Psychologist 3 completed the evaluation on February 10, 2022. School Psychologist 3 evaluated the Student in a number of areas related to the Student's exhibited challenges. School Psychologist 3 observed other concerns regarding the Student that could impact the Student's learning, but was unable to evaluate those issues due to a lack of relevant medical information provided by the Parent. These concerns specifically related to the Student's anxiety. This was an area of specific concerns voiced by the Parent.

During interviews with the Department's Complaint Investigator, the District reported having ongoing concerns about other factors impacting the Student's leaning but being prohibited from evaluating the Student in all areas of suspected disability due to the Parent not providing relevant medical information. Administrator 1 and the Case Manager had concerns about the cause of the Student's exhibited work and task avoidance. District staff observed that such avoidance impacted the delivery of specially designed instruction.

School Psychologist 3 evaluated the Student in a variety of academic areas, including

³ OAR 581-015-2105(1)—(4)

mathematics. The Parent's complaint alleges that the evaluation prior to that, conducted by School Psychologist 3, was deficient. School Psychologist 2 completed their evaluation on March 5, 2020. Consent to complete the evaluation was obtained November 15, 2019. While largely falling outside the time period covered by this complaint, the Student was then referred for evaluation by the Parent to address issues with reading. In March 2020, the Student shifted to comprehensive distance learning as the result of the COVID-19 pandemic. The Student's IEP Team further recognized that the Student experienced a lack of expected progress during comprehensive distance learning, specifically that the Student displayed a lack of expected progress in written expression. The District offered the Student Individualized COVID-19 Recovery Services. The Parent disagreed with the Individualized COVID-19 Recovery Services offered, preferring those services to focus on reading. The District intended to begin providing these services on April 1, 2022. However, the Parent chose for the Student to not receive these Individualized COVID-19 Recovery Services.

The District had concerns whether the Student could be found eligible under other eligibility categories. Those concerns could not be fully evaluated by the District in the February 10, 2022, because the Parent did not provide relevant medical data. The District's 2020 evaluation of the Student focused on the Student's needs in reading. The evaluation completed in 2022 addressed additional areas of concerns as observed by the Parent and District. The District further observed that the Student demonstrated a lack of expected progress as the result of the reduction of in-person instruction during the COVID-19 pandemic. The Parent rejected the recovery services offered by the District.

The Department does not substantiate this allegation.

General Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA when it failed to evaluate the Student in all areas of suspected disability, academic performance, and related services needs. The Parent alleged that the District had not appropriately evaluated the Student based on the Student's exhibited academic weaknesses. The Parent specifically alleged that the District, by not repeating tests previously administered to the Student, could not appropriately assess the Student's academic progress.

School districts must utilize a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student. This should include information from the parent. This information is used to determine whether the child is a child with a disability. This information will also be used to determine the content of a student's IEP, including information related to enabling the student to be involved in and make progress in the general education curriculum. Districts may not use any single measure as the sole criterion for determining whether a child is a child with a disability. Districts must ensure that children are assessed in all areas related to the suspected disability, including social and emotional status. Evaluations must be sufficiently comprehensive to identify all the student's special education and related service needs.⁴

Districts must ensure that evaluations are administered by trained and knowledgeable personnel. These should include areas not commonly linked to the disability category in which the child has been classified. Districts should employ assessments and other evaluation

⁴ OAR 581-015-2105(1)—(4)

materials including those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.⁵

The Parent's Attorney asserted in interviews with the Department's Complaint investigator that the District's evaluations were deficient because they did not repeat the same exact tests as previously conducted on the Student during a prior evaluation. The Attorney alleged that the District's failure to repeat the FAR test did not provide the IEP Team with the appropriate comparable data to assess the Student's progress in areas such as math and reading. On October 12, 2021, the District sent the Parent and Attorney a consent form listing the evaluations the School Psychologist 3 intended to administer. The Parent provided consent but wrote on the consent form their preference for how the evaluations would be administered. Administrator 1, during interviews with the Department's Complaint Investigator, explained that the District has concerns that repeating tests previously administered would not provide appropriate or reliable data. Overtesting was also a concern, as the District was also gathering data through iReady in accordance with the Student's IEP. The evaluations conducted by the District assessed the Student in a variety of areas including math and reading.

The Parent's Complaint observes that the IEE obtained by the Parent and provided to the District over the summer break between the 2021-22 and 2022-23 school year included the administration of the FAR reading assessment. During interviews with the Department's Complaint Investigator, the Attorney alleged that the results of the administration of the FAR as part of the IEE demonstrated deficiencies in the District's evaluations. Administrator 1 reported that the District plans to convene an IEP meeting to consider the results of the IEE. To date, due to the Student not attending school during the 2022-23 school year and the Parent not agreeing to meet, the Student's IEP Team has yet to consider the IEE. Administrator 1 expressed the District's intent to move forward with the meeting without the Parent's attendance.

The District performed a variety of evaluations relevant to the Student's observed academic difficulties. School Psychologist 3 chose a variety of evaluations, with the District noting that it had concerns regarding the data obtainable through repeating specific tests that the District previously administered. The Parent has provided the District with the results of the IEE but has been unwilling to meet with the District to discuss these results.

The Department does not substantiate this allegation.

Content of the IEP

The Parent alleged that the District violated the IDEA in several ways regarding the content of the Student's IEP, as follows:

- a) The Parent alleged the District failed to maintain appropriate or accurate data regarding the Student's present levels of academic achievement and functional performance. Specifically, it is alleged that the Student's IEP did not contain baseline data for the Student's IEP goals thereby frustrating the Parent's and IEP Team's ability to determine and/or measure the Student's progress toward annual goals and short-term objectives.
- b) The Parent alleged that the District failed to include in the Student's IEP a statement of annual goals that were measurable. Rather, it is alleged that the District included a single goal that was not clear, did not state how the goals would be measured, nor

⁵ OAR 581-015-2110(4)(b)—(f)

details of the specific special education and related services that would be provided to the Student.

- c) The Parent alleged that the District failed to include progress monitoring data in the Student's IEP or how the Student's progress toward IEP goals would be reported.
- d) Finally, the Parent alleged that the District failed to include within the IEP, information regarding the specific curriculum utilized to meet the Student's unique needs.

Among those items that must be included in an IEP are, a statement of measurable annual goals designed to (1) 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 (2) meet each of the child's other educational needs that result from the child's disability.⁶ The IEP must also include a description of how the child's progress toward meeting the annual goals will be measured.⁷

The IEP must include a statement of the specific special education and related services and supplementary aids and services to be provided to 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 annual goals, to be involved and progress in the general education curriculum, and to be educated and participate with other children with and without disabilities).⁸ The IEP must include the projected dates for initiation of services and modifications and the anticipated frequency, amount, location, and duration of services and modifications.⁹

"The essential function of an IEP is to set out a plan for pursuing academic and functional achievement."¹⁰ "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."¹¹ School districts are expected to "be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable to child to make progress appropriate in light of his circumstances."¹²

The IEP should contain a description of how the child's progress toward meeting the annual goals articulated in the IEP will be measured. The IEP should also contain information on when periodic reports on the child's progress toward meeting annual goals will be provided.¹³ Instruction offered to a student "must be specially designed to meet a child's unique needs."¹⁴ The IEP must provide meaningful benefit to the student for which it is developed. In developing an IEP, a district "is not required to provide a specific program or employ a specific methodology requested by the parent."¹⁵

- a) The Parent alleged the District failed to maintain appropriate or accurate data regarding the Student's present levels of academic achievement and functional performance and that the Student's IEP did not contain baseline data for the Student's IEP goals. The Student's March 31, 2022, IEP does contain present levels data for the Student. This data is provided in the form of iReady assessment data. There is significant communication in the record between the Parent and District discussing the Parent's preference that the Student's progress be monitored and communicated in terms of grade

⁶ OAR 581-015-2200(1)(b); 34 CFR §300.320(a)

⁷ OAR 581-015-2200; 34 CFR §300.320

⁸ OAR 581-015-2200(1)(d); 34 CFR §300.120(a)(4)

⁹ OAR 581-015-2200(1)(e); 34 CFR §300.120(a)(7)

¹⁰ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017)

¹¹ *Id.* at 1001

¹² *Id.* at 1002

¹³ OAR 581-015-2200(1)(c)

¹⁴ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 994 (2017)

¹⁵ *Rowley*, 458 U.S. 175 (1982)

level equivalency instead. The Student's IEP indicates that progress will be measured by curriculum-based measures and iReady comprehension. The Student's IEP indicates that progress would be measured yearly, with progress reported March 30, 2023. The Student's Amended IEP dated August 24, 2021 included similar present levels data based on iReady assessments and grade level indicators. In the Amended IEP, the Student's progress toward IEP goals would be measured by iReady and curriculum-based measures, with progress reported May 24, 2022.

b) The Parent alleged that the District failed to include in the Student's IEP a statement of annual goals that were measurable. Rather, it is alleged, that the District included a single goal that was not clear, did not state how the goals would be measured, nor details of the specific special education and related services that would be provided to the Student. As noted above, the Student's IEP included that the Student's progress towards goals over the course of the school year would be measured by iReady assessment data. The Student's IEPs covered within the complaint period included two pages of supplementary aids and services in the case of the amended August 24, 2021 IEP, and more than three pages in the case of the March 31, 2022 IEP.

c) The Parent alleged that the District failed to include progress monitoring data in the Student's IEP or how the Student's progress toward IEP goals would be reported. As noted above, both the amended August 24, 2021 IEP and the March 31, 2022 IEP indicated that progress monitoring data would be measured over the course of the academic year through iReady assessments. Data would be reported at the conclusion of the IEP cycle inform the IEP Team of the Student's progress.

d) The Parent alleged that the District failed to include within the IEP, information regarding the specific curriculum utilized to meet the Student's unique needs. The IDEA does not require that Districts articulate within the IEP the specific curriculum that will be delivered to the Student. The Student's IEP does include specially designed instruction to assist the Student with their reading difficulties including support from special education staff working with the Student on the general education classes. In addition, the Student had access to a variety of reading supports in all areas of curriculum including text-to-speech services.

The Department does not substantiate this allegation.

IEP Team Considerations and Special Factors

The Parent alleged that the District violated the IDEA when it failed to consider the Parent's concerns in the development of the Student's IEP. Specifically, it is alleged the Parent raised concerns regarding the Student's lack of progress in the academic program of instruction, and that suggestions from evaluations by experts were not being implemented.

In the development, review, and revision of a student's IEP, the IEP team must consider a variety of factors including the strengths of the child, the concerns of the parent for enhancing the education of their child, and the results of the initial or most recent evaluation of the child. The IEP team must also consider the child's academic, developmental, and functional needs.¹⁶ The IEP team should also consider the student's communication needs and whether they require assistive technology devices and services.¹⁷ The IEP team must also consider a

¹⁶ OAR581-015-2205(1)(a)—(1)(d)

¹⁷ OAR581-015-2205(2)(a)—(2)(b)

variety of additional special factors that may impact or impede the student's learning.¹⁸

The Parent was invited to and attended all IEP team meeting during the period covered by this Complaint. The Parent raised numerous concerns related to the education of the Student, primarily focused on the Student's difficulties with reading. The Parent provided input at each of these IEP meetings. The IEP Team considered the results of evaluations. The IEP Team, not individual evaluators, determine the content of the IEP. The content of the evaluations was discussed, with the IEP Team making determinations regarding which of those accommodations were appropriate for the Student. During the 2021-22 school year the Student's IEP Team met numerous times. The development of the Student's March 31, 2022 IEP was preceded by six IEP meetings where the Parent took part: August 24, 2021, October 11, 2021, February 10, 2022, February 24, 2022, March 10, 2022, and March 31, 2022. Many of the suggestions put forth by the Parent were incorporated into the Student's March 31, 2022 IEP.

The Department does not substantiate this allegation.

Additional Parent Participation Requirements for IEP and Placement Meetings

The Parent alleged that the District violated the IDEA when it failed to appropriately evaluate the Student. The Parent alleges that this failure impeded both the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the Student, and the Parent's ability to participate in the formulation of the Student's IEP.

School districts must take steps to ensure that one or both of the parents of the child with a disability are present at each IEP or placement meeting and are afforded the opportunity to participate. To ensure said participation, the district should notify the parents of the meeting early enough to ensure that they will have an opportunity to attend. Meetings should be scheduled at a mutually agreed upon time and place. IEP and placement meetings should be conducted with a parent in attendance. The Parent should be afforded a copy of the IEP at no cost.¹⁹

The Parent alleges that the District failed to appropriately evaluate the Student in the area of math, given the Student's poor academic performance in math. The Parent was especially concerned that their concerns regarding the Student's math performance were repeatedly voiced but seemingly disregarded by the District. The Student's March 31, 2022 IEP includes specially designed instruction and supports in math, stemming from the District's evaluation of the Student initiated on October 12, 2021 and completed February 10, 2022. The Parent alleges that the Student previously exhibited weakness in math but was not evaluated and did not receive support for their academic struggles in math. While the Student's prior September 22, 2020 IEP did not include specially designed instruction in math, it did include accommodations for math. The Student's September 22, 2020 IEP was amended on May 25, 2021, and again on August 24, 2021.

During interviews with the Department's Complaint Investigator, the Parent observed that the Student was not performing well in math. During interviews with the Investigator, Administrator 1 explained that while the Student was not performing well in their math class, the Student was testing at a higher level on District assessments. The District understood that the Student's struggles in math were more related to the Student's difficulties with reading the assignments, rather than mathematical problem solving or conceptualization as indicated by iReady

¹⁸ OAR 581-015-2205(3)

¹⁹ OAR 581-015-2195(1)—(5)

assessments. Administrator 1 noted that the Student's 2021 IEPs had accommodations for math, and that additional SDI was added following the development of the Student March 31, 2022, IEP. The record includes discussion of the Parent's concerns regarding the Student's math ability.

The Department does not substantiate this allegation.

When IEPs Must Be In Effect

The Parent alleged that the District violated the IDEA when it failed to provide special education and related services to the Student in conformity with the Student's IEP, as follows:

- a) The Parent specifically alleges that the District did not conduct frequent checks for understanding, reduce volume of writing/copying tasks, shorten assignments, or provide time limits for task completion in conformity with the Student's May 25, 2021 IEP and August 24, 2021 IEP amendment. It is also alleged that other accommodations outlined in the May 25, 2021, and August 24, 2021, IEP were provided only when the Student requested them.
- b) The Parent alleges that the District did not conduct frequent checks for understanding, reduce volume of writing/copying tasks, shorten assignments, provide advance organizers, or copies of class notes and assignment models, in conformity with the Student's October 11, 2021, IEP.
- c) Finally, it is alleged that the District did not conduct frequent checks for understanding for task and direction when assignments were given, reduce volume of writing/copying tasks, shorten assignments, provide preferential seating, provide daily communication sheet including status of work completed, provide repeated practice and review, or provide school/home communication, in conformity with the Student's March 31, 2022, IEP.

At the beginning of each school year, a district must have an IEP in effect for each child with a disability within the district's jurisdiction. The district must provide special education and related services to the child in accordance with that IEP. As soon as possible, following the development of the IEP, special education and related services must be made available to the child in accordance with that child's IEP. In addition, the district must ensure that the IEP is accessible to each regular education teacher, special education teacher, and related services provider responsible for its implementation. Each teacher and service provider responsible for implementing the IEP must be informed of their specific responsibilities therein.²⁰

The Parent alleges that the District failed to implement various components of the Student's IEP. The Department received this Complaint on August 8, 2022. Therefore, allegations before August 9, 2021, fall outside the IDEA's one year look back provision.²¹ The Parent alleges that the District did not conduct frequent checks for understanding, reduce the volume of writing/copying tasks, shorten assignments, provide advance organizers, or copies of class notes and assignments, and provide school/home communication in conformity with the Student's October 11, 2021 and March 31, 2022 IEPs.

There is little information in the record regarding these allegations. On September 2, 2021, the Parent sent the Case Manager an email agreeing that the Student benefitted from identifying when they needed help and self-advocating for assistance. The IEP meeting notes are filled with discussion between the District and the Parent regarding how accommodations are implemented and whether the Student would benefit from self-advocating for some

²⁰ OAR 581-015-2220(1)—(3)

²¹ OAR 581-015-2030(5)

accommodations or teachers providing them to the Student directly. In the fall of 2021, the record contains examples of daily communication forms exchange between the District and the Parent. During the Department's Complaint Investigator's interview with the District, the District provided records of its attempt to work with the Parent to create daily communication forms as agreed upon in the Student's March 31, 2022, IEP. Those that do exist appear to be in the possession of the Parent, having been sent home as was their intended purpose.

According to IEP meeting notes, the Parent frequently questioned whether various IEP accommodations were provided to the Student. The District observed that there was confusion regarding how certain accommodations would be provided to the Student. The Case Manager reported to the Department's Complaint Investigator their work with general education teachers to reinforce their understanding of the Student's IEP accommodations and ensure their implementation. The Case Manager discussed the various ways in which these accommodations could be implemented in the general education and special education environments. Administrator 1 and the Case Manager both reported that the Parent had numerous questions throughout the Student's middle school tenure regarding how accommodations were provided. Furthermore, the record contains email communication between the District and the Parent regarding the manner in which accommodations such as shortening assignments was accomplished by the District.

The parties in this matter report differing impressions of how and when the accommodations were provided to the Student. Of note is the Student's accommodation for shortening assignments. The Parent reported expecting to see in writing how an assignment was shortened or being able to observe a full-length assignment and the shortened counterpart appropriate for the Student. The Case Manager reported that assignments were often verbally shortened, or general education teachers gave instructions to the Student on how an assignment would be shortened. The Parent and District exchanged emails on this subject most recently in May 2022 and appear to have arrived at a solution regarding improved communications. The Student's IEP does not discuss in detail the way assignments would be shortened.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

The Parent alleged that the District violated the IDEA and denied the Student a FAPE when it:

- a) failed to assess the Student in all areas of suspected disability;
- b) deprived the Parent of a meaningful opportunity to participate in the development of the Student's IEP;
- c) failed to develop an appropriate IEP for the Student as a result of the District not conducting appropriate assessments, including appropriate or accurate present levels statements, measurable annual goals, and progress monitoring data; and
- d) failed to provide special education and related services as outlined in the Student's May 25, 2021, August 24, 2021, October 11, 2021, and March 31, 2022, IEPs.

Each school district is responsible for providing a FAPE to school age children with disabilities for whom the school district is responsible.²² Notwithstanding COVID-19 challenges, school districts "remain responsible for ensuring that a free appropriate public education (FAPE) is

²² OAR 581-015-2040(1); 34 CFR §300.101(a)

provided to all children with disabilities.”²³ If an IEP cannot be implemented as written for distance learning, the IEP team must meet to review and revise the IEP.²⁴


As discussed above, the Department does not find that the District failed to assess the Student in all areas of suspected disability during the period for this Complaint. The Department finds from a review of the IEP meeting minutes that the Parent was afforded a meaningful opportunity to participate in the relevant IEP Team meetings. The District performed a variety of assessments in the Student’s relevant areas of suspected disability. Finally, the Department does not find sufficient evidence in the record to support the contention that the District failed to provide special education and related services as outlined in the Student’s IEP.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²⁵
In the Matter of Medford School District 549C
Case No. 022-054-027

The Department does not order corrective action in this matter.

Dated: this 6th Day of October 2022



Tenneal Wetherell
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: October 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).)

²³ Questions and Answers: Implementation of IDEA Part B Provision of Services in the Current COVID-19 Environment (OSEP 9/28/20)

²⁴ Oregon’s Extended School Closure Special Education Guidance (ODE 5/11/20)

²⁵ 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)).