

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School)
District)
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)

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 14-054-012

I. BACKGROUND

On March 17, 2014, the Oregon Department of Education (Department) received a letter of complaint from the parent (Parent) of a student (Student) residing in the Salem Keizer Public School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint on March 18, 2014 and provided the District a copy of the complaint letter on March 17, 2014.

The parties requested and received an extension of the investigative timeline in order to pursue mediation. When mediation efforts were unsuccessful, the Complaint process was reinstated.

On April 8, 2014, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of April 22, 2014. The District submitted its timely *Response* to the Department and to the parent on April 22, 2014. The District's *Response* included a narrative response and the following documents:

- A. Emails between the District, (including teachers and administrators) and the parents
- B. Student Grades and Progress Reports for the school years 2012-2013 and the current school year, 2013-2014
- C. Handwritten notes from the Assistant Principal documenting meetings and conversations with parents and teachers
- D. Parental contact log kept by District
- E. IEP, including PWN and Team Meeting Notices for IEP dated 1/18/13
- F. IEP, including PWN and Team Meeting Notices for IEP dated 4/11/13
- G. IEP, including PWN and Team Meeting Notices for IEP dated 11/14/13
- H. Evaluation and Re-Evaluation documents
- I. IEP, including PWN and Team Meeting Notices for IEP dated 2/13/14
- J. Eligibility statements for Special Education dated 2/13/14
- K. Measurable Annual Goals for February 2014
- L. Draft IEP for February 13, 2014
- M. Evaluation reports and data
- N. Documentation of assistive technology provided to the Student

On April 29, 2014, the Parents submitted supplemental documentation that included emails, evaluation data and correspondence with the District.

The Department's complaint investigator determined that on-site interviews were required. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department's receipt of the

complaint and must issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.¹ This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR § 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one-year period from March 18, 2013 to the filing of this complaint on March 17, 2014.²

	Allegations	Conclusions
	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1	<p><u>Re-evaluation.</u> Parent alleges that the District failed to properly re-evaluate the Student in all areas related to the suspected disability, particularly for autism spectrum disorder and communication disorder.</p> <p>OAR 581-015-2130 and OAR 581-015-2135 and OAR 581-015-2105 and OAR 581-015-2110 and 34 CFR 300.305.</p>	<p>Unsubstantiated. There was no evidence that the Student exhibited behaviors that would have led the District to reasonably believe the Student was eligible for services related to autism spectrum disorder, hence its failure to evaluate does not violate the IDEA. Further, the Student no longer showed eligibility for a communication disorder under IDEA and the parent did not request a re-evaluation or IEE related to this disability, so there is no violation of the IDEA. Finally, the parent did waive a full re-evaluation of the Student at the November 11, 2013 IEP meeting and agreed to a limited review for the Student's three year re-evaluation due on February 13, 2014. Because the parent knowingly consented to the limited re-evaluation procedure, there is no violation of the IDEA.</p>
2.	<p><u>Implementation of IEP.</u> Parent alleges the District has failed to properly implement the Student's IEP since September of 2013, as the Student has not been provided class materials, quizzes, test or other documentation in a written format (paper copy) the Student can comprehend, not having items read</p>	<p>Unsubstantiated. The Student's IEP did not call for any of the additional accommodations that the Parents requested from school staff until the Student's IEP was revised on November 14, 2013. Also, the District provided a laptop computer to the Student as indicated in the February 25, 2013 IEP and a Fusion Writer</p>

¹ OAR 581-015-2030(12) (2013)

² See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

	<p>aloud to Student as called for in the IEP and not providing learning aids and assistive technology as provided for in the IEP. Parent also alleges the District failed to properly instruct, provide information and/or supervise the Student's teachers regarding the Student's learning needs and accommodations per the Student's IEP.</p> <p>OAR 581-015-2220, 34 CFR 300.323.</p>	<p>after the January 18, 2013 IEP, fulfilling the requirements for assistive technology for written work. Because the District provided assistive technology and special education services as outlined in the Student's IEPs, there is no violation of the IDEA.</p>
3.	<p><u>Assistive technology and learning aids</u> Parent alleges the District failed to provide assistive technology to aid with the Student's communication disorder and failed to provide learning aids and accessible materials to the Student.</p> <p>OAR 581-015 and OAR 581-015-2060(2).</p>	<p>Unsubstantiated. The District has provided both a Fusion Writer and a laptop to the Student to fulfill the assistive technology components of the Student's IEPs. The IEPs required access to assistive technology (AT) for written work, and the record shows these devices were provided to help with written work.</p>
4.	<p><u>Content of IEP.</u> Parent alleges that the District failed to provide an IEP that accurately documented the Student's progress and failed to accurately document the results of the IEP meetings.</p> <p>OAR 581-015-2220, 34 CFR 300.320.</p>	<p>Unsubstantiated. The Student's progress was reflected on the IEPs and in progress reports regarding the Student's annual measurable goals which were remitted to the Parents when the Student received report cards. Further, all IEPs remitted to the Parents contained a section entitled, "Meeting notes" which reflected the discussion and decisions of the IEP team.</p>
5.	<p><u>IEP Team Members.</u> Parent alleges that necessary individuals with knowledge of the Student were excluded from participation in the IEP team meeting and that the District was not timely to responding to the Parent's meeting requests.</p> <p>OAR 581-015-2210(g), OAR 581-015-2190, OAR 581-015-2015, 34 CFR 300.322, 34 CFR 300.321.</p>	<p>Unsubstantiated. All individuals that must participate in the Student's IEP meeting have been present at every IEP meeting according to the sign in sheets contained on the IEPs. Further, the District scheduled the November 2013 IEP meeting and evaluation meeting at a time when all necessary parties, including the Parents, could attend.</p>
6.	<p><u>FAPE.</u> Parents allege the District failed to provide special education services to the Student and that the District failed to provide necessary materials and technologies to</p>	<p>Unsubstantiated. The District continuously attempted to make accommodations for the Student and continuously provided appropriate special education and related services to the</p>

<p>the Student resulting in a denial of FAPE. OAR 581-015-2040, 34 CFR 300.101.</p>	<p>Student, and the Student received educational benefits.</p>
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<p><u>Requested Corrective Action.</u> The Parents are requesting that the District:</p> <ol style="list-style-type: none"> 1. Reimburse and pay for tuition and other expenses associated with the math, social studies and science classes for the Student. 2. Allow the Student to transfer to any school within the District up to and including the year of Student's graduation from high school. The District shall arrange for and pay for transportation costs if the school selected is not Student's "home school both to and from school on regular school days. In addition, the District shall agree to fully comply with the requirements of Student's then current IEP and take all steps necessary to immediately implement the then current IEP. 3. At the option of the Parents, the Student may attend, with the agreement of a receiving school district, any school district that is within thirty (30) miles of Salem-Keizer School District. This option shall extend up to and including the year of Student's graduation from high school. In addition, the Salem-Keizer School District shall arrange and pay for transportation costs, both to and from school, on regular school days. The District agrees to fully cooperate in seeking such transfers and to take such steps as necessary to effectuate a transfer. 4. Employees and agents of the District shall not speak of the Student or the Student's family to any other school or any other school district or its employee's agents, in a negative 	
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	<p>manner or take any steps to disseminate negative information, regarding the Student or the Student's Parents, that they may have concerning the Student or the Student's Parents.</p>	
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III. FINDINGS OF FACT

1. The Student is 12 years old and is currently in the sixth grade. The Student attends Crossler Middle School in the Salem-Keizer School District.
2. The parents reported that the Student was delayed in all areas of development and did not speak until well past the age of two years. The Student was initially evaluated and found eligible for special education services under the category of Communication Disorder on April 27, 2004.
3. The Student had received speech services through Willamette ESD and had an IEP throughout elementary school that provided for 30 minutes of speech therapy as well as an occupational therapy consultation.
4. The Student has also had a history of difficulty with handwriting, drawing people, visual perceptual skills and coordination.
5. On March 31, 2011, the Student was re-evaluated and found eligible for special Education services under the category Specific Learning Disability (SLD). The Student was not found eligible for services under the category of Communication Disorder at this time. Specifically, the Student had participated in speech therapy related to Student's speaking delays and had improved to the point where further therapy was no longer needed.
6. During the 2013-2014 school year, the Student would have Social Studies during the first semester and Science during the second semester of sixth grade.
7. According to the February 25, 2013 PLAAF, the Student's disability impacted Student's ability to participate in grade level written activities without accommodations.
8. The February 25, 2013 IEP provided for accommodations both during State testing and for regular classroom work. The IEP further provided for assistive technology to the Student.
9. The accommodations for state testing on the February 25, 2013 IEP were as follows:

<p>Reading/Literature (Standard selected)</p>	<p>Extended time, administer at time of day most beneficial to Student. Divide testing over several sessions. Minimize distractions. Print hard copy for Student to highlight key words. Student read test aloud to self with use of Whispy.</p>
<p>Mathematics (Standard selected)</p>	<p>Extended time. Administer at time of day most beneficial to student. Divide testing over several sessions. Minimize distractions. Read items and</p>

	response choices aloud to the student.
Science (Standard selected)	Extended time. Administer at time of day most beneficial to student. Divide testing over several sessions. Minimize distractions. Read items and response choices aloud to the Student.

10. According to the February 25, 2013 IEP Service Summary for the Student's classroom instruction, the Modifications and Accommodations were: ***Provide additional time and assistive technology.*** The IEP Placement reflected that the Student would be provided with additional time for written tasks and careful scheduling with the teacher. The Service Summary only pertained to the Student's classroom modifications and accommodations.
10. On April 14, 2013, another IEP meeting was held at the request of the Parent so the Student could be exempted from State testing pursuant to the parent's request to keep student from the State testing. The IEP meeting was held via telephone and the Student was thereafter exempted from State testing. There was no discussion of other accommodations being made for the Student such as providing the Student copies of materials or text books or reading tests/quizzes aloud to the Student. The only modification made to the Student's IEP was that the Student would no longer go to the Learning Resource Center (LRC) for writing; this instruction would be provided in the Student's regular education setting per the parent's request to receive IEP instruction in the general education classroom only.
11. The Student's regular education teachers were given a Student IEP Summary Page(s) regarding the accommodations that were included on Student's February 25, 2013 IEP. The Supplementary Aid/Services, Modifications, Accommodations were: Provide additional time, access to assistive technology and consultation between Special Education & General Education staff. It is a regular practice in the District to provide all regular education teachers with a Student Service Summary page.
12. After the Student began middle school, the Parents had the Student privately evaluated for a disability by a doctor. At this time, it was found that the Student has a disability that affects Student's visual processing. More specifically, the Student's performance on the Visual Recall Test, Visual Manipulation Test, MVPI and the Wold Sentence Copy show that Student is performing below grade level in each of these areas. The evaluation report also states that, there are delays in eye-hand coordination from well-developed visual skills such as tracking, teaming, focusing and depth perception. It is apparent that in the Student's case, these visual skills are delayed to varying degrees for the Student's age. In terms of schoolwork, the Student cannot perform work that requires copying from projection or board onto the Student's paper. The Student has problems with coordinating motor skills with visual acuity. The Parents gave the District notice of the Student's disability evaluation on October 15, 2013.
13. As early as September 23, 2013, the Parent emailed the school and requested a meeting because, in the estimation of the Parent, the Student was falling behind.
14. The District responded to the Parent stating that a planning meeting was scheduled in October to discuss the Student's re-evaluation which was due in February, 2014. The District originally scheduled the planning meeting for October 21, 2013 but had to reschedule due to lack of necessary personnel. The District, on September 24, 2013, requested that the planning meeting be rescheduled. The Parent also had to reschedule the planning meeting/IEP due to the Student's vision therapy appointment.

15. In response to the rescheduling of the planning meeting, the Parents requested an IEP meeting as soon as possible, asking for the dates of either October 17, 2013 or October 21, 2013. However, since the Student was still engaged in vision therapy, the Parents did not feel a full IEP meeting was warranted at that time.
16. The District could not accommodate the request of the Parents and scheduled the dual IEP/evaluation planning meeting on November 14, 2013.
17. Prior to the November 14, 2013 IEP meeting, the Parents continuously contacted the District and requested that the Student be provided with accommodations and modifications for the regular education environment that were not indicated on either the February 2013 or April 2013 IEPs. More specifically, the Parents asked that all tests and quizzes be read aloud to the Student and that the Student receive a 'hard copy' of any materials that would be projected for note taking. The Parents also requested text books for the Student's classes and requested that the Student be provided Student's work in a larger font (14-18 point).
18. The Student's language arts teacher made the additional accommodations the Parents requested prior to any formal modification of the IEP. However, the Student's Social Studies teacher did not always make the requested additional non-IEP accommodations. The Parents did receive a Science text book as well as hard copy of the Math problem books which were all used for the Student's classes. The Student did not have a regular textbook for Language Arts.
19. Parents withdrew Student from Social Studies on November 20, 2013), six days after the November 14, 2013 IEP meeting in favor of home schooling for this subject. The Student stated no copies of written materials or text books have been provided to by the Social Studies teacher and that the Student was at least four assignments behind. The Parent's decision to remove the Student from Social Studies was not directly related to the student's IEP (E46) but rather a lack of overall communication with the Social Studies teacher. The Parents also withdrew the Student from the Math class in favor of home schooling because Math was "too visual". Finally, the Parent removed the Student from the LRC and demanded that the Student spend the entire day in a regular class room.
20. On November 14, 2013, a dual IEP/evaluation planning meeting was held and at that time, the Student received accommodations and modifications which are as follows:
 - a. Read tests/quizzes ahead (sic) in a quiet environment, provide student with copy
 - b. Provide hard copy of all overhead materials and, if possible, in advance
 - c. Resize font for hard copies to larger type (14-18)
 - d. Limit or eliminate timed tests
 - e. Provide a copy of classroom text book to be used at home
21. Also, during the IEP/evaluation planning meeting of November 14, 2013, the Parent gave consent for a re-evaluation based on observation and work samples both written and typed. The Parents agreed that no additional evaluation data was needed to determine if the Student was still eligible for services because the Student was undergoing vision therapy. New testing was not recommended based upon the teacher information and O/T information. The Parents signed the Prior Written Notice regarding evaluation on November 14, 2013.
22. The Student's regular education teachers were given a summary of the accommodations that were included on the November 14, 2013 IEP. It is a regular practice in the District to provide

all of a student's regular education teachers with a student's Student Service Summary page. After the implementation of the IEP in November, 2013, the Parents contacted the Student's caseworker and inquired how the Student's second semester Science class would be conducted. The Parents had concerns that the Student would still be copying from a screen projection and that the IEP would not be properly implemented.

23. The Student's caseworker responded that the Science teacher regularly used an interactive notebook which required the class to copy text from a projection into their notebooks. The caseworker ensured the Parents that she would contact the Science teacher and discuss the Student's accommodations.
24. The Student's annual IEP meeting was convened on February 13, 2014.
25. The Student's progress reports are sent home regularly with the report card. Further, the February 13, 2014 IEP PLAAF contains the following information on whether the Student met the annual measurable goals:

“[The Student] has met ... past year IEP goals by writing a three paragraph story using 5th grade organization and conventions with the use of assisted technology. [The Student] is able to write using capital letters for proper nouns 93% of the time. [The Student] is able to revise [the Student's] writing with adult prompts 90% of the time. [The Student] is close to being on sixth grade level in writing with accommodations in place.”
26. The Student's accommodations were modified at the February 13, 2014 annual IEP meeting. The Student's most recent accommodations are:
 - A. Additional time for assignments based on teacher Parent consult
 - B. Access to assistive technology
 - C. Preferential seating, first two rows of class
 - D. Read test/quizzes aloud in quiet environment/copy for Student also
 - E. Provide copies of all overhead materials in advance if possible
 - F. Resize font for hard copies to larger type (14-18)
 - G. Limit or eliminate timed tests
 - H. Provide a set of textbooks to use at home
 - I. Consultation between regular/SPED teachers
27. During the 2012-2013 school year, the Student was using a Fusion Writer as assistive technology. After the Student's annual IEP meeting in February, 2013, the District requested a laptop for the Student. On April 5, 2013, the Student's LRC teacher applied for a laptop. The Student received a laptop on the same day.
28. The Student had problems with the laptop provided by the District in that it would take, on average, 20 minutes to boot up. Further, the laptop would have problems "reawakening" out of sleep mode. The Student would often start the laptop at home to avoid lengthy boot up times but the Student would still encounter long period of time at the beginning of a class where Student could not use the laptop to take notes.

Further, the Parents reported the laptop would often "crash". The Parents worked with the District's IT department but finally gave the District notice that they would simply purchase a different sort of laptop for the Student.

29. Parents purchased a Chromebook for the Student and worked with the District IT department to enable the Chromebook to access the Student's email and to print out the Student's assignments and tests.
30. At the beginning of the second semester of the 2013-2014 school year, the Student's Science teacher used a screen projection for written warm ups and the class would be expected to copy text from a screen prior to doing hands on lab work. Because of the Student's disability, the Student could not participate in this activity in a timely manner during class time. Accommodations for the Student were not initially made in accordance with the Student's November 14, 2013 IEP. The Parents contacted the school to discuss the Student's IEP accommodations and thereafter the Science teacher accommodated the Student by sending teaching materials to the Student using Google Docs which the Parents then printed for the Student's use.
31. After the Parents contacted the District and requested the Science teacher be provided the accommodations information for the Student, the Science teacher made the accommodations. However in November of 2013 the Science teacher gave a vocabulary test to the class which she read out loud to the entire class. When she finished reading the test to the class, she asked the Student if Student wanted the test read again to Student alone, for the IEP accommodations, The Student refused a second individual oral re-reading of the test. Thereafter, the Parents withdrew the Student from Science class.
32. Prior to the Student receiving therapy for the visual perceptive motor skill disorder, the Parents were unsure why Student's writing performance was suffering. The Student was placed on medication for ADHD but without any specific results. The Student has never been formally diagnosed with ADHD.
33. The Student's report card contains not only grades earned for certain classes but also contains comments regarding the Student's individual characteristics and performance. The comments from the Student's teachers for the first and second semester of sixth grade are as follows:
 - a. Dependable worker
 - b. Contributes well in class; expresses self well
 - c. Contributes well in class
 - d. High quality work
 - e. Uses class time efficiently
 - f. Behavior was commendable
34. The IEP team members attending the Student's three IEP meetings, dated April 11, 2013, November 14, 2013 and February 13, 2014 are as follows:
 - a. Parent
 - b. Special Education Teacher/Provider
 - c. District Representative
 - d. Individual Interpreting evaluation
 - e. Occupational Therapist (For only the November 14, 2013 and February 13, 2014 IEP meetings)

V. DISCUSSION

A. Evaluation/Re-evaluation

The Parents allege the District violated the IDEA by failing to properly evaluate the Student for communication disorder and autism spectrum disorder.

The District is responsible for evaluating a student for a suspected disability if the parent requests an evaluation or if there are factors which would lead a District employee to suspect the student has a disability. OAR 581-015-2105. Further, pursuant to the Child Find obligation found in OAR 581-015-2080, it is the duty of a District to identify, locate and evaluate all resident children with disabilities regardless of the severity of the disability who are in need of special education or special education services. The IDEA does not confer a right to be classified under a particular disability.³ The key is whether the IEP is individualized based on the student's unique needs.⁴

The Parents allege that the District should have conducted an evaluation for autism spectrum disorder for their child who is currently IDEA eligible in the category of Specific Learning Disability (SLD). However, given the totality of the circumstances, there is no compelling evidence which would lead any teacher, administrator or agency personnel to believe the Student would require services related to autism spectrum disorder nor that Student is suspected of having this disability, nor is there any evidence the Student needs an evaluation related to this eligibility category.

Reviewing the Student's grades and progress notes, the teacher's comments specifically state that the Student can stay on task, is a responsible student, makes good use of time and is appropriate in class. The IEP notes indicate Student is well liked by peers, loves to read and learn and is making progress in writing toward the IEP goals. There is no indication that the Student encounters any attention problems and the record contains no mention of any emotional, social, or organizational problems, which could lead a reasonable educator to suspect the Student may have a form of autism spectrum disorder (ASD). The Parents report that Student is shy and reticent to initiate social interactions and that the Student developed some things later than other infants, but District staff reported no social concerns or problems for the Student and noted that Student gets along well with teachers and peers and has leadership skills. Because the Student did not exhibit any behaviors that would lead an educator to believe the Student suffered from autism spectrum disorder, and no indications of ASD needs were relayed to District, no evaluation was requested by the District.

Further, there is no record that the Parents disclosed to the District that the Student was taking any prescriptions for autism spectrum disorder or that the Student had been diagnosed or examined by a health care professional for any form of autism spectrum disorder. Therefore, because there was no evidence that would have led the District to suspect the Student was eligible for services related to autism spectrum disorder, nor in need of testing in this regard, there is no violation of IDEA on the part of the District for failure to evaluate the Student for autism spectrum disorder.

As to the allegation related to communication disorder, the Student did obtain special education services for speech delays throughout elementary school. However, when the Student was re-evaluated in 2011, the testing failed to show that the Student qualified for special education

³ *R.C. , by and through his next of friends, S.K. and D.H., Plaintiff v. Keller Independent School District*, 958 F. Supp. 2d 718

⁴ *Id.*

services related to communication disorder. At no time thereafter, did the Parents request a re-consideration of that testing, nor did they request an Independent Educational Evaluation (IEE) regarding the Student's communication disorder.⁵ It would have been reasonable to request a re-evaluation of the Student at the time this eligibility and its IEP goals were terminated or to request an IEE related to the evaluations leading up to this termination of communications disorder eligibility, if there was a disagreement with the finding that the Student no longer qualified for special education services under the communication disorder category. Additionally, there is no evidence in the record that the current IEP team or the child's educators believe that Student has communication disorder or autism needs nor that they suspect these disabilities. Since there was no request from the Parents for a re-evaluation or an IEE in this regard, nor is there any evidence that child needs communication disorder or autism services at this time, the District did not fail its statutory duty to evaluate in all areas of suspected disability under the IDEA.

Pursuant to OAR 581-015-2090(5)(a), a school district must obtain informed parental consent before conducting any re-evaluation of a child with a disability, except as provided in the exceptions to parental consent.⁶ Additionally, a District must conduct a re-evaluation on a student at least every three years unless the parent and public agency agree that a re-evaluation is unnecessary. OAR 581-015-2105(4). If the IEP team determines no additional data is needed to determine whether a child is or continues to be a child with a disability, and to determine the educational and developmental needs, the public agency must notify the child's parents of that determination and the reasons for it. OAR 581-015-2115 (4)(a)(A). The District is not required to conduct an assessment on the child unless requested to do so by the child's parents. OAR 581-015-2115(4) (b)

The Student's re-evaluation was due in February 2014. On November 14, 2013, the Parents and District held a dual IEP/evaluation planning meeting. Prior to that meeting, the Parents stated that a re-evaluation would not be helpful for Student because the Student was still participating in vision therapy. The notes from the meeting minutes from the November 14, 2013 meeting indicate that the team, including the Parent, determined that because the Student is undergoing vision therapy at that time, assessments may be inaccurate, thus no additional evaluation data was needed at that time. Therefore the necessary three year re-evaluation was limited in scope, and would be based on work, a review of records including samples (both typed and written) and observation. Further, the team did not recommend any new testing for the Student based upon information related to Student's progress which was provided by the Student's teachers and occupational therapist and the Student's vision therapy. The Parent signed a Prior Written Notice at this meeting indicating that a file review, progress reports, teacher input, and team discussion were the only evaluation procedures, tests, reports and records needed at that time due to the Student's vision therapy. They also noted on the notice that the current placement provides the appropriate amount of support. This document is dated November 14, 2013.

Since the Parents knowingly agreed to waive the need for a full re-evaluation of Student at the reevaluation planning meeting, this allegation is unsubstantiated.

B. Implementation of IEP.

The Parents allege the District failed to properly implement the Student's IEP because the Student did not receive textbooks and hard copies of written materials (including but not limited to quizzes and tests), because the Student did not have tests read aloud to him and because the

⁵ If a parent disagrees with a re-evaluation, they may request an independent educational evaluation pursuant to OAR 581-015-2395 (1)

⁶ See OAR 581-015-2090 and OAR 581-015-2095

Student's teachers were not properly instructed regarding the Student's accommodations.

Pursuant to OAR 581-015-2220(3)(a) and 34 CFR 300.323, a District must provide each regular education teacher, special education teacher, and service provider access to a child's IEP if that individual is responsible for implementation of the child's IEP. At the beginning of each school year, a district must have in effect an IEP for each child with a disability within its jurisdiction and school district must provide special education and related services in accordance with an IEP. OAR 581-015-2220(1). A material failure to implement an IEP constitutes a violation of the IDEA and occurs when the services for the Student fall significantly short of those provided for in the IEP.⁷ Minor discrepancies between the services provided and the services called for in the IEP do not give rise to an IDEA violation.⁸

The Student had different versions of an IEP during the complaint period of March 18, 2013 through March 17, 2014 because of multiple team meetings and revisions to the IEP which occurred during this time frame.

The first IEP for the Student during the time in question, was February 25, 2013. It stated that Student has a disability which impacts the ability to participate in grade level written communication activities without accommodation and indicates the Student needs access to assistive technology for written tasks.

Next, a revision to this IEP was made via a meeting where the parent phoned in to the school, on April 11, 2013. This revision was made to address Student's test anxiety and Parent's request to have IEP support in the general education classroom. The accommodations and assistive technology (AT) at issue in this complaint, were not changed at this time.

The IEP dated February 13, 2014 contained the accommodations of extended time for assignments based on Parent/teacher consult, preferential seating for the first two rows of class, and access to assistive technology for writing tasks. The Service Summary page on this IEP also notes that Student should have tests and quizzes read aloud in quiet environment/copy to Student; provide hard copies in advance if possible of all materials; resize font for hard copies to type (14-18); limit or eliminate timed tests; and provide a set of text books to use at home. The meeting documentation cover sheet dated February 13, 2014 indicates that discussion noted that Student is "a likable and capable student" and that "Student can work easily with any student and gets along well with others." Notes further indicate that "Student is very involved with sports and demonstrates leadership abilities in band class. Student has positive attitude and loves to learn." Team discussion of work samples and how Student is doing in class reflects that teacher stated that Student is doing a "great job" and "has made a lot of growth with writing skills." Finally, the IEP meeting notes state, "Parents provide a personal device at this time and further stated that "...Parents are willing to print at home as needed."

Although there were no written modifications in the Student's actual IEP for enlarging font size or reading tests aloud until November 14, 2013, the Parents continually contacted the school staff in the early fall of 2013 to demand that these extra accommodations be followed, despite the fact that none of these accommodations actually appeared on the Student's IEP in effect at that time. Pursuant to OAR 581-015-2200 (1)(d), an IEP must contain 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. Both the February 25, 2013 IEP and the April 11, 2013 IEP, met this criteria

⁷ Van Duyn v. Baker School District, 502 F3d 811, 47 IDELR 183 (U.S. Ct. Appeals, 9th Circuit 2007).

⁸ *Id.*

though they did not list the specific accommodations the Parents wanted at that time. It was not until the November 14, 2013 IEP meeting that the Student's IEP was modified to include these accommodations for enlarged font size on print materials, reading tests aloud in a quiet environment, access to textbooks to take home, and hard copies of quizzes and tests.

The IEP dated November 14, 2013 lists the need of assistive technology for writing on districtwide assessments. It lists the need for access to AT for written tasks throughout the day, and preferential seating in the first two rows of class as accommodations for Student. The November 14, 2013 IEP also added resized font for hard copies to larger type (14-18 font size), limit or eliminate timed tests, read tests/quizzes aloud in quiet environment, provide Student with a copy, and provide a copy of classroom text book to use at home as modifications and accommodations for the Student on the Service Summary page of the IEP. The meeting notes dated November 14, 2013 indicate all required parties were at the meeting and noted that the Parent requested the meeting to discuss revisions to the IEP. These notes also detail discussion regarding the Student's vision therapy and planning for the three year evaluation. These notes state that no additional evaluation data was needed at that time other than hand written/typed work and classroom observations per the team. The notes indicate Parent signed the consent for evaluation PWN at this time and that team was in consensus for the reevaluation planning.

The District accordingly did not fail to implement the Student's IEP from March 17, 2013 through November 14, 2013 as there was nothing written onto the IEP to support the Parents claims during this time frame. The Student's IEP was subsequently modified to take into consideration the results of the Student's vision therapy (including the recommendations by the Student's physician). The Student's February 25, 2013 IEP and April 11, 2013 IEPs were appropriate for the Student, because at the time of their writing, both IEPs were calculated to confer an educational benefit to the Student. They offered access to assistive technology to the Student on written tasks per the decision of the team. For IEP content and implementation allegations, the operant question is not whether the IEP is adequate in light of subsequent developments but whether the IEP was appropriately designed and implemented at the time it is created.⁹ The IEP was written with modifications that the IEP team reasonably believed would benefit the Student educationally. All necessary components of a student's IEP must be in writing for the IDEA's protections to apply. As seen here, the Parents did request an IEP meeting for these accommodations to be added, which was held on November 14, 2013, at which time these changes were made and subsequently implemented. Therefore, the District did not fail to implement the Student's IEP as written prior to the November 14, 2013 IEP team meeting with regard to the accommodations specifically added in the November 2013 IEP. In an email to District dated October 8, 2013 Parent noted that "...teachers have been accommodating on an informal basis" which indicates Parent knew there was no written basis for the requested accommodations in the IEP that was in effect at this time. Parent contends that the Social Studies teacher did not "give full accommodation the first six weeks so the grade was a D," however, as noted above the IEP did not reflect all of the Parent's requested accommodations until November 14, 2013. Therefore the relevant scope of this inquiry is after November 14, 2013.

As for if the teachers had access to the IEPs and were informed of their duties related to student, the District policy is to provide a Service Summary to the Student's regular education teachers that describe any supplementary aids, services, modifications and accommodations to use for a student in alignment with the IEP in effect. It is standard practice in the District for this school to provide a written Service Summary to all regular education teachers after an IEP meeting is held, so that the regular education teacher is aware of what accommodations are needed for their

⁹ B.S. v. Placentia Yorba-Linda Unified School District, 51 IDELR 237 (U.S. Ct Appeals, 9th Circuit, 2009).

students. Additionally full text copies of the IEP are accessible to staff as needed from case managers or shared drives. As the staff who were responsible for implementing the IEP were informed of their specific responsibilities for implementation of the IEP and the specific accommodations, modification, and supports that must be provided in accordance with the IEP and the IEPs are accessible to implementing staff, there is no violation of OAR 581-015-2220(3).

The Parents further allege that the District failed to properly implement the IEP because the Student's Social Studies and Science teachers did not follow the accommodations for the Student. The Student was provided with some text books, hard copies of notes and when possible, quizzes and tests ahead of time. Although the Student did not obtain a Social Studies text prior to being unenrolled, it is unknown if that accommodation would have been made because the Student was withdrawn from Social Studies class within a few school days after the November 14, 2013 IEP meeting, which as noted above, specifically provided for that accommodation.

As for Science class, there is one email from District to Parent dated November 20, 2013 that indicates a situation for accommodations in Science class during this time frame. The email indicates that an administrator told the Science teacher of Student's vision therapy and the November 14, 2013 IEP meeting, and that the teacher was aware of accommodations for Student, and is getting a copy for the November 14, 2013 IEP. During interviews, both parties described an instance when the Science teacher read aloud a quiz to the entire class on one date after the November meeting. However this was not in violation of the IDEA, as the teacher offered the IEP's accommodations to Student for a separate read aloud of the materials, and the Student denied the accommodation as Student had just heard the quiz read aloud with the rest of the class. The record and interviews were silent as to if printed materials were given to Student at this time. No further evidence was offered to indicate the dates or instances in which the teacher was not implementing the IEP after the November 14, 2013 IEP meeting. There is one email dated November 20, 2013 from Parent to District which stated that Student reported not being read aloud to individually or provided with written materials, but this message alludes to the date of October 16 which was again, prior to the November 14, 2013 IEP that specifically required all of the Parent desired accommodations. Another email dated November 20, 2013 from Parent to District states that Student has not received copies of written materials or text books (but does not indicate in which classes), indicates that one teacher is not responding to email or entering grades online quickly enough, and indicates that Student will be withdrawn from Social Studies class. This message was sent three school days after the November 14, 2013 IEP meeting. Another email sent on November 21, 2013 states "our decision to remove Student from Social Studies is not directly related to the IEP....it was driven from a lack of communication from this particular teacher..." As there is inconclusive evidence that the November 14, 2013 IEP was not implemented with fidelity, this allegation is not substantiated.

This allegation is not substantiated and no corrective action is ordered.

C. Assistive Technology and Learning Aids

Parents allege that the District failed to provide assistive technology to the Student and failed to provide learning aids and accessible materials to the Student.

An assistive technology device is defined as, "any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability." OAR 581-015-2000(2). The Student has been provided assistive technology pursuant to Student's IEP accommodations.

The Student initially had a Fusion Writer to assist with classes and written work, but the Student was given a laptop at the end of the fifth grade year because the Parent's believed that a laptop was more appropriate given the Student's entry into Crossler in order to see more lines at a time and to keep an agenda for middle school. As such, the IEP team met and discussed the issue and adopted a laptop.

The Parent wrote an email to District dated November 11, 2013 which stated the laptop took 8-10 minutes to start and noted that it would crash, requiring a restart in the middle of class. This information was also relayed in interviews, but no documentation substantiates how often these issues occurred or precisely when they occurred, or how much class time was at issue due to technology concerns. The email from Parent to District on this matter notes that Student worked with school staff whenever there was a problem with the device. The email records also note the District staff showed Student how to use the laptop, how to attach power cord, where to put flash drive, and how to adjust settings and log on April 29, 2013. Another email from Parent to District notes the laptop took almost 20 minutes to turn on, this email was dated September 30, 2013. The email says it takes the Student 5-10 minutes to open a document. The email further stated Parent would buy Student a Chromebook. There is a series of emails from Parent to school to indicate issues with the Wi-Fi at the school for both the laptop and Chromebook. Although the laptop was not without problems, it still was an acceptable assistive technology device to give the Student educational benefit and the Student was instructed on how to use the device. Although the District provided laptop may have been unreliable at times, it still could confer an educational benefit. The District also had technology support staff who could help Parent and Student with the device if needed. Under the IDEA, the Student is entitled to a serviceable device not necessarily the technological device that is desired by the Parents.¹⁰ It was the decision of the Parent to invest in a Chromebook for the Student and thereafter, the District has undertaken efforts to ensure that the assistive technology that was Parent provided worked appropriately to confer an educational benefit upon the Student.

The Parents also allege that the Student was not provided learning aids and accessible materials. The Student was given text books for Science and Math and these books were present during interviews with the Parents. Providing these texts enabled the Student to forego constant copying of notes and/or problems during class time. The Student also received hard copy of notes and quizzes even before the Student's IEP was formally amended in November 14, 2013, which then required these accommodations. Any accommodation must be specifically written into the IEP in order for the IDEA protections to apply to them.¹¹ Because these specific accommodations were not actually written into an IEP until November 23, 2013, there was no violation of the IDEA.

This allegation is not substantiated and no corrective action is ordered

D. Content of IEP

Parents allege that the District failed to provide an IEP that accurately documented the Student's progress and failed to accurately document the results of IEP meetings.

OAR 518-015-2200(c) provides that an IEP will contain descriptions of how the Student's progress toward the measurable annual goals and states that these progress notes may be given through use of quarterly reports given concurrently with the report cards. Further, a parent has the right to request amendment of the education records of the student if the parent believes

¹⁰ See, Doe v. Board of Education of Tullahoma City School, 20 IDELR 617 (6th Cir. 1993) *cert denied*, 511 U.S. 1108 (1994)

¹¹ OAR 581-015-2200

information in the records is inaccurate or misleading.¹²

The record reflects that the Parent was given reports on the progress the Student was making toward the annual measurable goals with every report card that was remitted to the Parents. Further, the IEPs that were remitted to the Parents all contained a "Meeting Notes" page wherein the scrivener for the District made notes of what occurred at the IEP meeting. There is no documentation or evidence that the Parents disagreed with or requested a revision of the IEP on the meeting notes, nor that District was asked to amend these documents. Further, the February 11, 2014 IEP specifically referenced the progress the Student is making toward the annual measurable goals.

This allegation is not substantiated and no corrective action is ordered.

E. IEP Team Members

Parents allege that necessary individuals with knowledge of the Student were excluded from participation in the IEP team meeting and that the District did not timely respond to the Parent's meeting requests.

An IEP team must usually consist of the student where appropriate, a general education teacher who has taught the student, one or both of a student's parents, an individual who can interpret the instructional implications of the evaluation results, a district representative, and at least one special education teacher of the student or if appropriate a special education provider of the child, and transition services representatives if appropriate. OAR 581-015-2210(1). The District representative must be a member of the team who is qualified to provide, or supervise the provision of, specially designed instruction; knowledgeable of the general education curriculum; knowledgeable of district resources; and authorized to commit district resources and ensure that services set out in the IEP will be provided. OAR 581-015-2210(1)(e)(A)-(F). Further, a parent may invite any other individual whom the parent determines has knowledge or special expertise regarding the child. OAR 581-015-2210(1)(g)(A). Finally, the district representative may also be serving concurrently as another member of the IEP team. OAR 581-015-2210(e).

In this case, every IEP meeting of the period reviewed has been convened with at least one Parent either in person or on the telephone and has been convened with at least one of the Student's other required team members. The telephonic IEP meeting which was held on April 14, 2013 had the requisite attendees, as the Student's principal was serving as the District Representative.

The subsequent IEP meeting which was held on November 14, 2013 also included an occupational therapist in addition to the requisite IEP team members.

A special education teacher had been attending the Student's IEP meetings; however, at the Parent's request, after the Student was no longer to participate in any LRC activities, the Student did not have a special education teacher for any specific classes or instruction. Therefore, the Student's case manager attended the November 14, 2013 IEP meeting as the special education provider for the Student.¹³

There is no record that the Parents requested any other person attend the IEP meetings. On the

¹² See 34 CFR 300.618(a) and OAR 581-015-2300(1) and OAR 581-021-0300

¹³ OAR 581-015-2210(1)(d)

contrary, the record shows that the Parents requested that certain school building administrators be excluded from the IEP meetings. During interviews, the Parents noted that they wanted one special education teacher from a previously attended school to be the 'district representative' at the IEP meetings in question, due to this individual's background and knowledge of working with the student. However, this individual does not meet the legal requirements of a district representative in this situation and the District was not legally bound to produce this employee from another school for the IEP team meetings when other District representatives could attend while meeting the legal requirements for District. The District complied with the Parent's requests to exclude certain building level administrators from the team meetings, although the District was not legally bound to do so.¹⁴ Since the District complied with the team member guidelines set forth in OAR 581-015-2210, there is no violation of the IDEA and no corrective action is ordered.

F. Meeting Request

Under OAR 581-015-2195, a District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate. The District must notify parents of the meeting early enough to ensure that they will have an opportunity to attend the meeting and the District must schedule the meeting at a mutually agreed upon time and place.

The regular annual IEP meetings for this Student generally occur in February of every school year. However, on September 23, 2013, the Parent requested an IEP team meeting because the Parent perceived that the Student was falling behind. There was already an evaluation planning meeting scheduled for the Student on October 21, 2013, but the Parent requested an earlier date for the team to meet in order to address the Parent's concerns for Student's lack of progress.

After the Parent requested an IEP team meeting, the District sent a request to the Parent requesting a delay in the evaluation planning meeting because the requisite personnel were not available to meet at that time. The Parent also requested a schedule change because the Student was participating in vision therapy which prevented one or both Parents from attending the meeting as set. The team decided on November 14, 2013, a mutually agreeable date to hold a concurrent IEP meeting and evaluation planning meeting.

At no time was there ever a failure to include the Parents in the meeting organization, nor to relay information about the meetings to Parents, and the District attempted to comply with the IDEA while taking the Parents' schedules into consideration. The record includes copies of meeting notices sent to Parents ahead of time for the meetings and email logs indicate District worked with Parent to find a mutually agreeable time to meet. There is no evidence that District ignored any requests of Parents to meet.

This allegation is not substantiated.

G. Free Appropriate Public Education (FAPE)

Parents allege the District failed to provide special educational services to the Student and that the District failed to provide necessary materials and technologies to the Student, thus resulting in a denial of FAPE.

OAR 581-015-2040 provides that Districts must provide "special education and related services to

¹⁴ Gelleman v. Calaveras Unified School District, 37 IDELR 125 (U.S. Ct of Appeals, 9th Circuit 2002)

all school-age children with disabilities,” and defines “school age children” as “children who have not yet reached 21 years of age on or before September 1 of the current school year.” Special education is defined as “specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability.”¹⁵ Additionally, FAPE is broadly defined in the 2006 Part B regulations as special education and related services that are provided at public expense, under public supervision and direction, without charge; meet the standards of the State Education Agency; include an appropriate preschool, elementary school, or secondary school education in the state involved, and are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.¹⁶ The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student.¹⁷ The Supreme Court has developed a two part test to determine the appropriateness of an educational program: 1) the procedural requirements of the IDEA must be met; and 2) the IEP must be developed and reasonably calculated to enable the child to receive educational benefit.¹⁸ Districts are not required to maximize a student’s educational performance to provide a student with FAPE.¹⁹

As discussed in Sections B and C above, regarding providing accessible learning aids and assistive technology which are the pertinent special education and related services for the Student’s FAPE, the District has responded to the Student’s particular need for assistance in writing and visual tracking. The Student was originally provided a Fusion Writer pursuant to the February 11, 2013 IEP. Thereafter, the District provided the Student a laptop at the request of the Parents. When the laptop did not perform in the most efficient manner, the Parents unilaterally purchased a Chromebook for the Student. There is no record that the District was approached regarding replacing the Student’s laptop. However, the District has taken steps through its IT department to solve all problems with printing, email and internet access that the Student encountered with the Chromebook. The Student does print some items at home due to the close proximity of home to school and District’s inability to print from Student’s device at all times; however, there is no specific printing requirement listed in the Student’s IEP. Additionally, there is no legal requirement to provide a specific device or technological item to a student based on parent or student preferences, if District has made available other suitable assistive technology devices or means to access what the student needs pursuant to the student’s IEP.

Here, the District did respond to the Parent’s request for “necessary materials,” i.e. the District provided the Math problem book when asked, teacher enlarged font size in documents in Language Arts class and provided Google Docs copies of notes. All of these extra accommodations were made for the Student by some teachers prior to having amendments formalized into the Student’s IEP which called for such measures. After the November 14, 2013 IEP meeting, the Student was given access to a Science text book, had hard copies of print materials and had enlarged fonts of between 14 and 18 point type for assignments. Additionally, Student was making academic progress and showing educational benefit by making progress toward IEP goals and performing sufficiently in classes. Since the District continuously attempted to and did in fact make updated accommodations for the Student, and because the District provided appropriate special education services to the Student, and the Student did receive educational benefit, there is no denial of FAPE.

This allegation is not substantiated and no corrective action is ordered

¹⁵ OAR 581-015-2000(34)

¹⁶ 34 CFR 300.17

¹⁷ *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

¹⁸ *Id.*

¹⁹ *J.L. v. Mercer Island School District*, 55 IDELR 164 *W.D. Wash. 2010.

CORRECTIVE ACTION²⁰
In the Matter of Salem-Keizer
Case No. 14-054-012

The Department does not order Corrective Action resulting from this investigation.

Dated: this 3rd Day of June 2014



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

Mailing Date: June 3, 2014

²⁰ 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)).