

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of  
Corvallis School  
District 509J

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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
CASE No. 23-054-029

**I. BACKGROUND**

On July 20, 2023, the Oregon Department of Education (Department) received a written special education complaint from a Parent of a child (Student) who resides within the Corvallis School District 509J (District). The Parent requested that the Department conduct a special education investigation, as provided by Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations. The Department must complete the investigation and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This rule also permits the Department to extend the timeline by mutual agreement of the parties to participate in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup> In this case, the District agreed to attempt resolution through mediation and/or a facilitated IEP, but the Parent chose not to pursue those options.

The Department’s Complaint Investigator (Complaint Investigator) spoke with the Parent by phone on July 28, 2023. During this conversation, the Investigator reviewed the allegations in their Complaint and identified which could be addressed in the investigation and those that would not be investigated because they did not state a potential violation of the IDEA.

On July 31, 2023, the Investigator sent a *Request for Response (RFR)* to the District identifying the allegations in the Complaint to be investigated and establishing a *Response* due date of August 15, 2023.

On August 16, 2023, the District submitted a narrative *Response* to the Investigator and to the Complainant. In its *Response*, the District reiterated its willingness to engage in mediation and/or a facilitated IEP to resolve any concerns about the IEP content or implementation of the Student’s IEP.

In its narrative *Response*, the District acknowledged one allegation in full and two other allegations in part but denied all other allegations. The District suggested corrective action.

Along with the narrative *Response*, the District provided the following written materials:

1. District’s narrative *Response* to the Complaint
2. A series of documents from the Camas, Washington School District dating from 3/19/20-3/24/2021:

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<sup>1</sup> OAR 581-015-2030(12)

<sup>2</sup> OAR 581-015-2030(12)

- a. Request for initial Evaluation Extension, Camas School District, extending timeline for initial special education evaluation from 3/19/2020 to 4/20/20 due to COVID-19 school closure
  - b. Meeting Notice (undated), for 4/20/2020 meeting
  - c. Evaluation Summary, 4/20/20
  - d. Prior Written Notice, 4/20/20
  - e. Section 504 Meeting, 5/5/20
  - f. Section 504 Notification Consent, undated and unsigned
  - g. Section 504 Notice of Meeting, 5/20/20
  - h. Section 504 Eligibility Determination, 5/22/20
  - i. Section 504 Prior Written Notice, 6/15/20
  - j. Section 504 Accommodation Plan, 4/12/21
  - k. Section 504 Prior Written Notice, 3/24/21
  - l. Section 504 Notice of Meeting, 3/24/21
3. Section 504 Accommodation Plan, Beaverton School District, 3/21/22
  4. Psychological Evaluation Report, prepared by a psychologist at Children's Program in Portland, describing an evaluation conducted in June 2022
  5. Brief letter from physician at Camas Pediatrics, 11/18/22
  6. A series of documents from Corvallis SD 509J, dating from 11/17/22-6/12/23:
    - a. Prior Notice about Evaluation/Consent for Evaluation, 11/17/22
    - b. File Review of Existing Information/Student Referral, 11/17, 2022. Attached to the File Review form were several other forms, that were undated, uncompleted, and unsigned
      - i. Authorization to Use and/or Disclose Educational and Protected Health Information (blank and unsigned)
      - ii. Meeting Notes form (blank)
      - iii. Special Education Notice of Team Meeting (blank)
      - iv. Developmental and Social History (blank)
    - c. Prior Notice about Evaluation/Consent for Evaluation, 11/17/22 (unsigned)
    - d. Prior Notice about Evaluation/Consent for Evaluation, 11/17/22 (signed)
    - e. Student Assessment List, 11/17/22
    - f. Special Education Notice of Team Meeting, 12/19/22
    - g. Confidential Evaluation Report, dated January 9, 2022 but presumably prepared January 9, 2023
    - h. Section 504 Eligibility Determination and Student Accommodation Plan, 1/13/23
    - i. Parent/Student Rights in Identification, Evaluation and Placement (Section 504 of the Rehabilitation Act of 1973 (undated but attached to 1/13/23 Section 504 Eligibility Determination)
  7. Statement of Eligibility for Special Education (Other Health Impairment 80), 1/19/23
  8. Prior Notice and Consent for Initial Provision of Special Education Services, 1/19/23
  9. Individualized Education Program (Initial) 1/19/23
  10. Special Education Placement Determination, 1/19/23
  11. Meeting Notes, 1/19/23
  12. Prior Notice of Special Education Action, 1/19/23
  13. Prior Notice of Special Education Action, 1/20/23
  14. Annual Academic and Functional Goals and Objectives Progress Report, 1/19, 2023
  15. Individualized Education Program (amended), 5/18/23
  16. Annual Academic and Functional Goals and Objectives Progress Report, 6/21/23

On 9/7/2023, the District sent two additional documents:

17. SIPPS Extension Level Mastery Tests Teacher's Cumulative Record with scores dated 10/21/22, 11/17/22, 12/15/22, 3/1/23, 3/14/23, 4/5/23, 4/28/23, 5/15/23
18. Star Student Progress Monitoring Report generated 6/21/23, with graph displaying trend line of reading scores for assessments dated 9/20/22, 12/21/22, 1/25/23, 5/30/23, and 5/31/23.

The Parent submitted a narrative *Reply* to the District *Response* on August 22, 2023. The Parent did not supplement their *Reply* with documents. The Investigator interviewed the Parent by phone on 8/28/23. On that same date, the Parent forwarded to the Investigator several email communications between the Parent and the District during the complaint period and a single document. In total, the documents submitted by the Parent included:

1. Parent emails batch #1 9/7-11/3/22
2. Parent emails batch #2 9/9-12/19/22
3. Parent emails batch #3 9/9-12/18/22
4. Parent emails batch #4 11/21-12/12/22
5. Parent emails batch #5 12/19/22
6. Parent emails batch #6 12/24/22
7. Parent emails batch #7 2/9/23
8. Parent emails batch #8 3/6/23
9. Parent emails batch #9 3/10/23
10. Parent emails batch #10 6/8-6/9/23
11. Parent emails batch #11 5/11-5/15/23
12. Parent emails batch #12 5/15, 2023
13. Note from Student's physician, dated 3/6/23

The Investigator reviewed the District's narrative *Response* and the documents that the District provided and determined that interviews with selected staff were necessary. On September 6, 2023, the Investigator interviewed several District staff members who are knowledgeable about the circumstances related to this Complaint: the Special Education Director (Director), the Student Services Coordinator (Coordinator), the General Education Teacher, the Special Education Teacher-Case Manager (Case Manager), the Response To Intervention Specialist (RTI Specialist), the Principal of the Student's school (Principal), and the School Psychologist.

The Investigator reviewed the Parent's *Reply* to the District *Response* and read the Parent-District emails the Parent provided. The Investigator reviewed and considered all documents as well as information that District staff and the Parent provided in interviews in reaching the findings of fact and conclusions of law contained in this Order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS<sup>3</sup>

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from July 21, 2022 to July 20, 2023.

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<sup>3</sup> The Complaint included many concerns that did not state an alleged violation of any provisions of the IDEA and thus could not be investigated. The Investigator explained in writing and in phone calls which allegations would not be investigated and informed the complainant of alternative complaint processes that were available within the District or at ODE and may be able to address those concerns.

Allegation	Conclusion
<p><b>Evaluation</b></p> <p>The Complaint alleges that the District violated IDEA requirements for special education evaluation procedures by:</p> <ol style="list-style-type: none"> <li>1. Unduly delaying special education evaluation. The District had reason to suspect that the Student had a disability beginning on September 7, 2022, the first day of the 2022-23 school year, when the Parent asked for a special education evaluation. The District did not hold an evaluation planning meeting or seek parent consent to evaluate until November 17, 2022.</li> <li>2. Not using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student that could assist in determining: <ol style="list-style-type: none"> <li>a. whether the Student had a disability, and</li> <li>b. the content of the Student's IEP</li> </ol> </li> </ol> <p>(OAR 581-015-2115; 34 CFR §300.304)</p>	<p><b>The District does not contest this allegation.</b></p> <p><b>Substantiated</b></p> <p>The District did a file review, administered a Conners-3, read a brief doctor's note about the Student's ADHD diagnosis, and noted the existence of a recent psycho-educational evaluation. Despite the District's own universal screening indicating a need for urgent intervention, the District did not follow up with additional assessments that would assist the team in identifying the Student's needs and crafting IEP goals and services.</p>
<p><b>IEP Content</b></p> <ol style="list-style-type: none"> <li>1. Not including measurable annual goals or specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable as needed to address the Student's severe delay in reading proficiency;</li> <li>2. Not including an accommodation for adequate lighting in [the Student's] classroom, in which the lights had been dimmed to accommodate a staff member's migraine headaches;</li> </ol>	<p><b>Substantiated</b></p> <p>The academic goals in the Student's IEP were vague, generic, and not supported by assessment data.</p> <p><b>Not Substantiated</b></p> <p>There was no documentation of an unusually dark classroom or the Student's need for an unusual amount of light.</p>

Allegation	Conclusion
<p>3. Not including an accommodation for the Student's disability-related need to use the restroom frequently;</p> <p>4. Not including periodic reports on the progress the Student was making toward meeting annual IEP goals.</p> <p>(OAR 581-025-2200(1)); 34 CFR §300.320)</p>	<p><b>Not Substantiated</b></p> <p>The Student's Physician wrote a letter stating that the Student had a medical condition requiring unrestricted access to the restroom. However, the school already offered unrestricted restroom access to all students.</p> <p><b>Not Substantiated</b></p> <p>Progress reports were provided that conformed to IDEA requirements.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complaint alleges that the District has deprived the Student of the core entitlement of the IDEA, a Free Appropriate Public Education, by not meeting the Student's unique individual disability-related needs for specially designed instruction and accommodations.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Substantiated</b></p> <p>The Student's IEP did not meet the Student's unique disability-related needs.</p>

<b>REQUESTED CORRECTIVE ACTION</b>
<p>The Parent requested the following corrective action:</p> <ol style="list-style-type: none"> <li>1. The district to pay for tutoring with a professional who teaches the Orton Gillingham (OG) method or Barton method.</li> <li>2. A formal apology from the district and admittance that our child was failed by [staff at the Student's elementary school].</li> <li>3. District accountability for failed processes and testing fraud.</li> <li>4. Reimbursed for the cost of the testing that they used for the IEP - \$600.</li> <li>5. Reimbursement for the tutoring Parent had to pay for during the year- \$1000.</li> <li>6. I recommend administrative changes from top down to support parents and children. At this time their policies do not favor the disabled child in any way.</li> </ol>

### 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 July 21, 2022. Some of the facts listed below are provided for historical context but do not suggest potential IDEA violations during the complaint period.

1. The Student is 10 years old and is in fourth grade in a District elementary school in the 2023-24 school year.
2. The Student attended school in Camas, Washington for first grade during the 2019-20 school year. The Parent became concerned about the Student's academic progress, specifically in reading. In March 2020, Camas School District conducted a special education evaluation and found the Student not eligible for special education. At the end of the 2019-20 school year, Camas SD determined that the Student needed a 504 plan.
3. The Student repeated first grade in Camas SD for school year 2020-21 and remained on a 504 plan.
4. The Student attended school in Beaverton, Oregon for second grade during the 2021-22 school year. The Parent reported that a Beaverton School District building administrator advised them that they should seek an evaluation from a private provider.
5. The Parent obtained a psycho-educational evaluation through the Children's Program in June 2022.
  - a. The assessment procedures included:
    - i. Review of Records
    - ii. Observation of [the Student]
    - iii. Beery-Buktenicka Visual-Motor Integration Test, Sixth Edition (BEERY-VMI)
    - iv. Behavior Assessment System for Children, Third Edition (BASC-3)
    - v. Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2)
    - vi. Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2, selected subtests)
    - vii. Conners Continuous Performance Test, Third Edition, (CPT-3)
    - viii. Delis-Kaplan Executive Function System (D-KEFS), selected subtests
    - ix. Multidimensional Anxiety Scale for Children, Second Edition (MASC-2)
    - x. Wechsler Individual Achievement Test, Fourth Edition (WIAT-4), selected subtests
    - xi. Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V)
    - xii. Woodcock Johnson, Fourth Edition Test of Cognitive Abilities (WJ-IV COG)
  - b. The Children's Program evaluation report included the following summarized findings:
    - i. The Student was distractible and impulsive during testing.
    - ii. The Student's cognitive testing yielded a range of scores, from average (Verbal Comprehension Index, Visual-Spatial Index) to low average (General Ability Index, Processing Speed Index) to very low (Cognitive Proficiency, Working Memory Index, Fluid Reasoning Index).
    - iii. Tests related to executive functioning indicated problems with inattention and impulse control.
    - iv. Academic assessments pointed to a mixture of strengths and weaknesses in math (low average and very low subtest scores), written expression (very low and extremely low subtest scores), orthographic processing (extremely low), writing fluency (average and low average subtest scores), reading (very low), phonological processing (low average and very low), phonological awareness (average and very low subtest scores), fluency and decoding (very low), comprehension and language (high average and average subtest scores).

- v. The Student's scores on assessments of social-emotional functioning were mostly "non-significant" with some scores suggesting problems with hyperactivity and attention and some scores in the clinically significant range related to adaptability, social skills, leadership, study skills, and functional communication.
- c. The Children's Program Psychologist who conducted the psycho-educational identified Diagnostic Impressions as follows:
    - i. Attention Deficit/Hyperactivity Disorder, Predominantly Inattentive Presentation
    - ii. Specific Learning Disorder with impairment in reading (word reading accuracy, decoding/fluency, phonological processing - elision, phoneme isolation, rapid naming)
    - iii. Specific Learning Disorder with impairment in written expression (spelling, accuracy, grammar)
    - iv. Unspecified Anxiety Disorder
  - d. Recommendations from the Children's Program evaluation report included:
    - i. Sharing the report with the school team "to assist in developing appropriate supports, accommodations, and even interventions" and perhaps assist in determining special education eligibility.
    - ii. Tutoring, with specific recommendations for evidence-based approaches recommended by the International Dyslexia Association.
    - iii. Home-based strategies for strengthening the Student's academic skills.
    - iv. Accommodations to address the Student's executive function challenges.
6. The Student enrolled at a District elementary school as a third grader at the beginning of the 2022-23 school year.
7. On September 8, 2022, soon after the Student began third grade at a District elementary school, the Parent sent an email to the Dean of Students at the school, stating: "I wanted to share [the Student's] medical documentation for [the] IEP. I would like to begin interventions asap [sic] to help [the Student] with reading per the report which confirms Dyslexia."
- The Dean of Students replied on September 16, 2022: "I know that [the Student] is currently on a 504 and has accommodations in place. With the diagnosis of dyslexia our Special Education teacher should be reaching out to you to better understand [the Student]'s needs. We will continue with 504 supports which the teacher has already been great at accommodating."
8. District staff were aware that the Student had a 504 plan, and implementation began at the beginning of the school year.
9. The Student's school uses a Student Support Team (SST) system that involves weekly meetings of staff members knowledgeable about students who may require special attention and possible referral to various supports. District staff report that the Student came to the attention of the SST early in the 2022-23 school year, and staff members report that a concerted effort to provide needed support to the Student began immediately.

10. The Student's school implements a school-wide Response to Intervention (RTI) program.<sup>4</sup> RTI is not a single program. Instead, RTI includes different models that differ in detail and implementation, but generally include three tiers: Tier 1, which is presumed to meet the instructional needs of the majority of students; Tier 2 which provides supplemental instruction for students for a smaller percentage of students who need more intensive instructional services; and Tier 3 which is intended to address the much higher needs of students who do not flourish in Tier 1 and 2. RTI models include research-based core curriculum, universal screening, progress monitoring through repeated assessment, and tier placement based on the assessment data.

The Investigator was unable to obtain a more specific description of the model the District uses.

11. The RTI program uses the SIPPS (Systematic Instruction in Phonological Awareness, Phonics, and Sight Words) curriculum<sup>5</sup>. District staff describe SIPPS as research-based reading instruction. SIPPS includes "mastery tests" in phonics and sight word reading at five lesson intervals. Under the Every Student Succeeds Act, there are four levels of evidence of effectiveness at which instructional programs can be rated. Level 1 (Strong Evidence) indicates the highest-quality research on a program's effectiveness, but there is an evidence-base for programs at any Level 1-4. SIPPS was determined to meet Level 2 "Moderate Evidence".
12. The District administers Star reading and math assessments for universal screening at the beginning of the school year and repeats those assessments at intervals throughout the year.
13. The Student completed the Star Reading assessment on September 20, 2022. The results showed the Student had a scaled score of 772 and a percentile rank of 1. This percentile rank indicated the Student scored lower than 99 percent of the national same-grade population. According to the assessment's scoring categories, the Student's results placed them in the "Urgent Intervention" range, signaling a need for immediate and intensive reading supports. Specifically, the Star Reading assessment includes four score ranges - At/Above Benchmark, On Watch, Intervention, and Urgent Intervention. Scoring in the Urgent Intervention range, as the Student did, reflects performance well below grade-level expectations and requiring prompt action.
14. The Student was unable to read grade level material and needed to be read to and use text-to-speech software. This continued throughout the 2022-23 school year.
15. At some point in Fall 2022, the Student was placed in Tier 2 of the District's RTI program. The Investigator was unable to obtain a specific date from District staff.
16. RTI staff first administered SIPPS assessments on October 21, 2022. The Student's scores were as follows:

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<sup>4</sup> For detailed description of RTI as widely implemented in Oregon, see: <https://www.oregonrti.org>. Briefly, Tier 1 includes all students. Universal screening of Tier 1 students identifies those students who may need more intensive instruction than the core curriculum alone provides. Those students move into Tier 2, where their growth is measured through frequent assessment of basic elements of reading acquisition—phonemic awareness, phonics, oral reading fluency, and comprehension. Students who do not respond as expected in Tier 2 move into Tier 3, which marks the beginning of a special education referral and possible identification of a specific learning disability (SLD). Data from RTI assessments becomes part of an SLD evaluation.

<sup>5</sup> See more information about SIPPS at the publisher's website: <https://www.collaborativeclassroom.org/programs/sipps/>.



- a. Mastery Test 1
    - i. 10 CVC (3-letter consonant-vowel-consonant) words. 9/10 correct.
    - ii. 25 sight words. 24/25 correct.
  - b. Mastery Test 2
    - i. 10 phonetically regular 4-letter words. 9/10 correct.
    - ii. 16 sight words. 8/16 correct.
17. On October 28, 2022, the Parent sent an email to the Dean of Students stating: “I wanted to reach out and ask for an update on [the Student]’s IEP. I have a meeting with [the] psychologist next week and I would like to have information ready for my meeting with them on Tuesday.”

The Dean of Students replied on October 31, 2022: “Thanks for checking in for an update before [the] upcoming appointment. I am connecting you with our special education teacher. [They] can give you a better picture of the process and the timeline.”

A November 2, 2022 follow-up email from the Case Manager states: “I have someone that schedules my meeting and I have a meeting on my calendar for the 17th. Have you received the invitation?”

The Parent immediately replied: “I am unaware of this meeting but happy to have one and get the ball rolling on supports for [the Student]. Can you share with me the time and reforward [sic] the invite please?”

In the evening of that same day, the Parent emailed: “I wanted to follow up to see when the meeting for [the Student]’s IEP is. I need advance notice to take time off from work. Please send me the information tomorrow so I can plan accordingly. [The Student] needs immediate intervention for [...] dyslexia according to [the Student]’s psychologist. I met with [them] today, and [they] said the IEP needs to be completed asap [sic]. I am very concerned about the valuable time that is slipping away.”

On November 3, 2022, the Case Manager replied: “Thursday the 17th at 2:45 [sic] I will send you the zoom [sic] link later today. [The Student] has been receiving instruction as if ... on an IEP since the beginning of the year. The curriculum we are using is designed to support students with dyslexia.”

The Parent replied on that same day: “May I ask for a list of what those are? [The] doctor says that [the Student] needs reading instruction called the Orton Gillingham ‘OG’ method. Is something [sic] the staff working with [the Student] is trained in? [The Student] also needs 1x1 reading supports and not in a group setting.”

18. The Student’s Primary Care Physician wrote a letter dated November 18, 2023, which stated: “[The Student] was seen in my clinic on 10/10/2022. [The Student] has a diagnosis of Attention Deficit Hyperactivity Disorder, or ADHD. [The Student] may benefit from accommodations in school to assist with...symptoms.”
19. RTI staff administered SIPPS assessments on November 17, 2022. The Student’s scores were as follows:

- a. Mastery Test 3
    - i. 10 phonetically regular 4- and 5-letter words with consonant blends. 4/10 correct.
    - ii. 22 sight words. 11/22 correct.
20. The Parent received Prior Notice about Evaluation/Consent for Evaluation dated 11/17/2022. The notice informed the Parent that the District proposed an initial evaluation for special education eligibility and to determine special education needs. The Consent form indicated that the evaluation would include intelligence or personality testing. The Student Assessment List included one assessment, the Conners behavior rating scale, and one other evaluation procedure, a medical statement. The Parent signed the consent form electronically.
21. A File Review of Existing Information/Student Referral form, dated 11/17/2022 identifies:
- a. Reason for Referral: “[The] Student has gone through the RTI process and has not made the growth we would like to see. The team feels a [special education] evaluation maybe [sic] a good next step.”
  - b. Areas of Concern: Math, Reading, Written Language, Attention
  - c. The sections headed Parent/Guardian Input and Teacher Input are blank.
  - d. The section headed Review and Evaluation Planning includes several subsections:
    - i. Under the subheading, Academic Performance is a question whether additional evaluation data is needed, and the Response is: “No, (Team Determined Not Needed)”
    - ii. Under the subheading Cognitive Ability/General Intelligence is the statement: “The team does not have any concerns in this area. No additional evaluations are needed.”
    - iii. Under the subheading Communication is the statement: “The team does not have any concerns in this area. No additional evaluations are needed.”
    - iv. Under the subheading, Behavior: Social/Emotional and Adaptive is a question whether additional evaluation data is needed, and the Response is: “Yes”
    - v. Under the subheading, Observable Classroom Skills, is the statement: “Not a concern at this time”
    - vi. Under the subheading, Health, is the term: ADHD. In Response to the question whether any additional evaluation is needed, the Response is: “Yes”
  - e. Suspected Disability(ies): 80 Other Health Impairment
22. On December 5, 2022, the Parent sent an email addressed to the “team”, stating: “Checking back in regarding [the Student]’s IEP. I would like to have a goal for completion before the holiday break. Is that possible? My goal is to have this completed so we can focus and have a finite plan in place in the new year.”
- The Case Manager replied on December 8, 2022: “I can check in with the school psychologist and see where she is at in the process. I do not think this will be possible as [they have] a different winter break and will be off a week before us. I can let you know what I hear.”
23. On December 8, 2022, the Parent sent a lengthy email to the Director: “...From Day one I asked for a formal IEP based on the information I received from [the Student’s] doctor. It took over two months to schedule the IEP initial meeting which was held on 11/17. Afterward, I did not hear anything back regarding the next steps. I reached out last week to

find out where we were and I was contacted by a school psychologist to complete another assessment called Conners. Each time anyone has sent me something to complete it is done the same day...no one will need to wait for me to action [sic] a request. Now, this week I had to reach out again to find out what the next steps are and see if we can wrap up this process before the holiday break. The [Case Manager] informs me that my goal is not attainable due to staff vacations.”

“[The Student] is a 3rd grader who barely reads at a 1st-grade level. [My child] is not behavioral and I think that is where the problem lies. My [child’s] doctor said [they need] the right interventions now to make difference before 4th grade. I am listening to medical professionals and trying to move the IEP process along to no avail. It is really very slow. [They need] individual pullouts that are one on one and not in a group that focuses on decoding. I know they are doing pullouts but still in a group. I have met with [the] doctor twice since the IEP meeting and they keep asking for updates and what is happening with [the Student’s] plan. They have encouraged me to keep nudging this process along but alas I am hitting roadblocks.”

“The Children [sic] Program has staff who are ready to sit in the next meeting to help with this process but we need a date for the meeting.”

“I need to know what the reasonable time frame is for an IEP is considering I delivered all the necessary paperwork the first week of school. It took us over 9 months to get the testing and report for school and now it is disheartening that a doctor’s report is not enough to get [my child] the help [my child] desperately needs.”

24. On December 12, 2022, the Director called the Parent to discuss their concerns and then followed up with an email:

“Per our conversation, there are many confounding factors within special education. I appreciate the opportunity to have the dialog [sic] and your advocacy, knowing that your child is very important (to us too). What I heard is better communication with the family about where ‘things’ are in the process.”

“Based on our conversation I wanted to outline the next steps: 1. As mentioned, I ask that you give us until next Wednesday to reach out and get the eligibility meeting schedule. As we mentioned, the 60-school-day timelines started on 11/17/2022. (I know that you asked through this Friday and while I see how the school team may meet that request, that wasn’t a commitment that I provided). 2. As mentioned, once scheduled, if the meeting does not occur, please reach out to me.”

“From here we will potentially identify eligibility and potentially special education services.”

“Additionally, based on our conversation, you are not interested in filing a formal complaint. If that changes, I hope that you will reach out to me. Families can also access their procedural safeguards (link at the bottom).”

The Parent replied:

“I believe that the timeline started on 9/9/22 when I requested an IEP in writing to [the Dean of Students with the Student’s] formal medical report from a clinical psychologist. I was never given anything to sign until 11/22. I really think the timeline of 60 days has past [sic]

because when I provided the paperwork I was told 'most parents don't have this documentation in place and this will save time'. So far this was not true."

25. On December 15, 2022, RTI staff administered SIPPS assessments. The Student's scores were as follows:
  - a. Mastery Test 3 (repeated from 11/17/22)
    - i. 10 phonetically regular four and five letter words with consonant blends. 9/10 correct.
    - ii. 22 sight words. 17/22 correct.
  - b. Mastery Test 4
    - i. 10 phonetically regular words, some with -es, -ed, or -ing endings. 8/10 correct.
    - ii. 9 sight words. 5/22 correct.
  - c. Mastery Test 5
    - i. 10 phonetically regular words with initial consonant blends. 10/10 correct.
    - ii. 13 sight words. 10/13 correct.

26. On December 18, 2022, the Parent sent an email to the Case Manager as a follow up to their November 3, 2022 email exchange. The Parent stated: "I never heard back regarding my request from 11/3/2022, what are the IEP supports that is [sic] currently being provided to [the Student] and how were they chosen? I need a list so I can compare it to the list I have from [the] physician. In addition, I need to know if my request for 1x1 reading support was honored from the same date which was a physican [sic] recommended support/accomodation [sic]....I want to ensure that the person working with [the Student] is a certified reading specialist."

"[The Dean of Students] referred me to you back in October 2022 and stated that a process and timeline would be provided to me so I can understand the schools [sic] process for IEP's [sic]. To date I have not received that. I would like to request that be sent to me within 3 business days."

27. On December 19, 2022, the Parent sent an email to the Principal of the Student's school: "I would like to formally request a copy of the process checklist for [the Student]'s IEP by end of day 12/20/22 to show me all the actions that have taken place since I requested an IEP for [the Student] on 9/7/22."

Later on the same day, the Parent forwarded the Children's Program evaluation report to the Principal. In this email message, the Parent stated, "This should help you understand the timeline issue. Please see my notice to [the Dean of Students] and [the Case Manager] on 9/9/22."

28. A Special Education Notice of Team Meeting dated December 19, 2022 invited the Parent to attend a meeting on January 19, 2023 to:
  - a. Review existing information about your child, and
  - b. Develop or review an individualized education program (IEP) and placement for your child.]

29. The Student's second Star reading assessment took place on December 21, 2022. The Student's scaled score was 785 and percentile rank was 1. Star Reading assessment score reports categorize scores as: At/Above Benchmark, On Watch, Intervention, and Urgent Intervention. The Student's score indicated a need for Urgent Intervention.
30. On December 24, 2022, the Parent sent an email to the Principal stating: "This is really concerning!" Attached to the email was a cell phone photo of the Student's December 21, 2022 Star Reading report, which included the following information about the Student's performance on this Star Reading assessment:
  - a. Scaled Score 785, Scaled Score 812 projected for 06/15/23, and Percentile Rank 1.
  - b. The report indicated that the Student needed "urgent intervention."
31. A Confidential Evaluation Report dated 1/9/2022 describes a special education evaluation of the student by a school psychologist. The evaluation report:
  - a. Explained that the Parent and a team at the Student's elementary requested "an assessment of the Student's behavior related to Attention Deficit Hyperactivity Disorder (ADHD) in the home and school setting in order to provide them with information needed to determine if [the Student] would qualify for Special Education under Other Health Impairment."
  - b. Stated that Camas SD found the student not eligible for special education as a child with a specific learning disability on 4/20/2020.
  - c. Briefly described the evaluation conducted by the Children's Program and identified the evaluating psychologist's diagnostic impressions of attention deficit/hyperactivity disorder, specific learning disorder with impairment in reading, specific learning disorder with impairment in written expression, and unspecified anxiety disorder.
  - d. Described the sole assessment administered, the Conners 3<sup>rd</sup> Edition (Conners-3), in which the Student's scores indicated:
    - i. "very elevated" concerns with inattention;
    - ii. "elevated" concerns regarding hyperactivity/impulsivity and executive functioning;
    - iii. "very elevated" concerns about learning problems.
  - e. Summarized findings: "Based on school data and a file review, [the Student] has academic skill weaknesses in areas of reading, math, and written expression and a medical diagnosis of ADHD. Information from teacher and parent rating scales indicates that [they are] likely experiencing symptoms consistent with inattention and learning problems related to this diagnosis, which can impact a student's ability to maintain alertness. The school team, which includes the parents, will need to consider the information provided in this report, previous psychoeducational and clinical reports, current school academic data, and teacher and parent input to determine if [the Student] is in need of specially designed instruction in order to access general education."
  - f. Described eligibility considerations: "...The team should consider the following when determining whether a student qualifies for services under the Individuals with Disabilities Education Act (IDEA: Amendments of 2004, Public Law 108-446), Section 504 of the Rehabilitation Act, and other school district programs: 1) The

results of this assessment and any prior assessments, 2) Information regarding the student's daily school performance including Response to interventions, and 3) Progress toward criterion-based and state standards."

32. The School Psychologist told the Investigator that they had not been involved in either evaluation planning or IEP development but had done only what they had been asked to do: a brief file review and a Conners-3. The School Psychologist is not a District employee but is contracted from the local Education Service District (ESD).
33. At the Parent's request, the District convened a meeting on January 12, 2023 to determine whether the Student was eligible for a 504 plan.
  - a. Attending this meeting were the Parent, the General Education Teacher, the Coordinator, the Principal, and the Dean of Students.
  - b. The team determined that the Student had a physical or mental impairment that substantially limited the major life activities of thinking, concentrating, and learning. The check box next to the major life activity of reading was left blank.
  - c. The team identified the following accommodations as needed to address the Student's disability in educational settings:
    - i. Frequent Check-ins (tasks, clarification, public speaking);
    - ii. Chunk assignments into smaller portions as needed: It has helped to highlight 1 or 2 tasks at a time;
    - iii. Preferential seating: Close proximity with thought to peer groupings;
    - iv. Visual aids: use of first/then and sentence stems;
    - v. Access to breaks/jobs and a fidget if needed to help [the Student] focus (this year looks like notebook/pen);
    - vi. Access to snacks;
    - vii. Minimize distractions in learning area; and
    - viii. Testing Accommodations: speech to text when available, separate setting with less distractions, read aloud to an adult while testing, testing read aloud ... on math portion, alternative ways to show knowledge on summative assessments.
34. A Statement of Eligibility for Special Education (Other Health Impairment 80) dated January 19, 2023:
  - a. Identifies the Eligibility Team Members as: Case Manager, School Psychologist, General Education Teacher, Principal, Director, RTI Specialist, Dean of Students, Parent; and a representative from the Children's Program.
  - b. Reviews special education eligibility criteria for Other Health Impairment (OHI) and indicates team agreement that the Student "does qualify for special education with the eligibility of Other Health Impairment."
35. Meeting Notes dated January 19, 2023 briefly describe the eligibility determination and summarily review the IEP development discussion. The notes include greater detail about the Student's needs.

The Parent expressed concern about the Student's reading: "STAR Report said [the Student] needed extreme interventions and that was hard to hear, [P]arents feel [the Student] has not progressed much in reading, [They] would like to see progress in reading, math seems to be a stronger area . . . would like to see . . . progress in writing

independently, [The Parent is] concerned about [the Student] feeling different . . . from other students, [The Student] has anxiety around getting up in front of others . . . [The Student] is confident socially but struggles academically, parents have some wonderings [sic] about [the Student's] memory.”

District staff members of the team expressed less concern about the Student's literacy skills, asserting that the Student is “getting better at decoding” and that “a small group setting has been a place where [the Student] shows growth.” . . . We had to so [sic] some repeated lessons, but [the Student] is making progress, [The Student] works and tries very hard, a small group setting has helped [the Student] to shine, allowing [them] to see progress has been helpful, it could take [the Student] longer to learn words with more repetitions. ... [The Student] is very excited about the reading skills [they are] working on in class with the small group, and starting to notice the reading ‘rules’ and identify them in ... reading.”

36. The team developed an IEP for the Student on January 19, 2023. The IEP identifies as team members all persons on the eligibility team plus a representative of the Children's Program. The IEP contains, in relevant part, the following IEP components and content:
- a. There were no special factors noted as relevant.
  - b. Present Levels of Academic Achievement and Functional Performance:
    - i. Student's strengths, interests, and preferences:
      - Love teacher
      - Appreciate having leadership roles and trying to be independent and taking responsibility.
      - Singular directions and be successful. Uses a list has been helpful for multistep.
      - Oral discussion back and forth.
      - Extremely artistic and into arts
    - ii. Input from Parent . . . including concerns for enhancing the education of their child:
      - Reading
      - Needing growth for taking notes or writing things down.
      - Has a lot to say but would struggle to write it down.
      - Investigation to see progress in math.
      - Loves going to school and going everyday [sic] and enjoys . . . friends.
      - When measuring compared to peers [the Student] has gotten teary before. [The Student] feels vulnerable even though [they are] socially confident.
      - Curious about vocabulary memory. In the home environment [the Student] doesn't quite remember.
    - iii. The only academic assessment scores listed under present levels of academic achievement were STAR Reading Assessment (Scaled Score 772 in the fall and 791 in the winter) and STAR Math Assessment (Scaled Score 814 in the fall and 843 in the winter).

- iv. The IEP also documented how the Student's disability affects their involvement and progress in the general education curriculum as follows: "[The Student's] reading fluency impacts [their] ability to access general education curriculum and needs additional support in that area in order to make growth."
- c. Annual Academic and Functional Goals and Objectives
    - i. Reading
      - Measurable Annual Goal: By January 2024 [the Student] will read at a second grade level passage at 55 CWPM with 90% accuracy or better.
      - Progress measurement: Progress will be measured through teacher data sheets/notes.
      - How progress will be reported: Written progress reports will be reported at the annual IEP and semester grading periods in January/February and June.
    - ii. Math
      - Measurable Annual Goal: By January 2024 [the Student] will add and subtract multi digit problems with 80% accuracy.
      - Progress measurement: Progress will be measured through data collection and teacher observation.
      - How progress will be reported: Written progress reports will be reported at the annual IEP and semester grading periods in January/February and June.
    - iii. Written Language
      - Measurable Annual Goal: By January 2024 [the Student] will Write [sic] two complete sentences with 5 words or more using correct punctuation and inventive spelling 3 out of 5 opportunities.
      - Progress measurement: Teacher observation and data tracking.
      - How progress will be reported: Written progress reports will be reported at the annual IEP and semester grading periods in January/February and June.
  - d. Specially Designed Instruction
    - i. Math: 90 minutes/week in the resource room, monitored by the case manager.
    - ii. Written language: 60 minutes/week in the general ed classroom, monitored by the Case Manager.
    - iii. Reading: 120 minutes/week in the resource room, monitored by the Case Manager.
  - e. Related Services: "The team determined not needed"
  - f. Supplementary Aids/Services; Accommodations



- i. The IEP provides for eight accommodations, all to be available or provided on all school days and across all school sites or in the regular education classroom.
    - Minimize distractions in learning area
    - Access to snacks
    - Access to breaks/jobs and a fidget
    - Visual aids: use of first/then and sentences stems
    - Preferential seating: Close proximity with thought to peer groupings
    - Chunk assignments into small goals
    - Frequent check-ins
    - Teaching mode: Read directions, grade level materials and tests aloud
37. When prompted by the Investigator to provide more detailed information regarding the Student's IEP reading goal, neither the Case Manager nor RTI Specialist could furnish specifics. Upon further inquiry about the Student's specialized reading instruction and service delivery location, the RTI Specialist stated it occurred in what they termed the "reading room." After additional probing from the Investigator about the provider and setting of these specialized services, the RTI Teacher indicated the Student's reading support was being implemented through the RTI framework alone. When asked for clarification on how the Student's progress was monitored, the RTI Specialist could only state that the curriculum contained formative assessments administered after every 5 lessons. Despite repeated requests for precise details regarding the Student's reading services, District staff were unable or unwilling to provide documentation or clear descriptions of how the IEP goals, specialized instruction, and progress monitoring were being carried out..
38. On January 18, 2023, a team including the Parent, the Case Manager, the General Education Teacher, the Director, the Principal, the Dean of Students, and the RTI Specialist determined the Student's special education placement. The team selected the placement option: "Regular classroom setting 80% or more of the time with special education services at determined times."
39. A Prior Notice and Consent for Initial Provision of Special Education Services dated January 19, 2023 states that the team had found the Student eligible for special education services and developed an IEP.
40. A Prior Notice of Special Education Action dated January 20, 2023 informed the Parent that: "Team reviewed the evaluation data and determined that [the Student] is eligible for special education services with the eligibility of: other health impairment. An IEP was developed for [the Student]. Services will start on 1/20/2023."
41. The Student's third Star reading assessment took place on January 25, 2023. The Student's scaled score was 791 and percentile rank was 1. Star Reading assessment reports include four score categories: At/Above Benchmark, On Watch, Intervention, and Urgent Intervention. The Student's score indicated a need for urgent intervention.
42. On February 9, 2023, the Parent sent an email to the Principal stating that they had not yet seen the Student's IEP and asking when they could "expect to have the executed plan".

43. The Parent digitally signed a Consent for Initial Provision of Special Education Services on February 10, 2023.
44. On March 1, 2023, RTI staff administered SIPPS assessments. The scores are confusing, as they seem to show two administrations with two different scores, but both were dated 3-1-23.

a. Mastery Test 6

- 10 phonetically regular CVCe words and words with consonant blends. Either 3/10 or 9/10 correct.
- 10 sight words. Either 7/10 or 9/10 correct.

b. Mastery Test 7 (undated but immediately following Mastery Test 6)

- 10 phonetically regular words with -s, -es, -ed, or -ing endings. Either 6/10 or 10/10 correct.
- 10 sight words. 9/10 correct.

45. On March 6, 2023, the Parent sent an email to the Principal stating, "I have obtained a letter for [the Student] to be able to use the restroom as needed. Please inform [the General Education Teacher] as soon as possible."

Attached to this email was a letter from the Student's Primary Care Physician that stated: "[The Student] was seen in my clinic on 3/3/2023. [The Student] has chronic constipation and is undergoing treatment. Please allow [them] to use the restroom any time [they request]. [They] should not have limited access to the restroom."

46. Early in the morning of March 10, 2023, the Parent sent an email to the Principal stating that the Student had reported that the classroom was "really dark" and that it was hard to focus on work "or even clearly see it."

In mid-afternoon on that same day, the Parent again emailed the Principal stating, "So I understand [the Student] was moved near a window instead of just turning on the lights in class. Are the lights broken?"

47. School staff responded to the Parent's concern by moving the Student closer to a window and giving the Student a clip-on lamp, so the Student could adjust the lighting as needed.
48. School staff, at the request of the General Education Teacher, began checking in on the classroom to make sure it was well-lit.
49. On March 14, 2023, RTI staff administered SIPPS assessments. The scores are confusing, as they seem to show two administrations with two different scores.

a. Mastery Test 8

- 10 phonetically regular words with vowel digraphs ee and ea or consonant blends. Either 5/10 or 10/10 correct.
- 15 sight words. Either 8/15 or 12/15 correct.

50. On April 5, 2023, RTI staff administered SIPPS assessments. The scores are confusing, as they seem to show two administrations with two different scores.

- a. Mastery Test 9
    - 10 phonetically regular words with vowel digraphs ai and ay and r-controlled vowels. 9/10 correct.
    - 14 sight words. Either 8/14 or 11/14 correct.
51. On April 28, 2023, RTI staff administered SIPPS assessments. The scores are confusing, as they seem to show two administrations with two different scores.
- a. Mastery Test 10
    - 10 phonetically regular words with vowel digraphs oo, oa, and ow. 8/10 correct.
    - 5 polysyllabic words ending in -le. Either 2/5 or 5/5 correct.
    - 16 sight words. Either 9/16 or 15/16 correct.
52. On May 15, 2023, RTI staff administered SIPPS assessments. The scores are confusing, as they seem to show two administrations with two different scores.
- a. Mastery Test 11
    - 10 phonetically regular words with vowel digraphs ee and ou and consonant blends with silent letters. Either 4/10 or 7/10 correct.
    - 5 polysyllabic words ending in -le. Either 3/5 or 5/5 correct.
    - 15 sight words. Either 11/15 or 13/15.
  - b. Mastery Test 12
    - 10 phonetically regular words. 4/10 correct.
    - 5 polysyllabic words. 4/5 correct.
    - 20 sight words. 10/20 correct.
53. The Parent sent an email to the Case Manager on May 11, 2023 asking for a copy of the most recent IEP.
54. The Parent sent an email with the subject line “Request for Copy of IEP - 2<sup>nd</sup> Request” to the Case Manager on May 15, 2023 stating, “I wanted to ask for [the Student’s] IEP in PDF form. I have never received a copy in paper or pdf [*sic*] form with all signatures on it.”
55. On May 15, 2023, the Parent sent an email with the subject line “Recap of Conversation 1/15/2023” to the Case Manager. The email contained the following: “[W]e discussed the last IEP meeting where we discussed the status of the lighting in the classroom and [the] teacher .... stated that [they] would turn up the lights during instructional/ work time after we discussed [the Student’s] continued concerns that the room is too dark to do ... work including reading. You stated that since [the Teacher] agreed to do this it did not need to be in the IEP. I disagree and would again request that [the] IEP is revised back to the March 2023 date to include this aspect since it was mutually agreed upon in the meeting. I also provided medical documentation from my [child’s] medical provider to substantiate this need.”
56. On May 18, 2023, the IEP team met to amend the Student’s IEP. Attending by video-conference were the Parent, the Case Manager, the General Education Teacher (who left the meeting about halfway through), the Principal, the Dean of Students, and the Director.

- a. Excerpted meeting notes as they relate to the allegations in this Complaint as follows:
- i. Successes:
- Interactions in the reading room have been good
  - [The Student] likes to work with [the RTI Specialist] and learn as much as [they can] can, cross-age buddies can be helpful ... and social connections are important...
- iv. Concerns
- [the Parent expressed concern about lighting in the classroom] adequate needs is to have the lights “all the way on”
  - access to speech to text, [the Parent] suggested ... doing it in another room if necessary, [and] wonders if [the Student] could have access to bluetooth headphones, [The Case Manager] has addressed this with [the Student] to give ... some other options
  - [The Parent] thinks that [the Student]’s needs are not getting addressed as [the Student] moves into 4th grade, [the Parent] is concerned with [the] STAR score
- v. Supports:
- Reading Intervention: outside the classroom,
  - [The Case Manager] clarified: Reading in the resource room, Writing is in the general education setting, and clarified that these are not always individualized additional support, it could be the classroom teacher providing this instruction as well
  - [The Parent] would like IEP to be revised to include adequate lighting for student.
  - [The Director] would not want to state lights on at all times, he would like to say “appropriate amount of light so [the Student] can access education”,
  - [The Director] clarifying “adult decisions” for seating, lighting and perspectives, and sometimes we need to get clarification from [the Student].
- vi. Other Notes:
- [The Parent] is open to having some differences in showing [the Student] how to adjust the ipad [*sic*] lighting, clip lamp for adjusted light ...
  - [The Director] wants us to evaluate
  - Teacher approach: observation of what light is helpful for students
  - Student advocate: [The Student] can ask for additional light to help see
  - Who is “student advocate”
  - [The Parent] reiterated that [the Student] has struggled for years ...[The Principal] clarified that [the Student] is making huge progress [but] is not yet at grade level, and is on a great trajectory which shows that the interventions are working
  - Revision of IEP will come through Docusign.
  - Weekly “yays and yucks” as a check-in with “the Principal and/or Dean of Students], perhaps [the General Education Teacher] could join for a few

minutes and have [the Parent] zoom in. Perhaps [the IA], or others could join.

- [The Parent] would like to understand [the Student's] grade-level equivalency and percentile growth. [The Case Manager] will send out [the] STAR progress. We reviewed some IEP goals and ... growth. [The Case Manager] shared the reading STAR which shows ... trajectory.

57. An amended IEP dated May 18, 2023 includes the following added or revised content:

- a. The annual reading goal remains the same, but the revised IEP includes two objectives:
  - [The Student] will decode CVC words with 80% accuracy
  - [The Student] will read 50 of the Dolch sight words with 80% accuracy
  - How progress will be measured changed from "Progress measured through teacher data sheets/notes" to "Progress will be measure by data collection from teacher observation" in the revised IEP.
- b. The annual math goal is unchanged.
- c. The annual written language goal is unchanged, but the description of progress measure changed from "teacher observation and data tracking" to "Progress will be measured by data collection from teacher observation" in the revised IEP.
- d. The description of specially designed instruction (SDI) is unchanged in the revised IEP except for changes in the start and end dates for these services.
- e. The revised IEP includes two new accommodations;
  - Speech to text: "Access to this in [the] classroom on all school days in all school sites."
  - Appropriate amount of light in the classroom for [the Student] to work: "Access to this in [the] classroom on all school days" in the general education classroom.

58. When asked what led to the addition of two reading objectives in the May 18, 2023 amended IEP, neither the Case Manager nor the RTI Specialist offered an explanation.

59. The Student's fourth Star reading assessment took place on May 30, 2023. The Student's scaled score was 770 and percentile rank was 1. Star Reading assessment reports include four score categories: At/Above Benchmark, On Watch, Intervention, and Urgent Intervention. The Student's score indicated a need for urgent intervention.

60. On May 31, 2023, the Student's fifth Star reading assessment took place only a day after the previous assessment. The Student's scaled score was 837 and percentile rank was 3. Star Reading assessment reports include four score categories: At/Above Benchmark, On Watch, Intervention, and Urgent Intervention. The Student's score indicated a need for urgent intervention.

61. A Prior Written Notice (PWN) dated May 31, 2023 informed the Parents that:

- a. The District proposed to review and update the Student's accommodations based on "Parent request"

- b. The other option considered was “[g]athering additional data” but that option was rejected because “[a]dditional accommodations are needed to support the student.”
62. On June 8, 2023, the Parent sent an email to the District. It read, in relevant part, as follows: “I want to be very clear that I am waiting for my revision to [the Student]’s IEP to have the following:
  - Adequate lighting
  - Non-verbal queue for redirection
  - Bathroom use as neededI need to wrap up the IEP for the year with signed docs [*sic*] and final meeting no later than 6/14.”
63. On June 9, 2023, the Parent sent an email to the Principal and the Case Manager, with copies to the Director and several other persons within and outside of the District, stating in relevant part: “I would like to document my 4th request to establish a timeline for my child’s experience at [school] in [the] IEP. Due to this being the 4th request to capture my [child’s] sentiment from the inception of [the] IEP to the current date, to clearly include a deterioration of ... trust and enjoyment of school, I would like to loop in all parties to ensure that this request is not only documented but visible to others. I have received an amended IEP however the verbiage is incorrect and I would like to ensure that it is documented in the IEP next Tuesday and a hard copy provided to me no later than the end of day Tuesday, June 13th, 2023. Let this serve as my rejection that the sentiment is my own. It is from my child.”

“It is important to capture [my child’s] experience. In the IEP it was stated that [my child’s] love of school has deteriorated since [the] IEP was started. This is not my words this is the words of my child and I need that corrected. [My child] told you in person that . . .it all changed when [the] IEP started.”
64. An amended IEP dated June 12, 2023 includes the following changes from the May 18, 2023 amended IEP. Attending the IEP meeting in person were: the Parents, the Case Manager, the General Education Teacher, the Director, and the Principal.
  - a. Added to the IEP under the heading of present level of functional performance was an update: “[The Student] has a medical need to use the bathroom when needed.”
  - b. Added to the list of accommodations was: “Nonverbal redirections being mindful of [*sic*] verbals/nonverbal.” The June 12, 2023 IEP did not include an accommodation related to bathroom use.
65. The Director told the Investigator that District staff members of the IEP team decided not to add the bathroom access accommodation that the Parent sought because the entire school has a policy of free access to the restroom upon request.
66. For the Student’s three annual goals, progress was reported on June 21, 2023 as follows:
  - a. Reading: “Progressing ... On the most recent assessment, “[the Student] read 37 CWPM at 97% accuracy”

- b. Math: “Progressing ... [The Student] scored 80% on a 2-digit problem and 75% on a 2-digit subtraction problem.
- c. Written Language: “Progressing ... [The Student] still needs additional feedback when writing. [The Student] has met this goal 2 times.”

67. The Parent filed this Complaint on July 20, 2023.

#### IV. DISCUSSION

##### **Evaluation**

The Complaint alleged that the District violated the IDEA’s requirements for special education evaluation procedures by unduly delaying the Student’s special education evaluation. The District did not contest this allegation.

The Complaint also alleged that the District violated the IDEA’s requirements for special education evaluations by not using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student that could assist in determining whether the Student had a disability and the content of the Student’s IEP.

The purpose of special education evaluation is not solely to determine whether a child has a disability. It also provides information about the nature and extent of the special education and related services that the child needs.<sup>6</sup>

A school district must conduct an initial evaluation to determine if a child is eligible for special education services when it suspects or has reason to suspect that: (a) the child has a disability that has an adverse impact on the child’s educational performance; and (b) The child may need special education services as a result of the disability.<sup>7</sup>

Before beginning an initial special education evaluation, the school district must conduct evaluation planning<sup>8</sup>. The district must convene a team that includes the child’s parent or guardian and other qualified professional to plan the evaluation.<sup>9</sup> Evaluation planning includes a review of existing records, including: (a) evaluations and other information provided by the parents; (b) current classroom based, local, or state assessments and classroom-based observations; and (c) observations by teachers and related services providers.<sup>10</sup> On the basis of this review, the team determines what additional data, if any, is needed to determine whether the child has an IDEA-defined disability; the present levels of performance, and whether the child needs special education and related services.<sup>11</sup>

To comply with the IDEA requirements for a full and comprehensive special education evaluation, a district must:

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<sup>6</sup> OAR 581-025-2000(10); 34 CFR §300.15

<sup>7</sup> OAR 581-015-2105(3)(a)

<sup>8</sup> OAR 581-015-2110(1)

<sup>9</sup> OAR 581-015-2115

<sup>10</sup> OAR 581-015-2115(1)(a)

<sup>11</sup> OAR 581-015-2115(1)(b)

- a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents;<sup>12</sup>
- b. The district must assess the child in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- c. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified,<sup>13</sup> and
- d. The evaluation must include assessment tools and strategies that provide relevant information that directly assists persons in determining the child's educational needs.<sup>14</sup>

In this case, both the District's evaluation planning and the resulting evaluation were inadequate. Although there was an evaluation planning meeting, the discussion was cursory. The District had ample information pointing to a possible specific learning disability: the psycho-educational evaluation the Parent obtained from the Children's Program; the District's own universal screening data indicating that the Student's reading performance was lower than 99% of grade level peers; and RTI data showing that the Student struggled with basic phonics and sight words all should have caused the District to seek consent for further evaluation that would have allowed the team to determine both eligibility for SLD and the Student's educational needs. Nevertheless, the evaluation planning team decided that no additional academic performance data was needed. The evaluation planning team concluded that the only suspected disability was Other Health Impairment (OHI), signaling an intent to not evaluate the Student for a possible specific learning disability.

While Oregon Administrative Rule would have allowed the District to determine that the Student was eligible for special education only under the category of OHI, additional assessments would still have been necessary to specifically identify their unique educational needs. However, no additional assessments were conducted. The consent for assessment that the Parent signed on November 11, 2022 listed one assessment, the Conners, and one other evaluation procedure, a medical statement.

The Department substantiates this allegation.

### **IEP Content**

The Complaint alleged that the District violated the IDEA's requirements for IEP content in several respects, each discussed separately below.

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<sup>12</sup> OAR 581-015-2110(3)(a)

<sup>13</sup> OAR 581-015-2110(4)(e)

<sup>14</sup> OAR 581-015-2110(4)(f)



*Not including measurable annual goals or specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable as needed to address the Student's severe delay in reading proficiency.*

The IDEA provides that an IEP must include the following components (among others not relevant to this Complaint):

- a. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.
- b. A statement of measurable annual goals, including academic and functional goals ... designed to: (i) 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 (ii) meet each of the child's other educational needs that result from the child's disability.
- c. A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- d. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: (i) to advance appropriately toward attaining the annual goals; (ii) to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and (iii) to be educated and participate with other children with disabilities and children without disabilities;
- e. The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.<sup>15</sup>

The present levels of academic performance in the Student's IEP contain two sentences, one stating the Student's Star reading assessment scaled score and one stating the Student's Star math assessment scaled score. Present levels establish a baseline from which the IEP team can project measurable annual goals and, if appropriate, benchmarks or objectives. Knowing only that a student had a Star reading assessment scaled score of 772 in the fall and 791 with no context and no explanation provides no useful information about what has contributed to the Student's lagging reading skills and little guidance to the IEP team about measurable goals that a student might be reasonably expected to achieve, let alone information that would enable the team to select appropriate specially designed instruction, related services, accommodation, modifications, and other supports to meet the Student's individual needs that arise from the unique nature of their disability.

The Student's annual reading goal is vague, and it has no visible foundation. Perhaps it is reasonable to anticipate that the Student will be able to access second grade reading material

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<sup>15</sup> OAR 581-015-2200(1)(a)-(e); 34 CFR §300.320(a)(1)-(4)

by the middle of fourth grade, but it is impossible to judge the reasonableness without knowing the basis for that goal. The same can be said for the target reading fluency target, 55 CWPM.

The IDEA requires specific statements of special education services. The Student's IEP identifies only broad skill areas—math, written language, reading—but identifies no specific services. The Investigator could not tell after reading and re-reading the Student's IEP what services the Student was receiving to address the acknowledged urgent need for reading intervention. It was only after repeatedly asking for specific information during staff interviews that the Investigator was told that the District was providing no SDI but was continuing the RTI intervention that the Student had been receiving for several months before the Student was even found eligible for special education.

“An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth.”<sup>16</sup> The IEP at the center of this Complaint does not reflect careful consideration of the Student's present levels of achievement, disability, and potential for growth. In answer to the Investigator's questions, staff members of the IEP team were unable to articulate bases for the Student's annual reading goal nor the addition of two new reading objectives.

The Department substantiates this portion of the allegation.

*The Complaint also alleged that the District did not include in the Student's IEP disability-related need for accommodation of the Student's purported need for increased classroom lighting and an accommodation for on-demand access to a restroom.*

The content of an IEP is to be determined solely by an IEP team which includes:

- a. the parents;
- b. a special education teacher;
- c. a regular education teacher (if the child participates in, or may participate in, a regular education environment);
- d. a district representative who is qualified to provide or supervise the provision of specially designed instruction;
- e. an individual who can interpret the instructional implications of evaluation results;
- f. at the discretion of the parent or district, other individuals who have knowledge or special expertise regarding the child; and
- g. when appropriate, the child with a disability.<sup>17</sup>

The IEP team is responsible for developing, reviewing, or revising an IEP for a child with a disability.<sup>18</sup> No individual, whether parent, administrator, teacher, or any other IEP team member can unilaterally determine any element of an IEP.

When the IEP team met on January 19, 2023, there was no discussion of a need for increased classroom lighting or deprivation of ready access to the restroom. These topics arose in March, 2023, when the Parent began complaining that the Student was having trouble seeing their work. The Parent requested that the Student's IEP include accommodations for adequate classroom lighting. In addition, the Parent provided the District with a letter from the Student's

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<sup>16</sup> *Andrew F. v. Douglas County Sch Dist RE-1*, 580 US 386 (2017)

<sup>17</sup> OAR 581-015-2210; 34 CFR §300.321

<sup>18</sup> 34 CFR §300.23

Physician, who explained that the Student was being treated for a medical problem and asking that the District allow the Student to use the restroom upon request.

Neither the District nor the Parent provided the Investigator with any documentation of a medical or disability-related need for increased classroom lighting. Despite that, the IEP team ultimately agreed to add such an accommodation.

The team decided not to add unrestricted restroom use, even though the Student's physician described a medical need. The team decided that the Student did not need that accommodation because it was already available to the Student and to all students in the school. Because the Student was not deprived of opportunities to use the restroom, the IEP team made a reasonable decision to not add the Parent's requested restroom accommodation.

The Department does not substantiate this portion of the allegation.

*The Complaint also alleged that the District did not provide periodic reports on the Student's progress toward IEP goals.*

The IDEA's special education progress reporting requirement is not rigorous. It does not require any particular form of progress reporting and does not prescribe a schedule, only suggesting that IEP progress reporting might be concurrent with issuance of report cards, and must be at least as frequent.<sup>19</sup>

Each Student's IEP team is responsible for determining the specifics of progress monitoring for the Student in light of their individual circumstances.

The District issues report cards twice each year—in late January at the end of fall semester and in June at the end of spring semester. The Student's IEP team determined that progress reports for special education would be issued consistent with that schedule. Because the Student's initial IEP was developed near the end of the fall semester, there was no IEP progress to report with fall semester report cards. The Parent thus received IEP progress reports only once in the 2022-23 school year, on June 21, 2023.

The Department does not substantiate this portion of the allegation.

### **Free Appropriate Public Education (FAPE)**

The Complaint alleges that the District has deprived the Student of the core entitlement of the IDEA, a Free Appropriate Public Education by not meeting the Student's unique individual disability related needs for specially designed instruction, related services, and accommodations.

School districts must provide a free appropriate public education (FAPE) to all school-age children with disabilities for whom the district is responsible. The IDEA defines FAPE as special education and related services:<sup>20</sup>

- a. Provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the [state educational agency];

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<sup>19</sup> OAR 581-015-2200(1)(c)

<sup>20</sup> 34 CFR §300.17

- c. Include an appropriate preschool, elementary school, or secondary school education; and
- d. Are provided in conformity with an individualized education program (IEP)<sup>21</sup>

The IDEA does not include a standard for determining whether a school district has provided a FAPE, but in 1982, the US Supreme Court articulated a two-prong FAPE test: (a) Procedural—Did the school district comply with IDEA procedural requirements, and (b) Substantive—Was the IEP reasonably calculated to enable the child to receive educational benefit?<sup>22</sup>

Not all procedural violations amount to a denial of FAPE. However, a district's procedural violation(s) deny FAPE to a student if they result in loss of educational opportunity or if they seriously infringe the parents' opportunity to participate in IEP development<sup>23</sup>. If procedural violations alone constitute a denial of FAPE, it is unnecessary to address the second prong of the FAPE inquiry.

If a school district demonstrates that it observed IDEA's procedural requirements, the question remains whether the IEP is substantively adequate. In this circumstance, it is necessary to determine whether the IEP enabled the student to benefit. The IDEA does not include a standard for assessing the adequacy of benefit.

In a 2017 decision the US Supreme Court attempted to clarify a substantive standard for educational benefit.<sup>24</sup> The Court held that "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and added that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act."<sup>25</sup> The Court emphatically rejected the "merely more than *de minimis* standard that prevailed in some US Circuit courts and elaborated that "[a]n IEP must be "appropriately ambitious" and "every child should have the chance to meet challenging objectives".

The Student's IEP was not appropriately ambitious, and the Student was not given an opportunity to meet challenging objectives. The Student made no meaningful progress during the 2022-23 school year. Although the Student's score ticked up slightly when administered the Star reading assessment two days in a row at the end of May, the uptick from a score in the 1<sup>st</sup> percentile to a score in the 3<sup>rd</sup> percentile indicates minimal progress and that the student is still in need of urgent intervention.

The Department substantiates this allegation.

### **Additional Finding - Prior Written Notice (PWN)**

Although the Complaint did not allege that the District failed to provide prior written notice (PWN) of its decisions, the Investigator noted that the District did not consistently provide PWN in Response to the Parent's requests.

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<sup>21</sup> OAR 581-015-2040

<sup>22</sup> *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

<sup>23</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

<sup>24</sup> *Andrew F. v. Douglas County Sch Dist RE-1*, 580 US 386 (2017)

<sup>25</sup> *Andrew F.*

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>26</sup> PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

In this case, the District gave the Parent PWN only for occasions in which the Parent participated. It appears that the District never provided PWN in response to the Parent's many requests as demands for information or action. Many of the Parent's emails were about issues not directly relevant to the Student's disabilities or special education, so no PWN was required. Some of the Parent's demands were outside the scope of parent rights and students' entitlements under the IDEA. However, the Parent sent numerous requests for information about special education processes and about the Student's special education in particular. While the Investigator did not find PWNs in response to any such questions or requests, it does not appear that this procedural error deprived the Student of educational opportunity nor seriously infringed the Parent's right to participate in the Student's special education decision making.

The Department finds that the District did not issue PWNs in all instances when required.

## **V. CORRECTIVE ACTION<sup>27</sup>**

In the Matter of Corvallis School District No.509J  
Case No. 23-054-029

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

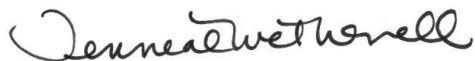
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<sup>26</sup> OAR 581-015-2310; 34 CFR §300.503(a).

<sup>27</sup> 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))

<b>Action Required</b>	<b>Submissions</b>	<b>Due As Soon As Possible But No Later Than</b>
<p><b>Staff Training</b></p> <p>The District must ensure that all District staff responsible for reviewing, revising, developing, and implementing IEPs for this Student receive training in each of the following areas:</p> <ul style="list-style-type: none"> <li>a. Prior written notice</li> <li>b. Timely evaluation</li> <li>c. Evaluation planning</li> <li>d. Evaluation procedures</li> <li>e. Developing legally compliant IEPs</li> <li>f. IEP review and revision</li> <li>g. IEP implementation</li> </ul>	<p>Training agenda/materials to be submitted to ODE for approval;</p> <p>Sign-in sheet for training.</p>	<p><b>November 15, 2023</b></p> <p><b>April 15, 2024</b></p>
<p><b>Compensatory Education</b></p> <p>The District must hold an IEP meeting with the Parent to review the current IEP, determine what revisions are necessary to address the Student's unique needs, determine how much compensatory education is owed in order to meet these needs, determine what areas compensatory education is required in, and form a plan to deliver this compensatory education in collaboration with the Parent.</p>	<p>Plan for amount and delivery of compensatory education.</p> <p>Proof of delivery of compensatory education.</p>	<p><b>November 15, 2023</b></p> <p><b>September 1, 2024</b></p>

Dated: this 18th Day of September 2023




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Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: September 18, 2023

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).)