

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Portland Public School District 1J
Case No. 23-054-041

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER

I. BACKGROUND

On October 30, 2023, the Oregon Department of Education (the Department) received a written Complaint (Complaint) from a parent (Parent), regarding the special education of a child (Student) who resides within the Portland Public School District 1J (District) and attends District high school. 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 state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On November 8, 2023, the Department’s Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of November 22, 2023.

The District submitted a timely *Response* on November 21, 2023, denying the allegations, providing an explanation, and submitting the following documents in support of the District’s position:

1. The District’s narrative *Response* to the Complaint
2. An Exhibit List that serves as a Table of Contents
3. The Student’s IEP, 10/17/2022
4. The Student’s IEP, 10/08/2023
5. IEP Progress Reports, 11/04/2022
6. IEP Progress Reports, 1/27/2023
7. IEP Progress Reports, 5/11/2023
8. IEP Progress Reports, 6/14/2023
9. IEP Progress Reports, 9/29/2023
10. Meeting Minutes, 10/17/2022
11. Meeting Minutes, 12/07/2022
12. Meeting Minutes, 2/15/2023
13. Meeting Minutes, 5/26/2023
14. Meeting Minutes, 08/31/2023
15. Meeting Minutes, 10/09/2023
16. Prior Written Notice, 10/17/2022

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

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

17. Prior Written Notice, 12/07/2022
18. Prior Written Notice, 2/15/2023
19. Prior Written Notice, 3/07/2023
20. Prior Written Notice, 5/11/2023
21. Prior Written Notice, 8/31/2023
22. Prior Written Notice, 10/09/2023
23. Emails between the District, the Parent, and the family's Advocate from 10/31/2022-10/30/2023
24. Document from Parent and the Advocate titled Prior Notice of Special Education Action, 10/13/23
25. List of District staff knowledgeable about the facts related to this Complaint

In *Reply* to the District *Response* on November 27, 2023, the Parent submitted the following documents, some of which predate the one-year complaint period:

1. The Student's 2021 reevaluation documents
2. To Whom it May Concern Letter from the Student's private tutor, undated
3. Assessments of Student's performance from private tutor
4. The Student's IEPs and associated documents (Notice of Team Meeting, Meeting Notes, PWN), 10/17/2022, 12/7/2022, 02/28/2023, 05/11/2023, 10/09/2023
5. Emails between the Parent and/or Advocate and District staff from 10/17/22-11/20/23
6. Document from Parent and the Advocate titled Prior Notice of Special Education Action, 5/19/23
7. Document from the Parent and Advocate titled Prior Notice of Special Education Action, 10/13/23
8. Prior Written Notice from the District, 5/11/2023
9. IEP Progress Reports, 11/04/2021
10. IEP Progress Reports, 1/31/2022
11. IEP Progress Reports, 4/08/2022
12. IEP Progress Reports, 6/14/2022

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant'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 October 31, 2022, to the filing of this Complaint on October 30, 2023.

Allegations	Conclusions
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<p>Review and Revision of IEPs</p> <p>The Complaint alleges that the District violated the IDEA by not reviewing and revising the Student’s IEP when the Student did not make the expected progress toward IEP goals.</p> <p>OAR 581-015-2225(1)(a)(A); 34 CFR §300.324(b)(i)(A)</p>	<p>Not Substantiated</p> <p>The District repeatedly reviewed and revised the Student’s IEP with full parent participation and giving consideration to the Parent’s concerns and amended the Student’s IEP to address slower than expected Student progress toward some IEP goals.</p>
<p>Free Appropriate Public Education (FAPE)</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>Not Substantiated</p> <p>The District complied with all IDEA procedural requirements and developed and implemented an IEP, amending it as necessary, that was reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances.</p>

<p>REQUESTED CORRECTIVE ACTION</p>
<p>The Complainant requested the following corrective action:</p> <ol style="list-style-type: none"> 1. The District should provide compensatory education to [the Student] in the form of 155 additional tutoring hours (265 minutes per week of specially designed instruction in reading and writing, times 35 weeks of the school year).

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 October 31, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student’s disability and special education history.

1. The Student is fifteen years old and in tenth grade. The Student is eligible for special education as a child with a Specific Learning Disability (SLD).
2. The Student attends 7 out of 8 classes with typically developing peers and has one pull-out Academic Support class to receive specially designed instruction (SDI) and assistance with

tracking and completing assignments. Because the Student's school operates on a block schedule, the Student attends the Academic Support class every other day. The Student also receives push-in services in regular classes, with assistance from the teachers and/or a paraeducator. The Student also has one class period acting as a teaching assistant (TA) in a subject in which the Student is proficient.

3. The Student's Case Manager provides or supervises delivery of SDI in the Academic Support class and in the regular classroom. The Case Manager consults with all of the Student's teachers and provides instruction on the Student's IEP accommodations.

4. The Student's IEP dated October 17, 2022, which was in effect at the beginning of the Complaint period, includes the following content relevant to this Complaint:

a. Parent Concerns:

- i. "Support with classroom skills in school. Reading while listening makes comprehension more difficult. [The Student] struggles with decoding worksheets when handed to [them]. Providing digital copies to parent is needed as an accommodation for homework support."
- ii. "Parent is also concerned with the level of academic support in all classes. Parent is concerned that [the Student] will consistently participate in a reading curriculum to build skills in the area of Language Arts."

b. Present Level of Academic Performance:

- i. The Student has an A in most subjects, a B in physics, and a C in geometry.
- ii. Reading data:
 - September 2022: 9th grade Reading Comprehension Pre-Assessment 58.33% correct overall score Details: 33% Evidence, 100% Central Idea/theme, 60% Interaction of Ideas, 60% Vocabulary and Language, 88% Structure, and 20% point of view;
 - September 12, 2022 San Diego Quick Reading Assessment: Independent 4th, Instructional 5th, and Frustration 6th;
 - September 14, 2022 Multisyllabic Word Reading Fluency Pretest Words 11 & Pretest Word Parts 33;
 - September 14, 2022 Passage Reading Fluency Pretest 86 Correct Words Per Minute 8th Grade 2021-22;
 - Fall MAP Literacy: 201 16th Percentile;
 - Fall MAP Math: 213 26th Percentile;
 - "In May of 2021 on an EasyCBM Probe at the 5-9 level (end of 5th grade) the Student scored the following: Reading Fluency – 104 correct words per minute, Reading Comprehension 85% accuracy and Decoding 100% accuracy."

c. How the Student's disability affects involvement and progress in the general education curriculum:

- i. "[The Student] demonstrates areas of need in Reading Fluency, Reading Comprehension, Written Expression and Math, which impacts ... involvement and progress in the general education curriculum. [D]elays due to ... Specific Learning Disability adversely impact [sic]... access to the general education curriculum due to a weakness in the cognitive ability areas of Speed of Lexical Access, Auditory Processing/Phonological Awareness, which requires specially designed instruction in reading, writing and math as well as accommodations for delivery [sic] classroom instruction, format for assessment participation, use of technology tools and visual supports across

instructional settings.”

- d. Results of age-appropriate transition assessment:
 - i. The results of the O*NET Interest Profiler from September 12, 2022, identifies the Student’s interests in video, film, television, sound engineering, all of which require post- secondary education, either college or trade school.
- e. Graduation option: Regular diploma.
- f. Special Factors:
 - i. The IEP identifies assistive technology needs as follows: Access to portable computer, word prediction, speech-to-text, and text-to-speech software, headphones and microphone.
- g. Measurable Annual Goals:
 - i. Reading goal #1 (literary text comprehension): By October 16, 2023, given a grade level literary text and a prompt [the Student] will answer questions correctly about evidence and point of view with 80% accuracy as measured by progress monitoring, work samples and formal/informal assessment.
 - ii. Reading goal #2 (reading fluency): By October 16, 2023, [the Student] will increase... grade level fluency score from 86 CWPM to 100 CWPM with 100% accuracy by 10/16/2023.
 - iii. Writing goal (five paragraph essay): By October 16, 2023, when given a teacher- created writing prompt and the use of sentence frames and graphic organizers, [the Student] will write a five paragraph essay score 4 in the targeted areas of ideas and content, organization, sentence fluency, and conventions as measured by the state scoring guide for writing.
 - iv. Mathematics goal: By October 16, 2023 with learning center and general education staff support will perform grade-level Geometry proficiency standards (including Constructions and Rigid Transformations, Congruence, Similarity, Right Triangle Trigonometry, Solid Geometry, Coordinate Geometry, and Circles) at the 9th grade level with HP Highly Proficient (score of 4) or PR Proficient(score [sic] of 3) accuracy on learning targets, 4 out of 5 data trials as measured by progress monitoring, work samples and formal/informal assessments.
 - v. Classroom/School Skills goal #1: By October 16, 2023, when given written or verbal directions during an independent work session in the classroom and allowed time to process the directions (e.g. “Please retrieve your independent reading book from your desk and begin to read silently”), [the Student] will independently begin the task within one minutes [sic] of the teacher direction [sic] 80% of the data trials.
 - vi. Classroom/School Skills goal #2: By October 16, 2023, when given a written or verbal homework assignment at the end of a class period and a verbal prompt (e.g. “Be sure to record the homework”), [the Student] will locate the space for the class content area in a written or electronic weekly planner and record the assignment title, due date, and two details about the task (e.g. in the area designated for math, the student writes “Geometry problems on plane transformation 1-12 on pg. 82 of textbook due tomorrow 2/24”), for 4 out of 5 assignments. [sic] As measured by teacher observations and planner checks.
- h. Specially Designed Instruction:
 - i. Writing: 65 min/week by general education teacher and 75 min/week by

- special education provider;
 - ii. Mathematics: 20 min/week by general education teacher and 40 min/week by special education provider;
 - iii. Reading: 25 min/week by general education teacher and 100 min/week by special education provider;
 - iv. Classroom/School Skills: 40 min/week by general education teacher and 20 min/week by special education provider.
 - i. Supplemental Aids/Services: Accommodations:
 - i. The Student's October 17, 2022 IEP describes in detail the accommodations needed to address student needs, including: access to class notes, recovery services, parent-school communication, executive functioning, preferential seating, adult support, technology, assignment supports, and testing modifications.
 - j. Supports for School Personnel:
 - i. Case Manager consult with general education teacher(s), 30 min/week;
 - ii. Training around accommodations for gen ed staff, 20 min/week.
 - k. Statement of Non-Participation Justification:
 - i. The IEP team determined that the Student needed to be removed from the regular classroom for one class period out of eight to received specially designed instruction and to practice learned skills.
- 5. Meeting Minutes from the October 17, 2022, IEP meeting included the following content relevant to this Complaint:
 - a. Common Lit Assessment Results:
 - i. 100% on central theme and idea 33% on evidence;
 - ii. 60% on interaction ideas 88% on structure;
 - iii. 20% on point of view.
 - b. The Case Manager was using the Rewards Secondary³ curriculum with the Student and reported a Rewards Assessment result: 25 out of 25.
 - c. The Case Manager reported that the Student did not always make good use of class time and sometimes did not complete assignments.
 - d. The English Teacher and the Physics Teacher reported that the Student may start slowly but gets the work done in class.
 - e. The Case Manager suggested that the IEP Team could add another Academic Support class, so the Student could receive more SDI and assignment completion assistance. The Parent objected to providing a second academic support class to the Student, as that would reduce time in the regular classroom and limit opportunities to take electives.
 - f. The IEP Team discussed goals and agreed that some goals were similar to those in the previous IEP. The Case Manager said that the Student had met some parts of goals but had not reached all the goals at an independent level. The Team agreed to

³ Rewards Secondary is a curriculum designed for students in grades 6-12 who struggle with the content area reading required of secondary level students. The curriculum focuses on reading multisyllabic words and comprehending content area text. For more information, see <https://www.voyagersopris.com/products/reading/rewards/overview>

revise the goals as well as strategies.

6. After the IEP meeting, the Case Manager developed a teacher check-in plan for the Student to be distributed to all teachers who worked with the Student. The check-in plan included:
 - a. Check for understanding of the task;
 - b. In 1 minute, check for task initiation;
 - c. After 5 minutes of independent working, assess task progress;
 - d. Check for task completion at the end of the work period.
7. A PWN from October 17, 2022 notified the Parent of the District's intent to implement the IEP and stating that: "All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team. [The Student] qualifies for Recovery Services so that was added to [the] IEP.
8. The District provided IEP Progress Reports to the Parent "quarterly" on unspecified dates. The Student's IEP Progress Reports all used a numerical code supplemented, as necessary, with narrative comments. The numerical progress code follows:
 1. Your child did not work on this goal during the reporting period (see explanation below);
 2. Progress is not sufficient to meet this goal by the time the IEP is reviewed. An IEP review will be held immediately;
 3. Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed;
 4. Progress has been made towards the goal. It appears that the goal will be met by the next IEP review;
 5. Performance is at or above what is required to meet the goal by the next review;
 6. Please see comments and score section below.
9. An IEP Progress Report from November 4, 2022 refers to the present level baseline information in the October 17, 2022 IEP for all annual goals.
10. The Student's IEP Team met again on December 7, 2022:
 - a. The present levels of academic performance statement included updated information. The Student was passing all classes with grades as follows: A in Study Skills, Game Design, Health, Woods & Metals, and English; B in Physics; and C in Geometry.
 - b. The Team added the following measurable annual goal in writing conventions to the Student's IEP: "By 10/16/2023, given a written grade-level sentence with 2 writing convention errors related to punctuation, capitalization, and/or spelling, and a writing convention checklist with exemplar corrections, [the Student] will correct the 2 named errors in writing, for 4 out of 5 sentences, on 3 out of 4 progress monitoring assessments."
11. Meeting Minutes from the December 7, 2022, IEP meeting include the following content related to this Complaint:
 - a. The team discussed a possible 0.5 elective for the second semester. The Parent expressed concern about whether a "college readiness" elective would be appropriate but agreed to discuss elective options with the Student.
 - b. One of the Student's general education teachers spoke of the Student's strengths in vocabulary, information retention, assignment completion, and peer collaboration.
 - c. The team discussed the Rewards curriculum, which the Parent thought was too

- easy. The Parent asked for reassessment, and the Case Manager said that would happen the following month.
- d. The Team added a writing conventions goal to the IEP.
 - e. The Team discussed adding adult support. The Case Manager said that the Student seemed to prefer support from a general education teacher when in the regular classroom but works well with a paraeducator in pull-out. The Team did not agree to add adult support.
 - f. The Case Manager stated that the current plan is working and pointed out that the Student was caught up on work and was earning strong grades.
12. A PWN from December 7, 2022 states: “All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team.”
13. An IEP Progress Report from January 27, 2023 described the Student making progress, as follows:
- a. Reading goal #1 (literary text comprehension): 4;
 - b. Reading goal #2 (fluency): 3;
 - c. Writing goal #1 (5-paragraph essay): 3;
 - d. Writing goal #2 (writing conventions): 3;
 - e. Math goal: 4;
 - f. Classroom/School Skills goal #1 (following written or verbal directions): 3;
 - g. Classroom/School Skills goal #2 (using planner to record homework assignments): 3.
14. The Student’s IEP Team met again on February 15, 2023:
- a. The Parent asked that the IEP Team address the following issues:
 - i. Curriculum;
 - ii. Recovery Services;
 - iii. Progress on Goals;
 - iv. Keeping up with Work/Finals Plan;
 - v. Teaching Assistant (TA) time;
 - vi. Comp Ed Discussion.
 - b. Annual Goals
 - i. The language of the Student’s Reading goal was changed to specify: “All progress monitoring of reading comprehension will be done without accommodations or assistance.”
15. Meeting Minutes from the February 15, 2023 meeting include the following content relevant to this Complaint:
- a. The Parent and the Advocate proposed several topics:
 - i. Progress on goals/update;
 - ii. Request for compensatory education;
 - iii. Curriculum request to align with private tutor;
 - iv. Work catch up plan that is clear and causes less stress for [the Student] than first semester;
 - v. Ensuring assignments are accommodated before they get to [the Student];
 - vi. Not getting pulled out of TA time.
 - b. The Parent reported that the Student was making progress in Lexercise⁴ private tutoring and requested that the Case Manager use the same literacy curriculum used in Lexercise. The Assistant Director of Special Education said that the Case

⁴ Lexercise is a commercial online education program that uses structured literacy (Orton-Gillingham) methodology to develop reading skills. For more information, see <https://www.lexercise.com>
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Manager was required to use the curriculum chosen by the District's Office of Teaching and Learning, but the Parent could send ideas and examples to the Assistant Director for review.

- c. The Team discussed the Student's progress on goals and reviewed data demonstrating that the Student was "making progress in many areas".
- d. The Parent and the Advocate asked for assessments without accommodations to establish a "true baseline". The team agreed to change the wording in reading goals to state that reading probe would require the Student to read both text and questions.
- e. The Parent expressed concerns about the Student tracking assignments, not letting work pile up, and getting all needed accommodations. The Case Manager pointed out that the Student had flex time and an Academic Support class, and that the Student's teachers were aware of and implementing IEP accommodations.
- f. The Parent and the Student stated that the Student did not want to be pulled out of TA time for IEP probes/assessments. The Case Manager agreed to honor that request.
- g. Compensatory Education
 - i. The Advocate and the Parent requested compensatory education because the Student had not met all IEP goals from the previous IEP. The Assistant Director explained that the IEP Team had agreed in October 2022 that the Student qualified for Individualized COVID-19 Recovery Services. The Parent stated that she did not think the pandemic was the cause of the lack of progress but pointed instead to "incompetence" of the Student's middle school case manager. The Assistant Director agreed to consult with the Special Education Program Administrator and would send a PWN outlining the District's decision on compensatory education.
- h. The Team Action plan includes:
 - i. [The Parent] will share the spreadsheet with the Assistant Director for tracking owed hours and can add on 20 Recovery Service hours.
 - ii. [The Assistant Director] will consult with [the Program Administrator] regarding [the Parent's] claim that [the Student's] lack of progress on IEP goals was the result of not having a competent teacher and access to appropriate FAPE and will respond with a PWN regarding decision.
 - iii. [The Case Manager] will send a hard copy of progress notes home.
 - iv. [The Case Manager] will follow up with math teacher to ensure there is an understanding of accommodations and discuss assignments so that there is more support in class.
 - v. [The Case Manager] will follow up with probes and assessments that are more true baselines (without accommodations) for goal areas.

16. A PWN from February 15, 2023 states: "All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team."

17. On February 27, 2023, the Advocate, on behalf of the Parent, sent an email to the Assistant Director stating in relevant part:

- a. "The current request for compensatory services is due to the lack of progress on [the Student's] previous goals, which indicates a violation of the provision of free, appropriate public education (FAPE). [The Student] did not meet any of the agreed

upon goals in the IEP dated 10/18/21-10/17/22.”

“We made the request in writing on 2/3/23 ... and discussed it with the team on 2/15/23. We have not received notice of a decision as of 2/27/23. This delay in response violates Sec. 303.421 of IDEA on prior written notice. Five of the seven goals on [the Student’s] current IEP dated 10/17/22 are carry-overs from the previous IEP. We have yet to receive updated data on three goals, despite our written request on 2/3/23 that the team come prepared with data for the 2/15/23 meeting. We are asking for a monthly data update due to previous violations, and we currently have a gap of 4 months without adequate data.”

- b. “The absence of updated data since October 2023 drives our concern that even with Recovery Services due to the COVID-19 Pandemic, the data (or lack thereof) continues to show a lack of meaningful benefit. We are going to take advantage of every opportunity to push for additional services that would allow [the Student] access to FAPE. The district may wish to label this additional recovery services or additional comp ed [*sic*], but regardless the request for more support stands.”
18. The Assistant Director replied on March 7, 2023 in a lengthy email, including three attachments: (a) a PWN responding to the February 27 email, (b) notes from the February 15 IEP meeting, and (c) the February 15 IEP. The Assistant Director’s email included a detailed response to the Advocate’s February 27 analysis and request, as excerpted below:
- a. “Thank you for your patience as I have looked into this further. In short, the District does not agree that [the Student] experienced a lack of FAPE during the spring 2022 through [the] October 2022 IEP meeting. To the contrary, [the Student’s] IEP teams at both Jackson Middle School and Ida B. Wells High School have followed precisely the process the IDEA envisions.”
 - b. “During spring 2022, [the Student’s] 8th grade IEP teams met in February and May to review progress, address concerns, and make amendments to the IEP including clarifying or revising SDI. No services were missed and there is no evidence of a denial of FAPE. The District also coordinated a transition meeting in May to share information in advance about [the Student’s] needs and the importance of the transition to high school. To this end, a list of [the Student’s] accommodations were shared with all ... general education high school teachers before the first day of school.”
 - c. “On September 9, a meeting was held with multiple general education teachers to hear parent concerns and to discuss how [the Student] was doing; it was noted that the parent was very pleased about how much support [the Student] was getting. ... [The Student’s] Case Manager also ensured that a para educator was checking in on [the Student] and other 9th graders, ensuring any support needed for accommodations was in place.”
 - d. “[The Case Manager] noted in this September 9 meeting concern that the combination of [the Student’s] work on IEP goals/SDI and the amount of workload at high school might indicate the need for a second Academic Support class. The parent explained [a] preference for all of [the Student’s] school work to be completed at school, none at home. ... The parent did not want to add [the second Academic Support class] at this time and instead wanted to try the IEP team’s alternate idea of using flex time for additional support which does not happen every week but multiple times per month.”

- e. "As you will recall, [the Student's] annual IEP review was held on October 21. The team noted limited progress on some of [the Student]'s IEP goals and carried some goals over (although they have been adjusted for the Student's current grade level which results in an increased grade level expectation), and added a new revised math goal to address skills needed for 9th grade level math. The team also agreed that 20 hours of Recovery Services were appropriate as a result of the lack of progress on IEP goals."
- f. "At the October meeting, [the Case Manager] again shared concerns about workload and [the Student] reporting [they] are too busy to complete work at home. The team again suggested adding another Academic Support class to [the] schedule; the parent again rejected this idea, reporting that [a preference for] [the Student] to be taking electives. [The Case Manager] shared that other classes can be moved (students have 4 years to earn 24 credits and taking 8 classes a year allows for flexibility) but the parent still did not want to consider an additional Academic Support class at this time."
- g. "[The Student's] IEP team met again on December 7 to check in on how [the Student] was doing and to address some concerns about second semester elective choices. Parent concerns were heard and addressed and changes were made to [the Student's] elective class. The team once again discussed the adding of another Academic Support class and once again was declined."
- h. "January grades show [the Student], with support, is doing well and accessing and succeeding in the general education curriculum with all the supports outlined in [the] IEP. [The Student] has earned four credits toward graduation with a 3.5 GPA."
- i. "As I mentioned above, the District acknowledged in October that [the Student] made limited progress on some of [the] IEP goals and offered 20 hours of Recovery Services to address that. After assessing guidance from ODE and reviewing parent concerns about lack of progress, the district is prepared to offer 10 additional hours of Recovery services making that a total of 30 hours of Recovery Services. The District also stands prepared to add an additional Academic Support class increasing [the Student's] access to increased support to keep up with high school course work and continue working on... IEP goals. However, we do not believe that FAPE has been denied such that compensatory services are warranted."

19. A PWN from March 7, 2023, states:

DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT: Provision of FAPE

This Notice Informs you of the following action(s): Provision of FAPE and action(s) below:

Explanation of why the district proposes or refuses to take the action:

Refusal to take action:

The district is refusing the request for compensatory education due to a potential violation of a FAPE for the period of spring of 2022-the annual IEP dated 10/21/22. The district does not agree that there was a denial of FAPE during this time period. Here is a summary of the district's reasons for the refusal:

1. During spring the team met [sic] review [the Student's] progress, address concerns and make amendments to the IEP including clarifying or revising SDI. No services were missed and there is no evidence of a denial of FAPE.
2. Two meetings were held to support [the Student's] transition to high school and a list of [the Student's] accommodations were shared with all of [the Student's] general education high school teachers before the first day of school.
3. A beginning of the school year meeting was held within the first couple of weeks of school to address parent concerns and review accommodations for [the Student's] teachers.
4. The IEP team agreed to recovery services during the annual IEP as a result of lack of progress on IEP goals.
5. Additional services were offered to [the Student] (an additional Academic Support class) to address both support for IEP goals and coursework at high school.
6. January grades show [the Student], with support, is doing well and accessing and succeeding in the general education curriculum with all the supports outlined in [the] IEP. [The Student] has earned four credits toward graduation with a 3.5 GPA.

Action Proposed: The district is proposing to offer an additional 10 hours of Recovery Services time for [the Student] due to lack of progress on ... IEP goals. This is in additional [sic] to the original 20 hours offered at the annual IEP on 10/21/22.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:

Refusal to take action:

Team reviewed all meeting notes from spring of 2022 as well as meeting notes from 3 meetings held during the 22-23 school year (September, October, February).

Action proposed: Team reviewed IEP progress notes, meetings notes, concerns shared by parents, most recent IEP.

Description of other options considered and why those options were rejected:

Refusal to take action: The district does not believe there was any violation of access to FAPE. The district has offered to increase [the Student's] services by adding an additional Academic Support class, and the parent has asked the team to not consider that change at this time.

Action proposed: The district considered not offering additional Recovery Service hours but due to the concern regarding [the Student's] lack of progress on IEP goals and Oregon Department of Education's guidance to consider the additional [sic] of those services at the IEP meetings following COVID-19 school closures, the district is honoring the parent request for additional services.

Description of the factors relevant to the actions proposed or refused are:

The District also stands prepared to add an additional Academic Support class increasing [the Student's] access to increased support to keep up with high school course work and continue working on ... IEP goals.

20. Following the Advocate's February 27, 2023 letter, the Case Manager assessed the Student monthly on progress toward IEP goals and provided IEP Progress Reports to the Parent.

21. An IEP Progress Report from March 13, 2023 described the Student making progress, as follows:
- Reading goal #1 (literary text comprehension): 3;
 - Reading goal #2 (fluency): 4;
 - Writing goal #1 (5-paragraph essay): 3;
 - Writing goal #2 (writing conventions): 3;
 - Math goal: 3;
 - Classroom/School Skills goal #1 (following written or verbal directions): 3;
 - Classroom/School Skills goal #2 (using planner to record homework assignments): 3.
22. An IEP Progress Report from April 10, 2023 described the Student making progress, as follows:
- Reading goal #1 (literary text comprehension): 3;
 - Reading goal #2 (fluency): 4;
 - Writing goal #1 (5-paragraph essay): 3;
 - Writing goal #2 (writing conventions): 3;
 - Math goal: 4;
 - Classroom/School Skills goal #1 (following written or verbal directions): 3;
 - Classroom/School Skills goal #2 (using planner to record homework assignments): 4.
23. An IEP Progress Report from May 11, 2023 described the Student making progress, as follows:
- Reading goal #1 (literary text comprehension): 3;
 - Reading goal #2 (fluency): 4;
 - Writing goal #1 (5-paragraph essay): 3;
 - Writing goal #2 (writing conventions): 3;
 - Math goal: 4;
 - Classroom/School Skills goal #1 (following written or verbal directions): 3;
 - Classroom/School Skills goal #2 (using planner to record homework assignments): 3.
24. The Student's IEP Team met again on May 11, 2023. The Team amended the Student's IEP as follows:
- The Parent provided a written statement of concerns:
 - "[The Student] is showing regression in ... writing skills. Data on [the] goal to write a 5-paragraph essay from June 2022 shows that [the Student] could write 4 paragraphs, while data from April 2023 shows [the Student] was not able to write without adult assistance and accommodations. In June 2022, [the Student] scored 4 out of 5 on the essay, while in April 2023, [the Student] scored 2s and 3s when given accommodations to complete the task."
 - "[The Student] is making significant progress in reading, and continues to access Lexercise tutoring on a weekly basis. A letter from the tutor and Licensed Dyslexia Therapist [name omitted], describes that [the Student] is making great progress with Lexercise structured literacy intervention. [The Student] is advancing through the levels and will soon be ready for advanced therapy on comprehension, fluency, and written expression."
 - "[The Student] responds well to structured literacy intervention, and we need to extend that approach to address writing skills. [The Parent wants] to make sure that [the] school program includes the interventions necessary, including an educator trained at a comparable level to [the] current tutor, to remediate skill deficits associated with dyslexia."
 - "[The Student] entered 9th grade at a 2-3rd-grade reading level with the support provided by PPS since 2nd grade [and] is leaving 9th grade at a 7-9th grade reading level due to the intervention and Lexercise program and

tutoring.”

- v. “[The Student’s Parent] is accepting the additional 10 hours of recovery services offered by the district, noting that [the Parent] stands by the firm belief that 10 hours is insufficient given [the Student’s] clear regression in writing and lack of progress shown in the data. 10 hours at the district’s \$65-an-hour cap will only provide [the Student] with approximately a month and a half of Lexercise tutoring.”

b. Under the heading of “Parent Concerns,” the IEP included a response to the March 7, 2023 email from the Assistant Director and PWN:

- i. “IDEA requires services that provide meaningful benefit in light of the child’s unique circumstances, and IEP goal data shows that [the Student] did not meet 6 out of 6 of the IEP goals between 10/18/21-10/17/22. This indicates that the school teams were not following the process that IDEA envisions.”
- ii. “[The Parent] understands that [the Student] has complex learning needs and [the Parent] is not a special educator ... which is why [the Student] needs access to support for school work. Regardless of a student’s home situation, the district remains obligated to provide FAPE. The failure we see in [the Student]’s IEP goals is not due to a lack of parent involvement, but rather a lack of adequate instruction. The academic support class was offered as a way to help [the Student] with homework completion, not as additional direct instruction minutes to address ... academic and classroom skills goals.”
- iii. “There is still no data showing that [the Student] is making progress toward 4 out of 7 current goals. We have considered the offer of 10 additional hours of recovery services. We continue to hold that [the Student] was denied FAPE during the Oct 2021-Oct 2022 IEP cycle and requires compensatory services. We do not believe that providing 20 hours of recovery services fully addresses the problem. [The Student’s] IEP included 4.25 hours of specially designed instruction per week. The time frame between the mediation agreement dated 4/12/22 through to the IEP annual review on 10/17/22 covers 15 weeks of school, totaling to 78.75 hours of specially designed instruction.” ... We are considering our next steps toward resolving this issue and will notify you when a decision is made.”

c. Measurable Annual Goals:

- i. The IEP Team removed the Student’s reading fluency goal.
- ii. The Team added a new writing goal:
 - By October 2023, given a choice of two argumentative writing prompts and a graphic organizer with examples, [the Student] will write one paragraph that includes an introductory statement, one claim, one piece of evidence that supports the claim, one sentence that explains the evidence, and a concluding statement, for 4 out of 5 rubric points, on 3 out of 4 progress monitoring assessments.

d. The Team added an accommodation: “Teachers will prompt [the Student] to record current assignments in [the] planner during the class period.”

25. Meeting Minutes from the May 11, 2023 meeting included:

a. Teacher input on the Student’s performance:

- i. [The Student’s English Teacher] reported on the Student’s progress on

- current assignments.
 - ii. [The Case Manager] also reported the Student's scores on a writing sample: 2.5 on Ideas and Content, 2.5 on Organization, 2.5 on Sentence Fluency, and 2.5 on Conventions.
 - iii. [The Case Manager] provided a Rewards progress report: 25/25 Decoding Multisyllabic Words, 27/30 Academic Vocabulary, 30/30 Meaning of Prefixes and Suffixes, and 9/15 Spelling. Rate development: Cold Timing 105, Hot Timing 132.
 - iv. [The Case Manager] reported on the Student's independent writing without adult supports, 0/5.
- b. The Team discussed the Student's accommodations and agreed that the Student's general education teachers should check the Student's planner in each class.
- c. The Team agreed to eliminate the Student's Reading Fluency goal and to add a Writing Initiating goal.
- d. The Parent expressed concern about regression in writing, and the District questioned whether the year-to-year writing scores could be compared. The Case Manager offered to review input from the Student's private tutor and to try new strategies for writing.
- e. The District offered an additional 10 hours of Recovery Services, which could be used for the Student's Lexercise program.

26. A PWN from May 11, 2023 states:

DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT:
Provision of FAPE

This Notice Informs you of the following action(s):
Provision of FAPE and action(s) below:

Explanation of why the district proposes or refuses to take the action:

The IEP team has determined that the following amendments to [the Student's] IEP need to be made in order for [the Student] to make progress in gen ed [sic] and on IEP goals:

1. Remove the fluency goal;
2. Add a new writing goal;
3. Add updated parent concerns;
4. Add accommodation for having teachers prompt [the Student] to write down assignments in [the] planner and ensure teachers know [the Student] is working on that goal in general education;
5. Increase Recovery Service hours to 40 after reviewing parent concerns.

Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:

Progress report review, input from parent and all team members, grades and progress in classes, review of last IEP

Description of other options considered and why those options were rejected:

Not updating [the Student's] IEP is not in [the Student's] best interest as team input and data suggests changes to the IEP will support [the Student's] access to gen ed [sic] and help [the Student] make progress on IEP goals.

Description of the factors relevant to the actions proposed or refused are:

All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team.

27. On May 19, 2023, the Parent and Advocate sent the District a letter from the Student's private tutor describing the Lexercise Program and the Student's progress as demonstrated in Lexercise assessments. The Parent also gave the District a document titled "Prior Notice of Special Education Action" with a format similar to the PWN form that Districts use to inform parents of District proposals and refusals. The document indicated that the Parent refused the option of adding a second Academic Support period to the Student's schedule, explaining that the Student "does not need another Skills class, as evidenced by [the Student's] general education assignments and grades. [The Student] needs systematic explicit instruction in written expressions [sic], and the district is not able to provide this service."
28. By the end of the 2022-23 school year, the Student achieved both measurable annual goals in the area of Classroom/School Skills.
29. An IEP amendment from August 31, 2023 included:
 - a. Updated Parent Concerns:
 - i. "[The Student] is showing regression in ... writing skills. Data on [the] goal to write a 5 paragraph essay from June 2022 shows that [they] could write 4 paragraphs, while data from April 2023 shows [they were] not able to write without adult assistance and accommodations. In June 2022, [they] scored 4 out of 5 on the essay, while in April 2023, [they] scored 2s and 3s when ... given accommodations to complete the task."
 - ii. "[The Student] is making significant progress in reading, and ... continues to access Lexercise tutoring on a weekly basis. A letter from the tutor and Licensed Dyslexia Therapist [name omitted], describes that [the Student] is making great progress with Lexercise structured literacy intervention. [The Student] is advancing through the levels and will soon be ready for advanced therapy on comprehension, fluency, and written expression."
 - iii. "[The Student] responds well to structured literacy intervention, and we need to extend that approach to address writing skills. We want to make sure that [the Student's] school program includes the interventions necessary, including an educator trained at a comparable level to [the] current tutor, to remediate skill deficits associated with dyslexia."
 - iv. "[The Student] entered 9th grade at a 2-3rd-grade reading level with the support provided by PPS since ... 2nd grade [and] is leaving 9th grade at a 7-9th grade reading level due to the intervention and Lexercise program and tutoring."
 - v. "[The Parent] is accepting the additional 10 hours of recovery services offered by the district, noting [a] firm belief that 10 hours is insufficient given [the Student's] clear regression in writing and lack of progress shown in the data. 10 hours at the district's \$65-an-hour cap will only provide [the Student] with approximately a month and a half of Lexercise tutoring."
 - b. The IEP Team added an accommodation to the Student's IEP: "Phone use: have access to the phone as needed for classroom and other school related activities,

including writing, photos, audio books, etc.”

30. Meeting Minutes from the August 31, 2023, IEP meeting focused on the Student’s accommodations and the Parent’s concerns about reading and writing curricula:
- a. The IEP Team reviewed the Student’s current accommodations, discussed how the Student’s teachers would become familiar with those accommodations. The Parent asked that teachers provide class notes to the Student and not just copies of PowerPoint slideshows. The Student expressed a preference for using a cell phone for taking notes and for using speech-to-text. The Case Manager said that all teachers who would be working with the Student had received copies of the IEP and a landscape format copy of the Student’s accommodations.
 - b. The discussion of reading and writing curriculum included discussion of the Parent’s choice of Lexercise and the Parent’s hope that the District would use that curriculum with the Student. The Special Education Program Administrator stated that the IEP Team could not specify curriculum in the IEP, but the District had other curricula similar to Lexercise with a foundation in Orton-Gillingham. The Case Manager suggested using the Wilson⁵ curriculum, also an Orton-Gillingham derivative. The Parent replied that the Student had used Wilson in the past, and it had not been successful.

31. A PWN from August 31, 2023 notified the Parent of the District’s intent to implement the IEP and states: “All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team.”

32. The Student’s IEP Team met on October 9, 2023 for the annual IEP review and revision. The revised IEP included the following:

- a. Parent Concerns. The Parent provided the following written statement of concerns:
 - i. “Thank you for meeting with us on 10/9/23 for [the Student’s annual IEP review. We wanted to make note of several of our discussions and agreements:”
 - ii. “[The Student] currently has good grades and is caught up on classwork. [The Student] benefits from the accommodations [received] in class and the assignment support [received] from the special education department.”
 - iii. “We discussed the concerns of [the Parent] regarding [the Student’s] lack of progress in reading and writing.”
 - iv. “[The Student] is dyslexic and [the] IEP goals show where [the Student’s] skill levels are in reading and writing. Goal data indicates that [the Student] did not meet [the] reading comprehension goal, [the] 5-paragraph essay goal, or [the] writing conventions goal from the last IEP.”
 - v. “These goals were rolled over to the new draft IEP. Present levels show that [the Student’s] skills on these goals fall lower than they did a year ago in October 2022.”
 - vi. “The Student] met [the] math goal and [the] study skills goals. [The Student] continues to work on an additional writing goal to write one paragraph, which was added in May 2023.”
 - vii. “We discussed what could be changed in [the Student’s] program in order to see progress in reading and writing. At our last meeting on 8/31/23, [the Special Education Program Administrator] stated that she would

⁵ The Wilson reading system is a structured literacy curriculum that incorporates elements of Orton-Gillingham, with emphasis on research on the science of reading. For more information, see: <https://www.wilsonlanguage.com/>
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communicate with district dyslexia specialists to work together to develop curriculum or instructional changes in order to increase [the Student's] progress. We heard back from [the Program Administrator] on 10/6/23, and she shared that [the Student] is using a district approved curriculum (Rewards) and has qualified teachers. No additional suggestions or ideas were shared about how to increase [the Student's] progress. [The Program Administrator] was not able to attend today's meeting, and [the Assistant Director of Special Education] attended but is new to [the Student's] situation and was not able to answer questions about potential program changes or tutoring."

- viii. "We discussed [the Student's] remaining Lexercise tutoring hours (reimbursed by PPS as agreed to in mediation and with recovery services) and the district was not able to share how many hours were left. It was our understanding that [the Student's] hours would be exhausted by the end of October. We learned after the meeting that [the] hours are exhausted as of 10/10/23."
- ix. "We discussed [the Student's] special education services in reading. [The Student] accesses Rewards lessons with [the Case Manager] for 40 minutes twice a week, with one additional 40 minute session once a month due to the new rotating class schedule. The team was not able to develop any significant changes to [the] program that would increase ... progress in reading and writing."
- x. "We discussed a new study skills goal for [the Student, who has] achieved [the] goals for using [a] planner and getting started on work. We considered a self-advocacy goal, but [the Parent] shared concern that [the Student] may not be ready to self-advocate for teacher assistance due to ... past experience with educational trauma. The team agreed to continue proactively providing [the Student] support, and will share a new study skills goal idea for parent input."
- xi. "The family shared a concern that [the Student] may need Extended School Year services, as data shows regression from spring 2023 to fall 2023. The team decided to continue monitoring [the Student] IEP goals monthly in order to track ... recoupment of skills. A decision about ESY will be made later this year based on goal data."
- xii. "We are requesting that the district continue to fund private tutoring for [the Student], and have shared a 10-day notice that we are enrolling [the Student] in tutoring and will seek reimbursement."

b. Present Level of Academic Performance:

- i. Current grades as of October 4, 2023:
 - 1. US History: A 100%;
 - 2. Forensic Science: A 100%;
 - 3. Weight Training: A 4.0;
 - 4. Algebra: B 3.3;
 - 5. Woods & Metals 3: A 3.97;
 - 6. English: NP;
 - 7. Woods & Metals TA: 4.0;
 - 8. Academic Support: A 100%.
- ii. Math Data: "In Geometry, [the Student] was proficient in 7 out of 8 learning targets in June 2023. [The Student] is currently enrolled in Algebra and is proficient in 2 out of 3 Learning Targets; 1 Highly Proficient as of 10/4/2023."
- iii. Reading Data: "In a Reading assessment in September 2023, [the Student

- scored 50% at a 9th grade level assessment and 90% on 7th and 8th grade level assessments.”
- iv. Writing data: “[The Student] struggles in this academic area. In a writing assessment at the start of the year September 2023, [the Student] scored the following: 2 Ideas and Content, 1 Organization, 1 Sentence Fluency, and 1 Conventions. Very limited response to prompt. In June 2023, [the Student] scored a 4 on Ideas and Content, scored a 4 on Organization, scored a 3 on Sentence Fluency, and scored a 3 on Conventions”.
 - v. “In an assessment on writing conventions, [the Student] scored a 2.75 out of 5. [The Student] recognized two spelling errors, but could not spell correctly without looking the words up.”
 - vi. “In September 2023 in assessing paragraph writing, [the Student] scored 0 out of 5 for an incomplete argumentative writing assessment. [The Student] scored a 3 out of 5 rubric in June 2023. In October 2023, [the Student] scored a 3 out of 5 in writing a summary paragraph.”
 - vii. “When confronted by an academic challenge, [the Student] needs an effective way to communicate [the] challenge to teachers and staff. This is a barrier to work completion, especially in writing assignments.”
- c. Present level of developmental and functional performance:
 - i. The IEP describes the Student as a “capable student” who learns and uses technology tools that facilitate participation in the general curriculum. The Student benefits from check-ins with teaching staff and needs support for the Case Manager to advocate for extra time and complete assignments.
 - d. Special Factors:
 - i. The IEP identifies the Student’s need for assistive technology.
 - e. Measurable Annual Goals. The Student’s goals relevant to this Complaint:
 - i. Reading: “By October 8th, 2024, given an 9th grade level literary text and a prompt, [the Student] will answer questions correctly about evidence and point of view with 80% accuracy as measured by progress monitoring, work samples and formal/informal assessments. All progress monitoring of reading comprehension will be done without accommodations or assistance.”
 - ii. Writing: “Writing Goal #1: By October 8th, 2024, when given a teacher-created writing prompt and the use of sentence frames and graphic organizers, [the Student] will write a five paragraph essay score 4 in the targeted areas of ideas and content, organization, sentence fluency, and conventions as measured by the state scoring guide for writing.”
 “Writing Goal #2: By October 8th, 2024, given a written grade-level sentence with 2 writing convention errors related to punctuation, capitalization, and/or spelling, and a writing convention checklist with exemplar corrections, [the Student] will correct the 2 named errors in writing, for 4 out of 5 sentences, on 3 out of 4 progress monitoring assessments.”
 “Writing Goal #3: By 10/2023 [*sic*], given a choice of two argumentative writing prompts and a graphic organizer with examples, [the Student] will write one paragraph that includes an introductory statement, one claim, one piece of evidence that supports the claim, one sentence that explains the evidence, and a concluding statement, for 4 out of 5 rubric points, on 3 out of 4 progress monitoring assessments.”
 - iii. Classroom/Skills Goal: “Classroom/School Skills: By 10/08/24, after writing a short-term academic goal, [the Student] will identify and record the steps

needed to complete the goal and 2 resources for assistance in the student planner for 4 out of 5 short-term academic goals.”

- f. Specially Designed Instruction:
 - i. Writing: 65 min/week by general education teacher and 75 min/week by special education provider;
 - ii. Mathematics: 20 min/week by general education teacher and 40 min/week by special education provider;
 - iii. Reading: 25 min/week by general education teacher and 100 min/week by special education provider;
 - iv. Classroom/School Skills: 20 min/week by general education teacher and 40 min/week by special education provider.

- g. Accommodations:
 - i. The IEP includes the same extensive list of accommodations as the October 2022 IEP, with the additional accommodations added in 2022-23 IEP amendments.

- h. Supports for School Personnel:
 - i. Special education teacher consult with general education teachers, 30 min/week;
 - ii. Training around accommodations for general education staff, 20 min/week.

- i. Statement of Non-Participation Justification:
 - i. “The team has determined the student will need to be removed from participating with nondisabled students in order to receive specially designed instruction, related services, or supplementary aids or services.”

33. Meeting Minutes from October 9, 2023:

- a. The Student was satisfied with the current class schedule but would like more help getting caught up with English and Math.
- b. The team discussed the Student’s strengths, with lots of positive comments from District staff who work with the Student.
- c. The Parent and Advocate both express belief that the Student is not making progress in literacy and asked for the District to pay for additional private tutoring.
- d. The Case Manager points out that the Student is earning good grades and is on target to graduate with a regular diploma.
- e. The Team discussed the Student’s need to develop self-advocacy skills. The Parent did not want a self-advocacy goal.

34. A PWN from October 9, 2023 notified the Parent of the District’s intent to implement the IEP and states: “All service options were considered by the IEP Team and those detailed on the IEP were agreed to by the Team.”

35. The Parent and Advocate sent the District a document titled Prior Notice of Special Education Action on October 13, 2023. This document stated:

- a. “[The Student] requires tutoring in reading and writing due to the district’s failure to provide... a free, appropriate public education.”
- b. “Based on data shared in October, 2023 [the Student] did not meet several ... previous IEP goals. [The Student] did not meet [the] reading comprehension goal, [the] 5-paragraph essay goal, or [the] writing conventions goal. This is concerning

because even with a highly qualified teacher using a district-approved structured literacy curriculum, [the Student] did not make progress. Recent data shows [the Student's] baseline on each of these skills is below the level of last year at this time. [The Student] has a history of not meeting IEP goals during middle school in Portland Public Schools."

- c. "[The Student's] new IEP written 10/9/23 contains several goals that were rolled over from [the] previous IEP. This is another indicator that [they are] not being provided with a free, appropriate public education."
- d. "[The Student] will begin additional private tutoring Oct 23, 2023 and the family will seek reimbursement from the district."

36. On October 30, 2023, the Case Manager exchanged emails with the Parent and Advocate:

- a. The Advocate wrote that the Parent had contacted a dyslexia consultant who expressed concern about the Student "being taught using two different programs at the same time—Rewards and Lexercise." The Advocate asked the Case Manager to provide a sample lesson from Rewards "to compare with Lexercise materials".
- b. The Case Manager expressed interest in obtaining professional development training in Lexercise.

37. On October 30, 2023, the Parent filed this Complaint.

38. On December 15, 2023, the Complaint Investigator interviewed the Student and the Parent:

- a. The Student:
 - i. When asked about the reading instruction the Case Manager provides, the Student said: "It's really repetitive, and it's not really helpful." The Student added: "Usually the people that they have doing it with me have like no experience with it and ... like they're also learning how to do the curriculum as they're teaching me and that just doesn't work out."
 - ii. When the Complaint Investigator asked the Student to talk more about reading challenges, the Student replied: "Like teachers, I don't know, making it like hard for me to read. And call me out in the middle of class ... Like they'll do this thing called popcorn reading. They'll take turns and just randomly call on someone and when some says that, it just makes my stomach drop."
 - iii. When asked about the assistance provided in the Academic Support class, the Student described the class and said it was helpful. The Student added that the Reading curriculum the Case Manager used was "kind of annoying ... It's just not being taught by someone who's trained enough."
 - iv. The Student spoke more enthusiastically about the private tutoring. When asked to say more, the Student said the curriculum used in private tutoring was on a computer and was more challenging.
- b. The Parent:
 - i. The Parent said that the Student entered high school reading at the 2nd to 4th grade reading level and that the Rewards curriculum did not "move the needle". The private tutoring, according to the Parent, had helped the Student reach 9th to 10th grade reading level in one year.
 - ii. When asked about an apparent disconnect between the Student's advance in reading level to 9th or 10th grade, as measured by the private tutor, and the Student's difficulty reading grade-level text at school, the Parent replied: "[The Student] is stuck at about 9th grade, which is where comprehension comes in. If [the private tutor] was here, she could really start to explain it. So

- the Student still works really hard to decode everything and is working so hard to decode that the comprehension goes out the window.” When asked to elaborate on that point, the Parent said, “You would have to look at the Lexercise data and talk to them to understand.”
- iii. When asked whether it was possible to be certain that improvements in the Student’s reading level were attributable to the private tutoring rather than the instruction the Student received at school, the Parent replied that the data from the school never showed improvement, and the Student was “stuck for years”.
 - iv. When the Complaint Investigator asked how the Student was able to earn high grades in general education classes with low reading proficiency, the Parent replied that it was because of the IEP accommodations and the case Manager’s and paraeducator’s assistance. The Parent added that they were successful in getting the accommodations into the IEP so that the Student could access the general curriculum.
 - v. When asked about the District’s suggestion of using the Wilson reading curriculum, the Parent said they were not rejecting the Wilson curriculum but they needed for an “educator who is certified to give that curriculum” to the Student because, “We don’t have time for someone’s learning curve.”

IV. DISCUSSION

Review and Revision of IEPs

The Complaint alleged that the District violated the IDEA by not reviewing and revising the Student’s IEP when the Student did not make the expected progress toward IEP goals.

The IDEA requires school districts to ensure that IEP teams review each IEP at least once every 365 days to: (a) determine whether a child with a disability is achieving IEP goals, and (b) to revise the IEP as appropriate.⁶ IEP team review and revision of an IEP is not limited to once per year. Rather, the IEP team must review and revise a child’s IEP at any time to address:

1. Any lack of expected progress toward the annual goals and in the general education curriculum;⁷
2. The results of any reevaluation;⁸
3. Information about the child provided to, or by, the parents;⁹
4. The child’s anticipated needs;¹⁰ or
5. Other matters.¹¹

The Parent alleged that the District failed to adequately review and revise the Student’s IEP due to the IEP team continuing several goals in the Student’s most recent annual review. The IEP team chose to add additional support to enable mastery of these updated goals when the

⁶ OAR 581-015-2225(1)

⁷ OAR 581-015-2225(1)(b)(A)

⁸ OAR 581-015-2225(1)(b)(B)

⁹ OAR 581-015-2225(1)(b)(C)

¹⁰ OAR 581-015-2225(1)(b)(D)

¹¹ OAR 581-015-2225(1)(b)(E)

Student did not master the prior goals by the annual review date. The Parent alleged that the District did not develop or implement any substantive changes to the Student's IEP to increase progress in goal areas where the Student had not mastered the prior IEP's measurable annual goals.

However, in this case, the District appropriately convened IEP meetings repeatedly to address the Parent's assertions that the Student was not making progress. After developing an annual IEP on October 17, 2022, the IEP team met on December 7, 2022, February 15, 2023, May 11, 2023, and August 31, 2023. At each meeting, the team considered the Parent's concerns and reviewed data showing the Student's progress toward IEP goals as well as the Student's grades in general education classes. Following IEP team discussion, including parent and Advocate participation, the IEP team revised the Student's services and supports. However, the IEP team did not agree to require a specific curriculum (Lexercise) or pay for private tutoring where that curriculum could be used.

In mid-year, at the Parent's request, the Case Manager began assessing the Student's progress toward IEP goals and providing progress reports to the Parent monthly. In addition, the Parent asked to change the Student's reading goals to specify that the Case Manager must administer assessments without any of the accommodations that the IEP required. The month-to-month progress was minimal, and the Student's scores were lower when assessed without accommodations than with accommodations. Over this same period of time, the Parent and Advocate asserted the Student was making substantial gains in reading proficiency in the private Lexercise tutoring. The Parent was unable to explain how the reported skill increases on Lexercise assessments did not transfer and generalize to the Student's school work.

At each meeting, the IEP Team gave careful consideration to the Parent's concerns and to the data showing the Student's progress. When the IEP Team identified possible weaknesses in the IEP, they made changes, adding goals, accommodations, and services. The Parent rejected a recommendation that the Student complete homework, which could have offered opportunities to practice and reinforce developing skills. Several times, IEP team members suggested adding a second Academic Support period to the Student's schedule, which would have provided the Student with more SDI and more support for assignment completion, but the Parent also rejected that idea, giving preference to the Student's elective class opportunities.

The Parent further explained this choice by stating that the Case Manager was not experienced or certified to use the curriculum the Parent and the Student preferred and would only use a non-preferred curriculum and help to implement the Student's accommodations.

Determination of the unique educational needs and IEP goals, SDI, and services is the responsibility of the IEP Team. In rare instances where a student is demonstrably capable of making progress only with one specific curriculum or teaching method, that Student's IEP would have to specify the one effective method that could enable the provision of FAPE. In this case, however, though the District uses a curriculum that the Parent believes is inferior, the Student is able to participate and make progress in the general curriculum.

The Department does not substantiate this 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 (FAPE) by not meeting the Student's unique individual disability related needs for specially designed instruction, related services, and accommodations. The Complaint asserts that the Student's alleged lack of progress toward several IEP goals constitutes a denial of FAPE.

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 that:¹²

- a. Are provided at public expense, under public supervision and direction, and without charge;
- b. Meet the standards of the [state educational agency];
- c. Include an appropriate preschool, elementary school, or secondary school education; and
- d. Are provided in conformity with an individualized education program (IEP).¹³

The IDEA does not include a standard for determining whether a school district has provided FAPE. However in 1982, the US Supreme Court articulated a two-prong FAPE test that includes procedural and substantive elements:

- 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?¹⁴

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 development¹⁵. If procedural violations alone constitute a denial of FAPE, it is unnecessary to address the second prong of the FAPE inquiry.¹⁶

If a school district demonstrates that it observed IDEA's procedural requirements, the question remains whether the IEP is substantively adequate. When this is the case, it is necessary to determine whether the IEP enabled the student to benefit.

In a 2017 decision the US Supreme Court attempted to clarify a substantive standard for educational benefit.¹⁷ 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."¹⁸ The Court emphatically rejected the "merely more than *de minimis* standard that prevailed in some US Circuit courts and elaborated that an IEP must be "appropriately ambitious" and that "every child should have the chance to meet challenging objectives".

In this case, the District complied with the procedural requirements of the IDEA. The IEP team, which includes the Parent, developed an IEP that was reasonably calculated to enable the Student to benefit from their educational program and to make progress appropriate in light of the Student's circumstances. The Parent was an active an IEP Team member, involved in every decision.

The Parent pointed to the Student's slow progress toward some IEP goals as proof that the

¹² 34 CFR §300.17

¹³ OAR 581-015-2040

¹⁴ Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176 (1982)

¹⁵ W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992)

¹⁶ Id.

¹⁷ Endrew F. v. Douglas County Sch Dist RE-1, 580 US 386 (2017)

¹⁸ Endrew F.
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District denied FAPE to the Student. The District reported the Student's progress regularly, including when progress was limited and changes to instructional strategies may be required. Notably, the Student consistently progressed towards their goals. In those instances where there were concerns about the Student's progress, the IEP Team reconvened to reconsider the Student's circumstances and revise the IEP as the team determined appropriate.

The IDEA does not guarantee that a Student will meet all IEP goals that the IEP Team anticipated would be attainable. Rather, it envisions a process for review and revision of the IEP when it becomes evident that it is necessary to enable FAPE. The District convened IEP meetings again and again to address the Parent's concerns and repeatedly made changes in the IEP. This Student participates and makes progress in the general curriculum.

The Department does not substantiate this allegation.

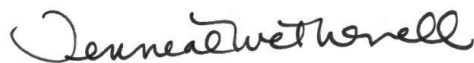
V. CORRECTIVE ACTION

In the Matter of Portland School District 1J

Case No. 23-054-041

The Department does not order corrective action in this matter.

Dated: this 28th Day of December 2023



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: December 28th, 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)).