

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Eugene 4J School District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 23-054-048

**I. BACKGROUND**

On December 11, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the Complainant of a student (Student) residing in the Eugene 4J (District). The Complainant requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the Complainant and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 15, 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 January 2, 2024. The District requested an extension for submission of the District *Response* and materials; the submission date was adjusted to January 4, 2024.

The District submitted a *Response* on January 4, 2024, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. Letter to [Investigator], 1/4/24
2. Assistive Technology Evaluation, 12/13/23
3. [District] Special Education SSD Document Checklist, 12/12/22
4. Eligibility Summary Statement, 10/28/22
5. Disability Statement, Specific Learning Disability (90) Criteria, 10/28/22
6. Prior Written Notice, 10/28/22
7. Parent/Guardian Consent for Individual Evaluation, 9/22/22
8. Prior Written Notice, 9/22/22
9. Confidential Psychoeducational Evaluation, 10/28/22
10. Confidential Speech and Language Report, 10/28/22
11. Notice of Team Meeting, 10/20/22
12. Notice of Team Meeting, 9/15/22

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

13. Prior Written Notice for IEP, 03/03/23
14. Prior Written Notice for IEP, 05/31/23
15. Prior Written Notice, Evaluation Decision, 9/22/22
16. Prior Written Notice, 10/19/23
17. Prior Written Notice for IEP, 10/26/22
18. Prior Written Notice, Eligibility, 10/28/22
19. Prior Written Notice, Individualized Recovery Services Review, 10/28/22
20. Individualized Education Program, 10/26/22
21. Special Education Placement Determination, 10/26/22
22. IEP Progress Report - Measurable Annual Goals, 2/3/23
23. [District] Special Education SSD Document Checklist, 3/15/23
24. Meeting Attendance/Summary, 3/3/23
25. Individualized Education Program Amendment, signed, 10/26/22
26. Special Education Placement Determination, 3/3/23
27. Special Education Placement Determination, 5/31/23
28. IEP Progress Report - Measurable Annual Goals, 6/9/23
29. Individualized Education Program, 10/19/23
30. Special Education Placement Determination, 10/19/23
31. Prior Written Notice for IEP, 10/19/23
32. Special Education, Team Meeting Notes, 10/22/23
33. Meeting Attendance/Summary, 9/22/22
34. The American Dream Poem, no date
35. Harlem Poem, no date
36. Care and Advocacy Specialist Request 433, 3/14/23
37. Email, re: Needs Attention: Mental Health Request, 12:37 pm, 3/14/23
38. Procedural Safeguards Notice, Parent Rights for Special Education K-21, no date
39. 30-day notice for Oregon's Statewide Assessments in English Language Arts and Mathematics, no date
40. Annual OSAS Opt-Out Form (2022-23), signed, 4/28/23
41. Annual OSAS Opt-Out Form (2022-23), unsigned, 4/28
42. Individualized Education Program Amendment, 10/26/22
43. Note About Requested Paperwork, no date
44. [Student] easyCBM, no date
45. Individualized Education Program, Draft, 10/19/23
46. IEP Meeting Agenda, 10/19/23
47. Parent/Guardian Consent for Individual Evaluation, Signed, 10/19/23
48. Assistive Technology Service Request, 4/28/23
49. Individualized Education Program, page one only, 10/19/23
50. Appendix B - Request for a Complaint Investigation, 12/7/23
51. IDEA Violations for [Student] 12/28/12, 12/28/12
52. [School] Daily Attendance Profile, Grade 4, 12/15/23
53. [School] Daily Attendance Profile, Grade 5, 12/15/23
54. [School] Report Card, Grade 4, Semester 1, no date
55. [School] Report Card, Grade 4, Semester 2, no date
56. Easy CBM Report, 12/12/23
57. [Student]: Curricula used in 2022-23 and 2023-24 School Year
58. [School] Letter re Individualized Covid-19 Recovery Services for Students, no date
59. Emails, dated 12/12/22 - 12/11/23

The Complainant submitted a *Reply* on January 11, 2024, providing an explanation and rebuttal and documents in support of the Complainant’s position. The Complainant submitted the following relevant items:

1. Letter to [Investigator], 1/9/24
2. Letter CC: [Student’s] Educational Record, 10/20/23
3. Easy CBM, no date
4. Student Copy Form 1-2, no date
5. Bridge the Gap: At-A-Glance, no date
6. Individualized Education Program, Draft, 10/19/23
7. Emails, dated 10/19/23 - 10/20/23

The Complaint Investigator interviewed the Complainant and the Parent on January 17, 2024. On January 29, 2024, the Complaint Investigator interviewed District personnel. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this Order. This Order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The 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 December 12, 2022, to the filing of this Complaint on December 11, 2023.

<b>Allegations</b>	<b>Conclusions</b>
<p><b>When IEPs Must Be In Effect</b></p> <p>The Complainant alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student’s IEP (Individualized Education Program). The Complainant specifically alleged that the Student did not receive explicit phonics instruction or the full amount of specially designed instruction (SDI) for reading.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Not Substantiated</b></p> <p>The District provided the Student with phonics instruction and the required amount of SDI as specified by the Student’s IEPs.</p>
<p><b>Content of the IEP</b></p> <p>The Complainant alleged that the District violated the IDEA by not including appropriate reading goals or adequate writing instruction in the Student’s IEP.</p> <p>(OAR 581-015-2200: 34 CFR §300.324)</p>	<p><b>Not Substantiated</b></p> <p>The District convened an IEP meeting and made revisions to the IEP to address Parent concerns and the Student’s needs. The IEP services were reasonably calculated to enable the Student to make progress towards IEP goals during the Complaint period.</p>

<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complainant alleged that the District violated the IDEA when the District failed to provide the intervention necessary for the Student to make progress in the area of reading fluency.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Not Substantiated</b></p> <p>The Student made progress towards IEP goals during the Complaint period.</p>
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<p><b>REQUESTED CORRECTIVE ACTION</b></p> <p>The Complainant requested that the Department order the District to take the following corrective action:</p> <p>“[Student] needs reading instruction that can help [them] grow far beyond the capability of the [District]. We would like the school to provide literacy intervention with an outside dyslexia therapist specially trained in teaching students with profound dyslexia. There are a few services in the Eugene area that could come to the school to support [the Student], but additionally, this service could be accessed through an online Certified Academic Language Therapist or the Lindamood-Bell Program. We would like to see ALL of [the Student’s] Language Arts/Reading/Writing instruction to be provided by an outside interventionist until [the Student] is performing within the ‘grade level’ average of 25th percentile or better.”</p>
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### III. FINDINGS OF FACT

IDEA regulations limit complaint investigations 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 December 12, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide the context necessary to understand the Student’s disability and special education history.

1. The Student was ten years old, in the fourth grade, and attended an elementary school in the District during the Complaint period.
2. The Student was eligible for special education as a child with a Specific Learning Disability (SLD).
3. The Student enjoys sports and is a good athlete. The Student loves animals and has a great sense of humor.
4. On October 20, 2022, a Notice of Team Meeting stated that the purpose of the IEP meeting scheduled for October 26, 2022 was to determine eligibility for special education.
5. On October 26, 2022, an IEP meeting was held with all required participants attending. The Student’s strengths were noted as:

- a. “[The Student] is beginning to retain word parts and letter sounds, as well as the occasional sight word”;
  - b. “With adult assistance (scribing, brainstorming,) [sic] [the Student] has a newfound pride in [their] work in gen ed [sic] language arts, even for books [they do] not enjoy”;
  - and
  - c. “[The Student] gives excellent effort in speech.”
  
6. The Parent concerns recorded at the October 26, 2022 IEP meeting indicated the Parent felt the Student had a large gap between the Student’s skills and fourth-grade expectations. The Parent described the Student as very bright, but unhappy with their skill gap, resulting in low self-esteem. Reading practice after school could be inconsistent, further raising concerns for the Parent. The October 26, 2022 amendment indicated that, due to a lack of progress, the team met to brainstorm different approaches. The team recommended increasing the Student’s Specially Designed Instruction (SDI) to include one-to-one instruction in the resource room for 30 minutes.
  
7. On October 26, 2022, the Present Level of Developmental and Functional Performance in the IEP indicated that the Student’s academic weakness in reading was related to their weakness in phonological awareness and long-term associative memory. The IEP stated that the Student’s lagging skills in decoding and fluency required specialized reading instruction and accommodations to access general education. The Special Factors section indicated the Student had communication needs but did not need assistive technology devices or services.
  
8. Annual academic goals for reading listed on the October 26, 2022 IEP indicated: “In one academic year, [the Student] will correctly sound out all letter sounds plus sh, ch, th, and wh when shown a random list of letters and sounds. An additional reading goal stated: “In one academic year, [the Student] will read the first 25 Dolch Sight Words from the first-grade level with at least 90% accuracy across three trials.” The Service Summary indicated the Student would receive 150 minutes a week of SDI for reading to be provided by the Special Education Teacher in the resource room, starting October 26, 2022, and ending October 25, 2023. The Student would also receive 90 minutes per month of speech services to be provided by the SLP. The location indicated on the IEP was “Speech Room/General Ed.”
  
9. Supplementary Aids and Services Accommodations on the October 26, 2022 IEP were:
  - a. “Read aloud assignments unless they test for reading fluency. Help [the Student] to access gen ed [sic] lessons, such as with adult assist [sic] from the learning center”;
  - b. “Read aloud tools”;
  - c. “Access to a scribe”;
  - d. “Multimedia”;
  - e. “Anything the team can come up with that seems to help [their] participation”;
  - f. “Small group work in language arts as much as possible”;
  - g. “Access to alphabet strip”;
  - h. “Access to word lists for class work and homework”;
  - i. “Couple visual with verbal instruction”;
  - j. “Shorten [l]anguage arts assignments as needed to match [the Student’s] fatigue”;
  - k. “Focus on [Student’s] strengths and building on what [the Student] can do”;
  - l. “Praise self-advocacy, value the struggle more than the success”;
  - m. “Build on what [the Student] can do...”;
  - and

- n. "Assist [the Student] with increasing [their] text-to-speech skills while using the iPad to write assignments."
10. Educational placement decisions were documented on October 26, 2022. The IEP indicated the Student received 150 minutes of small group instruction in reading and writing. In addition, the Student received an hour or more per day of instruction in the general education language arts class by joining a fourth-grade class co-taught by a general education teacher with support from a special education teacher. The Student had access to more frequent adult assistance in the regular classroom. The Student was in the regular classroom 80% or more of the time.
  11. According to a Confidential Psychoeducational Evaluation dated October 28, 2022, the Student's reading performance indicated persistent difficulties (<10<sup>th</sup> percentile) with independent reading passages. When asked to read a kindergarten word list in the spring of the Student's 3<sup>rd</sup> grade school year, the Student correctly read 3 out of 9 total words in a minute. Vocabulary understanding showed difficulties compared to peers. The evaluation stated that the Student's basic reading skill weaknesses were related to weaknesses in the Student's psychological processes of auditory and long-term associative memory. Reading fluency was noted as an academic weakness for the Student according to the CTOPP-2 Rapid Automatic Naming test, which revealed performance at less than the 1<sup>st</sup> percentile.
  12. On October 26, 2022, a Prior Written Notice (PWN) for the Individualized Education Program (IEP) indicated the Student was re-evaluated and found eligible under SLD. The Student needed SDI in reading, speech, and writing.
  13. On January 18, 2023, the Parent emailed the Case Manager to request a copy of the Student's IEP. The Case Manager emailed a copy of the Student's IEP to the Parent that same day.
  14. On February 3, 2023, an IEP Progress Report-Measurable Annual Goals document indicated the following:
    - a. For the goal of "correctly sounding out letter sounds sh, ch, th, and wh, when shown a random list of letters and sounds," the Student achieved 60 to 80 percent accuracy, and was rated at a Progress Level of 4, which meant the Student was on track to meet the goal, and;
    - b. For the goal "In one academic year, [the Student] will read the first 25 Dolch Sight Words from the first-grade level with at least 90% accuracy across three trials," the Student was rated at a Progress Level of 4, which indicated the Student was on track to meet the goal of reading sight words accurately 90% of the time.
  15. On February 6, 2023, the Case Manager sent an email to the Principal, which stated, "It seems like [the Parent] is concerned that we're not doing enough to help [the Student] make progress. I agree with [the Parent] on the point that [the Student's] progress is unusually slow and concerning. However, we are Seeing [*sic*] [the Student] for small group instruction (both [Speech Therapist] and I) to work on phonics and basic writing skills. Having me support [the Student] for the entire second half/majority of gen ed [*sic*] language arts and Offering [*sic*] modified homework (I've sent some home months ago but never got anything back or got a

response thus far). We'll definitely go over this at the IEP meeting...But [the Student] will learn very slowly if [the Student] is not willing to learn."

16. On February 6, 2023, the Parent sent an email to the Case Manager, which stated, "I would like to ask for a review of [the Student's] IEP. What times would be available for us?"
17. On February 6, 2023, the Case Manager emailed the Parent, letting the Parent know that the IEP could include accommodations for homework where the assignments from the classroom were modified, or the Special Education Teacher would send home specialized homework. The Parent sent an email to the Case Manager which stated, "I do also want to review the goals [the Student] has, methods [*sic*] being used to teach. I do also wish to review the IEP in addition to this conversation."
18. On February 7, 2023, the Case Manager emailed the Speech Language Pathologist (SLP) asking how consistently the Student was reading very short sight words with the SLP. The Case Manager stated, "I do it inconsistently." The SLP replied, "We haven't worked on sight words, but [the Student] is reading short words that follow 'simple' phonetic rules every time I see [them]. These have been words of 3-4 sounds. I typically point to each letter, [the Student] says the letter sound, and then [the Student] can most often get the word on [their] own from there. I can take more concrete data before we meet."
19. On February 27, 2023, the Case Manager emailed the Occupational Therapist (OT) to request feedback for the Student and requested that the OT observe the Student. The Case Manager shared that they are looking for ideas to help with reading instruction. The Case Manager stated, "It seems that [the Student's] lack of progress has been due to [their] strongly resisting it and immediately giving up if [the Student] can't figure out something right away. [The Student] can be grumpy about reading instruction at school, and [the Student's] very angry about it all at home, from what we are told."
20. On March 3, 2023, a PWN indicated an amendment to the current IEP because the Student's progress on reading goals was insufficient, and the team wanted to modify the Student's plan.
21. On March 3, 2023, a Meeting Attendance/Summary document indicated, "Due to [the Student's] slow progress since [their] initial evaluation, the team met to brainstorm different approaches. [The Title 1 Specialist] made a lot of good suggestions, mainly to use Goalbook for [the Student's] IEP goals, use explicit phonics instruction, use one of Kirkpatrick's [*sic*] programs, measure progress with DIBELS instead of EasyCBM, and use Heggerty's assessments. We also decided to increase [the Student's] specialized instruction time so that [the Student] gets one-on-one instruction in the resource room for 30 minutes. The team also decided to assign independent-level Seesaw homework 2 to 3 times a week that [the Student] can complete on the school iPad at home. [The Student] will also receive instruction using the Past program by Kirkpatrick and the CORE phonics survey to compare results with the most recent re-evaluation data. The Case Manager will try a phonemic awareness pilot program."
22. An Education Placement Discussion and Decisions section of an IEP dated March 3, 2023, indicated the Student would receive "about on [*sic*] [one] hour of instructional minutes in reading, some in small group and most 1:1. This is in addition to specialized instruction in writing as well as 45 to 75 minutes of support in gen ed [*sic*] language arts." The benefit of the option chosen was that the Student would receive more intensive individualized instruction.

23. The School Community School Report Card for Grade 4, 2022-23 School Year indicated that, for both semesters, the Student made “minimal or no demonstration of knowledge and skills of grade level expectations” in the area of “reads fluently at grade level.” The Student made “progress toward knowledge and skills of grade-level expectations” for both semesters in the category of “demonstrates comprehension of a variety of literature and informational texts and the use of strategies to determine the meaning of unknown words in texts.” Also, the report card noted that the Student “consistently demonstrated grade-level expectations” when engaged in reading tasks.
24. In the area of writing, the Student’s performance showed improvements. For writing text at grade-level the Student was “making progress towards knowledge and skills of grade-level expectations.” The Student’s appropriate use of spelling, punctuation, capitalization and grammar, and organization within a paragraph went from “minimal or no demonstration of knowledge and skills of grade-level expectations” to “making progress towards knowledge and skills of grade-level expectations.” The Student’s choice of words and phrases to convey ideas precisely improved from “making progress towards knowledge and skills of grade-level expectations” to “consistently demonstrates grade-level expectations.” The Student also made progress in math from first to second semester and “consistently demonstrated grade-level expectations.”
25. On March 9, 2023, the K-5 Literacy Support Specialist sent an email to the Case Manager giving actionable next steps from reviewing Easy CBM scores over the years to assist the Student’s progress, which stated:
- a. “Phonemic awareness seems to be lacking, so I would assess [their] [Phonemic Awareness] PA with the PAST. This will help pinpoint specific PA skills that need to be strengthened”;
  - b. “I would also give [the Student the] CORE phonics survey to pinpoint specific phonics skills that can be worked on. If there are gaps in early phonics but we are working on higher-level phonics skills, instruction will not be effective. This will help design effective instruction”;
  - c. “If cognitive testing was done at [the Student’s] last (or initial) evaluation, I would review the results to see where is [sic] deficit lies. It might give you more information about [the Student’s] struggles. It may give insight to whether or not there are language deficits that need to be assessed...maybe it’s deeper than a learning disability, and there is a language deficit that required the input of an SLP”;
  - d. “Increase the amount of time [the Student] is pulled for direct, explicit phonics instruction. If [the Student] is only pulled for 30 minutes, I would increase to 45-60. Reading is the gateway to all learning, so increasing [the Student’s] time in reading instruction NOW will benefit [the Student] later. I am sure it [sic] all learning is difficult given [the Student’s] reading scores”; and
  - e. “The programs you mentioned (with the exception of ERI) do not have a PA component, which I suspect is where [the Student] needs strong intervention.”
26. On March 10, 2023, the Case Manager emailed the Parent, letting the Parent know the accommodations for the Student will be updated as determined at the IEP meeting on March 3, 2023.



27. On March 14, 2023, the Case Manager emailed the Parent, letting the Parent know the Case Manager was trained in some easy-to-use apps for reading and spelling assistance for the Student.
28. On March 19, 2023, the Parent sent an email to [the Speech Language Pathologist], which stated, "The two emails I have gotten from you this school year have been the same theme '[the Student] won't take my help.' Have you consulted with your peers? Have you tried alternative approaches? I ask especially now, after finding out, only after demanding an IEP review, that the interventions being used were severely lacking and outdated. Not even teaching [the Student] to decode." The Parent stated, "[the Student] is embarrassed. [the Student] cannot read or write. And instead of helping [the Student], you are telling [the Student] you're gonna tell [their] mom [sic]."
29. On May 31, 2023, an IEP meeting was held. The Special Education Placement Determination indicated the Student would receive instruction in the regular classroom between 40 and 79 percent of the time. The rationale for selection indicated: "We considered going back to [the Student's] old plan of about a half hour per day in the resource room with 1:1 tutoring, but [the Student's] been doing better with two sessions (about an hour per day) that we will stick to this plan. It is sufficient to meet [the Student's] needs at this time."
30. On May 31, 2023, the Case Manager emailed the Parent regarding a temporary increase in reading instruction for the rest of the school year, pulling the Student for reading instruction in addition to the Student's two scheduled times. The District and the Parent signed a written agreement to amend the IEP without a meeting on May 31, 2023.
31. On June 9, 2023, an IEP Progress Report-Measurable Annual Goals indicated the following for the Student's reading goals:
  - a. For Reading Goal 1, "By October 2023, when given a word with up to three sounds...from the 44 essential phoneme list... [the Student] will demonstrate knowledge of sounds within words by verbally blending..., segmenting..., and deleting or replacing the sounds," the Student was rated at a Progress Level 5.
  - b. For Reading Goal 2, "By October 2023, [the Student] will average 50 correct words per minute on three different third-grade reading fluency tests," the Student was rated at a Progress Level 5.

A rating of Progress Level 5 indicates that the Student's performance was "at or above what is required to meet the goal by the next review."

32. On June 9, 2023, the Case Manager emailed the Special Education Administrator, stating that the Student was listed for recovery services last fall. "I ended up doubling [their] reading minutes at the beginning of March, amending the IEP to go from 150 minutes to 300 per week, but [the Parent] still wants something over the summer for [the Student]. I would also like to see [the Student] get instruction over the summer...[the Student] hasn't qualified for normal ESY because [their] scores from spring to fall either stay the same or increase slightly." The Special Administrator Responded: "Please reiterate (very kindly) to [the Parent] that [the Student] does not qualify, and it truly is a good thing that [the Student] is not losing substantial skills over breaks."

33. On September 19, 2023, the Parent emailed the Classroom Teacher to discuss concerns and plans for the Student. A meeting was held to discuss these concerns on September 21, 2023, where the Parent and the Classroom Teacher discussed testing services and “reading work for [the Student] to work on at home.”
34. On October 11, 2023, the Parent emailed the District requesting to review some documents regarding the Student. The Parent asked for guidance in getting the documents.
35. According to easyCBM progress monitoring on October 11, 2023, the Student read 6/6 CVCC & CCVC words correctly. The Student read /sh/, /ch/, /th/, /wh/, /ph/ & /gh/ sounds correctly 83% of the time. When reading words with three sounds, the Student scored 12/12 words correctly. The Student scored 56% on Phoneme Segmenting. In the area of writing, the Student needed frequent adult assistance.
36. An IEP dated October 19, 2023, indicated the Student was improving in sounding out words in decodable passages and rhyming, and was strong in identifying initial word sounds. The Student was good at copying words and liked to write. In reading, the Student had shown improvement in rhyming CVCC and CCVC words, scoring 3/6 on the final trial. The Student improved in orally identifying digraphs (*sic*), scoring 0/6 on the first trial and 5/6 on the last trial. The Student had shown increased accuracy when blending and segmenting CVC words. In the area of writing, the Student copied some class notes and copied and identified known words. The Student was able to access ‘Snap and Read’ and ‘Co-Writer Universal’ apps, which are speech-to-text and text-to-speech apps for the iPad. IEP goals for reading, writing, and assistive technology indicated:
- “By October 2024, when asked to read previously learned sight words words [*sic*], [the Student] will correctly read 18 out of 20 words on 3 out of 4 consecutive progress monitoring assessments”;
  - “By October 2024, when presented with previously taught cvc, ccvc, and/or cvcc words, [the Student] will write and correctly spell 9 out of 10 words on 3 out of 4 consecutive progress monitoring assessments”;
  - “By October 2024, when provided a graphic organizer and the use of assistive technology (e.g., Snap and Read, Co-Universal Writer, speech to text), [the Student] will write a 3-paragraph essay, with each paragraph including an introduction sentence, three detail sentences, and a conclusion sentence, as measured by in-class assignments”; and
  - “By October 2024, when asked to produce written work on an iPad or laptop, [the Student] will edit [their] work for correct capitalization and ending punctuation to include four or less errors per paragraph or one or less errors per sentence, as measured by in-class assignments.”
37. The Service Summary for the October 19, 2023 IEP indicated the Student would receive SDI for written language provided by the Special Education Teacher and the General Education Teacher, 400 minutes per year, starting on October 20, 2023, and anticipated to end on October 18, 2024. The Student would receive SDI for reading provided by the Special Education Teacher in the resource room for 300 minutes per week, starting October 20, 2023, and anticipated to end on October 18, 2024.
38. Supplementary Aids and Services for the October 19, 2023 IEP indicated:

- a. "Accessible materials (e.g., books and textbook provided on accessible tech) provided by the Special Education Teacher/Provider, 360 minutes per day";
- b. "Access to text prediction, provided by the Special Education Teacher/Provider, 360 minutes per day";
- c. "Assignments and tests are read aloud by an adult or embedded text-to-speech software, except those testing for fluency, provided by the Special Education Teacher/Provider, 400 minutes per month";
- d. "Access to speech-to-text and text-to-speech with highlighting apps (e.g., Snap and Read, Co-Universal Writer), provided by the Special Education Teacher/Provider, 360 minutes per day";
- e. "Access to word banks and alphabet lists, provided by the Special Education Teacher/Provider, 400 minutes per week";
- f. "Couple visual with verbal instruction, provided by the Special Education Teacher/Provider, 300 minutes per week";
- g. "Graphic organizers, provided by the Special Education Teacher/Provider, 400 minutes per month";
- h. "Options to shorten ELA assignments, provided by the Special Education Teacher/Provider, 200 minutes per month";
- i. "Notes provided ahead of lectures, provided by the Special Education Teacher/Provider, 200 minutes per month";
- j. "Alternate forms of note-taking, provided by the Special Education Teacher/Provider, 300 minutes per week";
- k. "Alternate forms of conveying/showing knowledge, provided by the Special Education Teacher/Provider, 300 minutes per week";
- l. "Multi-sensory learning, provided by the Special Education Teacher/Provider, 400 minutes per month";
- m. "Chunking assignments, provided by the Special Education Teacher/Provider, 400 minutes per month";
- n. "Small group work in language arts as much as possible, provided by the Special Education Teacher/Provider, 400 minutes a month";
- o. "No deduction for spelling errors, unless assessing spelling specifically, provided the Special Education Teacher/Provider, 20 minutes per month";
- p. "Extra time for writing assignments, provided by the Special Education Teacher/Provider, 400 minutes per month";
- q. "Breaks when needed, provided by the Special Education Teacher/Provider, 200 minutes per month";
- r. "Frequent positive encouragement, reinforcement, and behavior-specific praise, provided by the Special Education Teacher/Provider, 200 minutes per month"; and
- s. "Incorporate strengths and areas of interest for writing and reading assignments when applicable, provided by the Special Education Teacher/Provider, 200 minutes per month."

39. On October 19, 2023, a Parent/Guardian Consent for Individual Evaluation indicated an Assistive Technology Assessment was requested for the Student.

40. On October 19, 2023, a PWN for the IEP indicated the team met, reviewed the Student's progress, and updated the Student's annual IEP. The team agreed to update goals in the areas of reading, writing, and speech; increase minutes in writing services; and provide additional accommodations. The IEP noted that, to support the Student in making appropriate

progress towards the Student's IEP goals, the Student will continue to be pulled out of the general education classroom to receive more intensive, small-group SDI. The team decided the Student would benefit from an Assistive Technology evaluation. Increasing the number of minutes for which the Student would be pulled out for reading instruction was rejected by the team because "[the Student] demonstrated progress in phonological skills of rhyming, identification of digraphs, and blending, segmenting, and replacing phonemes."

41. On October 19, 2023, the K-5 Literacy Support Specialist emailed the District team, letting them know that the Parent and the Parent's Advocate would like the District to provide an additional 15 minutes of 1:1 reading instruction per day, totaling 45 minutes of 1:1 and 30 minutes of small group reading instruction. "They believe [the Student] is owed compensatory minutes from previous years. I will be taking a closer look at my schedule and staff support to try and make this happen. At this point, I believe I can make it work, but I just wanted to keep you all abreast of the recent ask."
42. On October 20, 2023, the Parent wrote a letter to the District outlining the goals and accommodations for review in the upcoming scheduled meeting:
  - a. Adding additional goals:
    - i. "New speech goal";
    - ii. "Goal for phonemic awareness accuracy";
    - iii. "Sight word goal";
    - iv. "Writing goals to write at least 3 paragraphs using graphic organizers and assistive technology tools"; and
    - v. "Goal for editing the Student's writing while using assistive technology."
  - b. Adding accommodations:
    - i. "Accessible materials";
    - ii. "Notes provided ahead of lectures";
    - iii. "Speech-to-text and text-to-speech apps Like Snap and Read and Snap and Text;
    - iv. "Breaks when needed";
    - v. "Chunking assignments";
    - vi. "Extra time for writing assignments";
    - vii. "Graphic organizers";
    - viii. "Alternative forms of note-taking";
    - ix. "Multi-sensory learning";
    - x. "Word banks";
    - xi. "Text prediction";
    - xii. "No deduction for spelling errors, unless assessing spelling specifically"; and
    - xiii. "Generous, positive encouragement and reinforcement."
  - c. Adding testing accommodations:
    - i. "Options for read-aloud or listening comprehension and vocabulary assessments."
  - d. Required staff, student, and parent training:
    - i. "Assistive technology training"; and
    - ii. "Accessible materials availability and use."
  - e. Specific requests:
    - i. "Avoid reading material that is not an appropriate decodable reader. [The Student] should not be given any reading material that [they] are not capable of decoding independently";

- ii. "Find another time for speech sessions to avoid pulling the Student during Math instruction";
  - iii. "Request access to Learning Ally";
  - iv. "[The Student] should not be asked to take notes"; and
  - v. "Consider an occupational therapy assessment for handwriting, form, and stamina."
43. On October 22, 2023, Special Education Team Meeting Notes indicated the Parent requested an increase of 15 minutes daily of 1:1 reading instruction, additional reading and writing goals, and additional accommodations. The team determined that additional reading and writing goals were appropriate, as were additional minutes of SDI in writing. However, the team determined that no additional minutes of SDI in reading were required. The team discussed the need for a reevaluation to consider whether the student required assistive technology, determined that such a reevaluation was needed, and sought the Parent's consent to conduct the reevaluation. The Parent provided consent for this reevaluation.
44. On October 22, 2023, the K-5 Literacy Support Specialist sent an email to the District team stating, "[the Student] made improvement in [their] goals from last year but is reading below kindergarten level. [The Student] made improvement in letter sounds but has not made much progress in phoneme segmentation or fluency (according to easyCBM). At the recent [special education] [K]-5 PD, a specialist noted that 60 minutes per day was not unreasonable for [their] level, but they are asking for 15 minutes more than that. I'm going to try to look into [the Student's] services and services minutes in past years."
45. On October 24, 2023, the Parent sent an email to the Case Manager with a list of accommodations the Parent would like to see added to the IEP:
- a. "Accessible materials";
  - b. "Notes provided ahead of lectures";
  - c. "Speech-to-text and text-to-speech apps like Snap and Read and Snap and Text";
  - d. "Breaks when needed";
  - e. "Chunking assignments";
  - f. "Extra time for writing assignments";
  - g. "Graphic organizers";
  - h. "Alternative forms of conveying/showing knowledge";
  - i. "Multi-sensory learning";
  - j. "Word banks";
  - k. "Text prediction";
  - l. "No deduction for spelling errors unless assessing spelling specifically";
  - m. "Generous, positive encouragement and reinforcement";
  - n. "Assistive technology training for staff"; and
  - o. "Accessible materials availability and use."
46. In the written *Response* from the District, it asserted that the Student received the following SDI services, totaling 350 minutes per week, between the IEP year starting October 26, 2022, and ending March 3, 2023:
- a. "The Student received 25 minutes of daily pull-out sessions for phonics and fluency instruction. This included both one-on-one and small group support from either the special education teacher or the speech/language pathologist";
  - b. "The Student received 45 minutes of daily one-on-one support from the special

- education teacher in their general education classroom. This support included instruction in reading (specifically phonics and sound blending), writing, and spelling. Additionally, accommodation was provided to ensure access to the Wit and Wisdom general education curriculum”; and
- c. “The Student received explicit phonics instruction through Heggerty Phonemic Intervention lessons, Phonics for Reading-2, Word-Attack Basics from the Corrective Reading curriculum, as well as portions of the Dyslexia Kit.”
47. The Parent provided a Bridge the Gap: At-A-Glance document, which summarized the curriculum.
48. On December 11, 2023, the Complainant filed this Complaint.
49. During interviews with the Complaint Investigator on January 17, 2024, the Parent shared that they were not sure what goal they wanted for their Student. The Complainant stated the current goals were not the issue; they asserted that the District agreed to a certain number of minutes of reading instruction, and then it was not included in the final IEP. Concerns for the Student’s IEP started in the second grade, and the Parent felt it was not addressed in the IEP. The Parent shared during interviews that the UFLI, a research-based program from Florida, was a fine program, but it was not being used with fidelity or with multi-sensory explicit instruction. The Parent went on to state that they started to question the instruction when the Former Case Manager told the Parent the Student was not getting what they needed.
50. During interviews with the Complaint Investigator on January 29, 2024, the Current Case Manager indicated that 400 minutes a year of [SDI] in writing was chosen when the Student was struggling in writing. The Current Case Manager shared that the Complainant suggested this amount of SDI to provide flexibility for instruction throughout the year.
51. During interviews with the Current Case Manager, when asked to describe how the goals and accommodations were implemented, the Case Manager shared:
- a. Bookshare;
  - b. Word prediction;
  - c. Read aloud and read to by Teacher;
  - d. ABC list and word bank;
  - e. Uses a display or worksheets;
  - f. Visuals during 1:1 instruction;
  - g. Graphic organizers;
  - h. Shortened assignments;
  - i. Takes notes by drawing pictures;
  - j. Scaffolding;
  - k. Extra time for writing; and
  - l. Breaks.
52. On January 29, 2024, the Literacy Support Specialist shared during an interview with the Complaint Investigator that the Current Case Manager reached out to them for feedback, but the Literacy Support Specialist did not review the IEP for the Student. When asked if they knew which state-approved kit was being used with the Student, the Literacy Support Specialist shared that the kit was the Dyslexia Toolkit, which included a series of assessments and some lessons.

53. On January 29, 2024, during interviews with the Complaint Investigator, the Former Case Manager shared that reading was the primary focus of the Student when the October 2022 IEP was developed. The phonics instruction included in the IEP encompassed writing instruction as well. The IEP Team agreed not to focus on an IEP writing goal at that time.
54. On January 29, 2024, during interviews with the Complaint Investigator, the Former Case Manager shared that there must have been a miscommunication with the Parent about the amount of SDI the Student was receiving. The Student received 25 minutes of small group instruction, plus SDI in the general education setting in Language Arts class with access to reading and graphic organizers for 45 minutes a day. The Student received phonics instruction, a Heggerty auditory component, Phonics for Reading, used phonemes, and word attack basics. The Special Education Teacher provided phonological awareness instruction and used Reading Mastery and Early Reading Intervention (ERI).
55. On January 29, 2024, during interviews with the Complaint Investigator, the 5<sup>th</sup> Grade Teacher shared that the Student was a low-performing reader and that the IEP was for phonics instruction. During the previous year, instruction was provided for 90 minutes, four times a week in general education class. When asked how accommodations were provided, the 5<sup>th</sup> Grade Teacher shared that audiobooks were used or the Student was read to by an adult; that small group instruction and word lists for vocabulary were provided, but they were not sure about visuals. The Student was assigned shorter assignments, text-to-speech, and graphic organizers. The 5<sup>th</sup> Grade Teacher shared that it was hard for the Student to access text or written instruction, but small group instruction supported the Student's needs.
56. The 4<sup>th</sup> Grade Teacher was not available for interviews because they were on personal leave.
57. On January 29, 2024, during interviews with the Complaint Investigator, the SLP was asked to discuss the SDI they provided the Student and whether it aligned with the speech and reading goals. The SLP shared that, during 4<sup>th</sup> grade, the Student was provided 90 minutes each month for speech sounds at a sound, word, and sentence level. The Special Education Teacher also designed reading lessons, and the SLP provided a portion of the reading instruction due to the rapport established with the Student and scheduling issues. The SLP reported that phonological awareness instruction was part of the underlying instruction, paired with phonics instruction. The Parent was aware that the SLP was involved in reading last year, and the IEP Team agreed with this plan. During the current school year, the SLP was not involved in reading instruction because the Special Education Teacher could support the Student in a smaller group for reading instruction.

#### **IV. DISCUSSION**

##### **When IEPs Must Be in Effect**

The Complainant alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. The Complainant specifically alleged that the Student did not receive explicit phonics instruction or the full amount of SDI for reading.

At the beginning of each school year, a school district must have an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. For accessibility of IEPs, each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation and inform each teacher and provider of their specific responsibilities for implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for or on behalf of the child in accordance with the IEP.<sup>3</sup> The responsibilities of implementing an IEP and the accommodations, modifications and supports must be provided for or on behalf of the child in accordance with the IEP.<sup>4</sup>

The key issue revolved around whether the Student received explicit phonics instruction and the designated number of instructional minutes listed in the IEP. The Student qualified for special education under a Specific Learning Disability. On March 3, 2023, a meeting attendance summary documented the IEP Team's recommendation to use a Kilpatrick Program for explicit phonics instruction, and a PWN for the IEP, dated March 3, 2023, indicated an amendment to the IEP due to the Student's progress in reading being insufficient. The Student was instructed using a phonemic awareness pilot program. On March 9, 2023, the K-5 Literacy Support Specialist suggested the IEP team increase the amount of time the Student received direct, explicit phonics instruction.

During District interviews, the Literacy Support Specialist shared the Student was instructed with the Dyslexia Toolkit, which was a State-approved curriculum, as well as Phonics for Reading and Corrective Reading. The Service Summary for October 19, 2023, IEP indicated the Student would receive SDI for reading provided by the Special Education Teacher in the resource room for 300 minutes a week. During District interviews, the SLP stated that they had provided SDI for the Student that aligned with the speech and reading goals. The SLP shared that in 4<sup>th</sup> grade, the Student received 90 minutes a month for speech sounds at a sound, word, and sentence level. The Student also received 1:1 reading instruction that included phonemic awareness and phonics instruction.

On October 22, 2023, Special Education Team Meeting notes indicated the Parent requested an increase of 15 minutes daily of 1:1 reading instruction. The IEP Team did not determine that additional minutes for reading were required. The Parent and the Complainant requested additional reading and writing goals. The IEP Team agreed and added additional written language minutes. On June 9, 2023, the Former Case Manager indicated the Student was identified for recovery services. The Former Case Manager reported that in March, the IEP team amended the IEP from 150 minutes to 300 minutes per week for reading. The Former Case Manager reported during interviews that the SDI amounts required in the IEP had been provided to the Student.

During District interviews, the 5<sup>th</sup> Grade Teacher reported that the Student was assigned shorter assignments and used text-to-speech and graphic organizers. The 5<sup>th</sup> Grade Teacher stated that it was hard for the Student to access text or written instruction, but small group instruction supported the Student's educational needs.

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<sup>3</sup> OAR 581-015-2220(1)(3)

<sup>4</sup> OAR 581-015-(1)(b)



The Department does not substantiate this allegation.

### **Content of the IEP**

The Complainant alleged that the District violated the IDEA by not including appropriate reading goals or adequate writing instruction in the Student's IEP.

The IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP must include a statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives or benchmarks) designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. The IEP must also include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.<sup>5</sup>

Also required in the IEP is 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. Additionally, the IEP must include a statement of the program modifications or supports for school personnel that will be provided for the child to enable them to advance appropriately toward attaining the annual goals, and to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities. The IEP must also include a statement that describes the extent to which the child will be educated and participate with other children with disabilities and children without disabilities, the projected dates for initiation of services and modifications, and the anticipated frequency, amount, location, and duration of the services.<sup>6</sup>

Annual academic goals listed on the October 26, 2022 IEP indicated the Student would receive reading instruction for letter sounds and Dolch sight words. The Service Summary indicated the Student would receive 150 minutes each week of SDI for reading provided by the Special Education Teacher. The Parent participated in the IEP meeting and agreed with the content of this IEP. Over the course of the 2022-23 school year, the District provided the Parent with IEP progress reports that indicated the Student was making progress toward the IEP goals. The Student scored at or above what was required to meet their first and second reading goals according to their June 9, 2023 IEP Progress Report and consistently demonstrated grade-level expectations in math.

When the October 2022 IEP was developed, the IEP team determined that a writing goal would not be added to the IEP as the IEP included accommodations for writing, the instructional focus of the IEP was to be for reading, and the reading instruction included writing components. An IEP dated October 19, 2023 stated the Student could copy some class notes and could copy

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<sup>5</sup> OAR 581-015-2200(1a-1c)

<sup>6</sup> OAR 581-015-2200(1d)(1e)

and identify known words. That IEP included a written language goal. The Student accessed speech-to-text and text-to-speech on their iPad using the Snap and Read and Co-Writer Universal apps. The Service Summary for the October 19, 2023 IEP indicated the Student received SDI for written language provided by the Special Education Teacher and the General Education Teacher of 400 minutes per year. A PWN dated October 19, 2023 indicated the IEP Team met, reviewed the Student's progress, and updated the IEP. The IEP Team updated goals in the areas of reading, writing, and speech. The IEP Team added SDI and provided additional accommodations to support the student's ability to access reading material and create writing material.

The Department does not substantiate this allegation.

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

The Complainant alleged that the District violated the IDEA when the District failed to provide the intervention necessary for the Student to make progress in the area of reading fluency.

Except as provided for age limitations and exceptions to FAPE, school districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.<sup>7</sup>

The allegation was centered around the Complainant and the Parent's concerns that the District violated the IDEA when the District failed to provide the intervention necessary for the Student to make progress in the area of reading fluency. An Eligibility Summary Statement indicated the Student qualified for a Specific Learning Disability and needed SDI in basic reading and reading fluency skills. According to a Confidential Psychoeducational Evaluation dated October 28, 2022, the Student's reading performance indicated persistent difficulties (less than the 10<sup>th</sup> percentile) with independent reading passages.

During District interviews, the Former Case Manager stated that the Student received 25 minutes of SDI reading instruction twice a week, plus SDI in the general education setting in Language Arts class with access to reading and graphic organizers for 45 minutes a day. The District's position was that the Student received phonics instruction, a Heggerty auditory component, Phonics for Reading, used phonemes, and word attack basic instruction. The Special Education Teacher and SLP provided phonological awareness instruction using Reading Mastery, ERI, and the Dyslexia Toolkit, which was a State-approved curriculum. This amount of SDI instruction met the requirements for reading instruction as outlined in the IEP.

On May 31, 2023, the Parent was notified regarding a temporary increase in reading instruction that the IEP team had agreed upon, via written agreement, for the rest of the school year. In accordance with this agreement, the Student was pulled for reading instruction in addition to the Student's two scheduled SDI times. A Special Education Placement Determination, dated May 31, 2023, indicated the Student would receive instruction in the regular classroom 40 to 79% of the time to provide the amount of individualized instruction that the Student required.

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<sup>7</sup> OAR 581-015-2040  
23-054-048

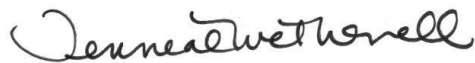
The IEP team, including the Parent, worked together to develop appropriately ambitious goals for the Student in light of the Student's circumstances. The Student scored at or above what was required to meet their first and second reading goals according to their June 9, 2023 IEP Progress Report and was also scoring at grade level expectations in math. The Student also made progress in writing. An IEP dated October 19, 2023, indicated the Student showed improvement in rhyming CVCC and CCVC words, scoring 3 out of 6 on the final trial. The Student improved in orally identifying digraphs, scoring 0/6 in the first trial and 5/6 in the last trial. The Student had shown increased accuracy when blending and segmenting CVC words. The Student's phonics fluency increased from identifying 28 correct letter sounds to 46 correct letter sounds in one minute. The Student made progress in reading fluency.

The Department does not substantiate this allegation.

**VII. CORRECTIVE ACTION**  
*In the Eugene School District*  
*Case No. 23-054-048*

The Department does not order corrective action in this matter.

Dated: this 8th Day of February 2024



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Tenneal Wetherell  
Chief of Staff  
Oregon Department of Education

E-mailing Date: February, 8th 2024

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).)