

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Philomath School District 17J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-004

I. BACKGROUND

On January 9, 2024, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Philomath School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On January 24, 2024, 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 February 7, 2024.

The District submitted a *Response* on February 7, 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. District's Written *Response* to Complaint, undated
2. Table of Contents, undated
3. IEP, 1/18/23 (amended 5/18/23 and 6/12/23)
4. Transfer/Interim IEP, 9/19/23
5. IEP, 10/16/23
6. Parent/Guardian Consent for Individual Evaluation, 11/15/23
7. Special Education Placement Determination, 1/18/23
8. Special Education Placement Determination, 9/19/23
9. Special Education Placement Determination, 10/16/23
10. Progress Report, 1/18/23
11. i-Ready Diagnostic Results, 9/13/23
12. i-Ready Diagnostic Results, 9/14/23
13. Email re Progress Update, 12/14/23
14. i-Ready Diagnostic Results, 1/4/24
15. i-Ready Diagnostic Results, 1/5/24
16. i-Ready Progress Monitoring, 1/23/24

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. i-Ready Benchmark Assessments, 1/23/24
18. i-Ready Progress Monitoring, 9/29/23
19. IEP Progress Report, 1/26/24
20. Notice of Team Meeting, 6/12/23
21. Notice of Team Meeting, 9/12/23
22. Notice of Team Meeting, 10/12/23
23. Notice of Team Meeting, 10/16/23
24. Notice of Team Meeting, 11/7/23
25. Notice of Team Meeting, 11/13/23
26. Notice of Team Meeting, 11/21/23
27. Notice of Team Meeting, 1/11/24
28. Notice of Team Meeting, 1/22/24
29. Special Education Evaluation, 12/14/23
30. IEP Meeting Notes, 6/12/23
31. IEP Meeting Attendance/Summary, 9/19/23
32. IEP Meeting Attendance/Summary, 10/16/23
33. Consent to Evaluate Meeting Attendance/Summary, 11/15/23
34. Prior Written Notice, 5/31/23
35. Prior Written Notice, 9/19/23
36. Prior Written Notice, 10/16/23
37. Prior Written Notice, 11/20/23
38. Prior Written Notice, 12/14/23
39. New Student Process, Dyslexia, undated
40. Process for the Student re Dyslexia, undated
41. RTII/MTSS Handbook, 2022-2023
42. Emails between District staff and the Parents, 9/11/23 through 1/25/24
43. Text Messages between District staff and the Parents, 10/11/23 through 1/8/24
44. Student Contact Log, 1/30/24
45. Current and Proposed Goals, undated
46. Eligibility Summary Statement, 1/25/24
47. Statement of Eligibility for Special Education, Specific Learning Disability, 1/25/24
48. Statement of Eligibility for Special Education, Other Health Impairment, 1/25/24
49. Prior Written Notice, 1/25/24
50. IEP, 1/25/24
51. Special Education Placement Determination, 1/25/24
52. Prior Written Notice, 1/25/24
53. IEP Meeting Attendance/Summary, 1/25/24
54. Notice of Team Meeting, 1/22/24
55. List of Staff Members Knowledgeable about the Complaint

The Parent did not submit any documents along with their Complaint and did not submit a *Reply* to the District's *Response*.

The Complaint Investigator interviewed the Parent on January 24, 2024. The Parent did not respond to email and voicemail requests from the Complaint Investigator for a second interview. On February 16, 2024 and February 20, 2024, the Complaint Investigator interviewed District personnel. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from January 10, 2023 to the filing of the Complaint on January 9, 2024.

Allegations	Conclusions
<p>Evaluation Timeline</p> <p>The Complaint alleges that the District violated the IDEA by failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting.</p> <p>(OAR 581-015-2110(5)(b))</p>	<p>Not Substantiated.</p> <p>At the time of the Complaint, the District was within the required timeline for completing the agreed-upon evaluation and reviewing the results at an IEP meeting.</p>
<p>Content of IEP</p> <p>The Complaint alleges that the District violated the IDEA when it failed to include appropriate specially designed instruction in the areas of reading, writing, and math in the Student’s IEP that are necessary to address the Student’s individual needs.</p> <p>(OAR 581-015-2200; 34 CFR §300.320)</p>	<p>Not Substantiated.</p> <p>The Student’s IEP included specially designed instruction in reading, writing, and math, as well as accommodations and other supports, that addressed the Student’s individual needs and were reasonably calculated to allow the Student to make progress on their IEP goals and in the general education curriculum.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>The Complaint alleges that the District violated the IDEA by failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting, and by not providing the Student with specially designed instruction that meets the Student’s unique disability-related needs.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p>Not Substantiated.</p> <p>The District met the substantive obligation to develop an IEP that was reasonably calculated to enable the Student to make appropriate progress in light of the Student’s circumstances.</p> <p>The District was within the required timeline for completing the agreed-upon evaluation and reviewing the results at an IEP meeting.</p> <p>While the District may have committed a procedural violation by failing to provide the Parents with a Prior Written Notice</p>

	addressing their request for one-to-one instruction, there was no evidence that this resulted in a denial of FAPE.
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REQUESTED CORRECTIVE ACTION

The Complainant requests that the Department order the District to take the following corrective action:

1. Convene an IEP meeting to review the results of the District’s reevaluation of the Student.
2. Provide the Student with specially designed instruction in reading, writing, and math in a one-to-one setting.

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 January 10, 2023. 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 ten years old and is in the fourth grade. The Student currently attends school within the District.
2. At the time of the Complaint, the Student was eligible for special education under the category of Other Health Impairment (OHI). Subsequent to the filing of the Complaint, the Student was found eligible under the additional category of Specific Learning Disability (SLD).
3. The Student was first evaluated for special education by a previous school district in March 2020. The eligibility team considered eligibility under the category of SLD and determined that the Student did not qualify for special education at that time. Instead, a 504 Plan was developed to provide the Student with accommodations.
4. The Parent reported that they had the Student privately evaluated during the 2021-22 school year when the Student was in second grade. According to the Parent, the private evaluator diagnosed the Student with a learning disability and dyslexia.
5. The Student was initially found eligible for special education under the category of OHI by a previous school district in January 2023.
6. The Student’s initial IEP was developed by the previous school district on January 18, 2023 and amended on May 18, 2023 and June 12, 2023. (January 2023 IEP). The January 2023 IEP included, among other things:
 - a. Special Factors: No special factors were identified for further consideration by the IEP team.

- b. Input from Parents: In the area of Reading, the Student was “needing growth for taking notes or writing things down” and “has a lot to say but would struggle to write it down.” Additionally, the Parents noted that, “When measuring compared to peers [the Student] has gotten teary before. [The Student] feels vulnerable even though [the Student] is socially confident.”

Updated Parent Input from June 13, 2023: [The Student]’s experience after the initial IEP was implemented “went from positive to negative”. “[The Student] no longer loves [their] teacher and just wants [the teacher] to be nice to [the Student] and [the Student] no longer loves coming to school and instead dreads coming and often asks to stay home.”

c. Present Levels of Academic Achievement:

- i. Reading: on the most recent STAR Reading assessment, the Student achieved a scaled score of 772 in the Fall and 791 in the Winter. Renaissance Learning, the organization that publishes the STAR assessment series notes that “The Scaled Score (SS) is the most fundamental score produced by assignments and tests. It ranges from 0–1400 and spans grades 1–12.”
- ii. Math: on the most recent STAR Math assessment, the Student achieved a scaled score of 814 in the Fall and 843 in the Winter. These scaled scores also range from 0–1400.
- iii. How the Student’s disability affects involvement and progress in the general education curriculum: “[The Student’s] reading fluency impacts [their] ability to access general education curriculum and needs additional support in that area to make growth.”

d. Present Levels of Functional Performance:

- i. Functional Strengths: “[The Student] loves to be a leader. [The Student] wants to make sure everyone is being treated fairly and with respect.”

Updated June 13, 2023: “[The Student] has a medical need to use the bathroom when needed.”

- ii. Evaluation Results: “[The Student] struggles to speak in front of large crowds giving [them] the opportunity to show knowledge in front of a smaller group of people or one-on-one is helpful for [them].”

e. Goals:

- i. Reading: By January 2024, the Student will be able to “Read a 2nd grade level passage at 55 CWPM (Correct Words Per Minute) with 90% accuracy.”

(1) Objectives: The Student will “Decode CVC words with 80% accuracy,” and “Read 50 of the Dolch sight words with 80% accuracy.”

- ii. Math: By January 2024, the Student will be able to “Add and subtract 3-digit problems with 80% accuracy.”

(1) Objectives: The Student will “Add multi-digit problems with 80% accuracy,” and “Subtract multi digit [sic] problems with 80% accuracy.”

iii. Writing: By January 2024, the Student will “Write two complete sentences with 5 words or more using correct punctuation and inventive spelling [sic] 3 out of 5 opportunities.”

(1) Objectives: The Student will “Demonstrate consistent conventions by capitalizing the first word of the sentence, capitalizing proper nouns, and providing the appropriate ending to a sentence” and “Write a complete sentence in 3 out of 5 opportunities.”

f. Specially Designed Instruction (SDI):

i. Math: 90 minutes weekly in the Resource Room

ii. Written Language: 60 minutes weekly in General Education

iii. Reading: 120 minutes weekly in the Resource Room

g. Related Services: not needed.

h. Accommodations: minimize distractions in learning area, access to snacks, access to breaks/jobs and a fidget, visual aids: use of first/then and sentence stems, preferential seating: close proximity with thought to peer groupings, chunk assignments into smaller goals, frequent check-ins, teaching mode: read directions, grade level materials and tests aloud, speech to text, appropriate amount of light in the classroom for [the Student] to work.

Added June 13, 2023: “nonverbal redirections being mindful of para verbals/nonverbals.”

i. Supports for School Personnel: Consultation to teaching staff by Case Manager for 30 minutes per year.

j. Nonparticipation Justification: “[The Student] will be removed from the general education classroom for approximately 210 minutes weekly.” Explanation: “Data supports the need for SDI at a level below [Student’s] peers and requires a quiet environment with limited distractions in order to concentrate on learning new skills.”

7. According to the Special Education Placement Determination completed on January 18, 2023, the Student’s IEP team considered placement in a “Regular classroom setting 80% or more of the time with special education services at determined times,” and placement in a “Regular classroom setting 100% of the day with push in support for services.” The first placement was selected because it “demonstrates the least restrictive environment while providing for the most appropriate service delivery for making student progress.”

8. The final IEP amendment meeting with the Student’s previous school district took place on June 12, 2023. The Meeting Minutes reflect that the Parents requested that the Student be given “bathroom access without delay” as the Student “has to take in a certain amount of water” and “this was shared by family as a medical need.” Additionally, the use of a “non-verbal cue for redirection was reiterated as a support need.”

9. The Meeting Minutes further document that “anxiety has been a concern” and that the Parents “reiterated from previous communication that the climate was not a good match.” According to the Meeting Minutes, there were no other matters for the IEP team to discuss at that time, but that the Parents “wanted the input and requests to be put into the IEP prior to school ending.”

10. The Student first enrolled in the District at the start of the 2023-24 school year.
11. The District became aware of the Student's eligibility for special education at the start of the 2023-24 school year and began implementing the January 2023 IEP at that time. According to the Student's Special Education Teacher, the Student received pull-out SDI in reading, writing, and math in the Resource Room in accordance with the January 2023 IEP. The Special Education Teacher provided all of the Student's SDI.
12. The Student's General Education Teacher (Teacher) reported that the District used i-Ready as a district-wide progress monitoring tool. On September 13, 2023, the District completed an i-Ready "Diagnostic Evaluation" of the Student's baseline math abilities. According to the "Diagnostics Results" report, the Student received an overall score of 370, which fell within the kindergarten level. The report indicated that the typical average growth for a student at this level would be to achieve a score of 394 within a year. The Student's scores in the individual math domains were as follows:
 - a. Number and Operations: Grade 1
 - b. Algebra and Algebraic Thinking: Grade K
 - c. Measurement and Data: Grade K
 - d. Geometry: Grade K
13. On September 14, 2023, the District completed a "Diagnostic Evaluation" of the Student's baseline reading abilities using i-Ready. According to the "Diagnostics Results" report, the Student received an overall score of 407, which fell within the kindergarten level. The report indicated that the typical average growth for a student at this level, would be to achieve a score of 435 within a year. The Student's scores in the individual domains that were evaluated were as follows:
 - a. Phonological Awareness: Tested Out
 - b. Phonics: Grade K
 - c. High-Frequency Words: Grade K
 - d. Vocabulary: Grade 1
 - e. Comprehension/Literature: Grade K
 - f. Comprehension/Informational Text: Grade K
14. On September 19, 2023, the District convened an IEP meeting to discuss the Student's transfer to the District ("Transfer IEP"). The Transfer IEP included the annual goals from the January 2023 IEP, but added the following Present Level information to each annual goal:
 - a. Reading: a progress report from 6/21/23 "shows that [the Student] read 37 CWPM at 2nd grade level with 97% accuracy."
 - b. Math: a progress report from 6/21/23 "shows that [the Student] scored 80% on 2-digit problems overall and 75% on two digit subtraction problems."
 - c. Writing: a progress report from 6/21/23 "shows that [the Student] met this goal on 2 opportunities and that [the Student] still needs additional feedback on [their] writing."
15. The Transfer IEP included the same SDI as the January 2023 IEP, except that services in the area of Written Language were designated to be provided in the Resource Room, rather than in the General Education Setting, and services in the area of Math were listed as 80 minutes per week rather than 90 minutes per week. The Transfer IEP also incorporated the

accommodations from the January 2023 with the addition of, "Testing in the morning" and "Access to restroom."

16. According to the Meeting Minutes from the Transfer IEP meeting, the purpose of the meeting was, "to transfer IEP from last year." District staff shared with the Parents that "a formal IEP meeting to examine and potentially rewrite any goals and accommodations will take place at a later date." It was explained that "Goals will be kept the same for until [sic] official IEP meeting. Some phrasing will change to match systems [sic] needs."
17. The Meeting Minutes go on to detail input from District staff at the meeting, including that "It has been nice getting to know [the Student]." The Student was described as "very kind, sweet and is doing a great job," although the Student "tends to 'zone out'." District staff noted that the Student's "attitude has been great and that [the Student] seems to be adapting to [their] new school very well."
18. As reflected in the Meeting Minutes, the Parents shared that "school last year was a year lost" and that the "IEP was a disaster." The Parents provided details about an investigation of the previous school district by the Oregon Department of Education and explained that corrective action had been ordered. The Parents shared that the Student had recently started taking ADHD medication and would "need access to water as a related accommodation." The Parents also indicated that they, "will be asking to have pull-out 1:1 for Reading. Writing as well. Last year there were 3-4 students in a group. They will be pushing ODE to ensure 1:1 with [the Student]."
19. According to the Meeting Minutes, District staff responded that, "[the Student] would be in a 2:1 group that will focus on [their] dyslexia needs." The Meeting Minutes go on to detail that the accommodations of access to water, testing in the morning, and access to the restroom would be added to the Student's IEP, and that the Student's placement will include "pull out services in the Resource Room."
20. The Special Education Teacher, who attended the Transfer Meeting, stated that it is not the District's practice to promise one-to-one instruction and that the IEP Team did not put that into the IEP because they were "just getting to know [the Student]." The Special Education Teacher added that "I told the Parents that I had a nice partner for [the Student] to work with at [the Student's] reading level." When asked if the District would provide one-to-one services to a student if they required it to make progress, the Special Education Teacher replied, "It's up to our school to decide that as a team, and we did not see that [need] based on data and information" available at the time.
21. The Special Education Teacher did not recall sending a Prior Written Notice (PWN) responding to the Parents' request for one-to-one instruction for the Student.
22. A Special Education Placement Determination, dated September 19, 2023, was completed as part of the Transfer IEP and the placement selected for the Student was "80% or more of the day in regular class," consistent with the January 2023 placement determination from the Student's previous school district.
23. The District provided the Parents with a PWN dated September 19, 2023, which appears to indicate that the Student's IEP from their previous school district would be implemented until a new IEP could be "developed, adopted, and implemented by the current team." The PWN, however, appears to be a template and does not indicate that date of the IEP that was to be implemented, or the name of the school district where the previous IEP originated. When asked why these details were missing, the District's Student Services Director (Director)

explained that this was a clerical error. The Director indicated that the District had switched to a new IEP management system at the start of the school year and that staff was having difficulty using the new forms at that time.

24. The Parent does not agree that it is appropriate for the Student to receive SDI in a group. The Parent believes that the Student requires one-to-one instruction in math, writing and reading, but “mostly in writing and reading,” and shared that the Student’s doctors recommended one-to-one instruction for the Student. Additionally, the Parent expressed concern that the other students in the group do not have the same disability as the Student and disagreed that the amount of SDI offered to the Student was sufficient for the Student to make progress.
25. When asked if the Student received SDI in a group of other students or in a one-to-one setting, the Special Education Teacher reported that the Student received writing SDI in a group of three or four students, math SDI individually, and reading SDI in a group with one other student. The Special Education Teacher further shared that students are grouped with other students who are at similar skill levels.
26. When discussing the provision of reading SDI in groups rather than individually, the Special Education Teacher explained that, based on research by a reading instruction expert who consulted with the District, students learn better in groups when they can hear peers reading rather than just hearing themselves read. The Special Education Teacher shared that, in their own experience as a teacher, they observed students to learn reading better in a group than one-to-one. The Special Education Teacher further shared that the Student “does very well” when receiving SDI in a group . . . is very social . . . [and] seems to get along with [their] peers,” and that “[the Student’s] growth shows that [they have] been successful in groups.”
27. The Special Education Teacher reported that they began utilizing a curriculum called “The Dyslexia Toolkit” with the Student, but that “[the Student’s] skills level proved to be above that.” The Special Education Teacher also used Phonics for Reading with the Student and confirmed that both of these curricula are research-based.
28. In the area of math, the Special Education Teacher shared that they used a combination of methodologies with the Student that included “a lot of manipulatives . . . to help [the Student] solidify [their] math facts.” When asked about SDI in writing, the Special Education Teacher indicated that they used a writing program called “Daily Writing” that focuses on “the six writing traits of ideas, organization, sentence fluency, word choice, conventions and spelling.”
29. The District convened an annual IEP meeting for the Student on October 16, 2023 (October 2023 IEP). The October 2023 IEP included, among other things:
 - a. Special Factors: The student requires assistive technology, to include text-to-speech and speech-to-text.
 - b. Strengths of Student: The Student “tries hard, doesn’t quit, wants to and can learn, wrote 5 pages in class, works well with classroom aide, showing gains in multi-digit addition.”
 - c. Concerns of Parents: “Parents feel that dyslexia is the predominant issue with [the Student]’s learning challenges, not ADHD. They would like [the Student] to have a new evaluation. The prior evaluation was completed during COVID, and before [the Student] was taking ADHD medication. [The Student] has not had a school-based evaluation. [The Director] will send a scheduling request for an evaluation planning meeting.”
 - d. Present Levels of Academic Achievement:

- i. Reading: Fall i-Ready- 3rd percentile
Fall fluency- 15 CWPM at 3rd grade level
 - (1) Progress Monitoring: 9/29/23- 32 CWPM at 2nd grade level, 82% accuracy
10/6/23- 29 CWPM at 2nd grade level, 76% accuracy
10/22/23- 37 CWPM at 2nd grade level, 86% accuracy
- ii. Math: District curriculum-based measure- 1st percentile. “[The Student] had difficulty with the headphones, used partial adult read aloud. This score may be low, reflecting difficulties in technology.”
- iii. Writing: “[The Student] was able to write 5 pages, using phonetic spelling. [The Student] now needs to focus on correct paragraph structure and conventions.”
- e. Present Levels of Functional Performance: “[The Student] is a pleasant and respectful 4th-grade student who demonstrates an eagerness to learn. [The Student] is new to the district but is already making friends. [They have] excellent communication skills.” The Student “uses fidgets in class, and it is helpful for [them] to take breaks or run class errands or other jobs.” The Student “has medical conditions which make it necessary for [them] to drink a lot of water. [The Student] needs to have access to water and to the restroom immediately upon request.”
- f. How the Student’s disability affects involvement and progress in the general education curriculum: The Student is impacted by “deficits in working memory, fluid reasoning, and orthographic processing, as well as challenges with attention.”
- g. Goals:
 - i. Reading: By October 2024, given SDI, the Student will “read 80 CWPM or more at a 3rd grade level with 90% accuracy.”
 - ii. Math: By October 2024, given SDI, the Student will “add and subtract 3-digit numbers with 80% accuracy or better on 4 of 5 problem-solving probes.”
 - iii. Writing: By October 2024, given SDI, the Student will “write a robust paragraph with grade-level details, correct punctuation, and phonetic spelling in 3 out of 5 opportunities with 80% accuracy.”
- h. Specially Designed Instruction:
 - i. Written Language: 80 minutes weekly in the Resource Room
 - ii. Mathematics: 80 minutes weekly in the Resource Room
 - iii. Reading: 120 minutes weekly in the Resource Room
- i. Related Services: not needed.
- j. Accommodations: State and District Testing: text-to-speech or human read-aloud, separate setting, extended time with frequent breaks, test in the morning; Speech-to-text for: classroom assignments, especially writing; Sensory supports: access to breaks, fidgets, send on errands, classroom jobs; Frequent checks for understanding; Teaching mode: read directions, grade level materials and tests aloud; Preferential seating:

consistent seat placement; Break assignments into smaller goals; Redirects by agreed-upon non-verbal signal, avoid calling student out in front of peers; Testing in the morning; Immediate access to restroom upon request; Minimize distractions in the learning area; Access to snacks; Appropriate amount of light in the classroom for work; and Access to water.

- k. Supports for School Personnel: Consultation to teaching staff by Case Manager for 60 minutes per year.
 - l. Nonparticipation justification: [The Student] will be removed from the general education classroom for 280 minutes per week. Explanation: “[The Student] needs specially designed instruction in small group or 1:1 in a quiet setting with fewer distractions to progress in the general education curriculum.”
30. According to the Special Education Placement Determination completed on October 16, 2023, the Student’s IEP team considered placement in “80% or more of the day in regular class” and placement in a “40% to 79% of the day in regular class.” The first placement was selected because it “best meets the student’s needs at this time.”
 31. According to the Meeting Minutes from the October 2023 IEP meeting, the Parents requested an evaluation planning meeting to determine appropriate special education services. The previous evaluation that the Parents completed privately was done during distance learning as a result of COVID and before the Student began taking medication for ADHD. They shared their belief that dyslexia was the main area of concern for the Student, rather than ADHD, and wanted to have the Student evaluated under the special education eligibility category of SLD. The District agreed that a new evaluation was warranted and offered to schedule an evaluation planning meeting.
 32. When the Complaint Investigator asked why another meeting needed to be scheduled rather than conducting evaluation planning at the October 2023 IEP meeting, the Director responded that there was not a school psychologist at the meeting, which would have been necessary for evaluation planning. Further, the Notice of Meeting had only included review of the IEP and had not indicated that evaluation planning would take place at that meeting.
 33. When discussing the Student’s present levels of performance in reading, the Meeting Minutes note that, based on several progress monitoring assessments, the Student was determined to be “about at the same level as June.” Accordingly, the IEP team adjusted the Student’s reading goal to reflect their current level.
 34. The Meeting Minutes further detail discussion regarding the Student’s IEP goals. District staff wished to adjust the mathematics goal after the new evaluation was completed. In regard to writing, the Student was noted to have recently written a five-page paper, which was more writing than the Student previously produced. The writing goal was adjusted to focus on paragraph structure and conventions.
 35. The District provided the Parents with a PWN dated October 16, 2023, which proposed to implement the IEP completed on the same date. The PWN explained that staff had gotten to know the Student since their enrollment in the District and had the opportunity to collect data. As a result, “minor changes were made to the goals and accommodations in the transfer IEP.” The PWN further noted that an evaluation had been requested due to “substantive changes” since the last evaluation, including that the Student had recently begun taking medication for ADHD and that the previous evaluation had been completed during the COVID-19 pandemic.

36. On October 27, 2023, the District's Administrative Assistant for the Department of Student Services (Assistant) left a voicemail message for Parents asking about their availability for an evaluation planning meeting the week of November 6-9, 2023. The Assistant sent a follow-up email on October 31, 2023 seeking a response from the Parents regarding their availability for an evaluation planning meeting for the Student.
37. On October 31, 2023, the Parents sent an email to the Assistant requesting that the evaluation planning meeting be scheduled between 8:00-9:00 am or 3:00-4:00 pm. Several emails and text messages were exchanged between the Assistant and the Parents between October 31, 2023 and November 6, 2023 in an attempt to find a mutually agreeable date for the evaluation planning meeting.
38. On November 6, 2023, the Parents sent an email to the Assistant, the Director, and two individuals from a law office expressing dissatisfaction with the "extreme difficulty scheduling the eval planning meeting." The Parents inquired as to the reason for the meeting and whether the meeting was required and stated, "I want to move forward without delay and red tape."
39. On November 7, 2023, the Assistant sent an email to the Parents with a copy of their Procedural Safeguards and a Notice of Team Meeting scheduling the evaluation planning meeting for November 15, 2023 at 7:45 a.m., a date and time that the Parents had previously indicated was agreeable to them.
40. The District held an evaluation planning meeting for the Student on November 15, 2023 (Evaluation Planning Meeting). The Meeting Minutes from the Evaluation Planning Meeting indicate that the District's "dyslexia point person" attended the meeting and described their role at the Student's school. The staff member shared that they had completed the dyslexia training required by the State and acted as one of the District's Response to Instruction and Intervention Specialists. After this introduction, the staff member was excused from the meeting.
41. After the "dyslexia point person" left the meeting, the Parents expressed their understanding that this staff member was "certified in the Orton-Gillingham Reading Program." The District clarified that the staff member is "trained in compliance with the State Dyslexia law" but is not certified in Orton-Gillingham.
42. The Evaluation Planning Meeting continued with a discussion of the evaluations that would be completed with the Student. When asked what they hoped to accomplish with an evaluation, the Parents shared that they "would like an academic baseline and a plan for specially designed instruction to help [the Student] progress in the general education curriculum." The Parents also noted that they had not signed a release of information with the Student's previous school district and that "no information should be shared between school districts."
43. As reflected in the Meeting Minutes, the District's School Psychologist explained that they would complete an academic assessment, but also wanted to include "several cognitive assessments that are related to dyslexia and may help provide more relevant information." The Psychologist suggested completing "the Orthographic Processing, Phonological Awareness, and Rapid Naming Sub-tests . . . [and] the Behavior Assessment for Children rating scale to understand how anxiety may be affecting [the Student]."
44. After the School Psychologist discussed the proposed assessments, the Parents shared that "other professionals have recommended the Orton-Gillingham curriculum, and that [they]

would like the code to [the Student]'s dyslexia unlocked so that [they] can catch up to grade-level academics." According to the Meeting Minutes, the Director responded that the Student "is receiving research-based specially designed instruction now, and [the Student's] eligibility category . . . does not affect [their] access to the specialized instruction that [they] need." The Director then offered another IEP meeting in December to review the Student's progress, which the Parents accepted.

45. The Parents continued to express their frustration, at the Evaluation Planning Meeting, that the District did not utilize the Orton-Gillingham curriculum. The Director reiterated that the instruction used by the District is research-based, "and that school staff welcome [the Student] and [their] family to Philomath and want to work together as a team to help [the Student] progress."
46. The Meeting Minutes go on to describe the discussion between the School Psychologist and the Parents regarding the evaluation process. District staff also shared that they were seeing growth with the Student in reading and writing. Both the Special Education Teacher and Teacher shared their belief that the Student "is above the 1st-grade level." The Parents "noted that the frustration Parents are feeling is because they have been traumatized to a high level. [The Parent] stated, 'Please know we are hearing positive feedback. We know [the Student] has had a good year so far and we appreciate the work you are doing.'"
47. The District provided the Parents with a Parent/Guardian Consent for Individual Evaluation dated November 15, 2023 (Consent for Evaluation). The Consent for Evaluation indicated that an evaluation of the Student was being proposed due to "Questions about academic progress and possible specific learning disability eligibility." The Consent for Evaluation included assessments in the areas of achievement, intelligence, behavior, as well observations. Specifically, the Consent to Evaluate identified the following assessment tools to be administered as part of the evaluation: Wechsler Individual Achievement Test (WIAT), Behavior Assessment System for Children (BASC) and Wechsler Intelligence Scales (WISC, WAIS, WPPSI). The Parents signed the Consent for Evaluation on November 18, 2023 and returned it to the District.
48. On November 21, 2023, the Assistant spoke to the Parents via telephone to discuss scheduling an IEP meeting to review the Student's progress in December, as had been agreed at the Evaluation Planning Meeting. The Assistant and the Parents tentatively determined that December 13, 2023 at 3:00 p.m. was a mutually agreeable date and time for the meeting and the Assistant indicated that they would confirm the meeting with the Parents.
49. On November 21, 2023, the Assistant sent an email to the Parents confirming the IEP meeting for December 13, 2023 at 3:00 p.m., with a Notice of Team Meeting attached. The Assistant also mailed a hard copy of the Notice of Team Meeting to the Parents on that same date.
50. On December 6, 2023, the Parents sent an email to the Assistant inquiring if the IEP meeting on December 13, 2023 was confirmed. The Assistant replied to the Parents' email on the same date indicating that the IEP meeting was confirmed. The Assistant included both the previous email confirming the meeting and another copy of the Notice of Team Meeting.
51. The District convened an IEP meeting to discuss the Student's progress on December 13, 2023. According to the Director and the Case Manager, who were both in attendance, the Parents did not show up for the meeting. The Parents were called to determine if they wanted the meeting to continue and Parents indicated that they had forgotten the meeting. According to the Case Manager, the Parents expressed that things were going well with the Student and

that they would prefer to meet after the evaluation of the Student was completed. In light of that information, the District ended the meeting.

52. The District sent a PWN to the Parents, dated December 13, 2023 indicating that the District had proposed to hold a meeting to amend the IEP but that the meeting would be rescheduled, at the request of the Parents, until after the evaluations of the Student had been completed. The PWN also noted that the Case Manager would send an email with information regarding the Student's progress.
53. On December 14, 2023, the Case Manager sent an email to the Parents with a summary of the Student's academic progress to date. The Student's progress was reported, in relevant part, as follows:
 - a. Math progress monitoring (easyCBM) at the 3rd grade level:
 - i. October: 14th percentile
 - ii. December: 24th percentile
 - iii. "According to the teacher and student work samples, [the Student] is now able to add and subtract 3-digit numbers with 100% accuracy when [they are] focused. [The Student] recently completed 8/8 3-digit subtraction, and 20/20 3-digit addition problems correctly."
 - b. Reading progress monitoring (i-Ready) at the 2nd grade level:
 - i. "The range has been 23-37 correct words per minute with 76-90% accuracy. On [the Student's] latest progress monitoring assessment, 12/05/23, [they] read 55 correct words per minute with 95% accuracy."
 - c. Writing progress monitoring (student work samples) at the 3rd grade level:
 - i. "Ideas- met on 1/3 samples"
 - ii. "Sentence Fluency- met on 2/3 work samples"
 - iii. "Spelling- met on 0/3 work samples"
 - iv. "Conventions- met on 1/3 work samples"
54. When asked about the Student's progress on their IEP goals, the Special Education Teacher reported that the Student had shown "extreme growth" in both reading and math. In the area of reading, the Special Education Teacher noted that Student began the year reading 14 correct words per minute at the 2nd grade level and was now reading 52 correct words per minute at the 3rd grade level. The Special Education Teacher described the Student's progress in reading as "way better than we could ever imagine" and "not what I expected."
55. In the area of math, the Special Education Teacher reported that, on the District's "fall benchmark" testing, the Student scored in the first percentile while on the "winter benchmark" testing, the Student scored in the tenth percentile. The Special Education Teacher described this progress as "phenomenal" and noted that "we've been so excited and [the Student] has been excited too." The Special Education Teacher went on to share that the Student was currently working "near grade level" in math when in the Resource Room. The Student's Teacher similarly reported that the Student was making progress in math and was "starting to catch up."
56. The Special Education Teacher described the Student's progress in writing, noting that the Student's "sentences are getting more complex and more descriptive," and that the Student

was working at a third-grade level. The Teacher also reported that the Student made progress in the general education curriculum in writing. The Teacher shared that, if the Student is motivated to write, they “can write pages and pages” and agreed that the Student is achieving at the third-grade level in writing.

57. The District completed its evaluation of the Student, pursuant to the Consent for Evaluation, and generated an Evaluation Report dated December 14, 2023 (December 2023 Evaluation). The report included the results of assessments in the areas of academics, cognitive abilities, and behavior/emotional functioning, as well as a review of the Student’s educational history, previous evaluations, and observations by District staff. The results of the evaluation included, but were not limited to, the following:
- a. The Student attended three different school districts prior to enrollment in the District and had repeated first grade. The Student’s educational history included varied levels of achievement in the areas of writing and math and more consistent difficulties in reading, particularly reading fluency.
 - b. Prior evaluations of the Student included a special education evaluation by a previous school district in March 2020, based on which the Student was found not to qualify for special education, a private psychoeducational evaluation in June 2022, and a special education evaluation completed by another previous school district, based on which the Student was found eligible for special education under the category of Other Health Impairment.
 - c. The Student was diagnosed with ADHD, specific learning disabilities in reading and writing, and an unspecified anxiety disorder in June 2022 by a private psychologist. The Student was diagnosed again with ADHD by their physician in October 2022.
 - d. According to the results of the Wechsler Individual Achievement Test, Fourth Edition (WIAT 4), administered by the District School Psychologist, the Student demonstrated academic delays in all areas. The Student’s scores were as follows:
 - i. Reading Composite: Standard Score of 72, which is in the 3rd percentile. The School Psychologist noted in the report that the Student’s score on the “Word Reading” subtest suggested that the Student’s sight word decoding “is consistent with early second grade expectations.” The Student’s reading comprehension, however, “was at an early first grade level.” As a result, the Student “was able to competently read a second-grade passage aloud, [but] struggled to find the answers to the questions in the passage.”
 - ii. Math Composite: Standard Score of 81, which is in the 10th percentile. The School Psychologist explained that the Student “was able to add and subtract multiple digits with regrouping, and multiply one digit by two digits,” but “was not able to divide or complete problems involving fractions.”
 - iii. Writing Composite: Standard Score of 69, which is in the 2nd percentile. The School Psychologist reported that the Student’s writing was “consistent with mid first-grade expectations.”
 - e. The School Psychologist used the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) and portions of the WIAT-4 to assess the Student’s cognitive abilities. The School Psychologist noted in the report that standard scores of 80 or below are considered

weaknesses, while scores of 90 or above are considered strengths. The Student's index scores were as follows:

- i. Phonological Processing: Standard Score of 88, which is in the 21st percentile. The School Psychologist noted that this score is in the low average range, and indicates that the Student "has made tremendous growth in this area since [their] previous evaluation."
 - ii. Orthographic Processing: Standard Score of 69, which is in the 2nd percentile (weakness).
 - iii. Naming Speed: Standard Score of 89, which is in the 23rd percentile.
 - iv. Symbol Translation: Standard Score of 91, which is in the 27th percentile (strength).
 - v. Storage and Retrieval: Standard Score of 87, which is in the 19th percentile.
- f. The Student's behavior and emotional functioning were evaluated using the BASC-3, which included a Parent Rating Scale completed by the Student's Mother, a Teacher Rating Scale completed by the Teacher, and a Self-Report-Child completed by the Student. Notable results of these rating scales are as follows:
- i. On the Parent Rating Scale, the Student was rated in the "At Risk" range in the areas of Hyperactivity and Attention Problems. All other areas were rated in the normal range.
 - ii. On the Teacher Rating Scale, the Student was rated in the "Clinically Significant" range for Attention Problems and "At Risk" for Anxiety, Somatization, Atypicality and Functional Communication. All other areas scored in the normal range.
 - iii. On the Self-Report-Child, the Student rated themselves in the normal range in all areas.
- g. The School Psychologist summarized the report and explained that "the current evaluation results indicate that [the Student] continues to demonstrate difficulty with attention regulation at home and in school." In addition, "[the Student]'s teacher is also observing signs of anxiety in class such as worrying and fearfulness." Based on the current evaluation and previous testing, the Student "has strengths in Verbal Comprehension and Visual Processing," but "presents with weaknesses in Orthographic Processing, Fluid Reasoning, Working Memory, and Processing Speed." The report further explains that, "these cognitive weaknesses explain [the Student's] difficulty with mastering grade level academic skills."
- h. As reflected in the 2023 Evaluation Report, the School Psychologist concluded that, "Even though [the Student] has made significant progress with phonological processing after ongoing reading intervention, [their] low orthographic processing continues to cause impairment seen with dyslexia." In addition, the Student "continues to demonstrate issues associated with ADHD and continues to meet special education criteria under the category of Other Health Impairment." Finally, the School Psychologist concluded that the Student "also presents with a pattern of cognitive strengths and weaknesses that suggest the presence of a Specific Learning Disability."
58. On January 5, 2024, the District completed another "Diagnostic Evaluation" of the Student's math abilities using i-Ready. According to the "Diagnostics Results" report, the Student received an overall score of 425, which fell within the second-grade level. The Student's scores in the individual domains that were evaluated were as follows:

- a. Number and Operations: Grade 2
 - b. Algebra and Algebraic Thinking: Grade 3
 - c. Measurement and Data: Grade 1
 - d. Geometry: Grade 3
59. On January 4, 2024, the District completed another “Diagnostic Evaluation” of the Student’s reading abilities using i-Ready. According to the “Diagnostics Results” report, the Student received an overall score of 407, which fell within the kindergarten level. The Student’s scores in the individual domains that were evaluated were as follows:
- a. Phonological Awareness: Tested Out
 - b. Phonics: Grade K
 - c. High-Frequency Words: Grade 1
 - d. Vocabulary: Grade 1
 - e. Comprehension/Literature: Grade K
 - f. Comprehension/Informational Text: Grade K
60. The Student’s overall reading score on the i-Ready Diagnostic Evaluation from January 4, 2024 was the same as their overall reading score on the same evaluation given on September 13, 2023. The Special Education Teacher explained that this was not surprising and did not indicate a lack of reading progress because the Student’s IEP goals were in the area of reading fluency, and the overall reading score would not necessarily show the Student’s growth in fluency. The Special Education Teacher further explained that, in their experience, a student may not show growth in the overall reading score, which includes reading comprehension, until their fluency has increased.
61. In addition to the Diagnostic Evaluations, the District used i-Ready to conduct regular monitoring of the Student’s progress in the area of “Passage Reading Fluency,” which was the focus of the reading goal in the Student’s IEP. According to an i-Ready progress report, the Student achieved the following scores when reading a second-grade level text:
- a. 9/29/23: 32 CWPM
 - b. 10/6/23: 29 CWPM
 - c. 10/12/23: 37 CWPM
 - d. 10/20/23: 35 CWPM
 - e. 11/9/23: 23 CWPM
 - f. 11/20/23: 33 CWPM
 - g. 12/5/23: 55 CWPM
62. The Special Education Teacher reported that the Student’s growth in reading fluency, as reflected in the i-Ready progress monitoring data, was better than they had expected for the Student.
63. On January 2, 2024, the Parents exchanged text messages with the School Psychologist inquiring as to when the evaluation of the Student would be completed. The School Psychologist replied that the evaluation was complete and “we are just waiting for the meeting to be scheduled.”
64. On January 2, 2024, the Parents sent an email to the Case Manager indicating that the School Psychologist informed them that morning that the evaluation of the Student was complete. The Parent inquired as to how soon an IEP meeting to review the evaluation results could be scheduled.

65. That same date, the Case Manager replied to the Parents via email that they had submitted a request to the Assistant to schedule the meeting. The Parents were informed that the Assistant would contact them, or that the Parents could call the Assistant and provide them with the Parents' availability.
66. On January 8, 2024, the Parents sent a follow-up email to the Case Manager and shared that they had not yet heard from the Assistant regarding scheduling an IEP meeting. The Case Manager replied to the Parents on the same date and stated that they had spoken with the Assistant and that the Parents "should hear from [them] in the next week or so."
67. Also on January 8, 2024, the Parents sent two additional emails to the Case Manager questioning whether the IEP meeting could be "expedited" and indicating that they had left the Assistant a voicemail "hoping that will move things along."
68. The Case Manager replied to the Parents on the same date stating, "I know it can be frustrating waiting for a meeting . . . [The Assistant] will get you on the calendar just as quickly as [they] can. Just to remind you, there is a 60-day time frame for this meeting, which I believe is the first week of March, but I'm sure it will be before that."
69. The Parents replied to the Case Manager asking if the Case Manager was "referring to the child find timeline through fape [sic] and idea [sic]." The Case Manager responded, clarifying that "the eligibility meeting must be held within 60 school days after the consent for evaluation is signed," to which the Parents replied, "Unacceptable, I will file a state complaint today. Another fape [sic] and idea violation [sic]."
70. On January 8, 2024, the Student's Father also sent an email reply to the Case Manager stating, "According to the ODE there is no 60 day delay after a child has an IEP [sic]. We just wrapped up with [previous school district] and our attorney for their law violations against [the Student]. So please do not delay this process further with attempting to reset the initial timeline for child find that we already went through last school year. If this is what is happening there will be consequences due to not being informed of this process. I will also be in contact with the ODE to discuss any violations forthcoming [sic]."
71. On January 8, 2024, the Parents also emailed the Superintendent for the District stating that the District "is trying to put us through the initial IEP timeline again and delay [the Student's] IEP meeting and educational supports by 60 calendar days," and that "it was never disclosed to us that by testing my child [they] would go back to square one like [they] never had an IEP."
72. On January 9, 2024, the Parents sent another email to the Superintendent expressing that "the 60 day hold was never communicated to us" and "you do not have consent from either parent to the 60 day hold."
73. On January 9, 2024 the Parents filed this Complaint.
74. On January 10, 2024, the Director sent an email to the Parents regarding the evaluation timeline noting that, "I believe there may be some confusion about the evaluation process." The Director explained, "Your child has an active IEP that has been and is being implemented since your child started attending school in Philomath. The evaluation currently underway is to determine any additional areas of need for your child and has not changed or reduced your child's special education services in any way. There is no "60 day hold" and nothing is on pause. Under the Oregon regulations regarding special education, the district has 60 school days to complete the evaluation from the date you sign consent (OAR 581-015-2110(5)(b))." The Director further noted that scheduling a meeting with many participants "does take some

coordination” but that the Case Manager and the Assistant were working to schedule the meeting.

75. The results of the December 2023 Evaluation were reviewed at an IEP meeting on January 25, 2024, at which time the Student was found to meet eligibility criteria for special education under the categories of both OHI and SLD.

IV. DISCUSSION

Evaluation Timeline

The Parent alleged that the District violated the IDEA by failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting.

School districts must conduct an evaluation or reevaluation of a student before determining that a student has a disability that meets eligibility requirements for special education, determining that a student continues to be eligible for special education, changing the student’s eligibility category, or terminating a student’s eligibility for special education.³

Before conducting an evaluation or reevaluation of a student, school districts must conduct evaluation planning, provide notice to the student’s parents that describes the evaluation procedures that the school district proposes to conduct as a result of the evaluation planning, and obtain informed written consent for the evaluation from the student’s parents.⁴

Once consent is received, a reevaluation of a student must be completed within sixty (60) school days from written parent consent to the date of the IEP meeting to consider the results of the reevaluation.⁵

In this case, the Parents first requested a reevaluation of the Student at the October 2023 IEP Meeting. The District was not able to conduct evaluation planning at that meeting because the District did not have professionals at the meeting who were necessary to determine what, if any, evaluations of the Student were appropriate. After receiving the request for reevaluation, the District made a timely attempt to schedule the evaluation planning meeting with the Parents and, after multiple attempts to accommodate the Parents’ schedule, was able to identify a mutually agreeable date that was a reasonable amount of time from the request.

The evaluation planning meeting took place, as scheduled, on November 15, 2023 and the District provided the Parents with the Consent for Evaluation that detailed what assessment tools would be utilized in conducting the evaluation. The Parents provided their consent to the reevaluation of the Student on November 18, 2023. At the time the Complaint was filed, the District was still within the allotted timeline for completing the evaluation and reviewing the results at an IEP meeting. The District completed the agreed-upon evaluation and reviewed the results at an IEP meeting on January 25, 2024, which was within the required timeline of sixty school days.

The Department does not substantiate this allegation.

IEP Content

³ OAR 581-015-2105(1)(a)-(d)

⁴ OAR 581-015-2110(1) and (2)(a)-(b)

⁵ OAR 581-015-2110(5)(b)

The Parents alleged that the District violated the IDEA when it failed to include appropriate SDI in the areas of reading, writing, and math in the Student's IEP that is necessary to address the Student's individual needs. Specifically, the Parent alleged that the Student required one-to-one instruction in three academic areas in order to make appropriate progress on their IEP goals.

When a student with an active IEP transfers to a new school district in the same state within the same school year, the new school district must provide a FAPE to the student, that includes services comparable to those described in the IEP from the previous district, until the new district either: (a) adopts the student's IEP from the previous school district; or (b) develops, adopts, and implements a new IEP for the student.⁶ Both the IDEA and Oregon law are silent as to whether a new school district must implement the IEP from a previous district when a student transfers schools over the summer. The IDEA does require, however, that a school district has an IEP in effect at the beginning of each school year for each student with a disability that is within its jurisdiction.⁷ In the case of a student who transfers school districts during the summer, the federal Office for Special Education Programs (OSEP) has advised that it is up to the discretion of the new school district to determine how it will meet this requirement.⁸

When developing a student's IEP, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. It must also include measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. The IEP must also include information on how the student's progress toward meeting the annual goals will be measured and provided to the parents. Finally, each IEP must include a statement of the specific special education and related services and supplementary aides and services to be provided to the student, or on behalf of the student.⁹

The specific special education, related services, and supports to be provided must enable the student to: 1) advance appropriately toward attaining their annual goals, 2) be involved and make progress in the general education curriculum, and 3) be educated and participate with other students with and without disabilities.¹⁰ The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹¹ In considering this standard, "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."¹²

When the Student enrolled in the District for the first time at the start of the 2023-24 school year, it was reasonable for the District to provide services comparable to those described in the IEP from the Student's previous school district until the IEP team could meet to develop and implement a new IEP for the Student. The District began providing special education services to the Student that were comparable to the January 2023 IEP upon the Student's enrollment. At the Transfer IEP Meeting, when discussing how the Student's SDI would be provided, the Meeting Minutes reflect that the IEP team considered the input of the Parents. While the Parents may have preferred that the IEP dictate that the Student receive SDI in a one-to-one setting, that was not included in the January 2023 IEP, and there was no evidence that the Student required SDI to be provided in that manner in order to make progress on their IEP goals or in

⁶ OAR 581-015-2230(1)(a)-(b); 34 CFR §300.323(e)

⁷ 34 CFR §300.323

⁸ *Letter to Siegel* (OSEP 2019)

⁹ OAR 581-015-2205(1); 34 CFR §300.320

¹⁰ OAR 581-2200(1)(d); 34 CFR §300.320(a)(4)

¹¹ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 1001 (2017)

¹² *Id.* at 1000

the general education curriculum. To the contrary, the District presented a credible argument that the provision of SDI in a small group, using research-based curriculum, was likely to result in superior progress.

The District collected baseline data during the first several weeks of the 2023-24 school year and used that data to develop a new annual IEP for the Student on October 16, 2023. The October 2023 IEP included a statement of the Student's present levels of academic achievement and functional performance (Present Levels). As reflected in the Present Levels, the Student had academic needs in reading, writing, and math that required specially designed instruction and the IEP team developed goals for the Student in each of the areas of identified needs. The IEP goals were developed based on the data reflected throughout the IEP, were measurable, and were designed to meet the student's disability-related needs.

The October 2023 IEP also included SDI in the areas of reading, writing, and math, as well as accommodations and other supports, that were reasonably calculated to allow the Student to make progress on their IEP goals and in the general education curriculum. The appropriateness of the special education services provided to the Student is evidenced by the progress that the Student made from the time of their enrollment in the District until the Complaint was filed. It is undisputed that the Student continues to have significant academic delays, particularly in the area of reading. The data collected by the District, however, demonstrates that the special education services in the Student's IEP are not only reasonably calculated to allow the Student to make progress, but have resulted in progress in all academic areas that has exceeded expectations.

The Department does not substantiate this allegation.

Free Appropriate Public Education

The Parent alleged that the District violated the IDEA by failing to timely complete an agreed-upon special education evaluation of the Student and review the results at an IEP meeting, and by not providing the Student with specially designed instruction that meets the Student's unique disability-related needs.

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.¹³ The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.¹⁴

In order to determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.¹⁵ Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.¹⁶

¹³ OAR 581-015-2040(1); 34 CFR §300.101(a)

¹⁴ OAR 581-015-2040; 34 CFR §300.17

¹⁵ *Andrew F.*, 137 S.Ct. at 999

¹⁶ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

In this case, the District met the substantive obligation to develop an IEP reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. As addressed below, the District committed a procedural violation when it failed to provide the Parents with a PWN in response to their request at the Transfer IEP that the Student's SDI be provided in a one-to-one setting. This potential procedural violation did not result in a loss of educational opportunity to the Student, as evidenced by the progress that the Student made on their IEP goals. It also did not infringe on the Parents' opportunity to participate in the development of the IEP. As reflected in the Meeting Minutes from the Transfer IEP, the request for one-to-one services was considered by the IEP team and the Parents were informed that SDI would be provided in a small group. The evidence provided also supports that the Parents were given ample opportunity to participate in each of the Student's subsequent IEP meetings.

The Department does not substantiate this allegation.

Additional Findings

Prior Written Notice (PWN)

The IDEA requires school districts to give parents PWN whenever it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a student with a disability.¹⁷ PWN must be both specific and explanatory, including:

- a. A description of the action the district proposed or refused;
- b. An explanation of why the district proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
- d. A statement that the parents of a student with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the district's proposal or refusal.¹⁸

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

In this case, the District provided the Parents with one PWN following the Transfer IEP. This PWN informed the Parents of the District's proposal to implement the IEP from the Student's previous district. This PWN did not, however, respond to the Parents' request that the Student receive SDI in a one-to-one setting. District staff shared in interviews that the Parents clearly, and on multiple occasions, requested one-to-one instruction for the Student, particularly in reading. While the District refused the Parents' request, as reflected in the meeting minutes from the Transfer IEP, the District only described the action that the District was refusing and did not include the additional required components of a PWN. This failure to respond to the Parents' request resulted in a procedural violation of the IDEA.

V. CORRECTIVE ACTION

¹⁷ OAR 581-015-2310(2)(a)-(b); 34 CFR §300.503(a)

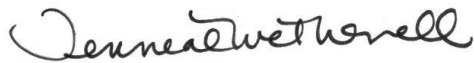
¹⁸ OAR 581-015-2310(3)(a)-(g); 34 CFR §300.503(b)

In the Matter of Philomath School District 17J
Case No. 024-054-004

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

Action Required	Submissions	Due Date
1. The District will ensure that all PWNs that were required to be provided to the Parents regarding special education decisions for the Student have been provided, even if they were not provided in a timely manner.	Copy of all PWNs that were provided to the Parents to ODE Legal Specialist.	March 30, 2024
2. The District will develop and conduct training on PWN requirements under the IDEA for all District staff responsible for implementing PWN requirements.	Training agenda/materials to ODE Legal Specialist for review/approval. Sign-in sheet from training	April 30, 2024 June 15, 2024

Dated: this 8th Day of March 2024



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: March 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).)