

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Camas Valley School District 21J

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 24-054-007

I. BACKGROUND

On January 29, 2024, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from an interested individual (Complainant) with knowledge of a student (Student) residing in the Camas Valley School District 21J (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.¹ 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.²

On January 30, 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 13, 2024.

The District submitted a *Response* on February 13, 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, 2/13/24
2. Parent Guardian Consent for Individual Evaluation, 10/28/23 *incorrectly dated 2024*
3. Out of State Draft Individualized Education Program (IEP), 11/12/20
4. Notice of Team Meeting on 5/10/22, 5/10/22
5. IEP, 5/10/22
6. Special Education Placement Determination, 5/10/22
7. Prior Written Notice (PWN), 5/10/22
8. IEP Meeting Notes, 5/10/22
9. IEP Progress Report, 6/14/22
10. IEP Progress Report, 4/4/22
11. IEP Progress Report, 1/23/22
12. IEP, 5/4/23
13. PWN, 5/4/23
14. Special Education Placement Determination, 5/4/23
15. Letter from Private Medical Provider, 9/15/23
16. IEP Amendment, 9/28/23

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. IEP Meeting Notes, 9/28/23
18. Parent Guardian Consent for Individual Evaluation, 10/9/23 (signed 10/28/23)
19. IEP Progress Report, 11/3/23
20. Student Work Sample, 12/5/23
21. IEP Progress Report, 1/26/24
22. 2023-24 District Calendar, adopted 3/16/23
23. Email exchanges between District Staff, Parents, and Complainant, 3/9/21 – 2/13/24
24. List of District Staff Knowledgeable about the Complaint, 2/13/24
25. i-Ready Historical Results, 11/9/23
26. Screenshots of StudentVUE Grade Book, undated
27. Student Transcript, 2/13/24

The District submitted additional documents on March 4, 2024.

1. Email exchanges between District Staff, 5/1/23 – 10/23/23

The Complainant submitted a *Reply* on February 16, 2024, providing an explanation and rebuttal. The Complainant submitted the following relevant documents in support of the Complainant's position:

1. *Reply*, 2/16/24
2. Transcript from 9/28/23 IEP Meeting, 9/28/23
3. Email exchanges between District Staff, Parents, and Complainant, 10/16/23 – 2/12/24

The Complainant submitted additional documents on February 27 and March 6, 2023:

1. Meeting Preparation Notes for 9/28/23 meeting, undated
2. Screenshots of Text Message Exchanges, 4/5/23 – 4/17/23

The Complaint Investigator interviewed the Complainant and the Student's Parents on February 27, 2024. On March 4 and 12, 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 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 January 30, 2023, to the filing of this Complaint on January 29, 2024.

Allegations	Conclusions
<p>When IEPs Must Be in Effect</p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP.</p>	<p>Substantiated</p> <p>It is unclear to what extent SDI was provided. At best, the Student's services were partially implemented.</p>

<p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p>The District did not appropriately monitor progress on the Student's IEP goals.</p> <p>From May 2023 through January 2024, the Student's removal from the general education classroom was greater than prescribed by the Student's IEPs.</p>
<p>Review and Revision of IEPs</p> <p>The Complaint alleged that the District violated the IDEA by failing to include modified curriculum in the Student's IEP, although the IEP team determined it was necessary.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p>Substantiated</p> <p>Agreements made by the IEP team at the September 28, 2023 IEP meeting, including modifications, were never added to the Student's IEP.</p> <p>The IEP team failed to review and revise the Student's IEPs to include appropriate present level information, measurable annual goals, and specific special education services and supports necessary to address the Student's unique disability related needs.</p>
<p>Parent Participation</p> <p>The Complaint alleged that the District violated the IDEA by interfering with the Parents' ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.</p> <p>(OAR 581-015-2190; 34 CFR §300.501)</p>	<p>Substantiated</p> <p>The District did not respond to the Parents' requests for information on the Student's services and supports, failed to appropriately monitor and report progress, did not inform the Parents that the implemented educational program did not conform to the Student's IEPs or placement, and failed to incorporate IEP team decisions into the September 2023 amended IEP.</p> <p>This interfered with the Parent's opportunity to participate in the IEP process.</p>
<p>Free Appropriate Public Education (FAPE)</p>	<p>Substantiated</p>

The Complainant alleged that the District failed to provide the Student with a free appropriate public education.

(OAR 581-015-2040; 34 CFR §300.101)

The District (1) failed to provide appropriate services and supports, did not appropriately monitor IEP goal progress, and failed to review and revise the Student's IEP as needed, resulting in lost educational opportunity and benefit, and (2) infringed on the Parent's opportunity to participate in the IEP process. This resulted in a denial of FAPE.

REQUESTED CORRECTIVE ACTION

- All Staff to be trained on their duties and responsibilities under IDEA & under Oregon Education Code Chapter 581, Special Education.
- Compensatory time for reading and math for the Student.
- Paid tutoring for the Student.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before January 30, 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 16 years old and in the tenth grade.
2. The Student is currently eligible for special education services under the category of Specific Learning Disability (SLD)
3. The Student was identified as a student with SLD in an out-of-state school district and started receiving special education services in 2014.
4. The Student's 2020 out-of-state Individualized Education Program (IEP) identified the Student as having "needs in the areas of reading comprehension, written expression, mathematical skills and work habits." The 2020 IEP stated, "[The Student] benefits from instruction/presentation multi-sensory models, visual aids, repeated instruction, grade level materials read to [them], tasks broken into smaller increments, copies of notes, word processor, extended time, small group setting, preferential seating, and sensory breaks when needed."
5. The Student started attending a District school (the School) in January 2021. The School included kindergarten through twelfth grade.
6. On May 10, 2022, the District convened the Student's annual IEP meeting.
7. The Student's May 10, 2022 IEP (May 2022 IEP) included the following, among other things:

a. Parent Concerns: "Parents are concerned about [Student's] progress at school and that [Student] receive the SPED [*sic*] support [they] may need."

b. Present Levels:

i. Academics: only included the Student's report card information (i.e., grades and teacher comments). No other present level academic information was included.

The comments for Language Arts and Social Studies noted, "Assignments modified to meet I.E.P. Test standards modified to meet I.E.P."

ii. Developmental and Functional Performance: only included undated WISC-V and KTEA-3 assessment information.

The WISC-V results indicated the Student scored very low in full scale IQ, fluid reasoning, general ability index, and cognitive proficiency index. The Student scored average or low average for verbal comprehension, visual spatial, working memory, and processing speed.

The KTEA-3 results indicated the Student scored below average in the academic skills composite and math composite, scoring below average in every area for math.

c. How the Student's disability affects involvement and progress in the general education curriculum: "Two years ago [the Student] scored below average in both math and written language on [their] standardized testing. Obviously this could have a negative effect on [their] ability to perform up to grade level in [their] general education classes. [The Student] compensates for these weaknesses by continuing to be very disciplined and also by being a very hard worker. As usual, [the Student] is currently passing all of [their] classes with a "C" grade or better with two periods of Special Education support... [The Student] appears to be thriving at [the School] academically, socially and athletically and is fitting in well here."

d. Special Factors: none.

e. Annual Goals: one goal total, under the category of "Social/Emotional/Behavioral" ("[The Student] will continue to pass all of [their] general education classes with a 'C' grade or better") with two short-term objectives (STOs) (complete all assignments with 95% frequency; score at least 67% on all assignments)".

The "Present Level" for the goal stated, "[The Student] is currently earning a C grade in Language Arts and an A in RR [Resource Room] Math."

The "Measurement Method" for both STOs was listed as, "[The Student] is very close to accomplishing this now."

Progress was to be reported to Parents "[d]uring school's regular written report time" and will be "[i]ncluded with report cards mailed." The anticipated dates for progress reports were listed as 6/15/22, 10/28/22, 1/27/23, and 4/7/23.

f. Specially Designed Instruction (SDI): Written Language (40 minutes per day, provided by special education teacher in the special education classroom); Study/Organizational Skills (40 minutes per week, provided by the General Education Teacher in the general

education classroom); and Math (40 minutes per day, provided by the Special Education Teacher in the special education classroom).

- g. Related Services and Need for Aids/Services; Modifications: the team considered these but determined they were not needed.
- h. Accommodations: may come to resource room for a quiet place to focus on assignment completion or testing after asking the general education teacher; may come to resource room when feeling overwhelmed; teachers will check for understanding after presenting a new concept in class; and may receive extra time to complete lengthy assignments.
- i. Supports for School Personnel: Special Education Consult (20 minutes per month).
- j. Non-Participation Justification: Extent of Removal listed as, "will be removed from [their] general education classroom and be placed in two periods of Resource Room daily."

Explanation and Justification listed as, "needs specialized support in math and tutorial support."

- 8. The May 2022 IEP included one goal (labeled as Social/Emotional/Behavioral), with SDI in the areas of Written Language, Study/Organizational Skills, and Math. The purpose of SDI in these areas is unclear as there are not corresponding measurable annual goals.
- 9. The May 10, 2022 Special Education Placement Determination selected, "40% to 79% of the day in regular classroom. [The Student] will be placed in two periods of Resource Room for specially designed instruction in math, reading and tutorial support," from the two placement options listed. SDI in reading is not included in the May 2022 IEP.

The other placement option listed was, "80% or more of the day in regular classroom. [The Student] would be placed in one period of Resource Room for tutorial support in [their] general education classes."

2022-23 School Year

- 10. In September 2022, the Student started the 2022-23 school year as a ninth grader.
- 11. During the 2022-23 school year, Student was supported by a new special education teacher (the Case Manager).
- 12. The Student's parents (the Parents) reported that the Student struggled with comprehension and the pace of their classes but would not ask for help and often fell behind.
- 13. For the 2022-23 school year, the Student's class schedule included two periods of "facilitated learning" in the resource room, also referred to as "study hall" by the District. The Student received a grade for each of these periods, based on participation.
- 14. When asked what SDI delivery looked like under the May 2022 IEP, the Case Manager referred to the Student's two study hall periods in the resource room. The Case Manager reported the Student received individualized instruction to support the Student with schoolwork in all academic areas, but the focus was on language arts and math. The Student would bring whatever assignments they were working on in their classes to receive extra help or instruction.

When asked about SDI in Study/Organizational Skills under the May 2022 IEP, which stated it would be provided by a general education teacher in the general education classroom, the Case Manager stated all Study Skills instruction was provided in the resource room.

15. When asked about delivery of SDI under the May 2022 IEP, the Special Education Director (the Director), who was also the Student's former special education teacher, stated SDI mostly revolved around extra time and graphic organizers. The Director stated some services were provided in the study hall class, which was supplemental to what was going on in the Student's general education classes.
16. The Parents stated it was their understanding that Student went to study hall in the resource room. During this time, the Student received help with catching up on their general education schoolwork. The Parents did not believe Student was receiving instruction on academic content.
17. The Parents reported they did not receive any IEP progress reports for the 2022-23 school year.
18. In a March 13, 2023 email to the Superintendent and the Director, the Parents expressed concern that the District did not communicate that the Student was failing their classes. The Parents wrote, "As we discussed previously, if [the District] is following [the Student's] IEP correctly, it is literally impossible for [the Student] to fail. Can you tell me what services and accommodations that [sic] your teachers are currently providing to [the Student]? I think we are all due for a sit down meeting with all of [their] teachers to discuss the IEP. It is obviously not being used appropriately. I need this to happen by the end of this week... We should have been notified way before we reached this point."

The Superintendent's March 14, 2023 email response stated they would have the Case Manager "contact you about the IEP and a meeting to make sure everyone is on the same page... [the Student's] IEP is due in May. I have... asked [the Case Manager] that we move the meeting up sooner. [The Case Manager] and I also talked about making sure the teachers are updated with the IEP information."

19. It is unclear why an IEP meeting was never scheduled. The Director and the Case Manager were unaware of, or could not recall, this request.
20. The Parents reported speaking to the Superintendent (who was also the Principal) several times during the second half of the 2022-23 school year about a math teacher (the Teacher), who refused to follow the Student's IEP accommodations. The Teacher allegedly refused to let Student take their math work outside the classroom and would not let the Student leave during class to get support from the Case Manager in the resource room.
21. On April 17, 2023, the Parents met with the Superintendent and the Teacher. The Parents reported that, at the meeting, the Teacher admitted they were not willing to follow the IEP accommodations. The Teacher stated the Student should not need to take work out of the class because the Student had plenty of time in class to get the work done.
22. The Case Manager affirmed there was a period of time when the Teacher would not allow the Student to take assignments to the resource room for help. Eventually, the Case Manager was able to convince the Teacher to give the Case Manager the assignments needed to support the Student in the resource room.

23. The Student's Social Studies Teacher reported the School had an "absolutely absurd" policy requiring teachers to reduce students' grades on assignments for each day the assignment was late "and it doesn't really accommodate any kind of IEPs or anything like that." They stated they thought the Teacher "would stick to that school policy because [the Teacher] was protected under that school policy, or [the Teacher] thought [they were]."
24. The District did not provide a copy of an April 2023 IEP progress report in its responsive documents.
25. On May 4, 2023, the District convened the Student's annual IEP meeting.
26. The May 4, 2023 IEP (May 2023 IEP) included the following changes, among other things:
- a. Parent Concerns: "want to ensure [the Student] receives the accommodations and support [the Student] needs to be successful in [their] general education classes."
 - b. Present Levels:
 - i. Academic: "[The Student's] teachers state [the Student] has difficulty with asking for help and engaging during class time. It is important that [the Student's] teachers encourage [them] to advocate for [themselves] when [the Student] doesn't understand something. [The Student] does well with asking [their] peers for help."

The only other information included was a list of the Student's current grades.
 - ii. Developmental and Functional Performance: continued to only include the undated WISC-V and KTEA-3 assessment information carried over from the May 2022 IEP.
- c. Goals: four goals total, one goal each in the following areas:
 - i. Math (increase ability to apply math skills associated with trades and personal finance as measured by teacher observation and student performance with 80% accuracy); included three STOs: (solve problems involving area and perimeter as pertaining to construction work; calculate time worked and expected monetary compensation; learn about financial responsibility including fees and interest associated with banking, credit, and loans).

Present Level: "struggles with math concepts and problem solving."
- ii. Writing (increase writing skills to grade level as measured by analysis of writing samples and teacher assessment); included three STOs (write a multi-paragraph passage to develop a topic; convey clear, focused main ideas and supporting details; revise writing to improve clarity and effectiveness).
- Present Level: "struggles with conventions of writing."
- iii. Organizational/Study Skills (pass all general education classes with 95% frequency as measured by teacher observation, classroom grades, and weekly grade checks); included three STOs (complete assigned work on a daily basis; keep accurate record of classroom and homework assignments; make up all missed or incomplete assignments);
- Present Level: "has missing assignments that affect [their] grades."

- iv. Social/Emotional/Behavioral (demonstrate the ability to self-advocate by asking for help with 80% frequency as measured by teacher observation).

Present Level: “currently doesn’t ask for help when needed and has difficulty advocating for [themselves].”

- k. SDI: Written Language (reduced from 40 minutes per day to 60 minutes per week, provided by the General Education Teacher); Study/Organizational Skills (increased from 40 to 200 minutes per week, provided by the Special Education Teacher); Math (reduced from 40 minutes per day to 60 minutes per week, provided by the General Education Teacher); and Social Skills (new, 30 minutes per week, provided by the General Education Teacher).
 - l. Accommodations: added three accommodations (will be able to retake tests to receive a passing grade; may receive up to two weeks of extra time to complete assignments or until the end of a unit; will be able to revise assignments to receive a passing grade); and removed two (may come to resource room when feeling overwhelmed; may receive extra time to complete lengthy assignments).
 - d. Related Services and Supplementary Aids/Services; Modifications: continued to state the team considered these but determined they were not needed.
 - e. Supports for School Personnel: Special Education Consult (increased from 20 minutes per month to 10 minutes per week).
 - m. Non-Participation Justification: removal reduced from two periods in the resource room daily to one period and stated, “needs specialized support in math and [their] general education classes.”
27. The May 4, 2023 Special Education Placement Determination included the same two options as the previous year. However, the IEP team selected the other option, “80% or more of the day in regular classroom. [The Student] will be placed in one period of Resource Room for tutorial support and to receive support in math and [their] general education classes.”
28. It is unclear why the May 4, 2023 Placement Determination stated the Student would receive support in the resource room for math, as the May 2023 IEP stated SDI in math would be provided by the general education teacher in the general education classroom.
29. The District issued a Prior Written Notice (PWN) dated May 4, 2023, in which the District proposed implementing the IEP developed at the May 4, 2023 IEP meeting.
30. The Parents reported the following about the May 4, 2023 IEP meeting:
- a. The Parents brought up concerns about the Student’s comprehension, missing schoolwork, struggles to catch up, and teachers not following the Student’s IEP.
 - b. The District insisted on putting restrictions and time limits on the Student’s ability to turn in work late.
 - c. When asked why the Student’s SDI minutes were reduced, the Parents stated the Vice Principal ran the meeting and made the decisions. Other team members did not provide

input. The Parents reported the Vice Principal had personal issues with the Parents and the Student which affected the meeting.

- d. The Parents reported the Case Manager did not agree with the changes made to the IEP but did not share this with the Parents until after the IEP meeting.
31. When asked about the May 2023 IEP provision for general education teachers providing SDI in the classroom for math, written language, and social skills, and what this looked like, the Parents did not know and said it was never communicated to them. They did not believe general education teachers provided SDI in the classroom.
 32. When asked, the Vice Principal and the Director did not remember that the Student's services were reduced or why.
 33. The Case Manager reported the IEP team agreed that service minutes should be reduced because the Student was doing so well with the two periods of study hall in the resource room where the Case Manager provided individualized instruction.
 34. The Case Manager reported the following about the May 2023 IEP and implementation following the meeting:
 - a. The Student's schedule did not change after the IEP meeting. The Student continued to attend study hall in the resource room for two periods each day.
 - b. Even though the May 2023 IEP stated SDI would be provided by general education teachers, the Case Manager was still providing SDI in math and written language and the general education teachers were providing accommodations.
 - c. When asked about the new goal, the Case Manager stated the goal was added because they wanted to put the accountability of asking for help on the Student when they did not understand something or had missing assignments, rather than the Case Manager advocating for the Student every time.
 35. The Case Manager stated that neither they nor the general education teachers kept track of SDI minutes provided to the Student.
 36. The Parents reported ongoing issues with the Student turning in assignments but teachers not updating their grade books within a reasonable amount of time, resulting in inaccurate information about missing assignments and the Student's grades.
 37. In a June 6, 2023 email to the Case Manager, the Superintendent, the Director, and the Vice Principal, the Parents wrote, "Please have the administration identify where the process set up at our recent IEP meeting has failed. Landing us at a point last week when we thought [the Student] was all caught up and now [the Student] has missing assignments dated more than 2 weeks ago, and a test that hasn't been take [sic] or graded in 3 weeks. This would be a prime example about my concerns the administration insisted on putting a 2 week time limit for assignment in [the Student's] IEP. I am failing to see how that is beneficial to [the Student's] comprehension and improvement. Please plan on another IEP meeting at the start of next school year."
 38. In a June 8, 2023 email to the Case Manager, the Parents wrote, "I find this extremely concerning... Again I'm looking for a response from the administration or the special education coordinator on how we find ourselves in this situation. Seems the administration is more

concerned by the time frame [the Student] is responsible for completing [their] work, but don't hold their own staff accountable for administering class work or for keeping the grade books up to date."

39. The Parents reported they did not receive any response from the District regarding these emails.
40. The District did not provide a copy of a June 15, 2023 IEP progress report in its responsive documents. However, progress information dated June 15, 2023 was included on a later progress report (dated November 3, 2023), which stated the following:
 - a. Math: "math skills have improved but [the Student] still needs support to learn and maintain skills."
 - b. Writing: "writing skills have improved but [the Student] still needs support to reach grade level."
 - c. Organizational/Study Skills: "has successfully passed all classes this semester. [The Student] still has some missing assignments but always asks for missing work and tries to complete it as needed."
 - d. Social/Emotional/Behavioral: "has shown advocacy skills this semester by asking for help when needed."

2023-24 School Year

41. On September 5, 2023, the Student started the 2023-24 school year as a tenth grader.
42. During the first few weeks of school, the Student's schedule changed, in the following ways:
 - a. The Student transferred from a "life skills" math class that focused on personal finance to a beginning algebra class. The Case Manager and the Vice Principal reported the life skills class was a special education math class taught by a general education teacher, with three students. However, the Parents did not want the Student to be in this class.

The Case Manager also reported they had to pull the Student out of the life skills math class because the Student was on a regular diploma track.
 - b. The Case Manager reported the Student transferred out of Spanish class because it was too difficult. Instead, the Student started an individual "life skills" health class in the resource room. The Case Manager stated they provided a life skills health textbook, which the Student would read independently and answer questions at the end of each chapter. When asked, the Case Manager said they considered this to be a special education class because it had a different curriculum than the general education health class.
43. The Student had the same teacher for language arts (the LA Teacher) during the 2022-23 and 2023-24 school years.
44. The LA Teacher reported the following about implementing the Student's IEP, including the Writing and Social/Emotional/Behavioral goals:
 - a. They met with the Case Manager regularly (usually weekly), communicating what the language arts class was working on and how the Student was doing. With longer

assignments, they would collaborate with the Case Manager and determine which questions could be removed to make assignments shorter for the Student. The Student received supplemental help in the resource room with the Case Manager and worked on whatever the Student was behind in.

- b. They primarily provided the Student with graphic organizers, writing prompts, and shortened assignments, but not special education or individualized instruction that was different than what the rest of the class received. There were some reading assignments where they could lower the reading level for the Student, to a fifth grade level. Otherwise, the Student did not need work at a lower skill level than the rest of the class.
- c. When asked about reporting progress information, they stated they verbally reported how the Student was doing to the Case Manager and whether they thought the Student met their IEP goals.
- d. They stated they worked on the Student's self-advocacy goal, but also stated the Student did not have any problems asking for help in their language arts class.

45. The Student's algebra teacher (the Math Teacher) reported the following about implementing the Student's IEP:

- a. They met with the Case Manager at least weekly (often daily) about how the Student was doing. The Math Teacher or the Case Manager would go through the textbook and assessments and select the math problems for the Student that aligned with the Student's IEP Math goal.
- b. The algebra class was modified for the Student to focus on the skills identified in the Student's IEP Math goal. The Student's algebra grade was based on the work the Student did related to their IEP goal, as opposed to what the rest of the class was graded on (i.e., the entire general education curriculum for the term).
- c. The Student frequently used the accommodation for leaving the classroom to get help in the resource room, leaving after class instruction and remaining in the resource room for the rest of the period. The Student could also work on math assignments during their study hall class in the resource room. This allowed Student to receive additional math instruction and help with assignments from the Case Manager. The Student often needed extra time for assignments because the Student was frequently tardy or absent.
- d. They did not keep track of the number of minutes they provided instruction to the Student. They did not keep a written record for progress monitoring, but stated they knew exactly what the Student was able to do.
- e. They were not aware of the Student's Social Skills SDI and did not work on this goal with the Student.

46. The Student's Social Studies Teacher reported they were not aware of the Student's Social Skills SDI and did not work on this goal with the Student, but they did provide the Student with accommodations listed in the Student's IEP.

47. When asked about SDI in Social Skills, the Case Manager reported all the Student's general education teachers worked on this goal. When asked what implementation of this SDI looked like in the general education classroom, the Case Manager stated there would have been prompting by the teachers.

48. The Case Manager reported they collaborated frequently with the LA Teacher and the Math Teacher, to discuss the upcoming work in the general education classes and whether the Student needed shorter or modified assignments. They made these decisions together, but the Case Manager usually made the modifications.
49. On September 18, 2023, the Parents emailed the Case Manager, the Superintendent, the Director, and the Vice Principal, stating they hired an advocate (the Complainant) to help the Parents understand the Student's IEP. The Parents wrote, "[the Complainant] confirmed many of the things that we are concerned about. There are several inconsistencies on the IEP, the goals are not measurable or pertaining to the instruction [the Student] should be receiving... Because of these things, we are asking to have a review IEP meeting as soon as possible."
50. On September 18, 2023, the Parents received a call from the Director, who had concerns about the Student's mental health. The Parents reported the Director requested permission to discuss a safety plan with the Student, as they were concerned the Student might engage in self-harm.
51. In a September 18, 2023 email to the Director and the Case Manger, the Parents emailed a letter dated September 15, 2023 from a private medical provider which stated, "[The Student] would significantly benefit from a reduced workload at school. I recommend 50% reduced workload for 4 weeks." The Parents asserted they were sending the letter to express "how urgent this matter is."
52. The Parents reported the Student was struggling with increased anxiety and depression at this time about being behind on assignments and low grades. In addition, the Parents asserted the Student was being bullied at school and the District failed to address the problem.
53. In a September 25, 2023 email, the Parents asked the Case Manager to help the Student with assignments in their science class. "[The Student] said [they] couldn't understand where to get the assignments cause [sic] the teacher didn't explain it so that [the Student] could figure it out."

The Case Manager's email response stated they would contact the Science Teacher and help the Student complete the assignments.

54. On September 28, 2023, following the Parents' request, the District convened an IEP meeting to review the Student's IEP. The IEP meeting was recorded.
55. At the September 28, 2023 IEP meeting, the IEP team discussed the following, among other things:
 - a. The Case Manager stated the Student was supported (1) in their general education classes with accommodations and modifications, and (2) in the resource room during study hall with the Case Manager, who provided tutoring help in all academic areas, not just language arts and math.
 - b. The team discussed issues with the Teacher during the 2022-23 school year, who refused to follow the Student's accommodations. The Director stated, "This is not an unusual situation for regular ed [sic] teachers not to want to implement accommodations and modifications in their classrooms... It's an ongoing battle... I think this year in particular from the new people that we've hired... we have a group of people that are more willing. They are more conversed [sic] in it because the teacher prep programs now are including

those things for special ed [sic] whereas in the past, you know, they really had no idea about the law or even how to really help our kids... It's not an uncommon thing."

- c. In response to the Complainant's request for providing more support in the classroom, the team agreed that the Student would be pulled out of language arts class after group instruction and receive support in the resource room from the Case Manager.
- d. The team discussed the option of a modified diploma. When asked if the Student could be successful in algebra, the Case Manager said, "no I don't believe [the Student] is going to be successful... [The Student] hates it and it's damaging to [their] self-esteem... [the Student] so overwhelmed and has so much anxiety about that... [they are] shutting down, [they are] starting to withdraw." The team agreed changing to a modified diploma would take a lot of pressure off the Student. The team agreed that the Student would receive modified math and writing. The Case Manager noted that the Math Teacher was "wonderful" at modifying the Student's math work.
- e. The Case Manager stated the Student's "language arts class can be modified...we have some of those things in the accommodations... allowed extra time, revise assignments, but are you asking, do you want it modified as far as shortened... instead of writing a five page essay [the Student] is writing five paragraphs"? The Complainant responded, "yes."
- f. The team discussed the Student's anxiety about the status of their grades. The team agreed to add a "modification" for teachers to enter a "pass" in the grade book for missing assignments rather than a zero, because the Student had extra time to complete them. The Case Manager said they would summarize this plan and put it in the IEP under the "need for aids/services and modifications."
- g. The Complainant shared some draft IEP goals as examples and stated, "Now it doesn't have to be this, but this is kind of what I'm thinking." The team agreed the Complainant would send the Case Manager a copy of the notes they prepared in advance of the IEP meeting, which included the example goals.
- h. The Case Manager stated they would update the IEP with new goals, add support in reading, add the accommodations suggested by the Complainant ("chunking assignments, smaller portions, graphic organizer, peer support, individualized instruction"), and add a summary of the agreed upon grading process. The Case Manager further noted that they would send it to the Parents and the Complainant for editing and revision, ensuring the Parents could "get it exactly how you want it."

56. The District's September 28, 2023 Meeting Notes included the following, in relevant part:

- a. "The IEP team agreed to place [the Student] on a Modified Diploma."
- b. "[The Student] will receive support in the Resource Room for Lang [sic] Arts. [The Student] also has a study hall in which [the Student] receives support for [their] gen ed [sic] classes."
- c. "The IEP was amended with new goals, accommodations, and modifications."

57. The September 28, 2023 IEP Amendment (September 2023 Amended IEP) included the following changes:

- a. Present Levels:

- i. Academic: were replaced by (1) adding the statement, “Updated 9/28/23... it was requested that [the Student’s] IEP goals were revised, and specific accommodations were added. Service times were also increased to reflect needed supports... It was decided by the team to request consent from parent to begin testing for [the Student’s] evaluation due in May. The following requested recommended changes were made: ...”; and

(2) Copying and pasting the Complainant’s pre-meeting notes into the present levels of academic achievement. This included suggested goals as well as comments written by the Complainant to themselves (e.g., “Present level – This is not substantial enough to determine [the Student’s] critical needs. What can [they] do? How do you know? What does [the Student] struggle with? How do you know?... None of this makes sense to me??... My notes on accommodations ([Case Manager], please look at which ones will fit with [the Student] best)...”).

The Complainant’s suggested accommodations were listed in the copied notes, but there was no mention of modifications.

- ii. Developmental and Functional Performance: still only included the same undated WISC-V and KTEA-3 assessment information carried over from the May 2022 IEP.
- b. Goals: the five example goals written in the Complainant’s notes were used to replace all existing goals, one goal each in the areas of:
 - i. Math (when given 4 multistep equations and a calculator, independently solve 3 out of 4 equations in 8/10 trials); included three STOs (estimate solutions to problems involving rational numbers or real numbers and determine if the results are accurate and reasonable; demonstrate understanding or properties of commutativity, distributivity, and associativity to calculate mentally; form and work with algebraic expressions using the properties of addition, subtraction, multiplication, division, exponentiation and root-extraction).
 - ii. Writing (when given graphic organizer and editing checklist, compose a 5-paragraph essay including introductory paragraph, 3 body paragraphs, and concluding paragraph earning an average of 80% on 2 out of 3 writing rubrics as documented by teacher observation and grading history); included three STOs (be able to write a multi-paragraph passage to develop a topic using details, examples, and illustrations; convey clear, focused main ideas and supporting details on a topic; revise writing to improve clarity and effectiveness).
 - iii. Organizational/Study Skills (when given a journal/calendar to organize assignments, will complete 100% of assignments in 4 out of 5 days of the week); included three STOs (will write down all class assignments immediately after they are assigned, without error every day for a week; carry journal/calendar book between home and school every day for a week; use journal/calendar book to remind self of assignments to complete 75% of assignments in 4 out of 5 days).
 - iv. Social/Emotional/Behavioral (when given 1 scenario per class where they will need assistance, will say the phrase “Can you help me,” for each scenario in 5 out of 6 classes); included three STOs (say “Can you help me” in 4 out of 6 classes; say “Can you help me” in 3 out of 6 classes; say “Can you help me” in 2 out of 6 classes).
 - v. Reading, a new goal area (when given 3 paragraphs of expository reading material

they can decode fluently and accurately (at least 100 wpm), will state or write the main idea and two supporting details for each paragraph); included three STOs (state or write the topic sentence of each paragraph; state or write the main idea of each paragraph; state or write the main idea of each paragraph and one detail for each paragraph).

Present Level: “can decode fluently and accurately but is unable to state or write the main idea and supporting details for each paragraph.”

- vi. The “Present Level” for the first four goals remained the same although the goals changed.
 - n. SDI: Written Language (increased from 60 to 100 min per week, provided by general education teacher); Study/Organizational Skills (remained at 200 minutes per week, provided by special education teacher); Math (increased from 60 to 100 minutes per week, provided by general education teacher); and Social Skills (increased from 30 to 60 minutes per week, provided by general education teacher).
 - o. Accommodations: added four accommodations (provide graphic organizers; copy of class notes; written directions; and chunk assignments).
 - c. Related Services and Supplementary Aids/Services; Modifications: continued to state the team considered these but determined they were not needed.
 - d. Non-Participation Justification: continued to state the Student would be removed from their general education classroom for one period in the resource room per day and, “needs specialized support in math, reading, language arts, and [their] general education classes.”
58. It is unclear why no modifications were added to the service summary, even though this change was agreed upon by the IEP team. The September 2023 Amended IEP also did not include several of the accommodations mentioned at the IEP meeting, nor an explanation of the new process for grading the Student’s missing assignments.
59. It is unclear why the non-participation justification continued to state the Student would be removed to the resource room for one period per day when the Student was already in the resource room for at least two periods per day, and the team agreed the Student would start spending half of their language arts class in the resource room.
60. The IEP team did not discuss or change the Student’s placement determination at the September 28, 2023 IEP meeting.
61. After the meeting, the Complainant emailed their pre-meeting notes to the Case Manager. The Case Manager reported (1) the Complainant sent about five pages of IEP changes and recommendations and (2) the Case Manager “obliged [the Complainant]” and made most of the changes. The Case Manager also noted that the IEP team agreed to these changes.

When asked why SDI minutes were increased, the Case Manager stated because the Complainant asked for it.

The Case Manager said they copied the goals from the Complainant’s notes into the IEP, but believed they were comparable to the May 2023 IEP goals. The wording of the goals changed, and they were more elaborate, but the goals were working on the same skills.

62. After the September 28, 2023 IEP meeting, the Case Manager reported the Student started receiving more language arts support in the resource room. After the LA Teacher provided whole class instruction during the first hour of the language arts class, the Student spent the second half of the class period in the resource room receiving additional instruction and support from the Case Manager.

As the language arts class was on a block schedule, twice per week, this resulted in an additional 100 minutes per week in the resource room.

63. The Math Teacher reported they received, and started implementing, the September 2023 Amended IEP right away.

64. The LA Teacher reported they received a copy of the September 2023 Amended IEP less than a week after the September 28, 2023 IEP meeting. They met with the Case Manager to go over the new IEP goals, and started implemented the new grading process.

65. In an October 2, 2023 email to the LA Teacher, the Case Manager wrote, "Can you please change [the Student's] grade to a P. We had a meeting for [them] last week and we are in the process of amending [their] IEP. [The Student] will not receive 'P' or 'NP.' We need to keep [them] off the D-F list. [The Student] has special circumstances."

66. The Complainant emailed the Case Manager on October 3 and October 5, 2023, asking if a copy of the amended IEP had been sent to the Parents.

67. In an October 9, 2023 email to the Complainant and the Parents, the Case Manager sent a copy of the September 2023 Amended IEP and wrote, "Please review the attached amended IEP. Let me know if you have any questions or if I missed something."

68. The Case Manager also sent an evaluation consent form to the Parents on October 9, 2023, which was signed on October 28, 2023. Every assessment area listed on the consent form was selected.

69. In an October 10, 2023 email to a District administrative assistant, the Case Manager requested the Student be removed from Spanish class as the Student "will now be taking Life Skills Health in my room during 4th period. [The Student's] 5th period will continue to be [Facilitated Learning] or Study Hall."

70. On October 16, 2023, the Parents emailed the Director, asking, "Can you please get with [the Student] first thing this morning? It is of the utmost important, [the Student] is not doing very good."

71. In an October 16, 2023 email to the Director, the Case Manager, the Superintendent, and the Vice Principal, the Parents reported witnessing Student being bullied and harassed by peers. The Parents expressed concern that the District did nothing to address this problem, even though "[t]he district has had to make and [sic] emergency action plan for [the Student] due to reports of [their] mental health and wellness."

72. On October 16, 2023, the Complainant emailed the Case Manager with questions about the September 2023 Amended IEP sent by the Case Manager on October 9, 2023.

The Case Manager's October 16, 2023 email response stated, "Thank you for reviewing and sharing your input. I'm home sick today, but I will make the changes when I return."

73. In an October 23, 2023 email exchange with the Case Manager, the Parents shared that the Student reported struggling in science and language arts. The Student said they were having “trouble with the volume and speed the information is being put out. [The Student] seems to fall behind then just frantically struggling to catch up. Has [*sic*] there been any work modifications in those classes, or any other services provided... If [the Student] is constantly behind and struggling just to keep [their] head above water, I’m not sure [the Student] is benefiting academically, and surly [*sic*] puts constant mental strain on any student. Please let me know what we can do differently.”

The Case Manager’s email response stated they were working with the Student on making up class work and talking to teachers, but the email did not address the Parents’ questions about modifications or what could be done differently.

74. In an October 30, 2023 email to the Parents and the Complainant, the Case Manager wrote, “I have attached the new amended IEP with the changes you recently requested. Please let me know if you have any questions so I can finalize the IEP.”

75. In a November 2, 2023 email to the Case Manager, the Superintendent, the Director, and the Vice Principal, the Parents asked for an update on the evaluation in process and wrote, “Can you please send us a copy of the data collection sheet that is being used to collect data on [the Student’s] goals?”

The Case Manager’s email response stated they received a signed evaluation consent form and would work on scheduling an evaluation planning meeting, but the email did not address the Parents’ question about IEP progress data collection.

76. The District issued an IEP Progress Report for the Student dated November 3, 2023, which included progress codes and comments but did not include any measurable progress information. It stated the following, in relevant part:

- a. Math: “has completed and mastered equations. [The Student] is now learning about functions and graphing functions.”
- b. Writing: “did not work on this goal during the reporting period” and “ELA teacher stated that [the Student] will begin composing a rough draft next week.”
- c. Organizational/Study Skills: “has a planner but is not using it regularly. [The Student] still needs encouragement and support to complete assignments on time.”
- d. Social/Emotional/Behavioral: “has shown improvement and progress in advocating for [themself]. [The Student] regularly asks for help.”
- e. Reading: “is able to scan and locate information when reading but [the Student] isn’t able to read 100 wpm with out [*sic*] errors.”

77. In a November 5, 2023 email to the Case Manager, the Director, the Superintendent, and the Vice Principal, the Complainant asserted the updated September 2023 Amended IEP sent on October 30, 2023 did not reflect agreements made at the IEP meeting. “[W]e have great concern for whether [the Student] is receiving any specially designed instruction, modified instruction, and any of [their] accommodations... This is our formal request for a copy of all the data that has been collected on [their] annual goals and accommodations since 9/28/23... we have already asked for this once... If you are unable to provide a copy of the data, please

capture that in a Prior Written Notice and send us a copy... I believe we need to meet again to get the IEP in a condition that serves [the Student's] needs..."

78. No changes were made to the September 2023 Amended IEP after October 30, 2023. When asked why, the Case Manager stated:
- a. When they made the changes to the Student's IEP in the District's computer system, they forget to check the box to add modifications in the service summary. However, the modifications were also reflected in the present level information and in the accommodations.
 - b. When asked why they did not add modifications to the service summary after October 30, 2023, they stated it was because they had already revised the September 2023 Amended IEP several times and the modifications were reflected in the IEP even if they missed adding them to the "Needs for Aids/Services; Modifications" section.
79. When asked why modifications were never added to the September 2023 Amended IEP, the Director stated the IEP team included everything in the IEP that the Complainant asked for, as evidenced by the Complainant's notes being copied and pasted into the IEP.
80. In a November 8, 2023 email to the Parents, the Case Manager wrote, "[The Student] has refused several times to complete [their] missing Lang [sic] Arts assignments. [Their] teacher modified the reading [sic] and length of the assignments and provided them to me so I could help [the Student]. [The Student] told me [they weren't] going to complete them, even with my help. I have been trying for several weeks... I'm trying to find a way to help [them] with Lang [sic] Arts."

The Parents' email response stated, "[The Student] said [they] are working on and completing the modified assignments received today... One concern I have is, did we go back months and modify all the past assignments and then ask [the Student] to get all caught up? [The Student] obviously had trouble with comprehension and work load back then. So now we are covering material from months past, if [the Student] was left behind then, [they] didn't learn anything. I don't imagine [the Student] is necessarily being taught anything now, rather just get the paperwork done and turned in. I am not laying any blame on you [the Case Manager]. I am confident the school districts [sic] methods and procedures makes [sic] your success difficult... If it's a matter of making it through the paperwork, I would rather spend your time with [the Student] on instruction and [the Student] actually learn something."

81. On November 8, 2023, the Complainant emailed the Case Manager and the Director about the request made by the Parents for copies of data collection sheets.
82. In a November 9, 2023 email to the Complainant and the Parents, the Case Manager provided a copy of the November 3, 2023 IEP Progress Report.
83. The Complainant initially reported the Parents did not receive a November 2023 IEP progress report. However, Complainant and Parents later confirmed they did receive the November 9, 2023 email from the Case Manager with the attached progress report.
84. On November 9, 2023, the Director emailed the Complainant to report the Case Manager was absent because of an injury and the Director would "make sure [the Student] is getting tutoring. [The Case Manager] has been providing a couple of periods of one on one with [the Student] daily."

85. In a November 10, 2023 email to the Director, the Complainant asserted the Student's SDI could only be provided by a certified special education teacher. Therefore, the District needed to keep track of the days the Case Manager was absent and the Student was not receiving services.

The Director's November 14, 2023 email response stated they checked with the Department and "as long as a qualified SPED Teacher designs the specialized instruction, any qualified teacher or instructional Assistant can deliver said instruction... That being said, after Talking [sic] with [the Case Manager] we see no problem marking if/when [the Case Manager] is absent on [the Student's] report."

86. The Parents reported the Case Manager was frequently absent during the 2023-24 school year, but the District never communicated what services the Student received during this time, if any.

87. The Case Manager reported there was a special education teacher covering the School when they were absent, there was adequate help and support available, and services continued to be provided to the Student.

88. In January 18 and 23, 2024 emails to the Director and the Case Manager, the Complainant asked about the Student's progress and whether progress data had been shared with the Parents.

The Case Manager's January 23, 2024 email response stated they already sent updated progress reports and testing scores last quarter.

89. The District issued an IEP Progress Report dated January 26, 2024 (provided to the Parents and the Complainant on February 5, 2024), which did not contain any measurable information. The report included progress codes for each goal and the corresponding STOs but did not include any comments or other information to explain the codes listed.

90. When asked why the January 26, 2024 IEP Progress Report only contained progress codes, the Case Manager stated they did not have time and they were told they were not required to include comments.

91. On January 29, 2024, the Complainant filed this Complaint.

92. In a February 6, 2024 email to the Superintendent, the Complainant requested records "for all the dates that [Student] received and did not receive [their] special education minutes due to the special education teacher being absent."

The Superintendent's February 8, 2024 email response stated, "we do not have that record."

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.

School districts must provide special education and related services to a student with a

disability in accordance with the student's IEP.³ As soon as possible after the development of the IEP, the services included therein must be made available to the student.⁴ The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports in accordance with the IEP.⁵ "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."⁶

School districts may allow qualified educational assistants (EAs), who are appropriately trained and supervised, to be used to assist in the provision of special education and related services to students with disabilities.⁷ While EAs are limited to assisting in a supportive capacity, EA tasks are adaptable to many support roles, such as instructional support, clerical support, student control, and personal care. Such duties must be performed under the supervision of an appropriately licensed teacher.⁸ The supervising teacher must (1) plan the instructional activities the EA carries out; (2) evaluate the achievement of the students with whom the EA is working; and (3) provide a supervision plan that includes regular monitoring of the EA's performance and effectiveness, and access to assistance and consultation.⁹

"IEP Teams must implement policies, procedures, and practices relating to... how a child's progress towards meeting annual goals will be measured and reported," to ensure that the district offers "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁰ "IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child's progress."¹¹

There were three IEPs in place during the Complaint period, the May 2022 IEP, the May 2023 IEP, and the September 2023 Amended IEP. Each of the IEPs included SDI to be provided by both special education and general education teachers. The May 2022 IEP (1) only included one goal, which did not identify any skills necessary for the Student to make progress in the general education curriculum, and (2) included SDI in areas that did not have corresponding goals, making it unclear what services should be implemented or how progress in these areas would be monitored. The May 2023 IEP continued to include some goals that did not identify skills necessary to make progress or were otherwise not measurable.

It is uncertain to what extent SDI was delivered to the Student. District staff did not maintain services logs, progress data, or other record of SDI provided. The Student attended a study hall class for two periods each day in the resource room throughout the Complaint period. The Student was also allowed to leave their general education classes for the resource room as needed. Witnesses described the support provided by the Case Manager in the resource room in various ways. District staff used the terms accommodations and modifications interchangeably, as well as SDI, individualized instruction, tutoring, and supplemental instruction. The Case Manager reported they provided individualized instruction and helped the Student with whatever assignments they needed to get done, in all academic areas.

³ OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

⁴ OAR 581-015-2220(2)(b); 34 CFR §300.323(c)(2)

⁵ OAR 581-015-2220; 34 CFR §300.323

⁶ Questions and Answers on *U.S. Supreme Court Case Decision Andrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017)

⁷ OAR 581-037-0015; 34 CFR §300.156

⁸ OAR 581-037-0015

⁹ OAR 581-037-0015

¹⁰ Q&A on *U.S. Supreme Court Case Decision Andrew F.*, 71 IDELR 68

¹¹ Q&A on *U.S. Supreme Court Case Decision Andrew F.*, 71 IDELR 68

Starting with the May 2023 IEP, the Case Manager was no longer responsible for providing SDI in math or written language. Nonetheless, the Case Manager stated they continued to provide SDI in these areas. It is unclear how much of the Case Manager's time with the Student was spent delivering SDI they were not assigned to provide versus providing tutoring support in all academic areas.

There is little evidence that general education teachers provided SDI in the general education classroom, except for SDI in math after the September 28, 2023 IEP meeting. While the Math Teacher modified the algebra class for the Student to focus on the skills identified in their Math goal and provided instruction in this area, this was done to the exclusion of the remaining algebra curriculum. However, modified math was never added to the Student's IEP. The LA Teacher provided accommodations, including reducing the length of assignments, but not SDI. It is unclear what SDI was provided in Social Skills. The Case Manager reported all the Student's general education teachers worked on this goal, yet the Math Teacher and the Social Studies Teacher stated they did not. The evidence available indicates the Student primarily received general instruction and accommodations in the general education classroom, rather than explicit SDI as required by the Student's IEPs. At best, the Student's IEP services were partially implemented.

All three IEPs stated progress on the Student's IEP goals would be reported in October, January, April, and June. Neither the general education teachers nor the Case Manager recorded data or specific progress information related to the Student's IEP goals. Four reporting periods occurred during the Complaint period. The District provided emails confirming the IEP progress reports issued November 2023 and January 2024 were sent to the Parents, but these reports did not contain measurable progress information. There is no documented evidence that April or June 2023 IEP progress reports were provided to the Parents.

The May 2023 IEP, as well as the May 3, 2023 Placement Determination, reduced the Student's removal from the general education environment. While both documents stated the Student would be removed for one study hall class period per day, this is not what the District implemented. The Student continued to be removed to the resource room for at least two periods of study hall per day. Starting in September 2023 the Student also attended a life skills health class in the resource room. After the September 28, 2023 IEP meeting, the Student's removal increased with the Student spending half of their language arts class in the resource room. This change, among others, was not reflected in the September 2023 Amended IEP or placement determination.

Special education services and supports were not provided as required by the IEPs, progress on the Student's IEP goals was not monitored, the Student's progress was not consistently reported to the Parents, and the Student's removal from the general education environment did not align with the Student's IEPs or placement determination.

The Department substantiates this allegation.

Review and Revision of IEPs

The Complainant alleged that the District violated the IDEA by failing to include modified curriculum in the Student's IEP, although the IEP team determined it was necessary.

A child's IEP must be reviewed and revised periodically, but at least once every 365 days, to determine whether the annual goals for the child are being achieved.¹² The IEP Team must

¹² OAR 581-15-2225(1)(a); 34 CFR §300.324(b)(1)(i)

revise a student's IEP, as appropriate, to address: (1) any lack of expected progress towards the annual goals and the general education curriculum; (2) the results of any reevaluation conducted; (3) information about the student provided to, or by, the parents; (4) the student's anticipated needs; or (5) other matters.¹³ Changes to an IEP can be made either by the entire IEP team at an IEP meeting, or the parents and the district may agree to make IEP changes without a meeting.¹⁴

A school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁵ "The instruction offered must be '*special*ly designed' to meet a child's '*unique* needs' through an '*[i]ndividualized* education program."¹⁶ Developing an IEP requires "careful consideration of the child's present levels of achievement, disability, and potential for growth."¹⁷ Measurable annual goals must be 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.¹⁸ To be measurable, an annual goal must clearly describe the specific, observable behavior(s) and/or skill(s) to be exhibited, the condition(s) under which mastery of those behavior(s) and/or skill(s) will be demonstrated, and the minimum criteria that must be achieved to represent mastery. "An IEP is not a guarantee of a specific educational or functional result for a child with a disability. However, the IDEA does provide for revisiting the IEP if the expected progress is not occurring."¹⁹

Two IEP meetings occurred during the Complaint period, on May 4, 2023 and September 28, 2023. The Parents expressed concern to the District and requested information about the services and supports the Student was receiving on multiple occasions, both during and outside of these meetings. They regularly communicated with the District about the Student's struggles, including difficulty comprehending the general education curriculum and falling behind in their classes. The Parents requested an IEP meeting on March 13, 2023, asking that it be scheduled as soon as possible. The District stated it would move up the Student's annual IEP meeting due in May. However, an IEP meeting was not convened until the Student's annual IEP review on May 4, 2023.

At the May 4, 2023 IEP meeting, the only change made to the present level information in the IEP was the identification that Student had difficulty asking for help in class. The present levels continued to consist of a list of the Student's grades and two undated assessments carried over from the May 2022 IEP. New goals were added to the May 2023 IEP, but they were not all (1) written to identify a specific skill to be taught, or (2) measurable. The Student's services in Math and Written Language were reduced from 40 minutes per day to 60 minutes per week, and the responsibility for providing SDI in these areas changed from the Case Manager to general education teachers. However, the Student's level of services did not change following the meeting. The Student continued to spend at least two periods per day in the resource room and the Case Manager continued to provide SDI in Math and Written Language, contrary to what was prescribed in the May 2023 IEP. Both the May 2023 IEP and September 2023 IEPs were not revised to accurately reflect the Student's removal from the general education environment.

At the September 28, 2023 IEP meeting, the IEP team discussed and explicitly agreed to add (1) modifications, (2) several accommodations, and (3) a consistent grading process for

¹³ OAR 581-015-2225(1)(b); 34 CFR §300.324(b)(1)(ii)

¹⁴ OAR 581-15-2225(2); 34 CFR §300.324(a)(6)

¹⁵ *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ OAR 581-015-2200(1)(b); 34 CFR §300.320(a)

¹⁹ Q&A on *U.S. Supreme Court Case Decision Endrew F.*, 71 IDELR 68

teachers to follow. Of these agreements, only a portion of the identified accommodations were added to the IEP. At the meeting, the Complainant expressed concern about the lack of appropriate present level information, which did not identify the Student's disability related needs, and the IEP goals. While the September 2023 Amended IEP included present level content and new goals, these were copied and pasted directly from the Complainant's pre-meeting notes provided to the District by the Complainant following the IEP meeting. These inclusions were not based on a team discussion about the Student's needs, but were unilaterally added by the District following the IEP meeting.

The District failed to revise the September 2023 Amended IEP to include IEP changes made by the IEP team at the IEP meeting, resulting in a unilateral decision by the District regarding IEP content. Further, the District failed to revise the Student's IEPs to include appropriate present level information, measurable annual goals, and specific special education services and supports necessary to address the Student's unique disability related needs and enable to the Student to make progress appropriate in light of their circumstances.

The Department substantiates this allegation.

Parent Participation

The Complainant alleged that the District violated the IDEA by interfering with the Parents' ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the student, and the provision of a free appropriate public education.²⁰ "Parents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."²¹ "In order to fulfill the goal of parental participation in the IEP process," a school district is required to conduct meaningful meetings.²² "Parents must be able to use the IEP to monitor and enforce the services their child is to receive."²³ While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."²⁴

The Parents attended the two IEP meetings convened during the Complaint period and expressed concerns about the services and supports the Student was receiving. The Parents regularly requested information about the Student's services and progress by email, such as what accommodations, modifications, and services the Student was receiving in various classes. They asked for copies of the Student's progress data and a record of services provided to the Student when the Case Manager was absent. Additionally, the Parents (or the Complainant on their behalf) made IEP meeting requests by email on March 13, June 6, September 18, and November 5, 2023. Except for scheduling the September 28, 2023 IEP meeting, it is unclear whether the District responded to the Parents' requests.

On November 5, 2023, the Complainant specifically requested the District provide a PWN if it was unable to provide a copy of data collected on the Student's IEP goals. The District did not

²⁰ OAR 581-015-2190(1); 34 CFR §300.322(a)

²¹ Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006)

²² *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, 969 F.2d 1479, 1485 (9th Cir. 1992)

²³ *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017)

²⁴ *Pasatiempo v. Aizawa*, 103 F.3d 796, 804 (9th Cir. 1996)

provide progress data on IEP goals, nor did it issue a PWN. According to records provided, the District issued one PWN during the Complaint period (a May 4, 2023 proposal to implement the Student's IEP developed at the IEP meeting).

IEP team agreements from the September 28, 2023 IEP meeting were not incorporated into the IEP, resulting in a unilateral decision by the District on IEP content which was contrary to IEP team determinations. Progress was not monitored or reported to the Parents as mandated by the IEPs, and the Parents were not provided with sufficient information to identify whether the Student was making progress. The Parents were not informed that the Student's educational program implemented by the District after May 4, 2023 did not conform to the Student's IEPs or placement. These deficiencies impeded the Parents' ability to participate in decisions regarding the Student's special education.

The Department substantiates this allegation.

Free Appropriate Public Education (FAPE)

The Complainant alleged that the District failed to provide the Student with a free appropriate public education.

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.²⁵ In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. Reviewing courts must inquire 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.²⁶

Not every procedural error is sufficient to rise to a denial of FAPE.²⁷ The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;²⁸ (2) whether the parent's right to participate in the IEP process was infringed;²⁹ or (3) whether the procedural error caused a "deprivation of educational benefit."³⁰ Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."³¹

The District's failure to provide appropriate services and supports to the Student, monitor progress on IEP goals, and appropriately review and revise the Student's IEP, resulted in the loss of educational opportunity and benefit. The failure to provide the Parents with sufficient information to identify whether the Student was making progress infringed on the Parents' right to participate in the IEP process. These procedural and substantive errors resulted in a denial of FAPE.

The Department substantiates this allegation.

²⁵ OAR 581-015-2040(1); 34 CFR §300.101(a)

²⁶ *Andrew F.*, 137 S.Ct. at 999

²⁷ *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990))

²⁸ *Target Range*, 960 F.2d at 1484

²⁹ *Id.*

³⁰ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

³¹ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. 2005)

Additional Findings

IEP Content

“[The] essential function of an IEP is to set out a plan for pursuing academic and functional achievement.”³² An IEP must contain (1) a statement of the student’s present levels of achievement and functional performance, including how the student’s disability affects the student’s involvement and progress in the general education curriculum; (2) measurable annual goals and a description of how the student’s progress toward meeting the annual goals will be measured and reported; and (3) a statement of the specific special education and related services and supplementary aids and services to be provided to the student, among other things.³³

Measurable annual goals must be designed to (1) 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 (2) meet each of the child’s other educational needs that result from the child’s disability.³⁴ The specific special education and related services and supports to be provided must enable the student to (1) advance appropriately toward attaining annual goals, (2) be involved and progress in the general education curriculum, and (3) be educated and participate with other children with and without disabilities.³⁵ “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”³⁶ School districts are expected to “be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable a child to make progress appropriate in light of his circumstances.”³⁷

As mentioned above, the Student’s IEPs did not appropriately identify the Student’s disability related needs. All three IEPs lacked information about the Student’s present levels and included the same description of how the Student’s disability affected their involvement and progress in the general education curriculum. The description merely stated (1) the Student scored below average in math and written language on standardized tests several years ago, and (2) this could have a negative effect on their ability to perform at grade level. The IEPs did not include measurable annual goals based on the Student’s present levels, disability, and potential for growth. As written, the Student’s 2022 and 2023 IEPs were not reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances.

V. CORRECTIVE ACTION³⁸

*In the Matter of Camas Valley School District 21J
Case No. 24-054-007*

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

Action Required	Submissions	Due Date
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³² *Andrew F.*, 137 S.Ct. at 999

³³ OAR 581-015-2200(1); 34 § CFR §300.320(a)

³⁴ OAR 581-015-2200(1)(b); 34 § CFR §300.320(a)

³⁵ OAR 581-015-2200(1)(d); 34 CFR §300.320(a)(4)

³⁶ *Andrew F.*, 137 S.Ct. at 1001

³⁷ *Id.* at 1002

³⁸ The Department’s order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

<p>1. The District must ensure that all current District staff responsible for evaluating, developing and implementing IEPs, and determining placement for this Student at any point during the Complaint period receive training in each of the following areas:</p> <ul style="list-style-type: none"> • IEP Development and Implementation; • IEP Content; • Review and Revision of IEPs; • Progress Monitoring; • PWN; • Parent Participation; and • FAPE. 	<p>Training agenda/materials to ODE for review/approval.</p> <p>Sign-in sheet for training.</p>	<p>June 1, 2024</p> <p>September 1, 2024</p>
<p>2. The District must provide the Student with Compensatory Education to make up for SDI not provided pursuant to Student's IEP. The Compensatory Education to be offered to the Parents shall include at least:</p> <p>41 hours of specially designed instruction in math;</p> <p>57 hours of specially designed instruction in written language;</p> <p>14.5 hours of specially designed instruction in social skills; and</p> <p>8 hours of specially designed instruction in study/organizational skills.</p> <p>The District must hold an IEP meeting with the Parents to develop a plan to deliver this SDI.³⁹</p>	<p>The District shall submit the following:</p> <p>Completed plan for delivery of Compensatory Education developed in IEP meeting with Parents;</p> <p>Evidence showing compensatory education was provided.</p>	<p>May 15, 2024</p> <p>March 1, 2025</p>

Dated: this 26th Day of March 2024



Tenneal Wetherell
 Chief of Staff
 Oregon Department of Education

³⁹ The Department provides IEP Facilitation services when it is mutually desired by parents and school districts and is available to support the Student's IEP team in this meeting. If a Facilitated IEP meeting is desired, please email ode.disputeresolution@ode.state.or.us.

E-mailing Date: March 26th, 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).)