

STATE OF VERMONT  
AGENCY OF EDUCATION

IN RE: ADMINISTRATIVE COMPLAINT AC 20-10 (████)

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION

PROCEDURAL HISTORY

1. Parents filed this administrative complaint on February 26, 2020.<sup>1</sup>
2. The Secretary accepted the complaint for investigation on February 26, 2020.
3. Parents were permitted 15 days to supplement their complaint.
4. The ██████████ (“District”) responded to the Parent’s complaint on April 30, 2020 and provided additional information on June 11, 2020. The Agency of Education (“AOE”) appointed Judith Cutler, Investigator, and Katherine Langevin, Education Programs Coordinator, to investigate this complaint.
5. The investigative team reviewed documentation and information provided by the District and the Parents, as well as the applicable state and federal laws and regulations.
6. The 60-day timeline was extended twice. The first extension, 17 days, was to allow the parties time to mediate, which the parties ultimately agreed not to pursue. The second extension, 30 days, was to allow the District additional time to access necessary documentation, which was difficult due to restrictions resulting from COVID-19.

FINDINGS OF FACT

1. █████ (“Student”) was enrolled in the District as a sixth-grade student for the 2019-2020 school year. At all times relevant to this administrative complaint, Student was eligible for and receiving special education services based on a specific learning disability in the area of math calculation. Student also had a recognized weakness in reading and writing and was diagnosed with anxiety disorder.
2. Student’s initial individualized education program (IEP), effective March 16, 2018 (March 2018 IEP), contained the following goals, objectives, and evaluation procedures:
  - a. Mathematics – Goal 1: By March 2019, [Student] will be proficient in the four main algorithms (addition, subtraction, multiplication and division) as well as understanding place value. [Student] will also know which algorithm to use for word problems concerning whole numbers. [Student] will display this proficiency by completing 8 out of 10 problems correctly in the areas of addition, subtraction, multiplication, division, place value, and word problems.

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<sup>1</sup> Parents are divorced, but filed this complaint jointly.

- i. Objective 1: By June 2018, [Student] will display proficiency by correctly completing 8 out of 10 multi-digit addition problems.
  - ii. Objective 2: By June 2018, [Student] will display proficiency by correctly completing 8 out of 10 multi-digit subtraction (with and without borrowing) problems.
  - iii. Objective 3: By November 2018, [Student] will display proficiency by correctly completing 8 out of 10 multi-digit multiplication problems.
  - iv. Objective 4: By November 2018, [Student] will display proficiency by correctly completing 8 out of 10 multi-digit division problems.
  - v. Objective 5: By March 2019, [Student] will display proficiency by using the correct algorithm in 8 out of 10 word problems.
  - vi. Evaluation Procedures – informal assessments, track-my-progress, observation.
- b. Basic Reading – Goal 1: By March 2019, [Student] will correctly decode words with short vowels, silent e, long vowel and vowel teams as well as understanding the different syllable types. This will be apparent by successfully decoding, encoding and having a better understanding of content in 8 out of 10 trials.
  - i. Objective 1: By June 2018, [Student] will display proficiency by recognizing and understanding the different kinds of syllables and knowing how to divide words with an OC/CO and OC/CCO pattern in 8 out of 10 trials.
  - ii. Objective 2: By November 2018, [Student] will display proficiency by decoding and encoding words with short vowels, silent e, long vowels, and vowel teams with OCO and OCCO and OO syllable patterns in 8 out of 10 trials.
  - iii. Objective 3: By January 2019, [Student] will display proficiency by decoding showing an increase in understanding of the content read in 4 out of 6 reading assignments.
  - iv. Evaluation Procedures – observation, informal assessments.
- c. Personal Development – Goal 1: By March 2019, [Student] will display improved academic self-esteem, no academic anxiety and a willingness to take academic risks.
  - i. Objective 1: By June 2018, [Student] will know and make use of several ways to regulate anxiety when faced with challenging academic assignments.
  - ii. Objective 2: By March 2019, [Student] will display self-confidence in regards to academics and show a marked willingness to attempt new and difficult academic challenges.
  - iii. Evaluation Procedure – observation.

The March 2018 IEP did not specify how or when progress reports would be provided to Parents. The March 2018 IEP also did not contain any additional accommodations beyond the special education services indicated on the service page.

3. On March 12, 2019, the District conducted the annual IEP meeting. Although the meeting minutes were unavailable for purposes of the investigation, based on additional documentation provided, Student's goals were discussed at the IEP meeting and the team produced a draft IEP.<sup>2</sup> Parents were provided the opportunity to review and offer revisions to the draft. On April 10, 2019 the team reconvened to finalize the IEP. Meeting minutes were unavailable, but based on documentation provided by the parties, the team discussed Student's IEP goals and increased the number of sessions Student would receive direct instruction from a special educator outside the general classroom.
4. The IEP developed at the March 12, 2019 and April 10, 2019 meetings (March 2019 IEP) was in effect for a majority of the time period covered by the complaint. Student's Mathematics goals and objectives were revised as follows:
  - a. Mathematics – Goal 1: By March 2020, [Student] will be proficient in the four main algorithms (addition, subtraction, multiplication and division) as they relate to multi-digit numbers, and fractions. [Student] will also know which algorithm to use for word problems concerning whole and negative numbers. [Student] will display this proficiency by completing 8 out of 10 problems correctly.
    - i. Objective 1: By October 2019, [Student] will display proficiency by correctly completing 8 out of 10 multi-digit multiplication and division problems.
    - ii. Objective 2: By June 2019, [Student] will display proficiency by correctly completing 8 out of 10 problems adding and subtracting fractions with unlike denominators, mixed numbers or improper fractions.
    - iii. Objective 3: By November 2019, [Student] will display proficiency by correctly completing 8 out of 10 multiplication and division of fractions.
    - iv. Objective 4: By January 2020, [Student] will display proficiency by correctly completing 8 out of 10 problems concerning the concept of ratios.
    - v. Objective 5: By February 2020, [Student] will display proficiency by using the correct algorithm in 8 out of 10 word problems concerning negative numbers.
    - vi. Objective 6: By November 2019, [Student] will display proficiency by correctly finding fractions on a number line in 8 out of 10 problems.

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<sup>2</sup> District personnel assisting with the investigation were unable to obtain the March 12, 2019 IEP and April 10, 2019 meeting minutes within the investigative timeline, as access to the District's physical building where the notes are located was restricted due to COVID-19.

Student's Basic Reading and Personal Development goals and objectives remained unchanged, and no method or frequency for reporting Student's progress to Parents was specified.

5. The March 2019 IEP also provided for Student to receive several accommodations, including in relevant part:
  - a. Allow [Student] support at the end of the school day to organize [Student's] materials for going home; and
  - b. Please allow [Student] the option of going to the restroom whenever [Student] finds it necessary.
6. On April 2, 2019 Parents emailed the District advocating for Student to be excused from standardized testing due to Student's test anxiety. Parents expressed that "[w]e feel that [Student] is making some progress and [the testing] will only set [Student] back."
7. On April 10, 2019, subsequent to the IEP meeting, Student's classroom teacher emailed Parents regarding Student's progress in reading. The teacher advised that with respect to English Language Arts, Student had been "solidly proficient" for the past two years. With respect to Foundational Skills, the teacher advised that Student's ratings were lowest in that skill area but had "steadily climbed into the mid 40's, which is also in the proficient range." He further noted that Student's Literature and Informational Reading skills "climbed into the 60s and even 70s over the past two years." The teacher offered Parents the opportunity to speak with him in person, noting that the data he cited may be more easily understood with visuals.
8. On April 12, 2019 the District conducted a KeyMath3 Assessment for Student. Assessment results indicated that although Student had a good understanding of how to solve mathematics problems, Student experienced significant difficulties in performing basic operations of addition, subtraction, multiplication and division, whether they applied to whole numbers, fractions or negative numbers. The results of this assessment were emailed to Parents on April 12, 2019.
9. On May 2, 2019 Parents emailed the District with some questions regarding changes to Student's schedule as a result of revisions made in the March 2019 IEP. Parents also advised that Student had not received organizational assistance at the end of the day as required by the March 2019 IEP accommodations. The District responded to Parents' questions regarding Student's schedule. The District also advised that the staff member assigned to assist Student with end-of-day organization had been at a workshop that day but would be assisting Student regularly going forward.
10. On May 16, 2019, Parents emailed the District seeking clarity on several of their concerns. Parents questioned how Student's progress was being assessed, who was conducting the assessment, and what information was being compared. In addition, Parents expressed concern that Student's organizational support at the end of each day was only being provided sporadically. Parents also inquired why the goals in the March

2019 IEP remained unchanged from the goals in the March 2018 IEP, why the goals had not been met, and what would be done differently for Student to achieve the IEP goals.

11. Both the Student's classroom teacher and special educator responded to Parents' inquiries by the following day. Student's special educator acknowledged that the end-of-day check-ins had not been happening as they should and advised she would review this requirement with relevant staff. With respect to Student's progress towards Student's IEP goals, the special educator explained that the goals in the March 2019 IEP represented the next steps developmentally in the decoding process. The special educator cited Student's work with another student as an obstacle to reaching the IEP goals and noted that Student was no longer working with the other student. She also noted that sometimes students need more than one year to accomplish progress towards a goal. In order to assist Student with meeting the IEP goals, the special educator specified that she would continue to provide Student with Orton Gillingham instruction in reading and cited the increase in direct Math instruction in the March 2019 IEP.
12. On June 4, 2019 Parents emailed the District to advise that Student's end-of-day check-in had not occurred that day. The District replied that the staff member assigned to conduct the check-in had to leave early and no one was available to cover for him. The District assured Parents that someone would make sure Student understood Student's assignments and was organized go home from then on.
13. On June 7, 2019 the District emailed Parents to advised them that Student had done particularly well on a Track My Progress Math assessment, despite struggling with test anxiety.<sup>3</sup>
14. On October 2, 2019 the District convened a meeting to discuss the Student's schedule and accommodations that were in place for her 6<sup>th</sup> grade year.<sup>4</sup> In addition to the discussion regarding Student's schedule and accommodations, Parent expressed concern during the meeting that Student was not making progress toward the March 2019 IEP goals. Meeting minutes do not contain information regarding the District's response to Parent's concerns and there is no indication that Student's March 2019 IEP was revised as a result.
15. On January 9, 2020 an incident occurred wherein Student requested to use the bathroom, as provided by the March 2019 IEP accommodations. The staff member interacting with Student at the time denied Student's request and, as a result, the Student had a bathroom accident. In an email to Parents on the day of the incident, Student's classroom teacher reviewed the incident, expressed that he "made the wrong call," and noted that he would

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<sup>3</sup> Track My Progress is an online assessment platform by which the District administers three assessments each year in Math and Reading. The assessments demonstrate progress as compared to Common Core Standards. Students complete the assessments online and results are available immediately. Track My Progress results are reviewed with parents at parent-teacher conferences, and access is provided to parents upon request.

<sup>4</sup> It is unclear from the documentation provided whether this meeting constituted a formal IEP meeting or was rather an informal discussion. No Notice of Meeting documentation was provided and only Student's mother attended the meeting.

like to apologize to Student. He explained that, as a result of a more open restroom use policy, District staff had been struggling to discern whether student requests were “legitimate” or “extraneous.” He advised that Student had been using the restroom more often during class recently, as opposed to preferred times throughout the day and during class transitions. Regarding the situation that day, he had not understood the Student’s need to use the restroom as an emergency and asked Student to wait until class was over. Student did not object, returned to Student’s seat, and subsequently had an accident. Student’s teacher acknowledged that he misread the situation. In a follow-up email to the Parents on January 13, 2020, the Student’s classroom teacher acknowledged the incident and outlined the steps taken “to insure this mistake is not made again,” including making all Student’s teachers and the school nurse aware of Student’s March 2019 IEP bathroom use accommodation.

16. On January 27, 2020 the District convened an IEP meeting at the request of the Parents. The meeting minutes reflect that the team reviewed the Student’s IEP services. The District advised that Student was keeping up with peers in Math. The District explained that Track My Progress was used to determine Student’s progress. At the time of the meeting, Student was at 50% in almost all Math areas monitored by Track My Progress. The areas where Student was behind were concepts that had not yet been introduced. The team also discussed Student’s progress with respect to Student’s anxiety. The District noted that Student made tremendous progress with Student’s self-esteem since 4<sup>th</sup> grade and was also less anxious in class. At the conclusion of the meeting, the team agreed that assessments would be conducted in Math and Reading/Spelling before the annual IEP meeting which would occur before March 12, 2020. In addition, a staff member was identified to be responsible for meeting with Student for end-of-day organization.
17. Over a period of time in February 2020, Student’s special educator conducted the following assessments with corresponding results:
  - a. Math Skill Assessment: Student was given this assessment to measure progress with math concepts during the school year. Student completed levels E and F of the XL math placement test. Student answered 45 out of 51 questions correctly. Student was cooperative and demonstrated increased confidence in Student’s ability. Student was previously administered levels C and D in September 2019, but Student had been unable to complete the tests due to a high level of frustration and lack of confidence in Student’s ability.
  - b. Grade 6 Math Placement Test: Student was given this assessment to measure Student’s ability to do and understand grade level concepts. Student answered 26 out of 30 questions correctly, which placed Student in the test score category of “no intervention required but more practice with specific skills.” These results indicated that Student was learning and retaining skills on grade level with accommodations. The special educator noted that Student used several

accommodations during the assessment such as using a multiplication table or calculator, having questions read aloud, and support staying on task.

- c. Assessment for Reading Fluency and Comprehension: Results showed that, based on Student's reading of a grade level appropriate passage, Student was an independent reader on the upper elementary level.
  - d. Wilson Assessment of Decoding and Encoding:
    - i. Assessment for Letter/Sound Recognition: Student demonstrated some inconsistencies with her letter and sound understanding. Specific sounds were identified that need to be reviewed and reinforced with Student.
    - ii. Word Recognition: Student displayed confidence during this assessment and was able to recognize syllables and sound out unknown words appropriately. Student read 104 words correctly out of a 120-word list.
    - iii. Spelling: Student displayed weakness with sentence dictation, did not include spaces between words, and did not use appropriate capitals and punctuation. Student's spelling errors indicated that Student was not applying necessary spelling rules and did not have a solid understanding of "vowel teams" (words ending with e, ee, ea, ai, oo and ow).
    - iv. Recommendation: Student's special educator determined that, based on the assessment, Student did need direct instruction reviewing all the spelling rules.
18. On February 12, 2020 Parents emailed District to inquire why Student was not receiving end-of-day organizational assistance. Parents noted that the staff member that did meet with Student regularly provided emotional support, not organizational help. Documentation provided to the investigative team did not contain a response from the District.
19. On February 25, 2020 Parents emailed the District to inquire about the status of the assessments that were to take place as a result of the January 27, 2020 IEP meeting. Student's special educator responded that she felt it was important to review the assessment results with Parents at a follow-up IEP meeting, to ensure that Parents agreed with the educational team of teachers when the goals for the next school year were written. The assessment results were shared with Parents at a subsequent IEP meeting held on March 6, 2020.
20. On March 6, 2020 the District convened Student's annual IEP meeting. The team discussed results from the assessments conducted in February 2020. The team discussed in relevant part the following issues:
- a. Student's special educator advised that the testing demonstrated that Student was making progress in Math and was able to learn with her peers in the general education classroom, with adult support and accommodations. Student's general education teacher shared that Student was meeting the standard in his Math class for the year.

- b. With respect to Reading, the testing demonstrated that Student was reading at grade level, though Student's decoding (reading/phonics) was stronger than encoding (written expression). The testing also demonstrated that Student had significant gaps in spelling and written assignments.
  - c. The team then reviewed Student's Track My Progress data, which revealed that Student was proficient in Math and Reading.
  - d. Parents expressed interest in a more accurate assessment of Student's reading level. Student's special educator advised that additional testing could be conducted, but it would be more rigorous and potentially beyond Student's comfort level.
  - e. The team reviewed Student's IEP goals and objectives, discussed and agreed to changes for Math, Spelling and Writing, and Personal Care.
  - f. The team reviewed and revised Student's accommodations.
  - g. In response to Parents' concern regarding the disconnect between Student's academic challenges, but Student's scores and grades meeting standards, the team discussed Student's struggles with remaining on task, focusing and executive functioning.
  - h. Counseling was added to Student's IEP to address Student's anxiety.
  - i. The team planned to conduct additional assessments in the areas of attention, executive functioning, and language processing.
21. In addition to the assessments outlined above, the District recorded Student's progress on the March 2019 IEP for the following review dates: 3/19; 6/19; and 11/19. In general, the progress reports indicated that the Student was making sufficient progress towards the objectives and was likely to achieve the goals. The only area where Student's progress was recorded as "emerging progress on objective, continuing to work towards goal" was in the Basic Reading goal. Progress in the area of Mathematics described Student as following the 6<sup>th</sup> grade curriculum, but using accommodations such as adult support, multiplication chart, calculator, and breaking down tasks into smaller tasks. Student's special educator noted that "[w]ith support [Student] is doing extremely well in the on-grade level curriculum." Progress in the area of Basic Reading described Student as 1) stronger with reading rather than writing, 2) a fluent reader but a phonetic speller, and 3) requiring consistent practice and reminders with the spelling rules. No progress narrative was provided for Student's Personal Development goal related to academic self-esteem and anxiety, but Student's progress was recorded as progressing from "emerging" to "sufficient progress" over the course of the reporting period.
22. Student's Track My Progress scores for the time period in question (Spring 2019-Winter 2020) indicated that Student performed at or above grade level in a majority of the assessments Student completed. Although Student's Fall 2019 score in Math dipped below grade level, it recovered back to grade level in Winter 2020. Track My Progress

was an evaluation procedure specified for measuring Student's progress toward Mathematics and Basic Reading goals.

23. The District asserts that the periodic reports in Student's March 2019 IEP were provided to Parents with her school progress reports. The District advised that progress reports are given to parents at parent-teacher conferences or mailed home if parents do not attend the conference. The District further advised that parents can access real-time proficiency-based data through the data platform PowerSchool. The District was unable to provide verification that Parents attended parent-teacher conferences, as that documentation is located in the District's physical building, which was restricted during the investigative period due to COVID-19.
24. Parents contend that the only time they were provided with completed written progress reports was at the March 6, 2020 annual IEP meeting. Prior to that, the progress report section of Student's IEP was blank. Parents further advised that they had trouble accessing the online platforms available to view the Student's progress.
25. Information provided by the parties indicates that Student will not be attending school in the District for the 2020-2021 school year.

#### SPECIFIC ISSUES TO BE RESOLVED THROUGH THE ADMINISTRATIVE COMPLAINT

In this case, the Parent raised an issue that does not allege a violation of Part B of the Individuals with Disabilities Education Act (IDEA), specifically a lack of clear communication between District staff regarding Student's schedule, scheduling IEP meetings, and staff coordination, and is accordingly outside the scope of this administrative complaint.

The following issues remain to be resolved:

1. Did the LEA violate 34 Code of Federal Regulations (CFR) §300.323(c)(2) and State Board of Education (SBE) Rule 2363.12(a)(1) by failing to ensure that Student's IEP was implemented appropriately with respect to Student's accommodations?
2. Did the District violate 34 C.F.R. §300.323(b) and SBE Rule 2363.6(c) by failing to adequately review and revise Student's annual goals?
3. Did the District violate 34 C.F.R. §300.320(a)(3)(ii) and SBE Rule 2363.7(b)(4) by failing to provide Parents with progress reports in accordance with the relevant regulations?

#### LAW AND ANALYSIS

Any person or organization alleging that an LEA or public agency has violated a requirement of Part B of IDEA or implementing federal or state special education regulations, may file an administrative complaint with the Secretary of Education. For

this office to find that the LEA was not in compliance with the prevailing law, the evidence would have to show that one of the regulations cited herein had been violated.

1. 34 CFR § 300.323(c)(2) requires that each public agency ensure that, as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. SBE Rule 2363.12(a)(1) requires each local education agency ("LEA") to provide special education and related services to an eligible student in accordance with the student's IEP.

Student's March 2019 IEP contained multiple accommodations, two of which Parents allege were not implemented with fidelity by the District. The first accommodation at issue is the requirement that Student receive daily assistance organizing school-work and assignments before going home. Parents allege that the District's failure to provide Student with this support was an ongoing issue. Documentation received establishes that on at least four occasions during the time period covered by this complaint, Parents contacted the District noting that Student had not received organizational support for that day. In three of those instances, the District acknowledged the lapse in support, primarily due to staff availability, and advised the issue would be addressed. However, the lapses continued to occur.

The second accommodation at issue is the requirement that Student be allowed to use the restroom whenever Student finds it necessary. In the instance that occurred on January 9, 2020 the teacher relied on school policy and his own interpretation of Student's need to make the determination not to allow Student to use the restroom. Student's IEP accommodation was not conditional on the situation being an emergency or that it be in alignment with school policy, but rather on Student's need. The District's failure to provide Student with the required accommodation in this instance was significant, resulting in an embarrassing situation for the Student who struggles with anxiety and lack of confidence in an academic setting.

For the forgoing reasons, the investigative team finds that the District failed to implement Student's end-of-day organizational accommodation and restroom use accommodation appropriately, in violation of the relevant regulations.

2. Parents allege that Student was not making adequate progress towards Student's IEP goals, and that the goals remained the same from year to year. 34 CFR § 300.324(b) and SBE Rule 2363.6(c) require that each LEA shall ensure that a student's IEP team reviews that student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, and revises the IEP as appropriate.

District records, including progress reports, assessment data, and teacher observation support a conclusion that, during the investigative time period, the Student made progress towards the IEP goals and in the general education curriculum. With respect to Math, progress reports demonstrate that, although Student required accommodations, Student was making sufficient progress in Math to achieve the IEP

goals. Student's February 2020 assessment results, Track My Progress data, and classroom teacher observations are consistent with that report. With respect to Basic Reading, Student's progress report indicates that Student is with reading than writing, that Student is a fluent reader, but phonetic speller, and that Student needs consistent practice and reminders regarding spelling rules. Again, this is consistent with the February 2020 assessment data reflecting that Student is a stronger reader than a writer and a fluent reader, but phonetic speller, as well as the classroom teacher's April 2019 report that Student had been "solidly proficient" for at least two years, but scored lowest on Foundational Skills. Finally, with respect to Student's anxiety, the District provided anecdotal information on June 7, 2019, on January 27, 2020, and at the Student's annual IEP meeting on March 6, 2020 regarding Student's progress managing and overcoming Student's anxiety. Additionally, Parents acknowledged that Student was making at least some progress in their April 2, 2019 communication to the District requesting that Student be excused from standardized testing. Notably, all methods used by the District to assess Student's progress were consistent with the evaluation methods identified in Student's IEP.

Further, the Student's IEP team met several times during the time period covered by the complaint to address Parents' concerns regarding Student's progress. In March and April 2019, the team discussed Student's goals and the Math goals and objectives were revised, with Parents' input, as a result. The team met in October 2019 to discuss Student's goals and again in January 2020, at Parents' request, to review Student's progress. Prior to the Student's March 6, 2020 IEP meeting, Parents were provided with several opportunities to explicitly request that the IEP team consider revising Student's goals due to lack of progress.

As a result of Student's progress outlined above, Student's goals were significantly revised at the March 6, 2020 IEP meeting. Based on the evidence received, the District had ample information to conclude that Student was making requisite progress towards the IEP goals and no revision was necessary until the annual IEP meeting. The record supports a conclusion that the District met its obligation to review and revise the Student's IEP to in accordance with 34 C.F.R. § 300.324(b) and SBE Rule 2363.6(c). As such, no violation is found in this instance.

3. 34 CFR § 300.320(a)(3) states that an IEP shall include a description of 1) how the child's progress toward meeting the annual goals . . . will be measured; and 2) when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. SBE Rule 2363.7(b)(4) adds that measurable annual goals related to the student's present levels of academic and functional performance shall be accompanied by a method of reporting the student's progress to the parents at least as often as other parents in the school receive progress reports, and inform

the parents of the student's progress toward the annual goals and extent to which the progress is sufficient to enable the student to achieve the goals by the end of the year.

Parents allege that they were not provided with progress reports during the time period at issue and the only meeting they attended where they were provided with complete progress reports in writing was the March 6, 2020 annual IEP meeting. The District contends that Parents were provided with IEP progress reports concurrent with Student's school progress reports at periodic parent-teacher conferences. However, the District was unable to provide corroborating documentation that Parents had in fact attended the parent-teacher conferences during the investigative time period.

Although the evidence provided is inconclusive with respect to whether Parents received formal progress reports, there is significant evidence that the District made efforts to address their questions and concerns regarding Student's progress. As noted above, the IEP team met at least four times during the investigative time period to discuss the Student's goals and progress. Additionally, the District was responsive to multiple informal inquiries regarding the Student's progress and provided Parents with information on those occasions. Finally, at least some data should have been accessible to Parents via PowerSchool and Track My Progress. Parents advised that they had some technical difficulty accessing these sites, but it is unclear whether they sought assistance from the District in accessing that information.

As discussed above, the District also specified in Student's IEP how Student's progress would be measured, and documentation submitted supports the conclusion that the District used the designated evaluation procedures accordingly: Math goals = informal assessments, track-my-progress, observation; Basic Reading goals = observation, informal assessments; Personal Development = observation.

However, despite the District's efforts to address Parents' inquiries and its execution of the stated evaluation methods in Student's IEP, the District did not include "a method of reporting the [Student's] progress to the parents at least as often as other parents in the school receive progress reports" or when the progress reports would be provided as required by the relevant state and federal regulations. Had the District explicitly included this information in the Student's IEP as required, it would have established a reference point for both Parents and the District with respect to Parents' expectations relative to progress reports. As such, a violation of the relevant regulations is found in this instance.

## DECISION

1. The District did violate 34 C.F.R. §300.323(c)(2) and SBE Rule 2363.12(a)(1) by failing to ensure that Student's IEP was implemented appropriately with respect to Student's accommodations.

2. The District did not violate 34 C.F.R. §300.323(b) and SBE Rule 2363.6(c), as it adequately reviewed and revised Student's annual goals.
3. The District did violate 34 C.F.R §300.320(a)(3)(ii) and SBE Rule 2363.7(b)(4) by failing to provide Parents with progress reports in accordance with the relevant regulations.

#### RECOMMENDED CORRECTIVE ACTIONS

1. Within 90 days of the date of this Decision, the District will provide a minimum of one hour of either in-person or virtual training to District special education personnel regarding the requirements of SBE Rules Rule 2363.12(a)(1) (IEP implementation, including accommodations) and SBE Rule 2363.7(b)(4) (frequency, method, and content of progress reporting to parents). Confirmation/documentation of this training, including agenda, attendance list, materials/handouts and minutes, if any, must be delivered to Judith Cutler of the Vermont Agency of Education by September 30, 2020.
2. Should the Student enroll in the District for the 2020-2021 school year, the Student's IEP team shall convene within 30 days of the beginning of the school year and revise Student's IEP to include a method of reporting Student's progress to Parents in accordance with 34 C.F.R §300.320(a)(3)(ii) and SBE Rule 2363.7(b)(4).

#### APPROVAL AND ADOPTION OF RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I, Daniel M. French, Secretary of Education of the Vermont Agency of Education, hereby approve and adopt the investigative team's recommended findings of fact, conclusions of law, and decision.

Dated this 19th day of June, 2020 at Manchester, Vermont.



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Daniel M. French, Ed.D.  
Secretary of Education