

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Salem-Keizer School  
District # 24J

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 15-054-035

**I. BACKGROUND**

On September 24, 2015, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parent (Parent) of a student (Student) residing in the Salem-Keizer School District 24J (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District.

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

On September 28, 2015, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of October 12, 2015.

On October 12, 2015, the District submitted a *Response* indicating that they disputed all portions of the allegations in the Parent's complaint. The District also submitted the following items:

1. Individualized Education Program 9/09/2015;
2. Measureable Annual Goals—6/9/2015;
3. Student IEP 3/10/2015;
4. Measurable Annual Goals 3/10/2015;
5. Student IEP—3/10/2015;
6. Student IEP—3/12/2014;
7. Marion County Health Department Individual Service & Support Plan (ISSP) Service Coordination Plan/Wrap Plan;
8. Request for Transportation-2015/2016;
9. Request for Transportation-2014/2015;
10. Request for Transportation-2013/2014;
11. Transportation Medical Protocol 10/2/2015;
12. Transportation Medical Protocol 4/11/2015;
13. Health Services-Confidential Log 4/10/2013;
14. Transportation Medical Protocol 10/17/2012;
15. Request for Transportation 2010/2011 & Bus Support Plan;
16. Request for Transportation 2009/2010 & Bus Transportation Plan;
17. Initial Adult Assistance Request Form 2006/2007;
18. Prior Written Notice 9/10/2015;

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

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

19. Notice of Team Meeting 9/8/2015;
20. Notice of Team Meeting 9/8/2015;
21. Prior Notice of Special Education Action 4/30/2015;
22. Notice of Team Meeting 4/22/2015;
23. Prior Written Notice 3/10/2015;
24. Prior Written Notice 3/10/2015;
25. Notice of Team Meeting 3/4/2015;
26. Notice of Team Meeting 2/26/2015;
27. Notice of Team Meeting 2/9/2015;
28. Notice of Team Meeting 1/28/2015;
29. Notice of Team Meeting 1/28/2015;
30. Prior Notice of Special Education Action 3/12/2014;
31. Notice of Team Meeting 3/11/2014;
32. Notice of Team Meeting 3/7/2014;
33. Conference Summary 9/10/2015;
34. Meeting Documentation Cover Sheet Draft 5/7/2015;
35. Handwritten Notes 5/7/2015;
36. Meeting Documentation Cover Sheet 3/10/2015;
37. Meeting Documentation Cover Sheet 1/30/2015;
38. Meeting Documentation Cover Sheet 1/30/2015;
39. Meeting Documentation Cover Sheet 3/12/2014;
40. Eligibility Summary Statement 9/10/2015;
41. Evaluation Report 4/28/2015;
42. Parent Guardian Consent for Individual Evaluation 3/10/2015;
43. Prior Notice About Evaluation/Consent for Evaluation 1/30/2015;
44. Prior Notice About Evaluation/Consent for Evaluation 12/3/2014;
45. Prior Notice of Special Education Action 4/10/2013;
46. Prior Notice About Evaluation/Consent for Evaluation 1/11/2013;
47. Prior Notice About Evaluation/Consent for Evaluation 1/11/2013;
48. Prior Notice of Special Education Action 10/17/2012;
49. Statement of Eligibility for Special Education & Meeting Documentation Cover Sheet 10/17/2012;
50. Notice of Team Meeting 10/8/2012;
51. Prior Notice of Special Education Action 4/20/2011;
52. Notice of Team Meeting 3/30/2011;
53. Prior Notice of Special Education Action 5/26/2010;
54. Notice of Team Meeting 5/14/2010;
55. Prior Notice of Special Education Action 12/3/2009;
56. Notice of Team Meeting 11/24/2009;
57. Prior Notice of Special Education Action 10/22/2009;
58. Notice of Team Meeting 10/12/2009;
59. Prior Notice of About Evaluation/Consent For Evaluation 9/2/2009;
60. Notice of Team Meeting 8/27/2009;
61. Prior Notice of Special Education Action 6/15/2009;
62. Notice of Team Meeting 6/12/2009;
63. Prior Notice of Special Education Action 3/13/2009;
64. Notice of team Meeting 3/9/2009;
65. Prior Notice of Special Education Action 11/20/2008;
66. Prior Notice of Special Education Action 10/30/2008;
67. Notice of Team Meeting 10/20/2008;
68. Prior Notice of Special Education Action 11/15/2007;
69. Notice of Team Meeting 11/5/2007;
70. Notice of Team Meeting 3/12/2007;

71. Prior Notice of Special Education Action 11/20/2006;
72. Notice of Team Meeting 11/9/2006;
73. Prior Notice About Evaluation/Consent For Evaluation 10/26/2006;
74. Previous School District—Letter of Notification and Invitation 10/6/2006;
75. Previous School District—Prior Written Notice 9/6/2005;
76. Previous School District—Letter of Notification and Invitation 9/1/2005;
77. Prior Notice of Special Education Action 5/6/2005;
78. Notice of Team Meeting 06/06/2005;
79. Notice of Team Meeting 5/27/2004;
80. Prior Notice of Special Education Action 5/27/2004;
81. Notice of Special Education Meeting 5/12/2004;
82. Email—Staff 2/8/2010;
83. Telephone Log Form 021. 2007/2008;
84. Phone Numbers;
85. High School tracking sheet 11/12/2014;
86. High School tracking sheet 9/22/2014;
87. Behavior Notes & Work Samples 4/13/2015 & 4/14/2015;
88. Email—Staff 1/29/2010;
89. Meeting notes—5/11/2009;
90. Telephone Log Form 021 3/10/2009;
91. Handwritten Notes 2/3/2009;
92. Email—Staff;
93. Telephone Log Form 021 1/6/2009;
94. Telephone Log Form 021 8/27/2008;
95. Telephone Log Form 021 5/2/2007;
96. Parent/Guardian Form 12/4/2006;
97. Observation Notes 4/23—26/2007;
98. Bus behavior descriptions & interventions 2007/2008;
99. Elementary School Daily Notes 9/27 & 11/17/2004;
100. Transportation: Student TRN-A004—Administrative Policy;
101. Transportation: Student Behavior Expectations & Consequences TRN-P036—Procedure;
102. Approved Nodes for Transporting Students TRN-W031—Work Instructions;
103. Mileage Reimbursement Request TRN-F024—Form;
104. Transportation Guide for Parents in Special Programs TRN-W023;
105. Transportation Guide for Teachers & Case Managers of Children in Special Programs TRN-W022;
106. Contact Log—2013/2014/2015;
107. Email & 2 Attachments—9/11/2015 (Complaint Form & Calendar Comparison);
108. Dr. Daniel Lam, Psychiatrist, Letter dated 9/10/2015;
109. Email—8/18/2005 (Transportation Request Urgent);
110. Staff Interview List.

The Parent submitted the following materials:

1. Request for Complaint Investigation;
2. Parent Response to District Response to Investigator's Request for Response.

The Department's complaint investigator determined that on-site interviews were needed. On October 26, 2015 the complaint investigator interviewed the Parent. On October 28, 2015, the complaint investigator interviewed the District's Counsel, Program Administrator for Special Education, High School Vice-Principal, and Special Education Program Assistant. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and

conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These 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 September 25, 2014 to the filing of this complaint on September 24, 2015.<sup>3</sup>

	<b><u>Allegations:</u></b>	<b><u>Conclusions:</u></b>
1.	<p><b><u>Review and Revisions of IEP's—IEP Content:</u></b></p> <p>The Parent alleges that the District violated IDEA when the District changed provisions of Student's IEP related to transportation.</p> <p>(OAR 581-015-2225(2)(a), (2)(b), (3)(a), 34 CFR 300.320(4), and 34 CFR 300.42)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The record indicates that the District moved to gather data to consider a change to the Student's IEP, no change was yet made.</p>
2..	<p><b><u>Parent Participation—General:</u></b></p> <p>The Parent alleges that the District did not provide Parent with an opportunity to fully participate in an IEP meeting.</p> <p>(OAR 581-015-2190(1) &amp; 34 CFR 300.500, 34 CFR 300.327, 34 CFR 300.501(b))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The record indicates that the Parent was informed in advance of the meeting, attended, participated, and presented information at the meeting. District moved to gather data to address needs of the Student highlighted by the Parent at the meeting.</p>
3.	<p><b><u>Placement of the Child:</u></b></p> <p>The Parent alleges that the District's determination regarding transportation does not conform to the Least Restrictive Environment provisions.</p> <p>(OAR 581-015-2250(b), 34 CFR 300.116, 34 CFR 300.327)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The Record indicates that the District is in the process of considering the Parent's requested modification to the Student's transportation.</p>
4.	<p><b><u>IEP Team:</u></b></p> <p>The Parent alleges that the District failed to comply with IEP meeting requirements, and failed to include required participants.</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The record indicates that all required participants were present at the IEP meeting that is the subject of this investigation.</p>

<sup>3</sup> This order does include some facts that are relevant to the case and that happened before September 24, 2014.

	(OAR 581-015-2210(1), 34 CFR300.344, 34 CFR 300.321, 34 CFR 300.324(a)(3) & (b)(3))	
5.	<p><b><u>IEP Team Considerations and Special Factors:</u></b></p> <p>The Parent alleges that the District did not take into account the input of the Parent, and evaluations of the Student.</p> <p>(OAR 581-015-2205(1), 34 CFR 300.320, 34 CFR 300.324(a)(1) &amp; (2), (b)(2))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The record indicates that the District considered the request of Parent and suggested gathering additional data upon which to base a decision.</p>
6.	<p><b><u>Nonacademic Services:</u></b></p> <p>The Parent alleges that the District's transportation services are provided in a manner that does not provide students an equal opportunity to participate in that service.</p> <p>(OAR 581-015-2070, 34 CFR 300.107)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The record indicates that the District made no final determination regarding modification to the Student's transportation. The District policy provides for a variety of solutions to issues presented by Parent.</p>

### III. FINDINGS OF FACT

- 1) The Student in this case is an 11th grader, 16 years old, residing in the Salem-Keizer School District 24J.
- 2) The Student is eligible for Special Education services because of Autism Spectrum Disorder, resulting in the Student being challenged with social interactions, communication, restricted interest and behaviors, and sensory processing.
- 3) The Student has received transportation services since approximately 5th grade. Transportation services are primarily needed due to family situations and Student's sibling attending school at a different location.
- 4) The Student currently attends regular education classes and also attends classes in the emotional growth classroom. The Student is working toward a modified diploma and working toward Transition services in the District.
- 5) On September 10, 2015, the District held an IEP meeting for the Student.
- 6) In advance of the meeting, the Parent sent, via email, a letter from the Student's psychiatrist requesting that the Student's younger sibling be allowed to ride the district-provided bus transportation. Due to the Student's schizophrenia and anxiety, the Student gets bored and can manifest unhelpful behaviors upon arrival to school.
- 7) The Parent further indicated that due to Student's Autism, the Student perceives an inequality between the Student riding the bus, and younger sibling being driven to school by the Parent.

The Parent indicates that this perceived inequality on the part of the Student can manifest as the Student escalating unhelpful and sometimes even aggressive behaviors at home toward the younger sibling. Removing the perceived inequality would be a solution to these mental health issues that the Parent has worked with the Student to move past over the years.

- 8) The Student reportedly also zones out during the bus ride to school, often engaging in such behaviors as nose picking until bleeding, and can arrive to school after the bus ride overly tired, which impacts the Student's ability to focus in class.
- 9) The Parent believes that if the Student's younger sibling is allowed to ride the bus with the Student, the Student's younger sibling will naturally react to such situations as the Student picking the Student's nose in a predictable little sibling manner, appropriately commenting and redirecting the Student to keep the Student from engaging in these behaviors and keeping the Student socially engaged. Parent's proposal is aimed at combatting these various behaviors.
- 10) On September 8, 2015, the District provided the Parent with a copy of a Notice of Team Meeting. The Notice indicated the date, time, and location for the Student's September 10, 2015 IEP team meeting. The Notice also included a list of participants, and a statement of Parent's rights.
- 11) The Parent raised these concerns during the September 10, 2015, IEP meeting.
- 12) The Parent presented the letter from the Student's psychiatrist recommending that the Student's younger sibling be allowed to ride the bus to alleviate the Parent's concerns about the Student's behavior.
- 13) The Parent felt that the District favored finding a different solution to the Parent's concerns, rather than have the Student's younger sibling ride the district-provided special needs bus with the Student.
- 14) The District has policies related to siblings riding transportation for students in special programs.
- 15) The District policy relevant to sibling riders reads in relevant part, "Providing transportation service to siblings of Special Program students is generally not allowed. Written requests for sibling riders must receive joint approval from the Student Services Coordinator and the Director of the Transportation Department. Transportation services will not be provided to siblings on days the Special Education student does not ride the bus."
- 16) District also maintains a Transportation Guide for Teachers and Case Managers of Children in Special Programs. That guide reads in relevant part, "Providing transportation service to siblings of Special Program students is generally not allowed. Written requests for sibling riders must receive joint approval from the Student Services Coordinator and the Director of the Transportation Department."
- 17) The District policy also notes that, "Parents may request to transport their own child and can be reimbursed at the current district rate. The Student Services Transportation Coordinator and the Director of Transportation must approve this request."
- 18) The Parent transporting the Student and sibling together in the Parent's own vehicle was raised at the meeting as a potential solution.
- 19) The Parent is concerned that the IEP meeting minutes did not adequately capture the Parent's concerns.

- 20) The IEP meeting notes read in relevant part, "Parent shares...a letter from [Student's] doctor indicating that it would be beneficial for...sibling to ride on the bus...[Student] asks about what happens if [Student] gets angry and [sibling] bothers [Student] on the bus. Parent responds with strategies [Student] can use if this should happen. Team discusses taking data to determine what interventions may work to support getting [Student] started in the morning; the team can discuss adding an adult rider to the bus to address this concern. Team agrees to three weeks of interventions and specific data prior to making a decision in regard to [Student's] bus ride. Parent does not agree with this timeframe and data tracking prior to implementation and modification of ride. Parent stressed that the transportation issue of siblings coming separately places great hardship on the family."
- 21) The Parent disagrees that the IEP Team decided to collect additional data before making a decision on transportation. Rather, the Parent's impression was that the District administration made a decision before the meeting and stifled conversation regarding transportation issues.
- 22) The Parent further noted that the Student's Case Manager mentioned that there was existing data regarding many of the concerns the Parent raised resulting from the Student riding the bus.
- 23) The District indicated its need to gather information to best determine how to address the Student's needs.
- 24) Following the meeting, and through the pendency of this complaint investigation, the Parent began to drive the Student and the Student's sibling to school.
- 25) On September 24, 2015, the Parent filed this complaint.

#### IV. DISCUSSION

##### 1. Review and Revision of IEP's—IEP Content:

The Parent alleges that the District violated IDEA when the District changed provisions of the Student's IEP related to transportation.

The IDEA recognizes the necessity of Parent Participation in the creation of the IEP, and requires districts to provide one or both parents the opportunity to be present at the IEP team meeting.<sup>4</sup> Parent Participation in meetings means affording parents the opportunity to participate with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.<sup>5</sup> Parents are one of several individuals that constitute the IEP team. The team should also consist of the child where appropriate, at least one regular education teacher of the child, a special education provider, a representative of the school district, someone who can interpret the instructional implications of evaluation results, and others invited by the parent or district as needed.<sup>6</sup> The team works together to create the IEP, a written statement of an educational program that is developed, reviewed, revised and implemented for a school-aged child with a disability.<sup>7</sup>

The evidence provided in the record shows that the Parent desired to provide information during the IEP meeting that the Parent considered relevant to the provision of FAPE. That information was provided in advance of the meeting. The Parent was informed ahead of time the location of the

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<sup>4</sup> OAR 581-015-2190(1), 34 CFR 300.501(b)

<sup>5</sup> 34 CFR 300.501(b)

<sup>6</sup> OAR 581-015-2210(1)

<sup>7</sup> OAR 581-015-2000(15)

meeting and did attend and participate in the meeting. The Student was also present at the meeting, and participated where appropriate. The Parent desired that the District consider the Student's psychiatrist's letter urging that the Student's younger sibling ride the district-provided bus transportation along with the Student. The team discussed the recommendation of the Student's psychiatrist and the Parent's suggestion. The IEP team did not move to immediately adopt the Parent's suggestion and instead suggested a three week period to gather information to determine the Student's specific needs in order to determine the best solution for the Student. The District and the Parent agree that those present at the meeting offered various suggestions and opinions.

The Parent was provided notice in advance of the meeting and afforded the opportunity to participate at the IEP meeting. The Student also participated in the meeting. The Parent preferred that the IEP Team adopt and implement the recommendation of the Student's psychiatrist. The District instead moved to gather specific data regarding the Student's needs, noting that the specific need then articulated by the Parent was not previously documented in the Student's IEP. Rather than a change to the Student's IEP, the IEP Team determined to defer any decision in making a change for at least three weeks during which data would be gathered regarding Student's needs.

This allegation is not substantiated and no corrective action is ordered.

## **2. Parent Participation—General**

The Parent alleges that the District did not provide the Parent with an opportunity to fully participate in an IEP meeting. Specifically, the Parent reports feeling that a decision on transportation had been decided in advance of the meeting, and that this discussion was cut short during the IEP meeting.

School districts are required to provide parents an opportunity to participate in IEP meetings. Districts must provide parents notice of the purpose of the meeting, as well as the proposed time, location, and list of attendees. Meeting notices must also contain other relevant information and statements of rights.<sup>8</sup>

The District provided the Parent with a Notice of Team Meeting dated September 8, 2015. The Notice indicated that the meeting would be held September 10, 2015 and included the specific location and time of day. The Notice also included a list of invited and required participants. The Parent reports that the Parent's views and opinions were not properly considered during the meeting. Interviews with the Parent indicate that the Parent provided input during the meeting and presented documentation from the Student's psychiatrist regarding the Student's transportation. Interviews with the District indicated that the District meeting participants understood the Parent's concerns and suggested that staff move to gather data regarding issues raised by the Parent.

As part of an evaluation or reevaluation, the IEP team is required to review and/or determine what additional data may be required to make a determination regarding changes to a student's IEP.<sup>9</sup> At least one member of the IEP Team may have mentioned that data existed, however that data was not presented during the meeting, and other meeting participants were not aware of a link between transportation and observed behaviors. The IEP Team determined to move forward with gathering data related to the Parent's requested change to the District's provision of the Student's transportation services.

The Parent appears to have presented relevant information during the meeting sufficient for the District to proceed to gather information to address the concern.

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<sup>8</sup> OAR 581-015-2190

<sup>9</sup> OAR 581-015-2115(1)(b)



This allegation is not substantiated and no corrective action is ordered.

### **3. Placement of the Child**

The Parent alleges that the District's determination regarding transportation does not conform to the Least Restrictive Environment provisions. The Parent's contention is that was the District to address concerns about transportation with an adult monitor, such a solution would be more restrictive than if the District were to utilize the Student's sibling.

Districts must ensure that student placement is determined in conformity with Least Restrictive Environment provisions.<sup>10</sup> Districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability.<sup>11</sup> Least Restrictive Environment provisions extend to non-academic services<sup>12</sup> such as transportation.

The Parent alleges that the District's failure to allow the Student's sibling to ride along with the Student on district-provided bus transportation and proposal of the alternatives of an adult rider, or for the Parent to provide transportation, is a more restrictive environment. The Parent and the District agreed that the determination made at the IEP meeting was for staff to gather data. No final determination on changes to the Student's transportation was made at the IEP meeting. The District and the Parent both have concerns regarding the Student's sibling riding the district-provided bus transportation. The Student also raised questions regarding this arrangement during the meeting. There was insufficient information provided at the meeting upon which to make a determination in this matter, therefore it was suggested that data be gathered. District policy provides for reimbursement of parents for transporting students. This was another possible solution discussed between the District and the Parent.

This allegation is not substantiated and no corrective action is ordered.

### **4. IEP Team**

The Parent alleges that the District failed to comply with IEP meeting requirements by failing to include required participants.

Districts must ensure that IEP teams include certain required participants. These participants should include the parent, student, at least one regular education teacher of the child, a special education provider, a representative of the school district, someone who can interpret the instructional implications of evaluation results, and others invited by the parent or district as needed.<sup>13</sup> Interviews with the District and the Parent indicate that all required participants were present at the September 10, 2015 IEP meeting that is the subject of this complaint.

All required team members were present at the meeting, therefore this allegation is not substantiated and no corrective action is ordered.

### **5. IEP Team Considerations and Special Factors:**

The Parent alleges that the District did not take into account the input of the Parent and evaluations of the Student. Specifically, the Parent alleges that the District dismissed comments from some staff

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<sup>10</sup> OAR 581-015-2250(1)(b)

<sup>11</sup> OAR 581-015-2240(1)

<sup>12</sup> OAR 581-015-2255(1)

<sup>13</sup> OAR 581-015-2210(1)

regarding available data and did not properly weigh a letter from the Student's psychiatrist.

The legal requirement regarding free appropriate public education (FAPE) can be found in OAR 581-015-2040 and 34 CFR 300.101. School districts must provide special education and related services to all resident school-aged children with disabilities. In determining whether a District has denied Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.<sup>14</sup> The IDEA requires school districts to provide a "basic floor of opportunity" to disabled students, consisting of "access to specialized instruction and related services which are individually designed to provide educational benefit" to the child with the disability.<sup>15</sup> A student's IEP need not address every medical diagnosis that a student receives or every condition that a student has. Instead the IEP must address the unique special education and related service needs that arise from a student's qualifying disabilities. The IDEA requires that districts consider "the concerns of the parent for enhancing the education of their child."<sup>16</sup> Parent concerns are one of the many things the IEP team considers in the development of the IEP.<sup>17</sup> The IEP may be composed from a variety of source data and assessments.<sup>18</sup> These are considered, developed, and interpreted<sup>19</sup> into the IEP, but are not necessarily included in the IEP in whole.

In this case, the Parent was present at the IEP meeting, and there is no dispute regarding notice of the meeting. All required individuals were present at the meeting, as was the Student. This meeting was held to revise and extended the Student's prior year IEP. Part of the information presented by the Parent included a letter from the Student's psychiatrist. The Parent desired that the Student's IEP service of bus transportation be amended to include Student's younger sibling riding with the Student to alleviate unhelpful behaviors. The District reports that this meeting was the first they had heard of concerns regarding the bus ride leading to potential behavioral obstacles after school, or as a primary contributing factor to behaviors in school upon arrival. The Parent urged acceptance of the Student's younger sibling as a solution, noting that the two would attend school in the same building beginning this school year and that arriving via separate transportation modes to the same location could trigger the Student to perceive an inequality between self and sibling that could exacerbate certain behaviors on the part of the Student.

The District reports recommending collecting data for three weeks to determine the best response to the Parent's concerns. The District noted that the Student also raised concerns regarding the Student's behavioral obstacles directed at Student's younger sibling, should Student's younger sibling be utilized to ameliorate the Parent's concerns. The District echoed the Student's concerns of utilizing Student's younger sibling as a service provider for the IEP. The District did not alter the IEP to accord with the specific transportation solution suggested by the Parent, but left open the resolution of this issue until data was gathered. The Parent's concerns were documented in the IEP meeting minutes. The District staff who kept meeting minutes agreed that the minutes could have been more descriptive, but that they were also taking part in the meeting, which frustrated more detailed note taking.

The District provided the Parent with the opportunity to participate in the generation of the IEP, considered information presented by the Parent, preserved the Parent's procedural rights, and moved to gather data related to the Parent's concerns. The Department therefore does not sustain this allegation and orders no corrective action.

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<sup>14</sup> Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (U.S. 1982)

<sup>15</sup> *Id.* at 200

<sup>16</sup> 34 CFR 300.324(a)(ii)

<sup>17</sup> 34 CFR 300.324

<sup>18</sup> 34 CFR 300.304, 34 CFR 300.305, and 34 CFR 300.305(c).

<sup>19</sup> 34 CFR 300.321(5)

## 6. Nonacademic Services:

The Parent alleges that the District's transportation services are provided in a manner that does not provide the Student an equal opportunity to participate in that service.

In providing and arranging for the provision of nonacademic and extracurricular services and activities, and services described on OAR 581-015-2070 which includes transportation, districts must ensure that students with disabilities participate along with students who do not have disabilities to the maximum extent possible.<sup>20</sup> These nonacademic services must be provided in a manner that affords students with disabilities an equal opportunity to participate in those services and activities. Transportation services are included in this calculation.<sup>21</sup> Required services are developed, reviewed, and revised in accordance with specific requirements.<sup>22</sup> These requirements include, among others, how the child's disability affects the child's involvement and progress in the general education curriculum.<sup>23</sup> When reviewing or revising a student's IEP, the student's IEP team must review existing evaluation data on a student, information provided by parents, observations, and determine what additional data may be required in order to make a decision. The district must collect additional data needed to make necessary determinations regarding student needs. If a district determined that additional data were not needed, the district must inform a parent of this, and parent's rights with regard to this decision.<sup>24</sup>

The Parent presented the District with concerns about the Student's behavior resulting from the Student riding the bus and not being engaged during the ride. The Parent urged the District to allow the Student's younger sibling to ride the bus with the Student as a means of addressing the Student's need for social interaction during the ride, thereby alleviating behaviors displayed upon arrival to school and home. The Parent considered the Student's younger sibling, as a student without a disability, to be a means of both ensuring that the Student has access to the Student's IEP transportation service and could participate along with students without disabilities. The Parent argues that were the District to provide an adult to accompany the Student to address the Parent's concerns about the Student on the district-provided transportation, that the Student would be further isolated and hinder the Student's equal opportunity to participate. The District has not yet made a determination regarding the Student's transportation. Instead the District moved to gather data regarding the Student's needs. The District also proposed that the Parent driving the Student together with the Student's sibling to address all concerns raised by the Parent.

The District has appropriately moved to gather additional data to determine the what if any revisions related to transportation should be made to the Student's IEP, and therefore no final determination regarding transportation services has been made. The Department therefore does not sustain this allegation.

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<sup>20</sup> OAR 581-015-2255(1)

<sup>21</sup> OAR 581-015-2070

<sup>22</sup> 34 CFR 300.22

<sup>23</sup> 34 CFR 300.320(a)(1)(i)

<sup>24</sup> OAR 581-015-2115

## V. CORRECTIVE ACTION<sup>25</sup>

*In the Matter of Salem-Keizer School District #24J  
Case No. 15-054-035*

The Department does not order any Corrective Action resulting from this investigation.

Dated: this 17th Day of November 2015



Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Learning - Student Services

Mailing Date: November 17, 2015

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<sup>25</sup> 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)).