

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Central School District
13J

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FINDINGS OF FACT,
CONCLUSIONS
AND CORRECTED¹
FINAL ORDER
Case No. 19-054-016

I. BACKGROUND

On April 25, 2019, 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 Central School District 13J (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District on April 25, 2019.

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.² This timeline may be extended if the Parent and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.³ This order is timely.

On April 30, 2019, the Department's Complaint Investigator (Investigator) sent a *Revised Request for Response* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of May 14, 2019.

On May 14, 2019, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Parent's Complaint. In total, the District submitted the following items:

1. District Response in 19-054-016
2. 04/23/2019 Letter of Response and Investigative Summary
3. Written Agreements between the Parent and the District, 3/12/2019
4. Authorization to Use and/or Disclose Educational and Protected Health Information
5. Authorization to Use and/or Disclose Educational and Protected Health Information
6. Prior Notice about Evaluation consent for Evaluation,(three year IEP review) 11/18/2016
7. Student Assessment List, 11/18/2016

¹ In a letter titled "Corrections to Final Order, Case #19-054-016" and dated July 16, 2019, the Parent asserted that Final Order 19-054-016 contained several inaccuracies, two of which are addressed in this Corrected Final Order. The first related to the year the Student was evaluated on the Reynolds Intellectual Assessment Scale (2011, not 2014), and the second related to the date the Parent received the District's "Stand Ready" letter (April 16, 2019, not April 14, 2019). The Department considered the entire content of the Parent's "Corrections to Final Order, Case #19-054-016" letter, and made only these corrections.

² 34 CFR § 300.152(a); OAR 581-015-2030(12).

³ 34 CFR § 300.152(b); OAR 581-015-2030(12).

8. Functional Behavior Assessment & Behavior Support Plan
9. Education Evaluation Center, 3/10/2017
10. Functional Behavior Assessment, 06/03/2014
11. Behavior Support Plan, 06/03/2014
12. Summary of Assessment, Autism Eligibility and Communication Report, 02/04/2014
13. Confidential Psychological Report, 01/06/2014
14. Confidential Psychological Report, 03/28/2011
15. Occupational Therapy 3-yr. Functional Assessment, 2010
16. Summary of Assessment, Confidential Psychological Report, 05/25/2010
17. Summary of Assessment, Autism Eligibility and Communication Report, 05/20/2010
18. Occupational Therapy Assessment, 04/06/2010
19. Summary of Assessment, Confidential Psychological Report, 01/09/2009
20. Occupational Therapy Assessment, 11/19/2008
21. Initial Development Evaluation, 01/19/2005
22. Initial Occupational Therapy Evaluation, 10/14/2005
23. Statement of Eligibility (Intellectual Disability 10), 02/10/2017
24. Statement of Eligibility (Other Health Impairment 80), 02/10/2017
25. Student's IEP 01/23/2019 (Amendment date: 03/12/2019)
26. IEP Team Meeting, 02/21/2019
27. Student IEP, 01/23/2019
28. Student IEP, 01/24/2018
29. Annual Academic and Functional Goals and Objectives Progress Report, (02/03/2017, 06/12/2017)
30. IEP meeting notes, 02/12/2019
31. Individualized Education Program Team Meeting, 02/21/2019
32. Annual IEP meeting notes, 01/23/2019
33. Annual IEP meeting notes, 01/24/2018
34. FBA Review meeting, 03/07/2017
35. Annual and 3 year re-evaluation meeting, 02/10/2017
36. Letter from District to Parent, 04/16/2019
37. Email: Re: (Student), 04/11/2019
38. Email: Question for you, 04/06/2019
39. Email: My understanding of the meeting on March 12, 2019, 03/20/2019
40. Email: (Student), 02/10/2019
41. Email: (Student's) items at school, 03/20/2019
42. Email: Fwd: [Staff Person A], 03/08/2019
43. Email: Fwd: Mtg. At 9:45 today, 05/13/2019
44. Email: (Student's) things, 03/06/2019
45. Email: Fwd: (Student's) absence, 02/04/2019
46. Email: Update, 03/01/2019
47. Email: (Student) meeting – urgent
48. Email: Fwd: [Staff Person A] & School
49. Email: Meeting, 02/14/2019
50. Email: Follow-up, 02/12/2019
51. Email: (Student)
52. Email: Check in, 01/31/2019

53. Email: Today, 01/25/2019
54. Email: (Student), 1/07/2019
55. Email: (Student) 01/05/2019
56. Email: Work, 12/19/2018
57. Email: (Student's) absence from school, 12/17/2018
58. Email: (Student) 12/12/2018
59. Email: (Student's) episode, 12/11/2018
60. Email: (Student's) weekend, 12/10/2018
61. Email: (Student), 12/05/2018
62. Email: (Student), 12/03/2018
63. Email: (Student), 11/29/2018
64. Email: (Student), 11/26/2018-11/14/2018
65. Email: (Student's) weekend behavior, 11/13/2018
66. Email: (Student's) sleepiness, 11/09/2018
67. Email: (Student), 11/08/2018
68. Email: (Student's) ankle braces, 10/28/2018
69. Email: Cookies, 10/28/2018
70. Email: (Student) 10/25/2018
71. Email: Monday, 10/11/2018
72. Email: (Student's) arrival at school, 10/04/2018
73. Email: (no subject), 09/23/2018
74. Email: Back to school, 09/04/2018
75. Email: Re: (Student), 03/19/2018
76. Email: Fwd: (Student's) feet, 03/15/2018
77. Email: (Student), 02/22/2018
78. Email: (Student), 02/13/2018
79. Email: I'm picking (Student) up today
80. Email: Bowling Day, 01/30/2018
81. Email: (Student), 01/29/2018
82. Email: My son, 01/28/2018
83. Email: (Student), 01/24/2018
84. Email: Re: (Student), 01/28/2018
85. Email: (Student), 01/04/2018-12/28/2017
86. Email: Today, 12/11/2017
87. Email: My son's attendance. 12/10/2017
88. Email: (Student) 12/01/2017
89. Email: (Student) 11/08/2017
90. Email: (Student's) Thursday night
91. Email: (Student) 10/18/2017-09/21/2017
92. Email: absence, 09/18/2017
93. Email: (Student), 09/15/2017-09/12/2017
94. Email: A staff member, 09/11/2017
95. List of School District Staff knowledgeable about the Student

The Investigator interviewed the Parent on May 28, 2019. The Parent provided additional documentation at that time. The Investigator determined that onsite interviews were

necessary. On May 30, 2019, the Investigator interviewed the District’s Special Education Director, Superintendent, Special Education Teacher, Building Principal, and District Title IX Coordinator. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint.⁴ The Parent’s allegations and the Department’s conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from April 26, 2018, to the filing of this Complaint on April 25, 2019.

	Allegations	Conclusions
1.	<p>IEP Implementation/When IEPs Must Be In Effect</p> <p>The Parent alleges that the District violated the IDEA when the District allowed the Student to sleep in school, resulting in missed hours of instruction.</p> <p>The Parent further alleges that the District did not provide the Student with educational opportunities during a period of time when the Student was home while the District investigated interactions between the Student and District staff.</p> <p>(34 §§ CFR 300.323 & 300.324; OAR 581-015-2220)</p>	<p>Not Substantiated</p> <p>The Student’s IEP included a provision for allowing the Student to sleep at school due to the Student’s chronic insomnia. The sleep provision of the IEP was added as a support to encourage attendance and assist the Student in behavior regulation. The Parent unilaterally removed the Student from the District and began home schooling the Student. The District did not withhold educational opportunities from the Student during this time.</p>
2.	<p>IEP Team Considerations and Special Factors</p> <p>The Parent alleges that the District violated the IDEA by not providing appropriate accommodations to the Student such as a quiet area to focus and concentrate while working, limiting the number of people in close proximity, staff to provide work support, and a dimly lit area to complete school work. The Parent</p>	<p>Not Substantiated</p> <p>Records received from the District and the Parent do not reflect that the Student demonstrated a need for the accommodations mentioned by the Parent. The Parent proposes the accommodations based on articles about other children with the same medical condition as the Student.</p>

⁴34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>alleges that instead, the District provided the Student with an educational environment that was ill-suited to the Student's needs.</p> <p>(34 CFR §§ 300.320, 300.324(a)(1) & (2) & (b)(2); OAR 581-015-2205)</p>	
3.	<p>Alternative Placements and Supplementary Aids and Services</p> <p>The Parent alleges that the District violated the IDEA when it failed to provide special education and physical education when the Student's placement was changed to home, or when the Student was not in school due to Parent concerns about the educational environment.</p> <p>(34 CFR § 300.115; OAR 581-015-2245)</p>	<p>Not Substantiated</p> <p>The Parent unilaterally removed the Student from school in favor of home schooling. The Student's IEP Team did not change the Student's placement. After the Parent began homeschooling the Student, the District expressed a willingness to continue to offer special education services based upon the Student's IEP.</p>
4.	<p>Review and Revision of IEPs</p> <p>The Parent alleges that the District violated the IDEA when the District failed to revise the Student's IEP to address a lack of expected progress toward annual goals, information provided by the Parent, and the Student's anticipated needs.</p> <p>(34 CFR § 300.305; OAR 581-015-2115,)</p>	<p>Not Substantiated</p> <p>The aspects of the Student's IEP that the Parent alleges have not been revised are generalized observations, many of which fall outside the one-year period of this complaint investigation.</p>
5.	<p>General Evaluation and Reevaluation Procedures</p> <p>The Parent alleges that the District violated the IDEA when it failed to consider a variety of factors in formulating the Student's IEP, including: (a) the strengths of the Student, (b) the concerns of the Parent for enhancing the education of the Student, such as safety concerns, and (c) the academic, developmental, and functional needs of the Student.</p>	<p>Not substantiated</p> <p>The District appropriately considered the Student's strengths, the Parent's concerns, and the academic, developmental, and functional needs of the Student in developing the Student's IEP. That the District did not find evidence of District staff abuse of the Student does not invalidate the District's considerations.</p>

(34 CFR §§ 300.320, 300.324(a)(1) & (2) & (b)(2) OAR 581-015-2205)	
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III. FINDINGS OF FACT

1. The Student in this case is in the eleventh grade and resides in the District. The Student is eligible for special education services under the categories of Intellectual Disability and Other Health Impairment.
2. The Student has a Fragile X Syndrome diagnosis. Individuals with Fragile X Syndrome can present with significant behaviors, including hyperactivity, impulsivity and anxiety, in addition to poor language development and seizures. An imbalance in inhibitory and excitatory neuronal circuits is believed to underlie many of the clinical manifestations of this disorder.⁵
3. In 2011, the Student underwent a psychological assessment that included the Reynolds Intellectual Assessment Scale (RIAS). The Student scored 63 on the nonverbal portion and <40 on the verbal composite. Such scores show the Student is significantly below average intelligence. The evaluator also utilized the Adaptive Behavior Assessment Systems (ABAS-II) showing that the Student scored “extremely low” in all areas.
4. On February 10, 2017, the District found the Student eligible for special education under the category of Intellectual Disability due to the Student’s intelligence score being more than three standard deviations below the mean. The District also found the Student eligible for special education under the category of Other Health Impairment, having met all of the criteria including limited strength, vitality, or alertness causes by a chronic permanent condition.
5. In the past, the Student has exhibited aggressive behaviors, including hitting, kicking, throwing objects, name-calling, and self-injurious behaviors. Signs of frustration could escalate quickly when staff attempted to redirect the Student.
6. The District developed a Behavior Support Plan (BSP) during the 2017-2018 school year, after which the District observed a decrease in aggressive behavior. The Parent also reports that the Student has undergone medication changes which have assisted greatly with behavioral regulation.
7. The Student’s BSP includes such interventions as modeling positive phrases, reinforcing appropriate and desired behaviors, extra time with staff for positive interactions, reducing work expectations at signs of escalation, allowing the Student to make corrections rather than pointing out mistakes, and using a five-point scale for emotions.

⁵ Nature Reviews Disease Primers, 3, Article Number: 17065 (2017).

8. The Student has trouble sleeping, with the Parent describing the Student as chronically sleep-deprived. To support more regular school attendance as well as accommodate issues related to exhaustion, District staff allow the Student to sleep during the school day. "Nap/rest opportunities" are included in the Student's IEP as an accommodation for when the Student shows signs of fatigue. The Student's IEP notes that the Student "often sleeps for at least 1 hour per day."
9. The Student works on curriculum significantly below grade-level peers, necessitating the use of alternative assessments.
10. The Student receives specialized instruction in behavior, independent living, functional academics, vocational, and communication. The Student receives supplementary aids, services, and accommodations such as adult support when the Student is frustrated and during transitions, and with toileting. The Student is provided with positive reward schedules throughout the day, support with feeding, nursing support, 1:1 instruction for academics, notice ahead of transitions, and a visual schedule.
11. The Student is provided with access to a calming room to deescalate.
12. The Student also receives occupational therapy, physical therapy, and behavioral consultations throughout the year.
13. The Student is removed from the general education setting six out of seven periods in the school day. The Student participates in the general education setting for breakfast, lunch, assemblies, pre-vocational routines, and other nonacademic activities. The Student works on a modified functional curriculum. The Student needs academic instruction delivered at a slower pace with frequent repetition for retention of information. When the Student does demonstrate aggressive and unusual behavior when escalated, a higher level of adult monitoring and assistance throughout the school day is necessary.
14. The Student expects to graduate with an alternative certificate, then participate in transition services, leading to work in the community with the support of Vocational Rehabilitation Services.
15. The Student's IEP Team includes county developmental disabilities staff.
16. On January 24, 2018, the Student's IEP Team met to discuss the Student's IEP. The Team discussed the Student's resistance to participate in such activities as writing. Even though the Student has the skills to perform the task, the Student generally resists engagement in non-preferred tasks. The Team noted that the Student was engaged in new curriculum around reading and that the Student's "reading comprehension is a relative strength," but that the Student struggled with more complex words. The Student "seems motivated by the new mode of learning . . ." The IEP Team explored ways to motivate the Student. The Parent expressed an interest in curriculum that moved "away from rote memorization of these concepts and moving onto functional use of these skills." In particular, the Student was then working on application of math and reading in

real world scenarios such as shopping. The IEP Team had at this stage begun shifting focus to transition and skills to support future employment and independent living.

17. On January 23, 2019, the Student's IEP Team met to review the Student's progress. The IEP Team noted that the Student had missed a significant number of school days related to health concerns. The Team reviewed behavior interventions and the Student's progress toward functional skills such as shopping. The Student's goals were then developed with an emphasis on skills for communication, independent living, behavior, vocational pursuits, and functional academics.
18. Over the course of the 2018–2019 school year, the Student's IEP focused more on skills that would support the Student's ultimate career goals. The Student's Teacher reported challenges in steering the Student to work on academic tasks.
19. During the interview with the Investigator, the Parent suggested that the Student would benefit from an environment away from other Students with disabilities. In support of this contention the Parent cited articles relevant to students with Fragile X Syndrome.
20. During the 2018-2019 school year, the Parent reported suspicions that the Student had been sexually assaulted by District staff. The Parent reported these suspicions to the Oregon Department of Human Services and also to local police.
21. On February 1, 2019, the Parent chose to home school the Student.
22. On February 12, 2019, the District documented having received the complaint regarding allegations about inappropriate contact between District staff and the Student.
23. The Parent's suspicions included certain District staff not speaking to the Parent on occasions where they usually do speak to the Parent, the Parent allegedly observing the same District staff member behaving in a manner the Parent described as "suspicious," and verbalizations from the Student that included the same District staff member's name.
24. The Parent lacked direct evidence of the alleged sexual contact between District staff and the Student. The Parent pointed to various verbalizations and sentence fragments the Student made which were similar in nature to those verbalizations made by the Student in the past when the Parent alleged sexual contact between the Student and staff in a different school district.
25. The Student did not report inappropriate behavior by any District staff. No witnesses to the alleged behavior came forward. The Student was not forensically interviewed regarding the alleged abuse.
26. The District investigated the Parent's allegations. Given a lack of direct evidence, witness statements, or direct report from the Student, the District did not substantiate the Parent's allegations. During the course of the District's investigation, the Parent alleged possible involvement by a second District staff member. In addition to the investigation,

the District consulted with their Title IX Coordinator regarding the issues raised.

27. On March 6, 2019, the District met with the Parent to review the findings of its investigation into the Parent's allegations. During this meeting the Parent shared with the District additional allegations of inappropriate contact between District staff and the Student.
28. The District investigated these additional concerns and provided the Parent with a summary of its investigation on April 23, 2019. The District concluded that there was no evidence to support the Parent's allegations.
29. The Parent took the Student to a community counselor to address concerns of possible abuse. The Parent observed behavior that the Parent reports the community counselor reported was indicative of the Student feeling they needed protection. The Parent interpreted this as confirmation of the Parent's suspicions that District staff had inappropriate contact with the Student.
30. As part of the District's investigation, the District offered to have the Student interviewed by a District behavior specialist who is also trained as a forensic interviewer. The Parent declined to have the Student participate in such an interview.
31. The Parent reported removing the Student from school due to concerns about abuse. The District reported finding no evidence to support the Parent's concerns and concluded that the Student's existing placement was appropriate.
32. During an interview with the Investigator, the Parent provided previous IEPs and meeting notes dating back to 2013 from prior school districts the Student attended. The Parent pointed to certain information that repeated throughout these documents as evidence that the District failed to appropriately update the Student's IEP, and that goals were not updated but rather copied from prior years resulting in the Student failing to make progress.
33. On April 16, 2019, the District sent the Parent a "stand ready" letter, explaining the District's willingness to continue to offer special education services based upon the IEP developed by the Student's IEP Team on January 23, 2019.
34. On April 23, 2019, the District sent a letter to the Parent providing a summary of the District's investigation into the allegations and the District's conclusion that "there is no evidence to support any of the allegations brought forward in the complaint. . . ."
35. On April 25, 2019, the Department received this complaint.

IV. DISCUSSION

A. IEP Implementation/When IEPs Must Be In Effect

The Parent alleges that the District violated the Individuals with Disabilities Education Act (IDEA) when the District allowed the Student to sleep in school, resulting in missed hours of instruction. The Parent further alleges that the District did not provide the Student with opportunities to engage in physical activities at school during a period of time when the Student was kept home while the District investigated allegations of abuse brought by the Parent against the District.

A school district must ensure that at the beginning of each school year, an IEP is in effect for each eligible student with a disability.⁶ School districts must ensure that the special education and related services needed by students with disabilities are provided in accordance with their IEP.⁷ As soon as possible after the development of the IEP, the services included therein must be made available to the student in accordance with the student's IEP.⁸

1. Sleeping at School

The Parent alleges that the District violated the IDEA by allowing the Student to sleep at school, which resulted in the Student missing instruction time. The Parent alleges that the Student was allowed to sleep up to 1.5 hours in the morning and 1.5 hours in the afternoon, significantly reducing the amount of instruction time available to the Student. The Student's January 23, 2019 IEP, revised on March 2, 2019, included observations regarding the Student's need for sleep related to behavior concerns:

[The Student's progress on [their] functional academic goals has been impacted by [their] absences this year. When [the Student] is at school during this time, [they] are often sleeping or managing [their] self-regulation due to other students being loud and upsetting them . . . staff also recognizes that [the Student] does not sleep well at night and [that the Student's Parent] reports that [the Student] is chronically sleep deprived. [The Student] often misses school due to sleep issues. In an effort to support more regular attendance as well as accommodate issues related to exhaustion, the . . . teachers and staff do allow [the Student] to sleep during the school day. [The Student] often sleeps for at least 1 hour per day. Staff have noticed a correlation between wandering/pacing and self-injury . . . and other signs of tiredness as if [the Student] is attempting to keep [themselves] awake.

District staff report that permitting the Student to sleep in class was done to encourage the Student's attendance rather than have the Student miss school due to lack of sleep. District staff reported that as the Student was able, the Student could participate in the academic

⁶ OAR 581-015-2220(1)(a).

⁷ OAR 581-015-2220(1)(b).

⁸ OAR 581-015-2220(2)(b).

day. The accommodation of nap/rest opportunities were incorporated into the Student's IEP. Both the Parent and the District reported a significant reduction in serious behavior concerns when the Student was allowed to sleep at school.

2. Physical Activities

The Parent further alleged that the District failed to provide the Student with opportunities to engage in physical activities and the social benefits that come therewith. On or around February 1, 2019, the Parent began keeping the Student home from school. The District had not changed the Student's placement to a home placement. Rather, the Parent removed the Student from school in favor of homeschooling. On April 16, 2019, the District sent a letter to the Parent informing them that the District had become aware that the Student was removed from the District in favor of homeschooling. The District provided the Parent with options for the Student to access services under the Student's IEP. There is no evidence in the record that the Parent opted to access those services.

The Student's IEP included instructions and rationale for the Student sleeping at school. The Parent removed the Student to homeschooling and chose not to access IEP services when the District offered them. For these reasons the Department does not substantiate this allegation.

B. IEP Team Considerations and Special Factors

The Parent alleges that the District violated that IDEA by not providing the appropriate accommodations to the Student, such as a quiet area to focus and concentrate while working, limiting the number of people in close proximity, staff to provide work support, and a dimly lit area to complete school work. The Parent alleges that instead, the District provided the Student with an educational environment that was ill-suited to the Student's needs.

In developing, reviewing, and revising a child's IEP, the IEP team must consider the strengths of the child.⁹ The IEP team should also consider the concerns of the parent for enhancing the education of their child, the results of the most recent evaluation of the child, and the academic, developmental, and their functional needs.¹⁰ A variety of factors should be considered when developing the IEP including behavior, and whether the student requires a particular device or service.¹¹

The Parent's specific concerns regarding the education environment, sound, light, and proximity of students and staff had not previously been communicated to the District, nor were these issues observed as obstacles to the Student's learning. Primary concerns have been behavior, aggression, sleep schedule, and at times, the Student's unwillingness to engage in academic instruction. The Student's behavior has recently improved due to a variety of interventions. The Student's IEP Team has focused more on transition services and life skills such as those that would support the Student's career goals. The Student's January

⁹ OAR 581-015-2205(1)(a).

¹⁰ OAR 581-015-2205(1)(b)-(1)(d).

¹¹ OAR 581-015-2205(3)(a) & (4).

23, 2019 IEP, revised on March 2, 2019, notes that despite noise and light in the learning environment that the Student is able to sleep in the classroom. The Student's Teacher noted that noise, light, or the absence of a separate work space had not been observed as obstacles to the Student's learning. Rather, the practical application of skills leading toward employment were the primary focus, along with reducing behaviors that impeded the Student's participation in the learning environment. During the course of the Department's investigation, the Parent provided articles discussing Fragile X Syndrome from which the Parent based their perspective on appropriate accommodations.

Information provided by the Parent and District did not demonstrate that the District violated the IDEA by not providing the Parent-suggested accommodations to the Student. This is not to say that the Parent's suggested accommodations may not be helpful. Rather, the Student's IEP Team had identified other issues (e.g., addressing the Student's reluctance to participate in the educational environment, improving the Students behavior and attendance) as the primary drivers for developing the Student's IEP, and the IEP Team developed an appropriate IEP without these accommodations. The Department does not substantiate this allegation.

C. Alternative Placements and Supplementary Aids and Services

The Parent alleges that the District violated the IDEA when it failed to provide special education and physical education when the Student's placement was changed to home, or when the Student was not in school due to Parent concerns about the educational environment. The Parent is concerned that the Student lacks access to physical education opportunities in the home placement, including the social aspects of those opportunities. The Parent further alleges that the District failed to provide such services during a period when the District investigated allegations of abuse involving the Student.

School districts are required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.¹² Such a continuum of alternative placements should be provided in conjunction with general education classroom placements.¹³ The continuum of placement options requires that district consider such options as resource rooms, itinerant instruction, and instruction at home.¹⁴

On or around February 1, 2019, the Parent began keeping the Student home from school. During February 2019, the Parent developed concerns that one or more District staff members had had inappropriate contact with the Student. The District investigated the Parent's concerns. The District's documents indicate formal receipt of the Parent's concerns on February 12, 2019. On March 6, 2019, the Parent shared with the District additional allegations of inappropriate contact between District staff and the Student. The District provided a summation of its investigatory conclusions to the Parent on April 23, 2019. The Investigator interviewed the District and the Parent regarding these events. The Parent reported removing the Student from school due to the concerns underlying the District's

¹² OAR 581-015-2245(1).

¹³ OAR 581-015-2245(2).

¹⁴ OAR 581-015-2245(1) & (2).

investigation. The District found no evidence to support the Parent's concerns and concluded the Student's existing placement was appropriate. On April 16, 2019 the District sent a letter to the Parent explaining that the District stands ready to provide special education and related services, and that the District was agreeable to meet and consider continuation of special education and related services to the Student in conjunction with the Student's homeschooling.

The District determined the Student's appropriate placement was in a District life skills classroom. The Parent unilaterally removed the Student from school and began homeschooling the Student. The District subsequently sent a letter to the Parent offering to continue special education services. The Department does not substantiate this allegation.

D. Review and Revision of IEPs

The Parent alleges that the District violated the IDEA when it failed to revise the Student's IEP to address a lack of expected progress toward annual goals, information provided by the Parent, and the Student's anticipated needs. The Parent alleges that the District neglected to revise the Student's goals and instead carried over goals from year to year without adjustment. The Parent alleges that this has resulted in the Student regressing in skills such as reading.

As part of a reevaluation the child's IEP team, and other qualified professionals, as appropriate must review existing evaluation data on the child.¹⁵ Information reviewed can include evaluations and information provided by the parent and classroom-based observations.¹⁶ Based on this data the district should determine what additional data, if any, are needed to determine whether the child needs any additions or modifications to special education and related services.¹⁷

The Student's IEP Team met on January 24, 2018 to discuss the Student's progress. The District reviewed new curriculum and testing methodologies. The focus of the Student's education was then shifting toward practical skills in support of the Student's future goals of independent living and employment. Likewise, the Student's January 23, 2019 IEP Team Meeting focused on the Student's pursuit and acquisition of skills leading to transition toward independent living supported by county services. During the interview with the Investigator, the Parent focused on whether the Student met IEP goals from 2011 and 2013, especially in the area of reading. Among the issues highlighted by the Parent were generalized statements regarding the Student's strengths and interests.

The facts underlying the Parent's allegations fall more than one year before the filing of the complaint.¹⁸ During the complaint period, the Student's IEP Team revised the Student's goals and objectives to support the Student's needs following graduation. Each revised IEP during this period was tailored toward promoting the Student's academic progress in light of the Student's circumstances. The Department does not substantiate this allegation.

¹⁵ OAR 581-015-2115(1)(a).

¹⁶ OAR 581-015-2115(1)(a)(A) & (1)(a)(B).

¹⁷ OAR 581-015-2115(1)(b)(D).

¹⁸ OAR 581-015-2030(5).

E. IEP Team Considerations and Special Factors

The Parent alleges that the District violated the IDEA when it failed to consider a variety of factors in formulating the Student's IEP, including: (a) the strengths of the Student; (b) the concerns of the Parent for enhancing the education of the Student, such as safety concerns; and (c) the academic, developmental, and functional needs of the Student.

In developing, reviewing, and revising a child's IEP, the IEP team must consider the strengths of the child, and the concerns of the parent.¹⁹ The team should also review the results of the most recent evaluation of the child and a variety of special factors.²⁰ Such special factors may include considering whether the child needs a particular intervention, accommodation, or program modification in order to allow the child to receive a free appropriate public education.²¹

The Parent alleges that the District did not give appropriate consideration to the Student's placement in high school because this was the setting in which the Parent alleged that District staff had inappropriate contact with the Student. The Parent contends that, were the Student to return to this same setting, with the same staff members who allegedly perpetrated the abuse, the Student would suffer emotional abuse, or again be victimized. The Parent was disappointed that these concerns were not considered by the IEP Team. The Parent reported concerns to the Department of Human Services (DHS). The District reported that they were not contacted by DHS or law enforcement, but that they conducted their own investigation of these allegations, including utilizing the school Resource Officer in the investigation. The District was unable to find any evidence of alleged abuse. The District noted that the Student did not make a direct report of abuse, rather that Parent interpreted certain verbalization and behaviors on the Student's part to infer abuse. The Parent did take the Student to a Counselor. The Student did not make a report of abuse to the Counselor, nor did the Counselor obtain sufficient information to make a report. The District spoke with the Counselor as part of its investigation. The Parent declined to have the Student interviewed by a District staff member trained to interview child victims.

The Parent alleges that the District failed to provide the Student with IEP services while the Student was home during the course of a District investigation. Rather than a change in placement from a District school building to the Student's home, the Parent removed the Student from school in favor of homeschooling. On April 16, 2019, the District sent a letter to the Parent informing them that the District had become aware that the Student was removed for homeschooling, and provided the Parent with options for the Student to access services under the IEP. There is no evidence in the record that the Parent chose to access those services.

During the complaint period, the District appropriately considered the Student's strengths, the Parent's concerns, and the academic, developmental, and functional needs of the Student in

¹⁹ OAR 581-015-2205(1)(a) & (1)(b).

²⁰ OAR 581-015-2205(1)(c), & (2).

²¹ OAR 581-015-2205(4).

developing the Student's IEP. That the District did not find evidence of District staff abuse of the Student does not invalidate the District's considerations. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²²

*In the Matter of Central School District #13J
Case No. 19-054-016*

The Department does not order corrective action in this matter.

Dated: this 28th Day of August 2019

Candace Pelt, Ed.D

Candace Pelt, Ed.D.
Assistant Superintendent
Office of Student Services

Mailing Date: August 28, 2019

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).)

²² 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)).