

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Reynolds School District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-026

**I. BACKGROUND**

On June 12, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Reynolds School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on June 12, 2019.

On June 19, 2019, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of July 1, 2019. The District partially submitted its Response on July 1, 2019 and completed its *Response*, with the Department's Contract Investigator (Investigator) receiving it in an electronic format on July 9, 2019. The *Response* included a narrative and the following documents:

1. Multnomah Education Service District Assessment dated May 16/24, 2006
2. Statement of Eligibility/Orthopedic Impairment dated June 10, 2006
3. Multnomah Education Service District Assessment dated February 28, 2008, May 7, 2008, and May 24, 2008
4. Statement of Eligibility (ASD) dated June 2, 2008
5. Case Coordinator Summary dated October 8, 2008
6. Progress Note Report dated October 20, 2008
7. Two person physical therapy stretch guidelines (undated)
8. Authorization to Use and/or Disclose Educational and Protected Health Information signed and dated May 6, 2009
9. District Medical Statement or Health Assessment signed and dated May 13, 2009
10. SLP Evaluation dated June 1, 2009
11. Statement of Eligibility (OHI) dated June 4, 2009
12. OHSU Occupational Therapy evaluation/report dated September 7, 2010
13. Occupational Therapy Evaluation dated November 9, 2010
14. Operative Report dated March 23, 2011
15. Shriner's Hospital Discharge Summary dated March 28, 2011
16. Prior Written Notice dated April 12, 2011
17. Outpatient Progress Note dated April 13, 2011
18. Physical Therapy Evaluation Treatment Note dated April 13, 2011
19. District Assistive Technology Evaluation dated April 20, 2011
20. Prior Written Notice dated May 18, 2011
21. District Physical Therapy Evaluation dated May 1, 2012
22. District SLP Evaluation dated May 1, 2012
23. Occupational therapy reports dated May 11, 2012
24. Eligibility Statement (OHI) dated May 15, 2012
25. Eligibility Statement (Orthopedic) dated May 15, 2012
26. Shriner's Hospital handwritten Post-Op directions dated May 30, 2012
27. Academic Evaluation Summary dated April 20, 2013
28. District Occupational Therapy Evaluation dated December 6, 2013

29. Authorization to Use and/or Disclose Educational and Protected Health Information signed and dated January 8, 2014
30. District Correspondence requesting medical statement dated January 12, 2014
31. Doernbecher Medical Record dated January 22, 2014
32. Psychoeducational Re-evaluation Report dated January 22, 2014
33. Eligibility Summary Statement dated January 22, 2014
34. Disability Statement (OHI) dated January 22, 2014
35. Prior Written Notice dated April 22, 2014
36. Prior Written Notice dated April 22, 2014 (handwritten)
37. Illustrated Daily exercise routine dated November, 2016
38. Prior Written Notice (adult assistance for mobility) dated November 2, 2016
39. Prior Written Notice (evaluation) dated November 2, 2016
40. Prior Written Notice (conduct of evaluation) dated November 2, 2016
41. Gross Motor Evaluation dated January 18, 2017
42. Psycho-Educational Report dated January 20, 2017
43. Disability Statement dated February 1, 2017 (OHI)
44. Disability Statement dated February 1, 2017 (Orthopedic Impairment)
45. WIAT-III Test Results Report dated February 1, 2017
46. Eligibility Statement removing Orthopedic Impairment dated February 1, 2017
47. Eligibility statement (OHI) dated February 1, 2017
48. Orthopedic Impairment Criteria dated February 1, 2017
49. Statement of Dissent of Eligibility and Request for IEE dated February 1, 2017
50. Prior Written Notice dated February 1, 2017
51. Amended IEP dated June 22, 2017
52. Prior Written Notice (stretching exercises) dated June 22, 2017
53. Prior Written Notice (accommodations/PT consult) dated June 22, 2017
54. Draft IEP dated January 23, 2018 (full document with signatures)
55. IEP dated January 24, 2018 (cover page only)
56. Placement determination page dated January 24, 2018
57. IEP Team Meeting Notes dated January 24, 2018
58. Prior Written Notice (math) dated January 24, 2018
59. Team Meeting Notes for Amended IEP dated February 8, 2018
60. Amended IEP dated in handwriting February 2, 2018
61. Placement determination page dated February 8, 2018
62. Prior Written Notice (IM math) dated February 8, 2018
63. Amended IEP dated April 13, 2018
64. Prior Written Notice dated April 13, 2018
65. IEP Team Meeting Notes dated April 13, 2018
66. IEP Progress Report – Annual Goal dated May 27, 2018
67. Prior Written Notice dated October 18, 2018
68. IEP Team Meeting Notes dated October 18, 2018
69. Notice of Team Meeting dated December 14, 2018
70. Agenda/Team Meeting Minutes dated January 16, 2019
71. IEP dated January 16, 2019
72. Updated exercise program (undated)
73. Placement determination page dated January 16, 2019
74. Prior Written Notice dated January 16, 2019
75. IEP Progress Report – Measurable Annual goals dated January 29, 2019
76. Prior Written Notice dated April 1, 2019
77. IEP Team Meeting minutes dated April 1, 2019 (telephonic)
78. Notice of Team Meeting (evaluation planning) dated April 24, 2019
79. Prior Written Notice dated April 24, 2019

80. Receipt for provision of Procedural Safeguards dated April 24, 2019
81. Team Meeting notes dated April 24, 2019
82. Handwritten Meeting notes dated April 24, 2019
83. Record Review for Evaluation Planning dated April 24, 2019
84. Consent for Individual Evaluation - unsigned, undated
85. Notice of Team Meeting dated May 30, 2019
86. Special Education team Meeting Notes Form dated June 13, 2019
87. Team Meeting Notes (typewritten) dated June 13, 2019
88. SETT Scaffold for Consideration of AT needs dated June 13, 2019
89. Data Collection for SETT (undated)
90. Disability Statement dated June 13, 2019
91. Eligibility Summary dated June 13, 2019
92. Prior Written Notice dated June 13, 2019
93. Prior Written Notice (exit from SPED) dated June 13, 2019
94. Student's Grade Transcript dated June 24, 2019
95. Student's School Schedule School year 2017-2018
96. Student Attendance Record for School years 2017-2018 and 2018-2019
97. Emails between District and Parent
98. SPED contact log dated July 1, 2019

The Parent submitted documentation in the form of emails between the Parents and District.

On July 25, 2019, the Investigator interviewed the Student's Case Manager, a District Special Education Administrator, and a District Special Education Scheduler. The Investigator interviewed the Parent and the Student via telephone on July 26, 2019. The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order.

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from June 13, 2018 through June 12, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

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.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1.</b>	<p><b>Parent Participation</b></p> <p>The Parent alleges that the District violated the IDEA because:</p> <p>a. The District has failed to schedule and hold IEP meetings after the</p>	<p><b>Not Substantiated</b></p> <p>a. The District scheduled and convened four IEP team meetings during the Complaint</p>

<sup>1</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>Parent requested meetings;</p> <p>b. IEP meetings were prematurely terminated and Parent concerns were never addressed;</p> <p>c. IEP meetings were scheduled when the District knew the Parent and Student could not attend; and</p> <p>d. The District intentionally scheduled an IEP meeting to terminate services after the Parent gave the District notice of unavailability.</p>	<p>period, three of which convened in response to the Parent's request.</p> <p>b. There is no indication that IEP team meetings were adjourned in such a way that precluded the Parent from the opportunity to participate in development of the Student's IEP.</p> <p>c. The Parent attended each of the four IEP team meetings that convened during the Complaint period.</p> <p>d. The IEP team meeting referred to here took place outside of the Complaint period, after the Parent filed their Complaint.</p>
<p><b>2.</b></p>	<p><b>IEP Content and Implementation</b></p> <p>The Parent alleges that the District violated the IDEA because it:</p> <p>a. Failed to provide the Student with specially designed instruction in math which would allow the Student to meet annual math goals;</p> <p>b. Failed to provide the Student with physical therapy and/or physical assistance and include physical therapy goals in the Student's IEP;</p> <p>c. Failed to provide any accommodations for physical education;</p> <p>d. Failed to provide assistive technology for the Student;</p> <p>e. Failed to implement preferential seating;</p>	<p><b>Substantiated in Part</b></p> <p>a. During the second half of the 2018-2019 school year, the District did not provide the Student with sufficient math SDI to allow the Student to meet their annual math goal. The Department substantiates this allegation.</p> <p>b. The IEP Team adequately decided that it was not appropriate to add physical therapy goals and services to the Student's IEP. The Department does not substantiate this allegation.</p> <p>c. The IEP Team appropriately concluded that the Student did not require physical education program accommodations. The Department does not substantiate this allegation.</p> <p>d. The Student has had consistent and appropriate access to assistive technology devices. The Department does not substantiate this allegation.</p> <p>e. There is no indication that the Student is not offered preferred seating. The Department does not substantiate this allegation.</p>

	<p>f. Failed to provide the Student with class notes;</p> <p>g. Failed to ensure all class materials were transported to the Student's class;</p> <p>h. Failed to implement the Student's IEP so that the Student could retain AVID as a class elective; and</p> <p>i. Locked the Student out of classes when the Student was physically unable to timely transition between classes due to walking and balance concerns.</p>	<p>f. Where needed, the District provided the Student with class notes. The Department does not substantiate this allegation.</p> <p>g. Any failure to transfer the Student's class materials was isolated and minor. The Department does not substantiate this allegation.</p> <p>h. During the Complaint period, the Student consistently participated in AVID as an elective. The Department does not substantiate this allegation.</p> <p>i. The Student was locked out of the Arts building once, had to knock, and was later let in. The Department does not substantiate this allegation.</p>
<b>3.</b>	<p><b>Extended School Year (ESY)</b></p> <p>The Parent alleges the District violated the IDEA because it failed to provide ESY services to the Student when the Parent requested consideration of ESY due to the Student's regression after services were altered or terminated.</p>	<p><b>Not Substantiated</b></p> <p>The District reviewed sufficient information to arrive at its decision that the Student did not require ESY to receive a free appropriate public education.</p>
<b>4.</b>	<p><b>Evaluation</b></p> <p>The Parent alleges that the District violated the IDEA because it failed to evaluate the Student for assistive technology after the Parent requested an evaluation after the Student's backpack became unmanageable and the Student failed to self-advocate for services.</p>	<p><b>Not Substantiated</b></p> <p>In response to the Parent's request for an assistive technology evaluation, the District engaged in timely and appropriate evaluation planning.</p>

<p><b>REQUESTED CORRECTIVE ACTION</b></p> <ol style="list-style-type: none"> <li>1. Deliver proper support to the Student in the form of specially designed instruction and accommodations;</li> <li>2. Keep accurate data on the Student's goals and determine whether there is a need for extended school year;</li> <li>3. Schedule IEP meetings in a timely manner so all parties can participate;</li> <li>4. Schedule a facilitated IEP meeting;</li> </ol>
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5. Evaluate for a physical therapy goal or add specially designed instruction for physical therapy;
6. Conduct an evaluation for assistive technology to reduce the Student's reliance on an educational assistant and to reduce the size of the Student's backpack so the Student may transport it.

### III. FINDINGS OF FACT

1. The Student is sixteen years old and attends school in the District. The Student is interested in pursuing a career in the medical field. The Student speaks two languages. The Parent is not a native English speaker, but is able to speak, write, and understand English.
2. The Student has a diagnosis of cerebral palsy. Prior to the Complaint period, the Student was eligible for special education services under the eligibility categories of Orthopedic Impairment and Other Health Impairment (OHI) for attention-deficit/hyperactivity disorder (ADHD).
3. In 2017, the Student's Individualized Education Program (IEP) Team decided the Student no longer met the eligibility requirements for Orthopedic Impairment, but remained eligible for special education services under an OHI eligibility. The Parent disagreed with the IEP Team's conclusions regarding the Student's Orthopedic Impairment eligibility.
4. During the Complaint period, the Student had one IEP goal, in the area of "Mathematics." The Student's IEP indicated that the Student would receive 225 minutes of specially designed instruction (SDI) for Mathematics. The Student's left the general education environment for one class period per day to receive SDI in a Math Lab.
5. The Math Lab has one instructor and one educational assistant to assist between 15 and 22 students with work on each student's respective IEP math goals.
6. Over the course of the 2017-2018 school year, the Student improved their performance on classroom assessments in Mathematics, but still demonstrated a need for SDI. Student earned "Cs" in Math during the 2017-2018 school year.
7. The Student's IEP contained accommodations that were designed to address the Student's mobility needs and the Student's ADHD. Accommodations included preferred seating, adult support with materials on and off the bus, adult assistance for managing materials when traveling to another hallway or building, additional time to complete assignments and testing, having a set of textbooks at home and in the classroom, the option to use and complete any assignments digitally rather than in hard copy, use of a calculator, an ability to retake tests, and teacher-provided copies of lengthy notes.
8. The Student's IEP includes physical therapy supports that are provided to District staff, but not directly to the Student.
9. On occasion during the Complaint period, adult assistance was not provided to transport the Student's backpack from one class to another. On those occasions, the Student would alert District staff and arrangements were made for the Student to retrieve their backpack. On one occasion, the Student's backpack went missing for an entire day due to an educational assistant's misplacing it.

10. Most of the Student's classes use a textbook, the exception being the Student's Honors Biology class. The Honors Biology teacher provides notes to the Student. The Student uses a calculator for some math tests and assignments and has used a laptop for at least one language arts assignment.
11. The Student's classes have seating charts, but often students are permitted to sit where they want. The Student frequently sits toward the back of the room, away from the teacher.
12. On one occasion during the Complaint period, the Student was locked out of the Arts building and had to knock on the door and wait to be let in.
13. On October 18, 2018, the Student's IEP Team met to address the Parent's request that the Student receive 1:1 adult supervision throughout the day. The Student participated in the IEP team meeting and disagreed with adding 1:1 supervision, as did the Student's other parent, who remarked that the Student should be more independent. The IEP Team decided to refuse the accommodation of 1:1 adult supervision. The District issued a Prior Written Notice (PWN) to reflect this refusal.
14. The Student's annual IEP team meeting was held on January 16, 2019. A notice of team meeting was sent and the District confirmed the date and time with the Parent by phone.
15. Going into the January 16, 2019 IEP team meeting, the Student's one annual goal was in "Mathematics," and it stated that "[The Student] will use high school level algebra and geometry to answer questions with 80% accuracy according to classroom assessment."
16. The Student's present level of academic performance in math was reported based upon the Student's grades at the time, which were "93.19% A" in Math Lab and "68% D" in Integrated Math 2A.
17. At the January 16, 2019 IEP Team Meeting, the Student's Math goal was revised to state the following: "By 1/5/20, given a word problem that includes functions represented in function notation, [the Student] will evaluate the given function for a specified input and write a complete sentence that explains the meaning of this value in the context of the word problem for 4 out of 5 word problems."
18. During the 2018-2019 school year, the Student has expressed interest in attending a nearby charter school. To be accepted into the program, the Student must take the courses required to graduate with a regular diploma.
19. On March 1, 2019, the Student's Case Manager, Parent, and Guidance Counselor met to review the Student's schedule and discuss the Student's potential enrollment in the charter school. The Student needed to take a physical education class. As a result of the meeting, the District removed the Student from Math Lab—the class where the Student received Math SDI—and placed the Student into a weightlifting class.
20. Later that day, the Student's Case Manager emailed the Parent to confirm the Parent's requests, inclusive of removing the Student's Math goal, removing the Student from Math Lab, which would eliminate the Student's Math SDI, and placing the Student into a weightlifting class.
21. On March 4, 2019 a District administrator sent an email to the Parent to confirm that the Parent

wanted “to drop the Math off of [the Student’s] IEP.” The District administrator informed the Parent that, “[s]ince Math is the only area of Special Education Instruction on [the Student’s] IEP, dropping the Math goal will end [the Student’s] IEP.” The District Case Manager proposed that the Parent wait for District staff to collect Math data and review the Student’s IEP, making a determination later whether to re-assess the Student’s eligibility for special education. The District shared that 504 plan eligibility could be explored.

22. On March 5, 2019, the Parent responded, indicating that the Parent wanted to remove Math Lab but that the Student should continue with their math goal to “catch up with required math to go to university.” The Parent also remarked that the Student’s IEP should meet the Student’s needs “without setting [the Student] back in all other classes.”
23. During interviews for this Complaint, the Parent expressed that they did not understand that removing the Student’s Math Lab would eliminate the Student’s ability to access math SDI and other components of the Student’s IEP.
24. During interviews for this Complaint, the Case Manager took responsibility for not adequately explaining to the Parent the consequences of replacing the Student’s Math Lab with a weightlifting class.
25. On March 22, 2019, the Case Manager emailed the Student’s general education Math Teacher inquiring about the Student’s removal from Math Lab. The general education Math Teacher responded that if the Student intended to take subsequent Math courses (Math 2B and Math 3), then “100% keep the math lab.”
26. During the second semester of the 2018-2019 school year, the Student did not receive daily SDI in Math Lab. There is no data supporting the District implementing the Student’s math goal and math SDI component of the Student’s January 16, 2019 IEP.
27. On April 1, 2019, the IEP Team met to discuss the Parent’s request that physical therapy goals be added to the Student’s IEP. The Parent’s main concern was to help the Student “maintain balance, get around better.” Both of the Student’s parents participated by phone. The Team discussed whether to add a physical therapy goal and related services. The Team explored the drawbacks of removing the Student from the general education physical education environment to work on physical therapy, and how the Student was successfully accessing their weightlifting class without the need for a physical therapy goal or related service. The Team concluded that it was not appropriate to add physical therapy goals to the Student’s IEP.
28. After the April 1, 2019 IEP Team Meeting, the District issued a PWN denying the Parent’s request to have physical therapy goals added to the Student’s IEP, noting that the “general education teacher reports [the Student] is making excellent progress in weight training class with consultation from the Physical Therapist.”
29. On April 24, 2019, the IEP Team met again. The District had sent out a notice of the meeting on April 3, 2019 and subsequently confirmed the Parent’s attendance by phone.
30. At the meeting, the Parent noted that the Student needed assistive technology to contact teachers regarding late assignments and requested an assistive technology evaluation. The Parent revisited the issue of adding a physical therapy goal focusing on the Student’s balance. The Parent reported that the Student had fallen on several occasions during the 2018-2019 school year.



31. During the Complaint period, the District reported to the Parent that the Student fell on two occasions—November 19, 2018 and May 20, 2019. In both instances, the Student reported to District staff that they were not hurt. The Student was given the opportunity to visit the school nurse, but declined on both occasions.
32. District staff at the April 24, 2019 IEP Team Meeting noted that the Student's weightlifting teacher had observed the Student lift weights and did not report any concerns.
33. During the April 24, 2019 IEP Team Meeting, the District proposed that the Student undergo a new evaluation to determine the Student's Math needs and reach finality about whether the Student should receive Math SDI. The Parent reiterated the Parent's position that "Math Lab did not work for [the Student]." In response to the District proposal to conduct a new evaluation to determine the Student's Math needs, the Parent agreed to "think about it."
34. As part of this complaint investigation, the District provided the Department with a document titled "Parent/Guardian Consent for Individual Evaluation," dated April 24, 2019. It contains the Student's name and personal information, and states that the evaluation is being proposed because the Student was referred by the IEP Team to "complete a new assessment in the area of Math, which is the area [the Student] has specially designed instruction on [the Student's] IEP." The evaluation was set to include an assessment of achievement toward age or grade appropriate learning standards as well as other achievement tests.
35. The "Parent/Guardian Consent for Individual Evaluation" document is unsigned, and it contains handwritten notation that states, "Parent refused evaluation in math at meeting."
36. Team members at the April 24, 2019 IEP Team Meeting concluded that the Student did not need an assistive technology evaluation or supports beyond what was already provided for in the IEP. The Parent requested the District explore whether or not assistive technology would be helpful before denying an evaluation. As of April 26, 2019, the District had not decided whether to initiate a Student Environment Tasks Tools (SETT) assessment for the Student.
37. On April 26, 2019, the Parent emailed the Student's Case Manager and asked when the April 24, 2019 meeting could be continued because it was not finished. The Case Manager replied the same day, noting that the District was gathering information to make a decision about a SETT assessment, and were also consulting with District Legal Counsel regarding next steps.
38. At some point after April 26, 2019, the District sent a "SETT Scaffold for Consideration of AT Needs" to the Student's teachers, inquiring about the Student's independent functioning ability. Highlighted areas of need were physical (balance fatigue) and cognitive (attention/focus). The SETT form was not completed by the teachers but an overview of responses was created by the Student's Case Manager. The consensus was that the Student did not have any physical barriers to accessing education but there was still a concern about organization and focus.
39. In response to the Parent's request, the District scheduled another IEP team meeting to convene before the end of the 2018-2019 school year. More than two weeks in advance, an IEP team meeting was scheduled for 10:00 a.m. on June 13, 2019 to accommodate the Parent's schedule. The meeting was confirmed by telephone on May 29, 2019. The week preceding the meeting, the Parent called and asked for it to be moved to an earlier date/time. Then, on June 11, 2019, the Parent called and asked that the meeting take place at 3:00 p.m. on June 13, 2019. This proposed time conflicted with school graduation ceremonies. A District

administrator noted that “[a]t this time, June 13 at 10:00 remains the time that works for the required members of the school team.” The District administrator went on to ask whether the Parent would like for the District to arrange for the Parent to participate by telephone.

40. The Parent filed this Complaint on June 12, 2019.

## **IV. DISCUSSION**

### **A. Parent Participation**

The Parent alleges that the District violated the Individuals with Disabilities Education Act (IDEA) because: (1) The District failed to schedule and hold IEP team meetings after the Parent requested them; (2) IEP team meetings were prematurely terminated and the concerns of the Parents were never addressed; (3) IEP team meetings were scheduled when the District knew the Parent and Student could not attend; and (4) The District intentionally scheduled an IEP meeting to terminate services to the Student after the Parent gave the District notice that she could not attend the IEP team meeting.<sup>2</sup>

School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.<sup>3</sup> School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including notifying parents of meetings early enough to ensure they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.<sup>4</sup>

#### **1. Scheduling IEP Team Meetings**

During the Complaint period, the Student’s IEP Team convened four times, with a fifth IEP team meeting being scheduled to convene before the end of the 2018-2019 school year. With the exception of the January 16, 2019 annual IEP Team Meeting, each IEP team meeting convened in response to the Parent’s request. The Parent was able to attend each of these meetings, and in some cases both parents and the Student attended and participated. In each meeting, the Parent was afforded the opportunity and did engage the IEP Team in discussion about the Student’s IEP. At different meetings, the Parent raised particular issues of concern involving the Student (e.g., physical therapy goals, Math Lab class, assistive technology evaluations, etc.) and the Team carried out substantive discussions regarding appropriate services for the Student. The District did not fail to schedule IEP team meetings in response to the Parent’s requests for them. The Department does not substantiate this allegation.

#### **2. Termination of IEP Team Meetings**

The IDEA does not prescribe a specific length for an IEP team meeting. Rather, the IDEA prescribes that school districts take steps to “ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate.”<sup>5</sup> As discussed above, the Parent attended each of the four IEP team meetings that convened

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<sup>2</sup> This action is alleged to have taken place on June 13, 2019, the day after the Parent filed this Complaint. As it falls outside of the Complaint period, this allegation will not be explored in this Order.

<sup>3</sup> OAR 581-015-2190.

<sup>4</sup> OAR 581-015-2195.

<sup>5</sup> 34 CFR § 300.322; OAR 581-015-2190.

during the Complaint period. In each meeting, the Parent engaged in productive discussion with District staff regarding the Student's educational program and was able to raise concerns from the Parent perspective. There is no indication in the record that IEP team meetings were adjourned in such a way that precluded the Parent from being afforded an opportunity to participate in developing the Student's IEP. Additionally, District staff and the Parent were in regular email contact. The Department does not substantiate this allegation.

### **3. Scheduling IEP Team Meetings When The District Knew The Parent and Student Could Not Attend**

As discussed above, the Parent—a critical member of each IEP team meeting—attended each of the four IEP team meetings that convened during the Complaint period. The Student attended and participated in the October 18, 2018 and January 16, 2019 IEP Team Meetings. The record does not support a finding that the District did not schedule IEP team meetings when it knew the Parent could not attend.

The Parent filed this Complaint on June 12, 2019, so the events related to an IEP Team Meeting scheduled for June 13, 2019 fall outside the time period for this Order. However, District correspondence to the Parent indicates that the District scheduled the IEP team meeting for a mutually agreed upon time and place. The District gave the Parent two weeks advance notice and confirmed the meeting by telephone. On June 11, 2019, the Parent proposed moving the IEP team meeting to a time that conflicted with the District's graduation ceremonies. A District administrator proposed other methods to ensure the Parent's participation, including a telephonic conference call. The Department does not substantiate this allegation.

### **4. June 13, 2019 IEP Team Meeting**

As addressed above, the events related to the June 13, 2019, IEP Team Meeting fall outside the time period for this particular order, and the Department will not reach a conclusion regarding the substance of the allegation.

## **B. IEP Implementation**

The Parent alleges that the District violated the IDEA because it: (1) Failed to provide the Student with specially designed instruction in math that would allow the Student to meet annual math goals; (2) Failed to provide the Student with physical therapy and/or physical assistance and include physical therapy goals in the Student's IEP; (3) Failed to provide any accommodations for physical education; (4) Failed to provide assistive technology for the Student; (5) Failed to implement preferred seating; (6) Failed to provide the Student with class notes; (7) Failed to ensure all class materials were transported to the Student's class; (8) Failed to implement the Student's IEP so that the Student could retain Advancement Via Individual Determination (AVID) as a class elective; and (9) Locked the Student out of classes when the Student was physically unable to timely transition between classes due to walking and balance concerns.

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the school district's jurisdiction. A school district must provide special education and related services in accordance with the student's IEP.<sup>6</sup> A material failure to implement an IEP constitutes a violation of the IDEA. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and

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<sup>6</sup> 34 CFR § 300.323; OAR 581-015-2220.

the services required by the child's IEP."<sup>7</sup>

## **1. Math SDI**

The Parent alleges that the District did not provide the Student with sufficient Math SDI to allow the Student to meet their annual math goal. The Student's IEP team is responsible for developing the special education to be provided to the child to advance appropriately toward attaining the IEP's annual goals.<sup>8</sup> Changes to a student's IEP may be made by the IEP team, or alternatively, the parent and the school district may agree not to convene an IEP team, but instead develop a written document to amend or modify a student's IEP.<sup>9</sup>

Going into the January 16, 2019 IEP team meeting, the Student's math goal was, "[The Student] will use high school level algebra and geometry to answer questions with 80% accuracy according to classroom assessment." The Student's present level of academic performance in math was reported based upon the Student's grades at the time, which were "93.19% A" in Math Lab, but "68% D" in Integrated Math 2A. At the January 16, 2019 IEP team meeting, the Student's math goal was revised and it was decided the Student would continue to receive SDI in Math. After a March 1, 2019 meeting among the Parent, Case Manager, and School Counselor, the Student was transferred out of Math Lab, stopped receiving SDI, and began attending a weightlifting class to fulfill a physical education graduation requirement.

There is no indication that the decision to stop delivering SDI to the Student was made by the Student's IEP team. There also is no written document where it is agreed upon between the Parent and the District to amend the Student's IEP to stop delivering SDI without convening an IEP team meeting. The Student stopped receiving SDI, but remained on an IEP. There is no evidence to show that after March 1, 2019 the Student either worked on or made progress toward achieving their annual math goal. The Student's Case Manager concedes that they did not adequately explain to the Parent the consequences of making the scheduling decision to replace the Student's Math Lab with a weightlifting class. During the second half of the 2018-2019 school year, the District did not provide the Student with sufficient math SDI to allow the Student to meet their annual math goal. The Department substantiates this allegation.

## **2. Physical Therapy/Physical Therapy Goals**

The Student has a diagnosis of cerebral palsy, uses a forearm crutch, and has on at least two recorded occasions during the Complaint period, fallen at school. In 2017, the District decided that the Student no longer needed special education services based upon the Student's orthopedic impairment. The Student's IEP retained accommodations to address the Student's mobility needs. This included adult support with materials on and off the bus, adult assistance for managing materials when traveling to another hallway or building, and additional time to walk from one class to another without being marked late or absent.

The Parent's concerns regarding physical therapy goals and services were raised at the April 1, 2019 and April 24, 2019 IEP Team Meetings. The Team explored the drawbacks of removing the Student from the general education physical education environment to work on physical therapy, and how the Student was successfully accessing their weightlifting class without the need for a physical therapy goal or related service. One of the Student's teachers reported that the Student was making "excellent progress in weight training class with consultation from the physical

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<sup>7</sup> *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007).

<sup>8</sup> 34 CFR § 300.320; OAR 581-015-2200.

<sup>9</sup> 34 CFR § 300.324(a)(4); OAR 581-015-2225(2).

therapist” and without the initiation of physical therapy goals or services. Also, the District was on notice that the Student had fallen twice at school during the Complaint period. In both instances, the Student reported that they were “okay” and declined the opportunity to visit the school nurse. The IEP Team had sufficient information to arrive at a conclusion that it was not appropriate to add physical therapy goals and services to the Student’s IEP.

### **3. Physical Education Accommodations**

See Section B(2) above. Based upon IEP Team discussion and input from the Student’s teachers, the IEP Team appropriately concluded that the Student did not require accommodations in their physical education program. The Department does not substantiate this allegation.

### **4. Assistive Technology**

The Student’s IEPs during the Complaint period allow for the Student to use assistive technology devices such as a calculator and computer for typing written assignments. For a longer writing assignment that came up in Language Arts, the Student’s teacher facilitated the use of a laptop for the Student. The Student has been permitted to use a calculator and re-take Math tests. The Student has had consistent and appropriate access to assistive technology devices during the Complaint period. The Department does not substantiate this allegation.

### **5. Preferred Seating**

The Student’s eligibility for special education services is under the category of Other Health Impairment based upon the Student’s ADHD and challenges with focus and organization. To address the Student’s need in the area of focus and attention, the Student’s IEP Team added certain accommodations, including preferred seating.<sup>10</sup> There is no indication in the record that the Student is not offered preferred seating in each of their academic classes. The Department does not substantiate this allegation.

### **6. Class Notes**

The Student’s IEPs during the Complaint period contain an accommodation for “[t]eacher provided copy of lengthy notes (when [the Student] is not able to finish them during allotted time in class).” For the majority of the Student’s academic courses, class notes are not a critical part of the classroom program. Rather, teachers rely on content in textbooks, which the Student has access to both at home and in the classroom. One exception to this is the Student’s Honors Biology class, where the teacher uses PowerPoint presentations to deliver instruction. The Honors Biology Teacher provides the Student with class notes from the PowerPoint presentation. The Department does not substantiate this allegation.

### **7. Transport Of Class Materials**

The Student’s IEPs during the Complaint period contain the accommodation of “[a]dult assistance for managing materials when traveling to another hallway or building” and “[a]dult support with materials on and off the bus.” On one occasion, the Student’s backpack was misplaced for an entire school day. Occasionally, the Student will enter class without their backpack having been dropped off. In these cases, the Student has left class with a friend to retrieve their backpack.

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<sup>10</sup> Other accommodations featured in the Student’s IEP to address attention and focus include: Staff prompts to redirect the Student if the Student is unfocused; frequent check-ins by staff to check for understanding; and daily prompting to ensure the Student writes assignments in a school planner.

These events are rare occurrences, as the Student's backpack has reliably been transported without interference throughout the Student's school day. The Student's backpack has been transported on a regular basis and there has been only one occasion of it being misplaced for part of one day. The record does not support a finding that the District's failure to transport the Student's school materials from one class to another has been anything other than an isolated and minor failure to adhere to the Student's IEP. The Department does not substantiate this allegation.

#### **8. Participation In AVID**

The Parent requested that the Student remain in AVID so that the Student could receive Math support. First, providing the Student with access to AVID as an elective is not a component of the Student's IEP. Nevertheless, the Student's high school transcript indicates that the Student has participated in AVID as an elective continuously throughout both the 2017-2018 and 2018-2019 school year. The Department does not substantiate this allegation.

#### **9. Locked Out Of Classes**

The Student's IEP includes an accommodation where the Student is provided with additional time to walk from one class to another without being marked late or absent. On one occasion, the Student was locked out of the Arts Building between classes. The Student knocked on the door and was let in. The District reports that this occasionally occurs to students, and can be rectified by contacting District staff. The record shows that this was an isolated event and minor failure to adhere to an accommodation in the Student's IEP. The Department does not substantiate this allegation.

#### **C. Extended School Year (ESY)**

School districts must "ensure that extended school year (ESY) services are available as necessary to provide a free appropriate public education to a child with a disability." Additionally, "extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child."<sup>11</sup> School districts must develop criteria for determining the need for ESY services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team. "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services. "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.<sup>12</sup>

None of the Student's IEPs or meeting discussion notes indicate that ESY services are necessary to deliver a free appropriate public education to the Student. On June 11, 2019, the Parent mentions ESY for the first time, to provide the Student with "math support over the summer." The Parent filed their Complaint two days later. The record in this Order cannot conclude that ESY services in Math, or other subject area, are necessary to provide the Student with a free appropriate public education. The Department does not substantiate this allegation.

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<sup>11</sup> 34 CFR § 300.106; OAR 581-015-2065.

<sup>12</sup> OAR 581-015-2065.

#### D. Evaluation

The Parent alleges that the District violated the IDEA when it failed to conduct an assistive technology evaluation. A parent may request that a school district conduct a special education evaluation.<sup>13</sup> If a school district refuses an evaluation requested by a parent, the school district must provide the parent with prior written notice of its refusal.<sup>14</sup> At the April 24, 2019 IEP Team Meeting, the Parent requested an assistive technology evaluation. Team members at the April 24, 2019 IEP Team Meeting concluded that the Student did not need an assistive technology evaluation or supports beyond what was already provided for in the IEP. The Parent requested that the District explore further the appropriateness of an assistive technology evaluation. In response, the District circulated a “SETT (Student Environment Tasks Tools) Scaffold for Consideration of AT Needs” to the Student’s teachers, inquiring about the Student’s independent functioning ability. Highlighted areas of need were physical (balance fatigue) and cognitive (attention/focus). The SETT form was not completed by the teachers but an overview of responses was created by the Student’s Case Manager.

At the April 24, 2019 IEP Team Meeting, the District did not propose or refuse to initiate an assistive technology evaluation. Rather, the District agreed to engage in evaluation planning by circulating SETT forms among its staff. A meeting was scheduled to convene to address the outcomes of this information gathering on June 13, 2019—one day after the Parent filed this Complaint. In response to the Parent’s request for an assistive technology evaluation, the District engaged in timely and appropriate evaluation planning. The Department does not substantiate this allegation.

#### V. CORRECTIVE ACTION<sup>15</sup>

*In the Matter of Reynolds School District*  
Case No. 19-054-026

The Department orders the following corrective action.

	<b>Action Required</b>	<b>Submissions<sup>16</sup></b>	<b>Due Date</b>
<b>1.</b>	In consultation with ODE staff, review and analyze the Student’s 2018-2019 IEP documents, transcript, and related progress reporting to determine if the Student is on track to graduate with a regular diploma and, if not, the steps needed to achieve a regular	Submit a written report of that information to the Parent, the Student, to IEP team members, and to ODE.	<b>August 30, 2019</b>

<sup>13</sup> OAR 581-015-2105.

<sup>14</sup> OAR 581-015-2110.

<sup>15</sup> The Department’s order includes corrective action. The order includes documentation to be supplied to ensure the corrective action has occurred. (OAR 581-015-2030(13).) The Department requires timely completion. (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).)

<sup>16</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeann.ray@ode.state.or.us](mailto:raeann.ray@ode.state.or.us) fax number (503) 378-5156.

	diploma. Specifically identify the Student's current level of Math achievement relative to regular diploma math requirements.		
2.	In consultation with ODE staff, develop a comprehensive written description of IDEA's parent participation requirements and procedural safeguards for the Parent, including IEP meeting participation by transition age students.	Provide the description to the Parent, copied to ODE.	<b>August 23, 2019</b>
3.	Convene an IEP team meeting, including the Student, to incorporate any changes, updates, transition information, needed to support the Student's learning and progress toward graduation.	Submit to ODE, copied to the Parent and the Student, a copy of the IEP team meeting notices, complete copy of the reviewed/revised IEP, and the related prior written notice.	<b>September 17, 2019</b>
4.	During the first semester of the 2018-2019 school year, make one hour per week of individualized Math tutoring/instruction available to the Student outside of the regular school day. This tutoring/instruction may be provided virtually or by an educator licensed by TSPC to teach Math.	Submit a copy of the tutoring plan to ODE, signed by the Parent and a district representative.  Submit a copy of the tutoring log to ODE and the Parent.	<b>September 17, 2019</b>  <b>November 1, 2019 and January 1, 2020</b>

Dated the 9th Day of August 2019

*Candace Pelt, Ed. D*

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

Mailing Date: August 9, 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).)