

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Corbett Public School District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 10-054-006

**I. BACKGROUND**

On March 1, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing in the Corbett Public School District 39 (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). The Department confirmed receipt of this complaint on March 1, 2010 and provided the District a copy of the complaint letter.

On March 4, 2010, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated. The District timely submitted its *Response* to the Department, together with over 400 pages of documentation. The District made a copy of the *Response* available to the parent and the parent submitted a timely *Reply*.

The Department's complaint investigator determined that on-site interviews were necessary. On March 30, 2010, the Department's investigator conducted an on-site interview with the student's parent along with the following District staff: case manager/special education teacher, third grade/fourth grade regular education teacher, principal, assistant principal, educational assistant, speech-language pathologist, and special education administrator. The Department's complaint investigator reviewed and considered all of these documents, interviews, and exhibits.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations within the twelve months prior to the Department's receipt of the complaint and issue a final order within 60 days of receiving the complaint; the timeline may be extended if the District and the parent agree to extend the timeline to participate in mediation or if exceptional circumstances require an extension.<sup>1</sup> There were no extensions and this final order is timely issued.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-153 (2009) 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 (Section III) and the Discussion (Section IV). This complaint covers the one year period from March 2, 2009, to the filing of this complaint on March 1, 2010.<sup>2</sup>

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<sup>1</sup> OAR 581-015-2030(12).

<sup>2</sup> See 34 CFR 300.153 (c); OAR 581-015-230(5).

	<b>Allegations</b>	<b>Conclusions</b>
1.	<p><b><u>Evaluation:</u></b></p> <p>The parent alleged that the District's evaluation was not sufficiently comprehensive to identify all of the student's special education and related service needs. Specifically, the parent alleges that the student was never evaluated to determine assistive technology, adaptive physical education, and occupational therapy needs.</p>	<p>Not substantiated.</p> <p>The District had no reason to suspect that the student had special education needs requiring evaluation or assessment in the areas of assistive technology, adaptive physical education, and occupational therapy.</p>
2.	<p><b><u>Eligibility:</u></b></p> <p>The parent alleges that the student's eligibility team failed to consider all relevant information in making its determination of the student's eligibility.</p>	<p>Not Substantiated.</p> <p>The District found the student eligible for special education and related services as a child with a communication disorder after appropriately considering all available, necessary, and relevant information.</p>
3.	<p><b><u>IEP Content:</u></b></p> <p>a. The parent alleged that the IEP developed by the District for the student does not include a statement of measurable annual goals designed to meet the child's needs that result from the disability. Specifically, the parent alleged that the student's IEP does not include measurable annual goals for special education services in the areas of reading, writing, and mathematics.</p> <p>b. The parent alleged that the student's IEP does not provide the special education and related services necessary for the student to be involved in and progress in the general education curriculum. Specifically, the parent alleged that the student's IEP does not provide for needed special education services, modifications, and accommodations including: modifications of the student's schoolwork, one-to-one assistance, and specially designed instruction in reading, writing, and mathematics.</p>	<p>Not Substantiated.</p> <p>a. The District determined through its evaluation that the student's academic achievement and functional performance is commensurate with the student's cognitive ability in all academic areas. Thus, the student does not need special education services in the areas of reading, writing, or mathematics.</p> <p>b. The District provided a one-to-one education assistant who provided services related to the student's identified social/emotional/behavioral needs. The District determined through its evaluations that the student did not need special education and related services or modifications and accommodations in academic areas such as reading, writing, or mathematics.</p>

4.	<p><b><u>IEP Implementation:</u></b></p> <p>The parent alleged that the District failed to make the student's IEP accessible to the appropriate personnel responsible for implementing the IEP. Specifically, the parent alleged that the District failed to inform the student's teachers of the student's present levels of academic achievement and functional performance.</p>	<p>Not substantiated.</p> <p>The student's third grade teacher is also the student's fourth grade teacher. This teacher participated in developing the student's May 2009 IEP, reviewed the present levels of academic achievement and functional performance with the rest of the student's IEP team, and participated in subsequent meetings to review and revise the services provided to the student. The Department finds these activities sufficient to inform the student's teacher with respect to her responsibility for implementing the IEP and to inform the student's teacher of the student's present levels of academic achievement and functional performance.</p>
5.	<p><b><u>Placement:</u></b></p> <p>a. The parent alleged that the student's placement was not based on the student's IEP or the student's identified needs for special education and related services. Specifically, the parent alleged that the student's placement was based on the lack of available resources or lack of availability of a suitable placement, rather than upon the unique needs of the student.</p> <p>b. The parent alleged that the District does not ensure that a continuum of alternative placement options is available to meet the needs of children with disabilities. Specifically, the parent alleged that the District denied the student an appropriate placement based on a lack of capacity in the District's life skills program.</p>	<p>Not substantiated.</p> <p>a. The Department finds that the District's placement of the student was not based on a lack of available resources or lack of an available, suitable placement. Rather, the student's placement was based upon student-specific data used as part of a process to determine the unique needs of the student.</p> <p>b. The Department finds that the District has met its obligation to make the full continuum of alternative placements available to the student, placing the student in the least restrictive environment consistent with the student's identified need for a small, highly structured behavior class.</p>
6.	<p><b><u>Parent Participation:</u></b></p> <p>The parent alleged that the parent was denied an opportunity to participate in meetings with respect to the educational placement of the student.</p>	<p>Not substantiated.</p> <p>The Department finds no evidence suggesting that the placement decision was predetermined, or that the parent was not afforded an opportunity to participate in the process.</p>

<p><b>Requested Corrective Action:</b> The parent sought an order requiring the District to develop a new IEP and placement for the student.</p>	<p>Not ordered.</p>
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### III. FINDINGS OF FACT

#### Background

1. The student resides within the District and is enrolled in the fourth grade. The student is eligible to receive special education and related services as a child with emotional disturbance and as a child with a communication disorder (syntax, morphology, and pragmatic). The District first identified the student as eligible to receive special education in May 2009, near the end of the student's third grade year in school. The student also attended first and second grade in the District.
  
2. A District SAT team comprised of staff familiar with the student met January 27, 2009 (when the student was in the third grade) and discussed whether the student should be referred to special education for evaluation in response to observations by staff that problem behavior the student exhibited at school had recently increased in frequency and intensity. The team's January 27, 2009 meeting notes reported that the student was suspended from school and receiving home tutoring pending development of a plan "to improve the student's situation." The meeting notes also referenced support efforts appropriate to behavior concerns by the team, which included the student's parents, since the student attended first grade. The notes included discussion of a psychological report submitted by the student's parents that indicated impressions of "mood disorder secondary to medical issues." The team noted that the student was taking medication for headaches, bladder issues, and Attention-Deficit Hyperactivity Disorder (ADHD). The student was also taking a psychotropic drug. Though the District had no ADHD diagnosis in its records, the District did have a letter from a physician in the student's file indicating a diagnosis of Oppositional Defiant Disorder (ODD).
  
3. The January 27, 2009 District SAT team reviewed supports put into place for the student at school, including: structured recesses, cross-age tutor support during PE, opportunities for time-out/cool-down choice, behavior plan, and in-school removal area with the Assistant Principal/Teacher's class.<sup>3</sup> The notes further reported extensive "cool-down" talking support for the student and frequent and extensive parent contact for check-ins, updates, and team meetings. Staff at the meeting described the student as capable of participating in the general education program, and performing academically in the classroom near grade level. Staff also reported that the student participated adequately in the general education PE program, except with respect to emotional/behavioral concerns associated with competitive games. However, the team noted concerns with increasingly frequent removals from class for behavior problems, and concerns that these removals interfered with the student's access to the educational program, the team referred the student for evaluations related to the IDEA eligibility categories of Other Health Impaired and Emotional Disturbance.
  
4. The parents provided a records release on February 9, 2009, and the District received a May 31, 2007 physician's statement stating that the student has ODD and has been

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<sup>3</sup> The assistant principal is also a classroom teacher.

prescribed medication for this condition. The student's physician described the condition as similar to ADHD, involving regulatory control of the student's emotional responses. The student's physician recommended that the school be sensitive to the student's emotional triggers and allow self-imposed time-outs to assist the student in controlling emotions and avoiding aggressive behaviors. The physician also noted, "Hopefully, a behavior plan will enable [the student] to stay in school and build...self-confidence and self-esteem."

5. The District also received a copy of an undated neuropsychological consultation and evaluation by a clinical psychologist that was apparently completed in the spring during the 2007-08 school year, when the student was in the second grade. The psychologist administered standardized intelligence testing, with the student receiving a full scale IQ of 85 and the evaluator noting that: "It is unlikely that these scores reflect [the student's] intellectual capacity and rather reflect [the student's] current level of functioning." The psychologist also administered a standardized academic achievement assessment with the student receiving the following standard scores: word reading – 86; reading comprehension – 70; pseudo word decoding – 89; reading composite – 79; numerical operations – 81; math reasoning – 64; mathematics composite – 70; spelling – 84; and listening comprehension – 79. The evaluator described the student's oral fluency as below average, and described the student's academic functioning as "quite fragile." The evaluator's report stated, "When things are simple [the student] processes consistent with ... current level of intellectual ability. With demand and load, processing deteriorates. Homework needs to be paced." With respect to school, the evaluator recommendation stated, "[The student] will continue to need support at school to manage stimulation levels, to have self-regulation and disengagement strategies and to have the ability to be flexible with pacing of demands and activities."
6. The District held a February 23, 2009 evaluation-planning meeting with the student's parents. At this time, the District had placed the student in a school in a neighboring school district ("School A") on a temporary basis, pending completion of an evaluation to determine eligibility for special education. School A is a school that serves special needs students; it utilizes a highly structured environment and small class size (approximately eight students in a class). The team included both of the student's parents and several District staff including: a general education teacher, special education director, and speech-language pathologist. The team also included a School A classroom teacher, a School A classroom therapist, and a clinical psychologist engaged by the District to conduct the evaluation. The team reviewed existing information concerning the student, including observations by his teachers, and determined that assessments were needed to determine whether the student was eligible for special education services in the areas of Other Health Impairment, Emotional Disturbance, and/or Communication Disorder. The parents provided written consent for assessments related to behavior and Other Health Impairment that same day and written consent for assessments in the area of communication and hearing on March 2, 2009.
7. District staff report that the February 23, 2009 evaluation planning team determined that the student did not exhibit needs requiring evaluation or other assessments in the areas of adaptive PE, occupational therapy, or physical therapy.
8. The clinical psychologist, in consultation with the parents, determined that additional assessments should be added to the initial evaluation of the student. On May 13, 2009, the District sought and obtained written consent from the student's parent for additional assessments.

9. The clinical psychologist completed several assessments, performed a records review, conducted interviews, and performed observations of the student at School A. The evaluation included standardized assessments of cognitive ability, yielding a full-scale IQ score of 68. The clinical psychologist included this comment concerning the student's performance: "*[The student's] exceedingly low score on Similarities adversely affected [the student's] Verbal Comprehension Index and may have resulted in an underrepresentation of [the student's] abilities.*" Emphasis in original. The clinical psychologist also administered standardized assessments of the student's academic achievement, yielding the following standard scores: Broad Reading – 71; Broad Math – 79; Broad Written Language – 76; Math Calculation Skills – 80; Written Expression – 79; Academic Skills – 78; Academic Fluency – 61; Academic Apps – 79; Letter-Word Identification – 91; Calculation – 79; Math Fluency – 85; Spelling – 76; Writing Fluency – 75; Passage Comprehension – 76; Applied Problems – 81; Writing Samples – 93; Handwriting – 91. The evaluator concluded that the student's "intellectual and academic skills are actually very close to being commensurate with one another. From that view, [the student] is performing to [the student's] abilities."
10. The clinical psychologist described several observations of the student's behavior and reported behavioral observations made by the student's parents and by staff from the District and from School A, and described various behavioral interventions used in the past with the student. The noted behaviors included screaming and crying, acting oppositionally and defiantly, hitting a teacher, throwing a chair, running away, pushing, shoving, being overly physical with peers, being short-tempered, and showing considerable difficulty managing anger, disappointment, or frustration or tolerating criticism. Staff at School A described the student as trying hard and wanting to be seen as a good student. They described the student as not wanting to admit to difficulties, whether academically or behaviorally.
11. The clinical psychologist noted concerns with the student's communication and processing, particularly concerning off-topic comments. The clinical psychologist provided a summary, recommending, among other things, that the student "develop skills that fall under the rubric of self-regulation. Toward being able to benefit from instruction, [the student] would have to...focus on the lesson and work taking place." The psychologist suggested "developing a menu of options toward staying on task and holding [the student] more accountable. The use of incentives and rewards may facilitate more active involvement for [the student] in that process." The psychologist also suggested assisting the student with emotional responses and suggested a cognitive behavioral approach to help the student improve the ability to deal with learning difficulties as well as academic motivation and ultimately assist the student to remain in the classroom and appropriately engage teachers. The psychologist also pointed to needs of the student in the area of communication, stating that the student's ability to communicate with teachers and service providers would benefit from growth in both expressive and receptive vocabulary. The District did not actually receive a written report from the clinical psychologist until the summer, after the end of the 2008-09 school year.
12. The speech-language pathologist completed an evaluation of the student, finding the student's hearing, articulation, voice, and fluency were typical. The speech-language pathologist reported that the student scored in the below average range on a comprehensive language test, with the results supported by a speech-language sample.
13. The District held a meeting on May 21, 2009 with the student's parents, the clinical psychologist, and several other staff including the special education director, District third grade/fourth grade regular education teacher, assistant principal, a teacher from School A, and the speech-language pathologist. The team reviewed the results of the evaluations by

the speech-language pathologist and clinical psychologist and determined that the student was eligible for special education and related services as a child with a communication disorder. [D58-59]

14. The District held a meeting on May 28, 2009 to develop an IEP and determine placement for the student. The student's parents, the third grade/fourth grade teacher, and various school staff participated in this meeting.

**May 28, 2009 IEP: (2008-09 School Year – Third Grade)**

15. The student's May 28, 2009 IEP remained in effect through the end of the 2008-09 school year (third grade) and during the fall of the 2009-10 school year (fourth grade). The May 28, 2009 IEP provided for 60 minutes per week of specially designed instruction in speech-language, a behavior plan for the student, and speech-language consultation services for the regular education teacher.
16. The May 28, 2009 IEP's Nonparticipation Justification described the extent of the student's removal from participation in general education programs as 60 minutes per week "[t]o address communication needs in an effective setting." It also stated that the student "receives specially designed instruction in the resource center on a pull out basis to work on ... IEP goals, and to meet [the student's] individual needs." The Special Factors section indicated that the student did not need assistive technology services, that the student had communication needs that were addressed in the IEP, and that the student exhibited behavior that impeded the student's learning or the learning of others and that the behaviors were addressed in the IEP. The student's IEP team did not identify any other factors to consider as part of the IEP development process.
17. The student's May 28, 2009 IEP's Present Levels of Academic Achievement and Functional Performance statement described the student's history at the school, interventions put into place in response to problematic behavior, medical issues affecting the student, and various support systems put into place at school to support the student. The statement noted that the student's "behavior problems continued, escalating around the winter break of third grade. Ongoing behaviors included refusals, threatening words and gestures to adults and peers, yelling and crying, and throwing things at teachers." The statement described the student's placement at School A pending completion of an evaluation and noted that the student did not exhibit the problem behaviors and did not require a behavior plan. The statement also described the student's Present Levels of Academic Achievement and Functional Performance in the area of speech-language, stating, among other things, that the student's communication difficulties negatively impact the student's ability to follow directions in the classroom and to participate in classroom discussion. The statement included a description of parent concerns; it indicated parental concerns related to the student's ability to participate in the regular classroom and, specifically, the student's ability to follow multi-step directions, complete tasks while maintaining appropriate behavior, and communicate the student's thought process to teachers.
18. The student's May 28, 2009 IEP had annual goals and short-term objectives for the student in speech-language. The District also developed a placement for the student on May 28, 2009. The team considered and rejected placing the student in the general education classroom with push-in support for areas of needed specially designed instruction, including provision of full-time one-to-one support and differentiation of all academic work, noting that these interventions had been tried without success. The team also noted that this setting provided the highest level of general education inclusion but identified possible harmful

effects on the student, including social anxiety and emotional/behavioral issues in the larger class, which could interfere with the student's academic progress; the team determined that current evidence did not support this setting. The team also considered and rejected placing the student partially in general education and partially in a special school program. The District placed the student in a special school program that offers a small group setting and structured behavioral support to meet the student's needs, noting the benefits of the smaller environment with fewer sources of pressure and anxiety and a program tailored to students with emotional/behavioral needs.

19. The District continued the student's placement at School A through the end of May, with the student returning to the general education third grade class for the last week of the 2008-09 school year. The student's third grade teacher describes the student as having difficulty with peer interactions. She also described the student engaging in intimidating behavior, including physical and verbal aggression, towards other students. The third grade teacher noted that the student's physical aggression, while not outside the bounds of physical aggression exhibited by the student's peers, is intensified by the student's large size relative to classmates. The third grade teacher also described the student's problem behavior as including interrupting the class with off-topic comments and gaining attention by getting the class off-task. The third grade teacher described the student as easily frustrated, noting that academics were not easy for the student.

#### **2009-10 School Year – Fourth Grade:**

20. On August 26, 2009, the District held a meeting with the student's parent, and the team agreed to return the student to the general education fourth grade classroom in the student's neighborhood school. The team reviewed and discussed the student's performance at School A, reviewed the student's behavior support plan, and reviewed several other factors concerning the student's educational program. The team discussed and agreed to having the student start the school year on a partial-day schedule, and decided to have a meeting with staff from School A to confer and share information on what was successful for the student in that environment. The District provided the parent with prior written notice of its proposal to change the student's placement to partial days in the general education setting.
21. The case manager is a special education teacher who first started working for the District shortly before the start of the 2009-2010 school year. At that time, she was assigned as the student's case manager. She has previous special education experience, however, and has run behavior programs similar to those operated by School A and School B. The case manager participated in this meeting and agreed with this plan to start the student on partial school days to assist the student in experiencing success with the transition back to the general education environment.
22. The student returned to the general education classroom for partial school days, with support from a behavior plan and a full-time educational assistant, under the supervision and direction of the case manager. The case manager also worked in the classroom with the student on a daily basis, sometimes in the role of the education assistant and sometimes providing input, supervision, and direction for the student's program. The District provided the educational assistant to assist the student with reentry into the general education setting, to assist the student in establishing new patterns of behavior, and to collect detailed data to assist the team in designing appropriate behavior program supports.
23. The fourth grade teacher had also taught the student in the third grade. She described the class as a blend of fourth and fifth grade students. The teacher described the student as

capable of participating academically in the class, reporting that she taught the student using general education fourth grade curriculum, substituting a different math curriculum for the student that did not require as much reading comprehension as the regular math curriculum she used. This curriculum was geared approximately to an end-of-third-grade/beginning-of-fourth-grade level. The teacher described the student as requiring significant attention and wanting assistance only from the teacher and not from the assigned educational assistant. The teacher stated that the student did at times work in class and make progress, but this was the exception; the student was typically disruptive in class, interfering with her instruction of the class.

24. The speech-language pathologist provides direct instruction to the student, implementing the services required by the student's IEP. The speech-language pathologist describes the student's communication disorder as impacting the general education placement, with the student's receptive communication deficits impairing the student's ability to follow and understand the content in the curriculum. The speech-language pathologist also reported, however, that the student's communication disorder did not significantly impair the student's ability to understand classroom rules or follow directions because this information is familiar to the student, repeated, and given to the student well within the student's ability. She describes the student as exhibiting a very strong emotional response to any difficulty with understanding curriculum. The speech-language pathologist stated that, in her opinion, the student could access the general education curriculum and successfully participate, if the student's problem behavior did not interfere. The speech-language pathologist asserts that it is the behavioral issues that prevent the student from successfully participating in the general education program. She reports that the communication deficits required only modifications and accommodations and, alone, do not prevent the student from accessing the general education curriculum.
25. The case manager kept daily narrative and numerical data concerning the student's behavior in the classroom, finding no pattern of areas of success in the regular education setting. Rather, the data collected by the case manager shows a high level of problem behaviors across all subjects, academic and nonacademic settings, structured and non-structured settings, with the exception of the speech-language services the student received in a pull-out setting. The team found that the student did not make significant improvement in behavior following adjustments to the behavior support plan, modification of subject material, changes to the length of the school day, changes to the nature of the educational assistant support, or to changes made consistent with parental input. The data collected by the case manager indicates that for 57% of days the student's score was at an average of below 2.5 for the day. Based on these scores, it was determined that the student needed "cues beyond what is typically provided in a general education classroom setting." The case manager reports that this is a common model for determining the appropriateness of behavior programs; when a student receives no scores of 2 or 3, the data indicates that the student is ready to increase participation in general education.
26. The case manager describes the student as having difficulty taking responsibility for behavioral issues and regularly acting out in an effort to be sent home from school. The case manager describes the student as very socially aware and academically able to perform within the average range of students in the general education fourth grade class in which the student was placed. She described the student's problem behavior in class as primarily low-level opposition behavior and passive aggressive behavior. The case manager also described the student as interrupting the teacher during class by blurting out bizarre or inappropriate comments to get attention, swearing at the teacher, or raising a hand to ask about something off-topic. The case manager reported that the student spends

27. The case manager observed that the student was able to participate academically in class with the types of modifications the general education teacher made available to all students. She also observed, however, that persistent behavior issues interfered with the student's participation in class and interfered with the teacher's instruction of the other students. The fourth grade teacher agreed with this observation, noting that she also observed no change or improvement in the student's behavior at school. The principal also described the student's behavior at school as disruptive and interfering with the education of the other students. The principal described the student as physically and verbally aggressive far outside the norm for students in general education. The assistant principal came into contact with the student as part of the behavioral intervention plan the school created for the student. She participated in a number of interventions that staff put into place to assist the student at school, including friendship groups to help build social skills. The assistant principal described the student's problem behavior as escalating in the third grade, with the student's behavior preventing success at school. The assistant principal reported that there were daily behavior issues with the student in class, requiring some sort of behavioral intervention, and these issues interfered both with the student's education and the education of the other students in class.
28. The educational assistant described the support services she provided, reporting that she was assigned as a one-to-one adult educational assistant working with the student full-time. She started as soon as the student arrived at school and stayed "always within earshot" until the student left on the bus. The educational assistant recorded data concerning the student's on-task and off-task behavior. She described the student as disruptive in class, making noises, asking inappropriate questions, and bothering the other students. The educational assistant reported that the student would continue making noises to interrupt the teacher, requiring the teacher to address the behavior. She reported that the student would sometimes comply but other times would escalate the behavior in class; in these instances, she would present the student with the choice to either stop, or leave and go to the library for a counseling session on behavior. The educational assistant reported that the student's behavior was not predictable but that the student would escalate the problem behavior on a daily basis requiring intervention and would have a more severe behavioral episode on three out of every four days (e.g. crying loudly in class to avoid having to accept responsibility or to get attention).
29. The team met again on September 30, 2009 and reviewed the data gathered by the case manager concerning the student's behavior. The parent participated at this meeting and asserted that the data was not accurate, that medication changes were being made that affected the student's behavior, and that the student felt treated differently due to the additional supervision and half-day schedule. The team agreed to make certain changes to the educational assistant's services in the classroom, and for the student to participate on a full-day schedule. On September 30, 2009, the District provided the parent with prior written notice that it was changing the student's placement to full-days.
30. The District held several more meetings in the fall, with the student's parent and school staff reviewing the data concerning the student's behavior and making adjustments to the student's school day and behavior support services. At an October 10, 2009 meeting held by the District, the agenda included consideration of whether another placement would

provide a more appropriate setting for the student and the behavior supports the student needed to access and benefit from academics and behavioral instruction. On October 15, 2009, the District held a meeting for several purposes, including determining whether the student also qualified for special education and related services as a child with emotional disturbance; the team found the student eligible in this area. At the October 15, 2009 meeting, the team also discussed whether the student qualified for special education and related services as a child with other health impairment; the team determined that the student did not qualify in this area. The parent disagreed with the decision concerning the student's other health impairment eligibility. The team also discussed placement of the student at School B, a separate special education school with a highly structured environment, behavior supports in place, and small class sizes with high adult-to-student ratios. The team agreed to postpone making a decision for another two weeks, and to gather additional data concerning the student's progress.

31. At an October 29, 2009 meeting, the District reviewed and revised the student's IEP to include 300 minutes per week of specially designed instruction in the area of social/emotional development and annual goals in the areas of academic engagement, classroom behavior, and unstructured settings. On November 3, 2009, the District initiated an evaluation to determine whether the student was a child with mental retardation. The parent provided written consent on November 9, 2009 for the District to administer adaptive behavior assessments as part of this evaluation.
32. The District held a meeting with the student's parent on November 10, 2009 to review the student's progress and participation in the current educational placement and to review and discuss a draft placement for the student describing a separate school such as School A or School B. The parent disagreed with removing the student from the general education placement and asserted that the issues were academic and not behavioral. The parent also contended that other students engaged in behavior such as that described on the data sheets but didn't have someone watching and writing it down. The team decided to change the student's placement to School B, with the parent disagreeing with this change and leaving the meeting. The District provided the parent with prior written notice of this change, indicating that the decision made at November 10th meeting. The parent withheld the student from school, and the District sent the parent a December 11, 2009 letter stating that it stood ready to provide the student with services at School B.
33. A school psychologist reviewed the recent evaluations for the student and reviewed adaptive skills assessments for the student using a standardized assessment tool completed by the student's parent and by the student's teacher. The school psychologist described the student's general adaptive composite score as within the Extremely Low range based on parent ratings and in the Borderline range based on teacher ratings, with both respondents rating the student below average in all domains. The school psychologist provided a report stating that, "The results...indicate that [the student's] overall adaptive functioning skills fall below average compared with...same age peers and is consistent with the results of [the student's] most recent cognitive evaluation." The District held a meeting on February 9, 2010, reviewed the results of this evaluation, and determined that the student was not eligible for special education services as a student with mental retardation.
34. The February 9, 2010 team also reviewed the student's placement at School B and discussed parent concerns with that placement. The team discussed various potential placements for the student, with the parent opposed to School B because of concerns with

behavior by other students placed there and concerns with the wand<sup>4</sup> and other safety measures taken at the school. Staff described the students placed at School B as exhibiting fleeing behaviors, difficulties with self-management, and trouble following directions. The special education director stated that she had never referred a dangerous student to School B. The meeting notes indicate that staff encouraged the parent to consider School B on an interim basis, with the special education director stating that, "The goal is return to a less restrictive environment, the least restrictive being a classroom with typical peers."

35. On March 10, 2010 (shortly after the parent filed this complaint) the District wrote to the parent and provided notice of a March 17, 2010 meeting to develop a new IEP and placement for the student and to discuss the request for an independent educational evaluation (IEE) that the parent submitted with the complaint. The meeting notice also indicated that the requests for evaluations of the student's needs in the areas of assistive technology, adaptive PE, physical therapy, and occupational therapy would be discussed at the meeting. At the March 17, 2010 meeting, the team reviewed their observations of the student in each of these areas, and discussed the nature of these services. The team also reviewed and revised the student's IEP, developing a new annual IEP for the student, and discussed placement of the student. The parent asserted that the student should return to the general education classroom with support, particularly academic, to address the frustration issues she observed. The District, however, again placed the student at School B.
36. At the March 17, 2010 IEP meeting, the team reviewed the issues raised in this complaint with respect to evaluation of the student's assistive technology, adaptive PE, and occupational therapy needs and also discussed whether there were physical therapy needs that required evaluation. The team developed an evaluation plan following this discussion. District staff did not suspect that the student needed special education services in any of these areas prior to this discussion, and the District had not received a request to evaluate the student in any of these areas prior to this complaint and the March 17, 2010 meeting.
37. The parent points out that the District did not offer to conduct evaluations in any of these areas until after she filed her complaint with the Department. She asserts that her child has complex medical needs and a developmental disability and takes medications known to affect alertness, stamina, and cognitive processes. The parent also reports that her child experiences severe migraine headaches that affect the student's ability to concentrate, pay attention, and interact appropriately and that the medications that the student takes are also very strong and impact the student's ability to learn. The parent also asserts that the cognitive scores reported by the two psychologists who evaluated the student indicate a cognitive disability, or mental retardation, such as would affect the student's academic achievement and lead to the type of frustration the student exhibits at school. The parent contends that these factors were not appropriately considered in the team's determination concerning the student's eligibility for special education or in determining the services the student requires.
38. The student's March 17, 2010 IEP provides for 60 minutes per week of specially designed instruction in speech and 300 minutes per week of specially designed instruction in behavior. The IEP also provides for implementation of a behavior and safety plan throughout the school and clarification of directions and instructions as supplementary aids and services. The IEP provides for several modifications and accommodations including,

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<sup>4</sup> The parent was particularly concerned that all students were subjected to inspection with a metal detecting "wand" upon entrance of the school.

among other things, preferential seating near the teacher and away from distractions and an opportunity to take breaks and process with an adult when frustrated or emotional (this is also part of the student's behavior plan). The IEP included an updated statement of the student's present levels of academic achievement and functional performance, updated goals and objectives for the services in the areas of speech-language and emotional/behavioral, and addressed various other needs of the student.

39. The District also determined the student's placement on March 17, 2010, again considering and rejecting placing the student in the general education classroom with support and considering and rejecting placing the student partially in a special school or class and partially in the student's neighborhood school or class. The District also considered and rejected placing the student in a special school life skills class in a small group setting and with a low student-teacher ratio, stating it is not an appropriate setting to meet the student's current academic and functional levels, and would not provide the social/emotional and academic growth opportunities that would support the student's transition back into a general education setting. The District placed the student in a special school emotional/behavioral class with a small setting and low student-teacher ratio (School B), noting that this placement meets the criteria established by the team of a small setting, low student-staff ratio, and a structured program with a high level of academic and emotional/behavioral support.
40. On March 30, 2010, the parent took the student to School B for services. The parent disagrees with placement of the student at School B, asserting that School B's wandering of all students as they enter the building and locking the doors to prevent students from leaving is more restrictive than her child requires. The parent is also concerned that School B serves students K-12; the parent does not want her child exposed to negative behavior modeled by high school students. The parent asserts that the District should have made a special education placement available within the student's neighborhood school, where the student could attend with neighborhood peers. The parent also contends that the District should provide academic services to assist the student in experiencing success at school, rather than continuing to present academic material above the student's cognitive ability. The parent asserts that the District should have evaluated the student much earlier, pointing to the student's lack of success in first grade and asserting that the student's behavior issues stem partly from frustration and a lack of success. It is the parent's opinion that the student's behavior does not warrant placement in School B.
41. The case manager continues to support the placement of the student at School B or at a similar special education program with structured, small classes designed to address the student's emotional, social, behavioral and academic needs. The case manager reported that the team looked for another similar placement because the parent was opposed to School B but has not located a suitable alternative that is available. The case manager points to the success the student had at School A, with structured, small classes of approximately eight students in a behavior program and states that School B provides a similarly structured program. The special education director also points to the success the student experienced at School A, a small class, special education structured behavior program similar to School B. The special education director also points out that the goal for the services at School B is to improve the student's behavior to achieve return to the general education classroom environment. School B is approximately 10 minutes from the student's neighborhood school within the District, making transition for part-days a feasible option as the student's behavior improves.

## IV. DISCUSSION

In a complaint investigation, the Department looks at all the available information to determine whether a school district or other program has complied with the requirements of the IDEA. The Department will substantiate an allegation if the evidence supporting it is more persuasive than the evidence denying it. If the evidence on both sides is equally persuasive, the Department will not find a violation.

### 1. Evaluation:

The parent's complaint alleged that the District's evaluation should have included evaluation of the student's assistive technology, adaptive physical education, and occupational therapy needs.

A district must complete an initial evaluation, or reevaluation, and convene a meeting to determine whether the child is eligible for special education and related services within sixty school days from the date that the parent provides written consent.<sup>5</sup> A student need only be determined eligible under one disability category, however, the child must be evaluated in all areas of suspected disability and the IEP must address all of the child's special education needs.<sup>6</sup>

The January 2009, District staff discussed their concerns with the student's behavior at school, including increasingly frequent removals from class for behavior problems and their concern that these removals interfered with the student's access to the student's educational program. The District responded by referring the student for an evaluation to determine if the student had health impairments (such as ADHD) or emotional disturbance such as would qualify the student for special education services. During the course of the District's evaluation, the scope of the evaluation was enlarged to include an evaluation of the student's speech-language to determine whether there was a communication disorder and an evaluation to determine whether the student qualified as a child with mental retardation. During the course of these assessments, records from the student's physician were reviewed, records of a previous neuropsychological evaluation from approximately the spring of 2008 were reviewed, a clinical psychologist conducted new assessments, a speech-language pathologist conducted assessments, and the student was placed at School A with all new staff as part of the evaluation process. A review of the information from all of these sources provides no evidence to suggest that the District should have suspected that the student had special education needs in the areas of assistive technology, adaptive PE, or occupational therapy or should have evaluated the student's needs in these areas. Therefore, the Department concludes that the District's evaluation was not required to include these components.

### 2. Eligibility:

The parent's complaint alleged that the student's eligibility team failed to consider all relevant information in making its determination of the student's eligibility. Under the IDEA, a school district must ensure that a student is assessed in all areas of suspected disability and the evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs.<sup>7</sup> Initial evaluations (if appropriate) and reevaluations must begin with a review of existing evaluation data on a student, including evaluations and information provided

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<sup>5</sup> OAR 581-015-2110(5).

<sup>6</sup> OAR 581-015-2120(4).

<sup>7</sup> OAR 581-015-2110(4).

by the parents; classroom-based, local, and state assessments; classroom-based observations; and observations by teachers and service providers.<sup>8</sup> Based on this review of existing information, the IEP team (and other qualified professionals, as appropriate) determines what additional data, if any, are needed to determine the student's eligibility for special education, present levels of academic achievement, and related needs; the team then considers the need for any changes to the student's IEP services.<sup>9</sup>

An evaluation must occur every three years – more frequently if conditions warrant – or if the child's parent or teacher requests an evaluation.<sup>10</sup> The District must ensure that the child is assessed in all areas related to the suspected disability.<sup>11</sup> For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disabilities, and the child's IEP must address all of the child's special education needs.<sup>12</sup>

In January 2009, the District initiated an evaluation of the student's eligibility for special education and related services as a child with other health impairment or as a child with emotional disturbance. The District enlarged the scope of its evaluation, first to determine whether the student was eligible as a child with a communication disorder and later to determine whether the student was eligible as a child with mental retardation. As discussed above, the Department found no evidence that the District should have suspected or evaluated needs in other areas. The District's evaluation included determining whether the student qualified for service as a child with an other health impairment, with the District's evaluation including review of a physician's statement concerning the student; academic, cognitive, and speech-language assessments, observations; and review of all relevant records available to the District. The District found the student eligible for special education and related services as a child with a communication disorder, with its evaluation including all necessary components and including evaluation in all areas of suspected disability. The Department concludes that the District appropriately considered all available, necessary, and relevant information in making its determination concerning the student's eligibility for special education and related services.

### **3. Content of IEP:**

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) advance appropriately toward attaining the annual goals; (b) be involved and make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) to be educated and participate with other children with disabilities and non-disabled children.<sup>13</sup> Each student's IEP must describe how a student's progress towards meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.<sup>14</sup> An IEP must contain a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects progress in the general education curriculum.<sup>15</sup> An IEP must also contain statements of measurable annual goals that will enable the child to

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<sup>8</sup> OAR 581-015-2115(1)(a).

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

<sup>10</sup> OAR 581-015-2105(4).

<sup>11</sup> OAR 581-015-2110 (4)(d).

<sup>12</sup> OAR 581-015-2120 (4).

<sup>13</sup> OAR 581-015-2200(1)(d).

<sup>14</sup> OAR 581-015-2200(1)(c).

<sup>15</sup> OAR 581-015-2200(1)(a).

participate in and make progress in the general education curriculum.<sup>16</sup> The statement of the student's present levels of academic and functional performance serves as the baseline on which the goals are built and against which the student's progress is measured.<sup>17</sup> In combination, these statements are designed to serve as a framework for teachers as they design the student's instructional plan. School districts also must timely reconvene IEP teams to review and revise a student's IEP to address any lack of expected progress towards the annual goals.<sup>18</sup>

The parent alleged that the IEP developed by the District for the student did not include a statement of measurable annual goals for special education services in the areas of reading, writing, and mathematics. The parent also alleged that the student's IEP did not provide for needed special education services, modifications, and accommodations including: modifications of the student's schoolwork, one-to-one assistance, and specially designed instruction in reading, writing, and mathematics.

The IEPs the District developed for the student did not provide for academic services or provide for specially designed instruction in reading, writing, or mathematics. The District determined through its evaluations that the student's academic achievement is commensurate with the student's cognitive ability and that the student's academic achievement and functional performance are adequate for the student to successfully participate in the general education curriculum in the regular classroom setting. Here, the evidence suggests that it is the student's behavior in the general education classroom setting, and not the student's lack of ability or inability to perform commensurate with ability, that prevents the student from successfully participating in the general education curriculum. Therefore, the Department finds that the absence of academic services was appropriate in relation to the identified educational needs of the student. Additionally, the District actually did provide a one-to-one educational assistant to support the student in the general education placement, but this service was related to the behavioral services provided by the District and not related to academic needs.

#### **4. IEP Implementation:**

The parent alleged that the District failed to make the student's IEP accessible to the appropriate personnel responsible for implementing the IEP. Specifically, the parent alleged that the District failed to inform the student's teachers of the student's present levels of academic achievement and functional performance.

A written IEP must be in effect for each eligible child at the beginning of each school year.<sup>19</sup> School districts must implement the services, modifications, and accommodations identified on each student's IEP.<sup>20</sup> As part of this responsibility, school districts must ensure that IEPs are

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<sup>16</sup> OAR 581-015-2200(1)(b).

<sup>17</sup> See, e.g. *Bend-LaPine School District*, DP 04-109 (ODE, August 20, 2004), affirmed, *Bend-LaPine School District v. K.H.*, 43 IDELR 191 (D. OR. 2005) ("The ALJ found that K.H.'s IEP was insufficient in regards to the adequacy of the statement of K.H.'s Present Level of Educational Performance (PLEP) regarding the detail necessary to provide a baseline for the impact of K.H.'s emotional disturbance disability on her ability to access her education. The PLEP is the starting point for determining annual goals under the IEP . . . Without that baseline of current performance and/or behavior, it is difficult to draft measurable and relevant annual goals. The ALJ correctly found that the statement . . . was insufficient to determine an accurate baseline of K.H.'s behaviors affected by her disability. The information explaining K.H.'s current level of performance failed to provide any measurable level of problematic behaviors, including how many times K.H. had been suspended as a result of the behaviors associated with her disability, or how many instances and in what settings had K.H. been verbally aggressive.").

<sup>18</sup> OAR 581-015-2225 (1)(b).

<sup>19</sup> OAR 581-015-2220(1)(a).

<sup>20</sup> OAR 581-015-2220(1)(b).

accessible to each regular education teacher, special education teacher, or other service provider responsible for implementation of a student's IEP and inform each of their specific responsibilities.<sup>21</sup> Here, the student's third grade/fourth grade teacher actually participated in each of the meetings to develop IEPs for the student, participated in regular meetings with respect to the student's behavior and participation in her class, and received regularly contact and consultation services from the case manager. The IEP included detailed information concerning the student's present levels of academic achievement and functional performance, and this information was reviewed and discussed by the third grade/fourth grade regular education teacher as part of the student's IEP team. Therefore, the Department concludes that the District met its obligation to make the student's IEP accessible to the student's teacher, inform the student's teacher with respect to her responsibility for implementing the IEP, and to inform the student's teacher of the student's present levels of academic achievement and functional performance.

### **5. Placement:**

The parent alleged in her complaint that the student's placement was not based on the student's IEP or the student's identified needs for special education and related services but was based on the lack of available resources or lack of availability of a suitable placement. The parent also alleged that the District does not ensure that a continuum of alternative placement options is available to meet the needs of children with disabilities. Specifically, the parent alleged that the District denied the student an appropriate placement based on a lack of capacity in the District's life skills program.

OAR 581-015-2240 provides:

#### Requirement for Least Restrictive Environment

School districts must ensure that:

- (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and
- (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Further, school districts must ensure that a continuum of alternative placement is available to meet the needs of children with disabilities for special education and related services. This continuum must include as alternative placements, instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions and must make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Here, the District first attempted to support the student's placement in the general education classroom through regular education interventions. The District next placed the student in a small class in a highly structured behavior setting (School A) for purposes of completing an evaluation of the student's eligibility and need for special education and related services. The District then placed the student in the general education classroom with support from a one-to-

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<sup>21</sup> OAR 581-015-2220(3).

one educational assistant and pull-out services to address the student's identified special education needs in the area of communication. The one-to-one assistant assigned to the student was supervised by a special education teacher with experience operating a program designed to address behavior needs. When the supported general education placement failed to improve the student's ability to participate in the general education classroom, the District reviewed and revised the student's IEP and placed the student in a special school designed to provide the small classes and highly structured behavior services that the team determined the student required. The Department finds no evidence that the District's placement of the student was based on a lack of available resources or lack of an available, suitable placement. Therefore, the Department concludes that the District has met its obligation to make the full continuum of alternative placements available to the student. The parent also disputes that School B is an appropriate placement for her child. With regard to that issue, the Department finds that the student's placement in School B was consistent with the requirement that the student be educated in the least restrictive environment and did not constitute a violation of the IDEA.

## **6. Parent Participation:**

The parent alleged that she was denied an opportunity to participate in meetings with respect to the educational placement of the student.

Parental participation is an important part of the IEP team process. Parents have been members of their children's IEP teams for the entire history of IDEA. In the IDEA 1997, parents moved to the top of the list of IEP team members as part of a broader move to strengthen the parent role in special education processes. School personnel typically bring expertise about curriculum, instruction, and assessment to special education decision-making. Parents have extensive knowledge of their children's characteristics, experiences, and needs and thus have substantial knowledge to contribute to the decision making process. Parent participation is a fundamental principle of IDEA.

Guidance included in the federal regulations relating to IDEA described the intended level of participation:

"The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

As previously noted in the introduction to section II of this Appendix, Part B specifically provides that parents of children with disabilities—

1. Have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of FAPE to the child (including IEP meetings);]
2. Be part of the groups that determine what additional data are needed as part of an evaluation of their child, and determine their child's eligibility and educational placement[;]

3. Have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEPs[.]”<sup>22</sup>

Essentially, the parent contends that District staff had already “made up their minds” concerning the placement of the student and, therefore, the parent’s input was not considered and her participation infringed. The facts here show, however, that the District took substantial steps to maintain the student’s placement in the general education classroom in the student’s neighborhood school, as sought by the parent. These efforts included meeting in August 2009, prior to the start of the school year, and developing and implementing a plan to support the student’s success in the classroom by starting with partial school days and support from an educational assistant. Next, the District moved the student to full-days at the request of the parent, again demonstrating that staff treated the parent as an equal participant in these meetings, and took seriously the parent’s suggestions for improving the student’s participation. The District met several times with the parent before ultimately making the decision to place the student in a separate school where the student’s behavioral needs could be addressed. It is clear that the parent disagrees with the District’s decision; however, the Department finds no evidence that the placement decision here was predetermined, or that the parent was not afforded an opportunity to participate in the process.

## V. CORRECTIVE ACTION<sup>23</sup>

*In the Matter of Corbett School District*  
Case No. 10-054-006

The Department does not order any corrective action as a result of this investigation.

Dated: April 30, 2010

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Nancy J. Latini, Ph.D.  
Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: April 30, 2010

**APPEAL RIGHTS:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

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<sup>22</sup> 34 CFR Part 300, *Assistance to States for the Education of Children with Disabilities, Appendix A, Question 5 (1999)*.

<sup>23</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).