

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Ashland SD

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**CORRECTED<sup>1</sup> FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER**  
Case No. 17-054-013

**I. BACKGROUND:**

On May 2, 2017, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation from the parents (Parents) of a student (Student) residing in the Ashland School District (District). The Parents requested that the Department conduct a Special Education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email on May 2, 2017.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint; or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.<sup>2</sup> Based on the date the Department received the Complaint, the relevant period for this Complaint is May 3, 2016 through May 2, 2017. The Final Order is due July 1, 2017.

On May 10, 2017, the Department's Complaint Investigator 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 May 24, 2017.

On May 26, 2017, the District submitted a packet of materials for the Complaint Investigator to review. These materials are listed in below:<sup>3</sup>

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|----|-----------------------------------|-----------|
| 1. | District Response Letter          | 5/26/2017 |
| 2. | MN for IEP meeting 1/19/16        | 1/11/2016 |
| 3. | Email                             | 1/15/2016 |
| 4. | Email                             | 1/17/2016 |
| 5. | Email                             | 1/19/2016 |
| 6. | Student SPED Registry Information | 1/19/2016 |
| 7. | IEP meeting Agenda                | 1/19/2016 |
| 8. | MM IEP meeting 1/19/16            | 1/19/2016 |

<sup>1</sup> See correction to item #1 in Corrective Action Table, page 25

<sup>2</sup> OAR 581-015-2030 (5).

<sup>3</sup> Many of the materials the District submitted were copies of emails between the Parents and the District, and between staff members of the District. After reading these emails, the Department's investigator removed all of the pages that were duplications and numbered only the single copies of each email string. In addition, the Investigator had asked for the Student's Cumulative file to be available for review during the interview process. Instead the District sent a complete copy of the Cumulative file with the Response materials. Since many of these records were not relevant to the complaint investigation the Investigator removed those from the total response packet. All of these duplicate materials were given to ODE as part of the original Response record.

9.	IEP	1/19/2016
10.	PWN	1/19/2016
11.	Email	3/15/2016
12.	Vision Testing Report by private optometrist	3/22/2016
13.	Anecdotal Behavior Report by EA	4/5/2016
14.	Apology written by Student	6/16/2017
15.	MN for IEP meeting 5/5/16	5/2/2016
16.	Email	5/3/2016
17.	Email	5/3/2016
18.	PWN	5/5/2016
19.	MM IEP meeting 5/5/16	5/5/2016
20.	Student SPED Registry Information	5/5/2016
21.	IEP	5/5/2016
22.	PWN	5/5/2016
23.	Email	5/12/2016
24.	Letter from parents to District about IEP meeting of 5/5/16	5/12/2016
25.	Email	5/18/2016
26.	Email	5/25/2016
27.	IEP Goal Progress Report	6/13/2016
28.	Email	9/18/2016
29.	Email	10/10/2016
30.	MN for Evaluation planning Meeting 10/17/16	10/10/2016
31.	Staff notes from Evaluation planning meeting 10/17/16	10/17/2016
32.	PWN for Evaluation	10/17/2016
33.	Email	11/28/2016
34.	Behavior agreement with peers	11/29/2016
35.	Parent letter requesting comprehensive SPED evaluation	11/29/2016
36.	Email	12/1/2016
37.	MN for Evaluation planning Meeting 12/12/16	12/8/2016
38.	Email	12/8/2016
39.	Meeting Agenda	12/12/2016
40.	Signed Parent Consent to Obtain and Release Information	12/12/2016
41.	Outline of Student Strengths and Issues	12/12/2013
42.	MN for IEP Meeting for 1/10/17	12/15/2016
43.	Meeting Agenda	12/12/2016
44.	MN for IEP Meeting for 1/10/17	1/4/2017
45.	MM from 1/10/17 Meeting	1/10/2017
46.	IEP	1/10/2017
47.	MM from 1/10/17 Meeting	1/10/2017
48.	PWN's and Parent consent for Evaluation	1/10/2017
49.	Student SPED Registry Information	1/10/2017
50.	Email	1/11/17 to 1/23/17
51.	W-J IV Test score report	2/14/2017
52.	Email	2/15/17 to 2/22/17
53.	Signed Agreement between Parents and District to Extend Evaluation Timeline	2/26/2017
54.	Email	3/1/2017
55.	Medical Statement	3/3/2017
56.	Email	3/6/17 to 3/8/17
57.	Letter from Parents to District requesting Student's Education Records	3/14/2017

58.	Email	3/16/17 to 4/10/17
59.	Data Collection Form for AAC Trial	3/16/17 to 4/11/17
60.	ASD Evaluation Report	3/20/2017
61.	Occupational Therapy Evaluation Report	3/20/2017
62.	Speech and Language Assessment Summary	3/20/2017
63.	Teacher Note about AAC Trial	3/21/2017
64.	Psycho-Educational Re-evaluation Report	3/23/2017
65.	Meeting Notice for IEP and Eligibility Meeting for 4/11/17	3/23/2017
66.	easyCBM Reading Fluency Record	4/10/2017
67.	Parent Input for IEP meeting	4/11/2017
68.	Email	4/6/17 to 4/11/17
69.	Eligibility & IEP meeting minutes	4/11/2017
70.	CD Eligibility Statement	4/11/2017
71.	ASD Eligibility Statement	4/11/2017
72.	SLD Eligibility Statement	4/11/2017
73.	Meeting Minutes	4/11/2017
74.	PWN	4/11/2017
75.	Email	4/14/17 to 4/17/17
76.	MN for IEP meeting on 5/8/17	4/17/2017
77.	Email	4/18/2017
78.	Parent Request for IEE and corresponding emails	4/28/17 to 5/1/17
79.	IEP	5/8/2017
80.	IEP Meeting Minutes	5/8/2017
81.	PWN	5/8/2017
82.	Email	5/10/17 to 5/18/17

During the week of May 15, 2017, the Parent submitted a packet of materials to the Complaint Investigator. These are described below.

1.	Parent Complaint	5/2/17
2.	Email from Principal to Parents	5/18/16
3.	Email from Parents to IEP team	5/12/16
4.	Email from Parents to IEP team	5/2/16
5.	Email from Director to Parents and IEP team	3/7/17
6.	Email from Director to Parents	1/12/17
7.	Email from Director to Parents	11/30/16
8.	Email from Parents to Investigator	5/17/17
9.	Email from Director to Parents	4/11/17
10.	Email from Director to Parents	4/7/17
11.	Email from Director to Parents	4/7/17
12.	Email from Director to Parents	3/24/17
13.	Email from Director to Parents and IEP Team	3/15/17
14.	Email from Parents to Director and IEP Team	3/15/17
15.	Assessment Report from Private Occupational Therapist	11/11/16
16.	Student Writing Samples; One completed with Co-writer, and one completed without.	Spring, 2017
17.	Developmental Vision Therapy Progress Summary <sup>4</sup>	6/4/14

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<sup>4</sup> These materials were given to the Department's Investigator during the Parent interviews. The Investigator shared them with the District.

The Complaint Investigator determined that on-site interviews were needed. On June 5, 2017, the Department's Complaint Investigator interviewed the Parents. On that same day, the Department's Complaint Investigator interviewed a Speech Language Therapist, a General Education Teacher, a Resource Teacher/Case Manager, and a School Psychologist. On June 6, 2017, the Complaint Investigator interviewed the Autism Specialist, a General Education Teacher, a Speech Language Therapist, and an Elementary Principal and the Special Education Director. On June 7, 2017, the Complaint Investigator interviewed the Occupational Therapist.

The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred 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.<sup>5</sup> This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS:

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151 – 153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from May 3, 2016 through May 2, 2017.<sup>6</sup>

	Allegations	Conclusions
1.	<p><b><u>Access to Student Education Records:</u></b></p> <p>The Parents allege that after they requested a copy of the Student's Educational Record on March 14, 2017, the District did provide them with a copy of the record, but the record was incomplete and did not contain a number of items the Parents expected to see. Those items include:</p> <ul style="list-style-type: none"> <li>a) Minutes, notes and parent input forms, including documentation of Parent requests for evaluations or services provision from IEP meetings;</li> <li>b) Various notes and reports related to summative and formative assessments, recommendations and other information provided by individuals who had evaluated or assessed the Student, copies of test</li> </ul>	<p><b><u>Not Substantiated:</u></b></p> <p>The District did give the Parent's access to the Student's educational records; however, this did not happen all at once as it took the District time to collect some of this documentation. Some of the documents requested by the Parents, such as phone messages, the working files of staff members, and test protocols, were not a part of the Student's Educational Record. The Department does not substantiate this allegation.</p>

<sup>5</sup> 34 CFR §300.1510(2010)

<sup>6</sup> See OAR 581-015-2030(5)(2008); 34 CFR §300.153(c)

	<p>protocols, writing samples, and evidence collected during AT trial periods;</p> <ul style="list-style-type: none"> <li>c) Various staff working files, including notes from observations of the Student;</li> <li>d) Disciplinary referrals;</li> <li>e) Copies of classroom data and other information used to determine the Student's eligibility for Special Education, and;</li> <li>f) Third party reports of any kind including MDT meeting and observations of the Student.</li> </ul> <p>(ORS 581-015-2300; 34 CFR 300.501 and 34 CFR 303.405 (a)).</p>	
2.	<p><b><u>Content of IEP:</u></b></p> <p>The Parents allege that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> <li>a) Included goals in the Student's IEP that are not measureable;</li> <li>b) Did not update the Present Level of Academic Achievement and Functional Performance (PLAAFP) statement with current information about the Student when it wrote the Student's IEP at the annual review meeting;</li> <li>c) Did not provide the Parents with information on the Student's progress on IEP goals during the time period under investigation;</li> <li>d) Did not address the Student's needs by adding goals attendant to the Student's fluency in speaking;</li> <li>e) Suggested to the Parents that the Student needed a summer social</li> </ul>	<p><b><u>Substantiated in Part:</u></b></p> <ul style="list-style-type: none"> <li>a) The District included measureable goals in the January 19, 2016, May 5, 2016, and January 10, 2017 IEPs, therefore this portion of the allegation is not substantiated.</li> <li>b) The District did update the PLAAFP with current information about the Student in each of the IEPs referenced above, therefore this portion of the allegation is not substantiated.</li> <li>c) The District did not send information regarding the Student's progress towards IEP goals, therefore this allegation is substantiated.</li> <li>d) The District included goals attendant to the Student's fluency in speaking, therefore this allegation is not substantiated.</li> <li>e) The District included goals in social skills, therefore this allegation is not</li> </ul>

	<p>skills group, but did not provide any goals in the Student's IEP for instruction in social skills, and;</p> <p>f) Refused to add goals in writing to the Student's IEP on the basis of the Student's area of eligibility (Communication Disorder).</p> <p>(OAR 581-015-2200 (1); 34 CFR 300.320)</p>	<p>substantiated.</p> <p>f) The District did not refuse to add writing goals to the Student's IEP based upon solely on the basis of the Student's eligibility category, but rather due to the fact that the Student had demonstrated improved writing goals as evidenced by meeting the writing goals in the previous IEP, therefore this allegation is not substantiated.</p>
<p>3.</p>	<p><b><u>Evaluation and Reevaluation Requirements:</u></b></p> <p>The Parents allege that the District violated the IDEA when it:</p> <p>a) Refused the Parents' requests, made over a period of time, to evaluate the Student for a Specific Learning Disability (SLD) in written communication using appropriate tools and evaluation methods;</p> <p>b) Refused the Parents' request to conduct a Functional Behavioral Analysis (FBA) of the Student's behavior;</p> <p>c) Refused the Parents' request to evaluate and consider the Student's needs for Occupational Therapy (OT); and,</p> <p>d) Failed to conduct an evaluation within the required timeline after multiple requests from the Parents.</p> <p>(OAR 581-015-2105 (1) (2) (3); 34 CFR</p>	<p><b><u>Substantiated in part.</u></b></p> <p>a) The District did evaluate the Student for a Specific Learning Disability in written communication during the spring of 2017. The tools and evaluation methods used by the District were appropriate. This portion of the allegation is not substantiated.</p> <p>b) The District did refuse to conduct a FBA based upon its conclusion that the Student's behavior did not warrant such an evaluation and provided a Prior Written Notice (PWN) for this decision. This portion of the allegation is not substantiated.</p> <p>c) The parties discussed delaying an evaluation of the Student for Occupational Therapy; however, the District failed to include this in the PWN sent to the Parents. This portion of the allegation is substantiated.</p> <p>d) The District satisfied all evaluation timelines for evaluations requested by the Parents; however, the three-year re-evaluation was not completed within the required timeline, therefore this portion</p>

	300.301 and 34 CFR 300.303)	of the allegation is substantiated.
4.	<p><b><u>Independent Educational Evaluation:</u></b></p> <p>The Parents allege that the District violated the IDEA when it did not provide the Parents with information about where an Independent Educational Evaluation (IEE) might be obtained and what the applicable District criteria for Independent Educational Evaluations are.</p> <p>(OAR 581-015-2305 (1) (2) (3) (4) and 34 CFR 300.502)</p>	<p><b><u>Substantiated:</u></b></p> <p>The District gave the Parents a list of criteria but did not inform the Parents where an IEE could be obtained. This allegation is substantiated.</p>
5.	<p><b><u>IEP Team:</u></b></p> <p>The Parents allege that the District violated the IDEA when it did not ensure that a Speech Language Therapist either attended the Student's IEP meetings during the period under investigation or provided written reports if excused from the meetings.</p> <p>(OAR 581-015-2210; 34 CFR 300.321)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The District met its responsibility to have "at least one special education teacher of the child or, if appropriate, at least one special education provider of the child" present at each meeting. There was no requirement that the Student's Speech Language Therapist attend the Student's IEP meetings. The Department does not substantiate this allegation.</p>
6.	<p><b><u>Prior Written Notice:</u></b></p> <p>The Parents allege the District violated the IDEA when it failed to provide the Parents with Prior Written Notice (PWN) on a number of occasions about several issues. These issues included:</p> <p>a) District refusal to provide an Assistive Technology (AT) assessment, and;</p> <p>b) District refusal to provide the Parents with copies of writing samples used to</p>	<p><b><u>Substantiated in Part.</u></b></p> <p>a) Although the District did not refuse to begin a formal AT assessment, it should have notified the Parents in a PWN that it was delaying the start of the AT assessment in accordance with the Parents' wishes expressed at the January IEP Meeting. The PWN sent out after this IEP Meeting did not state that the AT assessment would be delayed. The Department substantiates this portion of the allegation.</p> <p>b) The District did provide writing samples to the Parents at the April 11, 2017</p>

	<p>evaluate the Student SLD eligibility. (OAR 581-015-2310; 34 CFR 300.503)</p>	<p>Eligibility Meeting. The Parents shared these samples with the Investigator. The Department does not substantiate this portion of the allegation.</p>
<p>7.</p>	<p><b><u>Review and Revision of IEP's:</u></b></p> <p>The Parents allege the District violated the IDEA when it failed to review and revise the Student's IEP during the time period under investigation even though the Student's easyCBM test results show regression in skills.</p> <p>(OAR 581-015-2225; 34 CFR 300.324 (b))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The decrease in reading fluency was the only measure that showed regression when the Student took the winter easyCBM tests. The Student's fluency was reassessed prior to the April 10, 2017 IEP Meeting and had improved by 29%. The IEP Team also reported that the Student had increased skills in speech articulation and self-monitoring personal speech. The IEP Team was able to identify the reason for the regression, but felt that the instruction being provided to the Student was appropriate and therefore did not revise the IEP. The Department does not substantiate this allegation.</p>
<p>8.</p>	<p><b><u>Specific Learning Disability:</u></b></p> <p>The Parents allege the District violated the IDEA when it did not:</p> <ul style="list-style-type: none"> <li>a) Use the appropriate tools, and evaluation strategies to evaluate the Student's eligibility for SLD using the Strengths and Weaknesses model;</li> <li>b) Did not consider all information available in establishing the Student's eligibility for SLD using the Strength and Weaknesses model, and;</li> <li>c) Did not address all of the criteria used to establish a Student's eligibility as a student with a Specific Learning Disability under the Strengths and Weaknesses model.</li> </ul> <p>(OAR 581-015-2170; 34 CFR 300.300.8, 34 CFR 300.306 and 300.307)</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The District gathered a wide variety of information and reviewed it during the eligibility meeting. The IEP Team considered the evaluation data in light of the criteria for establishing a SLD using the Strengths and Weaknesses model. Therefore, the Department does not substantiate this allegation.</p>

9.	<p><b><u>When IEP's Must be in Effect:</u></b></p> <p>The Parents allege the District violated the IDEA when it did not implement the Student's IEP as written. The Parents allege the District failed to provide accommodations and supports to the Student in both the classroom and other school settings, and that the District did not provide support to the Student's teachers about the Student's SLD in written expression.</p> <p>(OAR 581-015-2220 (1) (b); and 34 CFR 300.323).</p>	<p><b><u>Not Substantiated:</u></b></p> <p>The District did provide accommodations to the Student in the general education setting. The Student was not identified as a student with a SLD, and to do so would have been inaccurate. Therefore, the Department does not substantiate this allegation.</p>
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**Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA):**

The Parents allege the District labeled the Student as "autistic and rigid". The Parent may address this issue by filing a complaint with the District by utilizing the District's formal complaint process or with the Oregon Teacher Standards and Practices Commission if the Parents wish to address the actions of a specific licensed individual.

The Parents allege the District implemented a variety of behavioral strategies without the Parents' knowledge and consent, and that the District did not provide the Parents with information about disciplinary procedures. In addition, the Parents also allege that the District lied to the Parents about the availability of various testing instruments to use in evaluating the Student for eligibility as a student with a SLD. The Parents may use the District complaint procedure to address these issues.

The Parents also allege that a signature was forged on a document. The Parents can utilize the District's complaint procedure to address this and can also contact the Teachers Standards and Practices Commission to address this.

<p><b><u>Requested Corrective Action:</u></b></p> <p>The Parents request the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> <li>1. IEP implemented immediately;</li> <li>2. Progress summary of IEP goals provided immediately;</li> <li>3. Regular updates of progress;</li> <li>4. Full IEP team present at IEP meeting;</li> <li>5. Measureable IEP goals;</li> <li>6. Assistive technology assessment provided by assistive technology specialist;</li> <li>7. Training across the district on IEP procedures and implementation;</li> <li>8. Training across the district on specific learning disabilities and identification;</li> <li>9. IEE for a specific learning disability in written expression;</li> </ol>
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| 10. Compensatory services in social skills and speech fluency' and;<br>11. Private school reimbursement. |
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### III. FINDINGS OF FACT:

1. The Student is eleven years old and is eligible for Special Education services as a student with a Communication Disorder (CD) in Fluency, established on April 11, 2017. Initial eligibility for Special Education services was established in 2010. The Student transferred to the District in 2014 from an out-of-state school district and initial placement for the provision of special education in Oregon was signed on March 20, 2014. The Student has attended school in the District since that time.

#### **Access to Student Education Records**

2. On March 14, 2017, the Parents sent the District a letter requesting a scheduled time to review all of the Student's educational records. Specifically, the Parents asked for:
  - a. "This request encompasses the identified education records no matter where they may be located, whether in the Central Administration Office, the Special Education Office, or any other department or office within the School District. This request includes all items that contain personally identifiable information about the Student and the Parents, whether those items name us as the parents, name our child, or refer to our child or us, as the parents, by social security number or by student identifier number. This request includes, but is not limited to, the following items: progress reports, report cards, deficiency notices, correspondence to and from parents and others, awards, standardized test results, staff memos, interoffice memos, emails, letters, notes and comments of any kind, including notes of telephone calls, multi-disciplinary meetings and observations of child, attendance records, requests for and notices of IEP meetings, medical and school health records, notes of psychologists, speech and language therapists, resource specialists and other personnel who have provided services to, evaluated or otherwise been involved in or responsible for the provision of a free appropriate education, class schedules, referrals for evaluations, evaluations and assessments, third party reports or writings of any kind, notices of placement and statements of rights that were provided to parents, including notes from multi-disciplinary team meetings and observations of the child, all IEPs and any documents related to the IEPs, videos and audiotapes."
3. On March 16, 2017, the Director sent an extensive email to all staff currently evaluating or serving the Student, and outlined the types of records each staff was to prepare for the Parents to review. The Director asked the staff to have some records ready for the Parents to review on March 20, 2017, and for other records to be ready no later than April 14, 2017. The Director provided explicit directions for staff to follow in organizing and preparing the records. The Director emailed the Parents on March 22, 2017 and informed them that they could pick up copies of the Cumulative folder, Confidential<sup>7</sup> Folder, Psycho-Educational Evaluation, Occupational Therapy Evaluation, Speech/Language Evaluation and Autism Evaluation (reports) at the District Office.

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<sup>7</sup> The District keeps all copies of special education, discipline, risk assessment and other confidential student information in this file.

4. The Parents met with the Director on March 22, 2017 and reviewed the prepared records. On March 23, the Parents emailed the Director and asked some questions about additional materials. The Parents were concerned they had not received goal progress reports, and copies of a wide variety of records they had requested. In particular, they had not received copies of test protocols, working files from staff, daily progress reports, etc. The Director replied on April 7, 2017, informing the Parents that they were not entitled to see some of the materials they had requested, i.e., test protocols, and that other items were either not available or were still being copied.

**Content of IEP/Review and Revision of IEPs**

5. During the time period under investigation, the Student’s IEP Team wrote two IEPs and revised one of them, for a total of three IEPs in effect in the one year time period. Two of the IEP allegations under investigation are centered on Goals and Supplementary Aids and Services, Modifications and Accommodations. Therefore, only these elements are summarized in the chart below.

**BACKGROUND IEP INFORMATION FOR IEP’S WRITTEN DURING TIME PERIOD UNDER INVESTIGATION:**

<u>IEP Element</u>	<b>January 19, 2016 IEP</b>	<b>May 5, 2016 IEP Revision</b>	<b>January 10, 2017 IEP</b>
<u>Goals:</u>	<p>Communications:</p> <p>1. S will demonstrate basic inferencing given a short narrative and moderate cues and prompts;</p> <p>2. Given a visual organizer, S will produce a basic verbal summary with supporting details given maximum cues and prompts;</p> <p>3. Given a writing assignment with specific guidelines and directions that the S can understand, S will initiate working on own without eliciting staff help and work for 15 min independently 4/5 opportunities.</p> <p>Progress will be reported to parents via written</p>	<p>ADDED, on 5/5/16 to Communications Goals:</p> <p>Behavior:</p> <p>1.S will exhibit responsible class behavior<sup>8</sup></p> <p>With report cards at grading periods and</p>	<p>Writing Skills:</p> <p>1. Given a 5th grade writing assignment S will create a writing assignment that complies with grade level writing standards.</p> <p>Speech:</p> <p>1. S will demonstrate two strategies to increase fluency in sentences given a model and maximum cues and prompts;</p> <p>Progress will be reported at the same time according to district</p>

<sup>8</sup> 60 minutes per week of Specially Designed Instruction in Study Skills in a special education setting was also added to the IEP at this time.

	report, at reporting periods.	annual IEP meeting.	calendar for report card distribution for the school year.
<u>Service Summary -- Supplementary Aids/Services; Modifications and Accommodations</u>	1. Printed notes; 2. Access to Keyboarding; 3. Increased time to complete work; 4. Decreased quantity of homework; 5. Opportunity for breaks in a quiet space.	ADDED, on 5/5/16 to other aids and services:  6. Scribe available; 7. Preferential seating; 8. Slant board available; 9. Reduce written class work.	1. Breaks in a quiet area; 2. Access to keyboarding/word program for writing; 3. Access to a scribe for writing; 4. Access to a word prediction program for writing; 5. Teacher notes available; 6. Increased time to complete work; 7. Preferential seating; 8. Slant board available for writing; 9. Pre-teach changes in schedule; 10. Graphic organizers and sentence starters for writing; 11. Student repeat directions back to teacher/frequent checks for understanding; 12. Break tasks into smaller chunks; 13. Allow student room to move and 'wiggle' during seat time; 14. Allow access to a visual timer during independent work time.

6. In the January 19, 2016 IEP Meeting, the IEP Team described Student strengths, listed Parent concerns, and reported data on the Student's progress on the winter 2016 easyCBM<sup>9</sup> tests. The IEP Team also reported the Student's increased skills in speech articulation and self-monitoring personal speech. The Team noted the Student continued to demonstrate difficulty with organization/planning and task initiation in the class setting, particularly in writing.
7. When the IEP Team revised the IEP on May 5, 2016, it added a statement that the Parents had concerns with some difficult behavior the Student was exhibiting. The Parents asked for additional accommodations and more positive behavior support for the Student. The Parents gave the District Team a copy of a new report from the Student's Optometrist, and this report was added to the IEP. In the narrative section of the PLAAFP, the Team noted that the Student was having difficulty following teacher directions, and was sometimes "silly". The Team stated that they would meet again in the fall to consider the eligibility category of Autism Spectrum Disorder and would also consider an Occupational Therapy (OT) Screening for the Student, specifically for handwriting skills. These decisions were documented in a PWN dated May 5, 2016.
8. The IEP Team wrote a new IEP for the Student on January 10, 2017, and in this PLAAFP, the IEP Team identified new strengths and interests the Student was exhibiting. The Parents expressed the concern that the Student was having more difficulty with stuttering, and also

<sup>9</sup> By Parents' request, the Student does not take any other State or District assessments.

shared an Optometrist's report with the Team as well as a Parent checklist. The IEP Team reported new results from District assessments in reading fluency, vocabulary, reading and math, dated fall, 5th grade, 2016. The IEP Team noted in the PLAAFP that the Student had met previous IEP goals in articulation, but was having increased difficulty in speaking fluently. Finally, the IEP Team noted in the PLAAFP that the Student had demonstrated improvement in initiating writing tasks and had also met the goal in basic inferencing from a narrative.

### **Evaluation and Reevaluation Requirements**

9. On May 12, 2016, the Parents sent a letter to IEP Team members summarizing the most recent IEP meeting. In this letter, the Parents expressed the following:
  - a. The Student has dysgraphia and needs OT services as well as specific accommodations added to the IEP to mitigate the effects of the dysgraphia;
  - b. Requested that the District add the Optometrist's recommendations for the Student's vision needs added to the IEP;
  - c. Requested that the District add instruction and support provided by the Speech Language Therapist in the areas of socialization and Executive Functioning;
  - d. Stated that although the other IEP Team members disagreed that the Student needed a Functional Behavior Assessment (FBA), the Parents were still worried about the Student's behavior as described by school staff. The Parents expressed disagreement with the implementation of a "HUG" Hello, Update, Goodbye behavior monitoring card system, and again requested that the District complete an FBA.
10. The Elementary Principal replied to the Parents on May 18, 2016. The Principal informed the Parents that the IEP Team had considered some of the Optometrist's recommendations in light of those that made the most sense educationally. The Principal also noted that after an OT evaluation had been completed the Team would consider the Student's eligibility for these services. Additionally, the Team would consider executive functioning, socialization and need for calming strategies after further evaluation; as these areas were not available to a student identified with a speech articulation disability. Finally, the Principal informed the Parents that the IEP Team could consider an FBA in the fall of 2016, but that staff would like to implement the lower level intervention of the HUG card first. The District sent this letter from the Principal but did not send a Prior Written Notice responding to any of the Parent's requests.
11. On June 13, 2016, the District sent the Parents an IEP goal progress report based on the goals of the January 19, 2016 IEP. The District stated the Student had made progress on all goals.
12. The District held a parent conference on October 17, 2016 with the stated purpose of reviewing existing information about the Student and deciding whether additional testing was needed. At this meeting, the Parents, General Education Teacher, and Case Manager discussed how the Student was faring after a month and a half of 5th grade. Although there is no record of such a discussion in the meeting minutes, the Case Manager sent the Parents a PWN after the meeting, stating the Team had discussed evaluating the Student for Autism Spectrum Disorder (ASD). The Parent refused consent for the evaluation.
13. On November 29, 2016, the Parents sent a letter to the District requesting that the District conduct additional assessment with the Student to determine if the Student needed other Special Education services. Specifically, the Parents requested: "a comprehensive

assessment in the areas of academic performance/achievement (reading and written expression), motor challenges, attention, speech (specifically stuttering), the need for Assistive Technology (AT), socialization, transition and behavior, specifically a FBA so that we can develop an appropriate behavior plan based on [the Student's] needs and strengths and individualize [the Student's] education so that the Student can make progress toward IEP goals." Further, the Parents noted they suspected a learning disability in written expression such as dysgraphia based on private evaluations<sup>10</sup> and observations of written assignments.

14. On November 30, 2016, the District Special Education Director replied to the Parents via email. In this response, the Director noted that the next step would be for the Team to meet and consider the areas to be evaluated and obtain the Parents' consent for an evaluation. The District Director also noted that the District now uses a formal (team) process for evaluating Assistive Technology needs, rather than referring the evaluation to an AT Specialist. The Director also stated that the District evaluates students for a Specific Learning Disability by focusing on the student's monitored progress and response; as opposed to measuring specific ability, processing or achievement.
15. The Parents met with the Case Manager,<sup>11</sup> Special Education Director, Principal, School Psychologist, General Education Teacher, and Occupational Therapist on December 9, 2016 to discuss the evaluation. The Parents gave the other Team members a list of the Student's strengths and concerns. The 5th grade Teacher noted that the Student needed help to get started on writing tasks; but had not exhibited some of the refusal or rigid behaviors from the previous year; and did not need the HUG card. In addition, the Team discussed various instruments to use for the assessments the Parents had requested, and discussed the AT evaluation.
16. The IEP Team met on January 10, 2017. At this IEP Meeting, the IEP Team decided not to wait for an AT evaluation, but to start the Student using Co-Writer on an iPad in the classroom as a trial. The Team reviewed the IEP and revised it, as noted above. The Team added a writing goal, a speech fluency goal and many additional accommodations and supplementary aids and services. The Parents signed consent to conduct a multi-faceted evaluation; assessing the Student for eligibility in CD, ASD, and SLD in writing. The Team also agreed to conduct an OT evaluation to assess the Student's difficulties with writing. The Meeting Notes indicate that the IEP Team planned to rely upon the information from the OT evaluation rather than conduct an AT evaluation at this time. The District sent the Parents a PWN addressing the issues above; however, the PWN makes no mention of the AT evaluation. The Parents had requested that the District use the Woodcock-Johnson IV, and the Test of Written Language (TOWL). On January 10, 2017, the District notified the Parents the District would use these evaluation tools:
  - a. Woodcock-Johnson Tests of Achievement;
  - b. easyCBM scores, Comprehensive Test of Phonological Processing;
  - c. Wechsler Intelligence Scales;
  - d. Behavior Rating Inventory of Executive Functioning;
  - e. Autism Diagnostic Observation Schedule;
  - f. Childhood Autism Rating Scale;

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<sup>10</sup> In March, 2016, an optometrist who evaluated the student noted in a report that the Student might have Graphomotor Dyspraxia. Other Private providers used the term Dysgraphia.

- g. Social Responsiveness Scale;
  - h. Observations, Developmental Profile and History, and Social Skills Improvement System Rating Scales;
  - i. Goldman-Fristoe Test of Articulation;
  - j. Clinical Evaluation of Language Fundamentals;
  - k. Expressive Vocabulary Test;
  - l. Peabody Picture Vocabulary Test;
  - m. Stuttering Severity Index, Language Sample, CELF -5 Pragmatic Profile and Pragmatic Activities checklist as well as a hearing screening and observation;
  - n. Functional Communication Assessment;
  - o. Beery –Buktenica Developmental Test of Visual-Motor Integration;
  - p. Screening for strength, manual muscle dexterity and coordination, and;
  - q. Observations.
17. Between January 8 and January 12, 2017, the Parents and the District Director exchanged a series of emails about the subject of dysgraphia and SLD. The exchange began when the Parents questioned the Director about a statement the Director made that “dysgraphia can only be diagnosed by a medical or mental health professional and diagnosis is outside the scope of school teams.” The Parents responded and quoted sections of an October 23, 2015 OSERS letter. In this letter, OSERS acknowledges the connections between the definitions of dyslexia, dyscalculia, and dysgraphia and a specific learning disability. OSERS had stated “there is nothing in the IDEA that would prohibit the use of these terms in IDEA evaluation, eligibility determinations, or IEP documents”. Further, OSERS notes the similarities in the definitions.<sup>12</sup>
18. On February 26, 2017, the Parents wrote to the Case Manager and asked if the Student could start using the Co-Writer program to assist with completing unfinished assignments due to being out of the classroom for the variety of evaluations. The Case Manager replied that although the District understood the Parents were not ready to start the trial with Co-Writer, the District was prepared to honor this request and provide the Student with the software on an iPad that could be used in the classroom. The Case Manager taught the Student how to use Co-Writer starting on March 6, 2017, and monitored the Student’s use of it through April 2, 2017. The Case Manager noted that the Student was enjoying using the software and was using it independently.
19. The General Education Teacher conducted a writing assessment in March 2017, and asked the Student to write a piece of persuasive writing; in one instance drafting and writing completely by hand, and in the other, using an iPad with Co-writer. The Teacher rated the documents using the state rubric for evaluating writing samples. The Student scored higher by at least two points in each category when the Student used the iPad with Co-Writer.

The Parent asked the District to send copies of all of the assessment reports five days before the Student’s Eligibility Meeting so that the Parents could read and review the reports before the Eligibility Meeting. The Parents also indicated that they did not want to have two separate meetings to discuss the Student’s eligibility, which was problematic considering the Student’s Communication Disorder (CD) eligibility due date of March 20, 2017.

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<sup>12</sup> Guidance Publication on Educating Students with Dyslexia, Dyscalculia and Dysgraphia. Michael K. Yudin, Assistant Secretary of the United States Department of Education, Office of Special Education and Rehabilitative Services. October 23, 2015.

20. The District prepared a statement which the District and the Parents signed, agreeing to convene the Eligibility Meeting on April 11, 2017. At that time, the parties agreed, they would consider the Student's eligibility for all three areas. In the signed statement, the District offered to meet the original timeline for the CD eligibility and hold that meeting on March 19, 2017. The Parents declined this offer. The District did not memorialize this agreement with a PWN. The CD three-year evaluation was not completed on time.

### **Independent Educational Evaluation**

21. On April 28, 2017, the Parents sent the Special Education Director an email and requested an Independent Education Evaluation (IEE). The Parent expressed dissatisfaction with the District's evaluation of the Student's cognitive/psychological processes, cognitive abilities needed for writing, written language skills, Assistive Technology assessment and the Occupational Therapy assessment. The Special Education Director replied to the Parents on May 1, 2017 notifying the Parents that they were free to choose evaluators who meet the District's requirements. The Special Education Director sent a one-page document outlining the Criteria for IEEs to the Parents. This document did not include any names of professionals qualified to conduct such an evaluation in the region. The criteria for IEEs for the District states specifically that the "District will provide a list of 3-5 qualified independent evaluators to parents considering an IEE."

### **IEP Team**

22. The Speech Language Therapist did not attend either the May 5, 2016 or the January 10, 2017 IEP Meetings. These IEP Meetings were attended by the Student's Case Manager. The Parents contacted the District on May 4, 2017 and asked the District to ensure that the Speech Language Therapist would be present for the May 8, 2017 IEP Meeting, which the District did.

### **Prior Written Notice/Specific Learning Disability**

23. The Eligibility Team met on April 11, 2017. The Parents, School Psychologist, Case Manager, Speech Language Therapist,<sup>13</sup> Autism Specialist, Occupational Therapist, District Director and Principal all attended the meeting. The Parents had had an opportunity to review copies of the evaluation reports prior to the Eligibility Meeting, and in some cases had discussed the reports with the evaluators. At the Eligibility Meeting, the Parents presented an outline about the Student's strengths and challenges. The Eligibility Team discussed the three possible areas of eligibility, and concluded the following:
  - a. The Student was not eligible for Special Education as a Student with a Specific Learning Disability. After reviewing the Student's performance on the intellectual and academic tests, the Eligibility Team concluded the Student was achieving adequately in reading, math and language given appropriate instruction and accommodations. The Eligibility Team had no Response to Intervention (RTI) data to consider, and did not discuss the discrepancy model. The Eligibility Team did consider the results of the Behavior Rating Inventory of Executive Functioning and the Social Skills Improvement System Rating Scales when it discussed the strengths and weaknesses model of evaluating for a Specific Learning Disability.

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<sup>13</sup> The Parents had requested that a different speech language therapist conduct the speech/language evaluation, and so the District asked the middle school therapist to complete it, and this person attended the meeting.

- b. The Eligibility Team reviewed the results of the Speech/Language Evaluation which included testing for fluency, articulation, vocabulary, a hearing screening, and language use skills. The Eligibility Team concluded that the Student was eligible for Special Education as a student with a fluency disorder.
- c. Finally, the Eligibility Team considered the Autism evaluation, including the functional language assessment the childhood rating scale, and observations, and concluded the Student was not eligible under the category of ASD. The Occupational Therapist noted that the Student demonstrated below average skills in handwriting, and decreased muscle tone in posture and control. The Occupational Therapist noted that the Student was eligible for school-based Occupational Therapy centered on the provision of accommodations. The Parents expressed concern that the Eligibility Team had not considered all areas when it evaluated and considered the eligibility criteria for Specific Learning Disability.
- d. The Eligibility Team agreed to schedule another meeting to review the Student's IEP and to discuss the transition to middle school. The Parents stated they did not want to sign the eligibility statements.

24. The District sent the Parents a PWN on April 11, 2017 noting the decisions the Eligibility Team had made and the items the Eligibility Team had reviewed. On April 17, 2017, the Parents emailed the District and expressed concern that the Eligibility Team had not considered the Student's specific challenges when the Team reviewed the testing results in light of the criteria for SLD. The Parents also asked why the District had not provided PWN explaining the District's failure to conduct an Assistive Technology assessment. The Special Education Director wrote back on April 18, 2017, and reviewed some of the IEP Team discussion about the eligibility for SLD. The Special Education Director also informed the Parents that they could choose to ask for an Independent Educational Evaluation (IEE) at District expense if they were dissatisfied with the District's evaluation.

25. The Parents filed this Complaint on May 2, 2017.

### **III. DISCUSSION**

#### **1. Access to Student Education Records:**

The Parents allege that after they requested a copy of the Student's Educational Record on March 14, 2017, the District did provide them with a copy of the record, but the record was incomplete and did not contain a number of items the Parents expected to see. Those items include:

- a) Minutes, notes and parent input forms, including documentation of Parent requests for evaluations or services provision from IEP meetings;
- b) Various notes and reports related to summative and formative assessments, recommendations and other information provided by individuals who had evaluated or assessed the Student, copies of test protocols, writing samples, and evidence collected during AT trial periods;
- c) Various staff working files, including notes from observations of the Student;
- d) Disciplinary referrals;
- e) Copies of classroom data and other information used to determine the Student's eligibility for Special Education, and;
- f) Third party reports of any kind including MDT meeting and observations of the Student.

Under OAR 581-015-2300 and 34 CFR 300.501 and 34 CFR 303.405 (a), a District meets its responsibility to a student with a disability when it provides access to a student's records to the parent. The access must be provided no more than 45 days after a parent has made the request to see the student's records. This includes all education records with respect to identification, evaluation, educational placement and the provision of a free, appropriate public education. Under 34 CFR 99.3, there are two exceptions to records to which parents may not have access. The first is records that are kept in the sole possession of the record maker, e.g. personal notes. The second is records created and maintained by a law enforcement unit for a law enforcement purpose. In addition, test protocols are not considered educational records when they are separate from the material on which the student records his/her answers. Parent are entitled to request an explanation and interpretation of the test results, in which case the appropriate District staff might show the parent the test booklet and the answer sheet.<sup>14</sup>

The Parents requested a wide variety of records for review, including Special Education records, health records, teachers' working files, etc. The Parents agree that records were provided, but allege that the materials provided were incomplete and did not contain everything the Parents had requested. The District responded that Parents did not have the right to view some records, i.e. test protocols, and noted that finding all emails was difficult because the Student was not referred to by name in the emails. The Parents requested the records on March 14, 2017. By the deadline on May 2, 2017, the District had provided the Parents with copies of the Student's Cumulative file (including health, attendance and previous out of district school records, and confidential file (including special education paperwork generated since the Student began attending the District, notes about Student behavioral interactions with peers, copies of meeting minutes, and copies of reports from other service providers which the Parents had given to the District).

During the Complaint Investigation, the District sent both the Complaint Investigator and the Parents more than 500 pages of emails concerning the Student. During the IEP Meeting on May 8, 2017, District staff showed the Parents copies of the test protocols from the evaluations completed earlier in the year. The District noted it did not have copies of previous protocols; per professional practice evaluators destroy the protocol after they have written their reports. In late May, 2017, the District sent the Parents copies of IEPs that were written for the Student in other districts, before the family moved to this District.

The Department does not substantiate the allegation.

## **2. Content of IEP:**

The Parents allege that the District violated the IDEA when it:

- g) Included goals in the Student's IEP that are not measureable;
- h) Did not update the Present Level of Academic Achievement and Functional Performance (PLAAFP) statement with current information about the Student when it wrote the Student's IEP at the annual review meeting;
- i) Did not provide the Parents with information on the Student's progress on IEP goals during the time period under investigation;
- j) Did not address the Student's needs by adding goals attendant to the Student's fluency in speaking;

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<sup>14</sup> Letter to Shuster, 108 LRP 2302 (OSEP 2007)

- k) Suggested to the Parents that the Student needed a summer social skills group, but did not provide any goals in the Student's IEP for instruction in social skills, and;
- l) Refused to add goals in writing to the Student's IEP on the basis of the Student's area of eligibility (Communication Disorder).

- a) Included goals in the Student's IEP that are not measurable;

OAR 581-015-2200 requires that IEPs contain goals that are measurable, but does not specify any specific format in which these goals have to be written. There are many formats by which a goal can be written as measurable. Many Districts have chosen to use the SMART format, an acronym which stands for goals which are Specific, Measurable, Achievable, Realistic, and Time based; however, this format is not required. In this case, the District provided the information about how the goals would be measured by adding objectives with specific ways of measurement included.

The Department does not substantiate this portion of the allegation.

- b) Did not update the Present Level of Academic Achievement and Functional Performance (PLAAPF) statement with current information about the Student when it wrote the Student's IEP at the annual review meeting;

OAR 581-015-2200 requires that the PLAAPF statement of each IEP be current. Simply copying the PLAAPF statement from a student's previous IEP is not sufficient. However, a review of all of the IEPs written during the year validated the District's position that the IEP Team had updated the PLAAPF statements in each of the Student's IEPs. In some cases, particular pieces of information were repeated because they were still relevant.

The Department does not substantiate this portion of the allegation.

- c) Did not provide the Parents with information on the Student's progress on IEP goals during the time period under investigation;

OAR 581-015-2200 requires school districts to report student progress toward IEP goals to the parent at least as often as the district sends report cards. In all of the IEP's written for this Student during the 2016-2017 school year, the District wrote that it would inform the Parents of the Student's IEP goal progress at the same time as report cards were distributed. However, in practice, the District has adopted a system of reporting on IEP goal progress at an annual IEP meeting when the date of the IEP meeting is close to the report card date. It became very clear during the interview process that the Parents did not understand that the annual IEP discussion was in lieu of a written IEP goal progress report. In all of the materials the District submitted for review there is only one IEP goals progress report, when there should have been reports on four goals at the end of the 2015-2016 school year; and four at the mid-year reporting period of the 2016-2017 school year.

The Department substantiates this portion of the allegation.

- d) Did not address the Student's needs by adding goals attendant to the Student's fluency in speaking;
- e) Suggested to the Parents that the Student needed a summer social skills group, but did not provide any goals in the Student's IEP for instruction in social skills, and;

- f) Refused to add goals in writing to the Student's IEP on the basis of the Student's area of eligibility (Communication Disorder).

OAR 581-015-2200 specifies that all areas of a student's needs must be addressed in the IEP, either through Specially Designed Instruction, related services, or supplementary aids and services. Goals in each of the areas listed above were added to the Student's IEPs. Additionally, the District added writing goals to the IEP in January, 2017.

The Department does not substantiate these portions of the allegation.

### **3. Evaluation and Reevaluation Requirements:**

The Parents allege that the District violated the IDEA when it:

- a) Refused the Parents' requests, made over a period of time, to evaluate the Student for a Specific Learning Disability in written communication using appropriate tools and evaluation methods;
  - b) Refused the Parents' request to conduct a Functional Behavioral Analysis of the Student's behavior;
  - c) Refused the Parents' request to evaluate and consider the Student's needs for Occupational Therapy; and,
  - d) Failed to conduct an evaluation within the required timeline after multiple requests from the Parents. (5/5/16, 10/17/16, and 11/28/16).
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- a) Refused the Parents' requests, made over a period of time, to evaluate the Student for a Specific Learning Disability in written communication using appropriate tools and evaluation methods;

Under OAR 581-015-2105 (1) (2) (3) and 34 CFR 300.301 and 34 CFR 300.303, a District must conduct an evaluation or reevaluation to determine whether or not the Student has a disability or continues to have a disability. The District must complete the evaluation in 60 school days after the parent has signed consent for the evaluation.<sup>15</sup>

On November 29, 2016, the Parents sent a letter to the District requesting that the District conduct a full comprehensive evaluation of the Student to determine the Student's needs in Special Education. The Evaluation Team met on January 10, 2017, and the Parents gave written permission for the District to evaluate the Student for eligibility in the areas of Communication Disorder, Specific Learning Disability—this was the Parents' first formal request for an evaluation for SLD and Autism Spectrum Disorder. This evaluation needed to be completed by April 20, 2017. The difficulty was that the Student's three-year reevaluation for CD was due a month earlier, on March 20, 2017. The District presented a written agreement to the Parents stating that the Parents would waive the March 20, 2017 deadline and that all evaluations would be completed for consideration at an Eligibility Meeting on April 11, 2017. The District met this deadline. However, OAR 581-015-2105 only permits the parties to agree to extend the evaluation timeline in writing when evaluating for SLD, not CD.

The Department substantiates this portion of the allegation.

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<sup>15</sup> OAR 581-015-2110 (5) (a) (b).

- b) Refused the Parents' request to conduct a Functional Behavioral Analysis of the Student's behavior;

The Student experienced some behavioral difficulties during the 2015-2016 school year, but nothing that led to major disciplinary action. When the Parents requested a FBA on May 12, 2016, the District refused. The District sent the Parents a PWN on May 5, 2016 documenting this refusal. An Evaluation Team must consider parents' requests for evaluation, but does not need to accede to them. Based upon the Student's lack of any significant disciplinary history, this was a reasonable decision on the District's part. The District implemented a lower level intervention for the remainder of the 2015-2016 school year, but even that was not needed when the Student began 5th grade in the fall.

The Department does not substantiate this portion of the allegation.

- c) Refused the Parents' request to evaluate and consider the Student's needs for Occupational Therapy;

The Parents Requested an OT evaluation in the spring of 2016. The Principal responded to this request in a May 12, 2016 email to the Parents, stating, "After an OT evaluation had been completed, the Team would consider the Student's eligibility for [OT] services."

The Department does not substantiate this portion of the allegation.

- d) Failed to conduct an evaluation within the required timeline after multiple requests from the Parents.

Even though the Evaluation Team agreed with the Parents that such an evaluation was necessary, the District did not request parental permission to evaluate until January, 10, 2017, and the evaluation was not completed until April 11, 2017.

The Department substantiates this portion of the allegation.

#### **4. Independent Educational Evaluation (IEE):**

The Parents allege that the District violated the IDEA when it did not provide the Parents with information about where an IEE might be obtained and what the applicable District criteria for Independent Educational Evaluations are.

Under OAR 581-015-2305 (1) (2) (3) (4) and 34 CFR 300.502, a District must provide a Parent with information "about where the parents may obtain an independent educational evaluation", and the applicable criteria. The criteria must include information including the location where an evaluation can be obtained, the qualifications of the examiner, and the cost of the evaluation.

When the District received the Parents' request for an IEE, the District sent the Parents a one page document outlining the District criteria for IEEs. Although this document clearly states that the District will provide a list of independent, qualified evaluators, the District did not do so. At a later date, the Director suggested some agencies the Parents might contact to find an evaluator.

The Department substantiates this allegation.

## **5. IEP Team:**

The Parents allege that the District violated the IDEA when it did not ensure that a Speech Language Therapist either attended the Student's IEP meetings during the period under investigation or provided written reports if excused from the meetings.

Under OAR 581-015-2210 and 34 CFR 300.321 a District meets its obligation to convene an appropriate IEP team when it ensures that one member of the team includes "at least one special education teacher of the child or, if appropriate, at least one special education provider of the child."

In this case, the Student's original area of eligibility was Communication Disorder. Therefore, for several years, a Speech Language Therapist served as Case Manager for the Student and conducted the IEP team meetings, as a Special Education provider for the Student. When the Team added a writing goal to the Student's IEP, the District changed the Case Manager to the Resource Room Teacher. At two of the subsequent IEP meetings, only the Resource Room Teacher attended the meetings as the Special Education Teacher/Provider, even though the Student was still receiving services from the Speech Language Therapist. At the Eligibility Meeting held on April 11, 2017, a new Speech Language Therapist attended. The District satisfied its responsibility to have at least one Special Education teacher/provider present at all IEP meetings.

The Department does not substantiate this allegation.

## **6. Prior Written Notice (PWN):**

The Parents allege the District violated the IDEA when it failed to provide the Parents with Prior Written Notice on a number of occasions about several issues. These issues included:

- a) District refusal to provide an Assistive Technology assessment, and;
- b) District refusal to provide the Parents with copies of writing samples used to evaluate the Student for SLD eligibility.

Under OAR 581-015-2310 and 34 CFR 300.503, a District is obligated to provide parents with Prior Written Notice when the District either proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education.

- a) The Parents asked for an assessment for AT on November 29, 2016. The IEP Team then discussed this at the January 10, 2017 IEP Meeting. The Parents expressed concern that the Student was going to be pulled out of class for a lot of other evaluations, and the Team decided to simply have an iPad available to the Student in the classroom. The District did not mention this in the PWN that was written after the meeting. The Parent requested a trial of Co-Writer in late February, and the District implemented this outside of its own AT Assessment procedure. Although the District did not refuse to begin a formal AT assessment, it should have notified the Parents in a PWN that it was delaying the start of the AT assessment in accordance with the Parents' wishes expressed at the January IEP Meeting.

The Department substantiates this portion of the allegation.

- b) The District did provide writing samples to the Parents at the April 11, 2017 Eligibility Meeting. In fact, the Parents shared these samples with the Complaint Investigator.

The Department does not substantiate this portion of the allegation.

### **7. Review and Revision of IEPs:**

The Parents allege the District violated the IDEA when it failed to review and revise the Student's IEP during the time period under investigation even though the Student's easyCBM test results show regression in skills.

Under OAR 581-015-2225 and 34 CFR 300.324 (b), a District meets its responsibility to a student with a disability when it reviews and revises the Student's IEP to address any lack of expected progress toward the annual IEP goals and in the general education curriculum.

When the District administered the scheduled winter 2017 easyCBM tests, the Student demonstrated a decrease in reading fluency. However, the Student had also been exhibiting an increase in verbal dysfluency during this time period. The District attributed the decrease in reading fluency to the difficulties the Student was having in verbal dysfluency, but chose not to revise the IEP. The Speech Language Therapist stated that the dysfluency was minimal at that point and that to focus on it might have a negative rather than positive effect.

The Department does not substantiate this allegation.

### **8. Specific Learning Disability (SLD):**

The Parents allege the District violated the IDEA when it did not:

- a) Use the appropriate tools, and evaluation strategies to evaluate the Student's eligibility for SLD using the Strengths and Weaknesses model;
- b) Did not consider all information available in establishing the Student's eligibility for SLD using the Strength and Weaknesses model, and;
- c) Did not address all of the criteria used to establish a Student's eligibility as a student with a SLD under the Strengths and Weaknesses model.

Under OAR 581-015-2170 and 34 CFR 300.300.8, 34 CFR 300.306 and 300.307, a District is obligated to conduct an evaluation using specified types of measures (not specific tests), in order to determine whether or not a student has a specific learning disability. The data gathered in this evaluation must be considered in using the framework of one of two different models: Response to Intervention (RTI), or Student's Strengths and Weaknesses. When using Strengths and Weaknesses criteria, the Eligibility Team must evaluate the "student's strengths and weaknesses in performance and achievement or both, relative to age, state-approved grade level standards or intellectual development".

When the Evaluation Team met to consider the Student's eligibility as student with a SLD, the Eligibility Team used the Strengths and Weaknesses model criteria. The data gathered when the Eligibility Team conducted the comprehensive evaluation clearly indicated that the Student was achieving adequately for the Student's age and as compared to grade level standards in all academic skill areas.

The Department does not substantiate this allegation.

**9. When IEP’s Must Be in Effect:**

The Parents allege the District violated the IDEA when it did not implement the Student’s IEP as written. The Parents allege the District failed to provide accommodations and supports to the Student in both the classroom and other school settings, and that the District did not provide support to the Student’s teachers about the Student’s SLD in written expression. (OAR 581-015-2220 (1) (b) and 34 CFR 300.323)

Under OAR 581-015-2220 (1) (b)) and 34 CFR 300.323, 300.324, a district meets its responsibilities to a student with disabilities when it has an IEP in place for the student at the beginning of a school year. Further, the district meets its responsibilities when it provides the “special education and related services” in accordance with the IEP.<sup>16</sup> This includes the supplementary aids and services, accommodations, modifications and supports to school staff.

Over the course of the year under investigation, the Student’s IEP Team considered and continued to develop the list of accommodations and modifications the Student needed in the general education classroom in order to be successful. Many of the accommodations which were added came directly from the Student’s General Education Teacher, as accommodations the Teacher had tried and found successful. The Student was not found eligible for Special Education services under SLD in written expression; therefore, there were no Special Education supports required. Although staff did not have written data to substantiate the provision of the accommodations, the degree of knowledge they demonstrated about these accommodations during the interviews made it obvious that they had implemented them in the classroom.

The Department does not substantiate this allegation.

**V. CORRECTIVE ACTION<sup>17</sup>**

*In the Matter of Ashland School District 5*  
Case No. 17-054-013

No.	Action Required	Submissions <sup>18</sup>	Due Date
1.	<b><u>Content of IEP:</u></b> In conjunction with ODE staff, the District will provide professional development for the special education staff at the school the	Provide draft agenda of professional development to ODE for approval by September 15, 2017.	<b>September 15, 2017</b>

<sup>16</sup> OAR 581-015-2220 (1) (b)

<sup>17</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)).

<sup>18</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: [raeannray@state.or.us](mailto:raeannray@state.or.us); fax number (503) 378-5156.

	<p>Student attends, including related service personnel who provide services at the school (i.e., SLP, OT). The training will include:</p> <ol style="list-style-type: none"> <li>1) All requirements and regulations related to Prior Written Notice and when provided to parents</li> <li>2) All requirements and regulations regarding progress reporting to parents</li> <li>3) All requirements related to 3-year re-evaluation timelines.</li> </ol>	<p>Provide documentation of training by sending to ODE copies of all training materials, and sign-in sheet of participants.</p>	<p><b>October 1, 2017</b></p>
2.	<p><b><u>Evaluation and Reevaluation Requirements:</u></b></p>	<p>See Corrective Action 1</p>	
3.	<p><b><u>Independent Educational Evaluation:</u></b>  The District will develop a list of possible independent education evaluators in the following areas:  Education/academics, psychological, speech-language, occupational therapy and physical therapy</p>	<p>This list of potential Independent Education Evaluators will be provided to ODE.</p>	<p><b>September 15, 2017</b></p>
4.	<p><b><u>Prior Written Notice:</u></b></p>	<p>See Corrective Action 1</p>	

Dated: this 5th day July of 2017

  


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

Mailing Date: July 5, 2017