

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Tigard Tualatin School        )  
District 23J    )  
  )  
  )

FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 12-054-019

**I. BACKGROUND**

On June 5, 2012, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent of a student (Student) residing in the Tigard Tualatin School District 23J (District). The parent, on behalf of the adult student, 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 and by US mail on June 5, 2012.

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

On June 12, 2012, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of June 27, 2012.

On June 29,<sup>3</sup> 2012, the District submitted a timely response indicating they disputed all but one of the allegations in the parent's complaint. The response packet contained IEP's, evaluation and eligibility reports; transcripts and progress reports; prior written notices; meeting notices; and copies of correspondence between the District and the parent. The Department's complaint investigator determined that on-site interviews were needed. On July 16–17, 2012 the complaint investigator interviewed the District's Special Education Director, Associate Special Education Director, a school psychologist, a speech and language therapist, two special education teachers and a general education geometry teacher. The parent submitted a response packet to the investigator and to the District on July 11<sup>th</sup> and July 13<sup>th</sup> respectively. The investigator interviewed the parent, the student, and the student's advocate on July 18, 2012. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in

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

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

<sup>3</sup> Upon request, the investigator allowed the District two additional days to prepare the response.

Section IV. This complaint covers the one year period from June 5, 2011 to the filing of this complaint on June 5, 2012.

	<u>Allegations</u>	<u>Conclusions</u>
	<p>Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:</p>	
<p>1.</p>	<p><b><u>Content of the IEP:</u></b></p> <p>a. Not including transition goals with measureable outcomes that facilitate achievement of post-secondary goals; and not including transition goals that accurately reflect the student's skill level (OAR 581-015-2200 (2) and 34 CFR 300.320 (b)(1)(2)).</p> <p>b. Not providing specially designed instruction based on the student's skill level in math. Rather, the District placed the student in a geometry class that did not reflect the student's stated IEP goals and objectives; (OAR 581-015-2200(1) and 34 CFR 300.320).</p> <p>c. Not writing a Present Level of Academic Achievement and Functional Performance that accurately reflected the student's functional level of performance; (OAR 581-015-2200(1)(a) and 34 CFR 300.320(a)(1)).</p> <p>d. Not designing transition services based on age appropriate transition assessments related to training, education, employment, and independent living skills; (OAR 581-015-2200(2) and 34 CFR 300.320(b)).</p>	<p><b><u>1.a. Not Substantiated.</u></b>            The transition goals are to facilitate achievement in post secondary school environments, they are based on the student's skill level, and they include measurable outcomes. Therefore, the Department does not substantiate this allegation and orders no corrective action.</p> <p><b><u>1.b. Not Substantiated.</u></b>            The team was focused on educating the student in the general education curriculum as much as possible and thus decided to schedule the student into the Geometry Credit Recovery class for the senior year. The math goal was measureable and designed specifically for the student. Therefore, the Department does not substantiate the allegation and does not order corrective action</p> <p><b><u>1.c Not Substantiated.</u></b>            The team did not see a need to assess the student's functional performance. The transition services were created based on a number of assessments including the OAKs and ACT. Therefore, the Department does not substantiate the allegation and orders no corrective action.</p> <p><b><u>1.d. Not Substantiated.</u></b>            The student's IEP includes the course of study and transition services, related to the student's interests in college and applied arts and based on age-appropriate assessments. Therefore the Department does not substantiate the allegation and orders no corrective action.</p>

<p>2.</p>	<p><b><u>Parental Participation – General and Additional Parent Participation Requirements for IEP and Placement Meetings:</u></b></p> <p>a. Not considering information the parent presented at the IEP meetings held on September 29, 2011 and February 23, 2012; (OAR 581-015-2190 &amp; 2195 and 34 CFR 300.501).</p> <p>b. Not involving the parent in the IDEA related decision-making process about the type of diploma the student was able to earn (OAR 581-015-2190 &amp; 2195 and 34 CFR 300.501).</p> <p>c. Not considering the specific concerns of the parent about the student’s math goals and supports, transition concerns, functional application of speech goals related to vocational tasks, functional and adaptive deficits, and the need for current cognitive and adaptive assessments to assist in transition planning; (OAR 581-015-2205(1)(b) and 34 CFR 300.324(a)(i) &amp; (ii)).</p>	<p><b><u>2.a. Not Substantiated.</u></b> Given all of this, it is clear the District did consider the information the parent presented, but that the two parties could not come to consensus about the need for evaluation. Therefore, the Department does not substantiate the allegation and does not order corrective action.</p> <p><b><u>2.b. Not Substantiated.</u></b> The parent did participate fully in the diploma discussion, and therefore the Department does not substantiate this allegation and does not order corrective action.</p> <p><b><u>2.c. Not Substantiated.</u></b> The District responded to the parent’s emails in a timely manner and provided evidence of considering parent’s concerns in meetings and via a pre-meeting questionnaire. Also, as noted above, the District used appropriate assessments for transition planning. Therefore, the Department does not substantiate this allegation and does not order corrective action.</p>
<p>3.</p>	<p><b><u>IEP Team:</u></b></p> <p>a. Not inviting an outside agency to participate in the 9/29/11 IEP meeting despite parent and advocate concerns about the student’s ability to communicate in vocational settings (OAR 581-015-2210(2)(b) and 34 CFR 300.321(b)(3)).</p>	<p><b><u>3.a Not Substantiated.</u></b> The District had no reason to believe the student needed the services for Transition from another agency. As such, no specialist at the September 29, 2011 IEP meeting was needed; The Department does not substantiate this allegation and does not order corrective action.</p>
<p>4.</p>	<p><b><u>General Evaluation and Reevaluation Procedures:</u></b></p> <p>a. Not evaluating the student in all areas of suspected disability when data, information from the parent and advocate, curriculum-based</p>	<p><b><u>4.a. Not Substantiated.</u></b> The District could not have evaluated the student as valid consent to evaluate was never provided by the adult student.</p>

	<p>measures, physician's medical statement, state-standardized assessments and ACT results were presented to the team and repeatedly delaying additional evaluations (OAR 581-015-2110 and 34 CFR 300.304(c)).</p> <p>b. Not informing the parent of the parent's right to request a reevaluation (OAR 581-015-2105(4)(b) and 34 CFR 300.303(a)(2)).</p> <p>c. Not observing the student in a general education setting during the reevaluation process (OAR 581-015-2110(4) and 34 CFR 300.310).</p>	<p>Therefore, the Department does not substantiate this allegation and orders no corrective action.</p> <p><b><u>4.b. Not Substantiated.</u></b> It is reasonable to conclude that the parent knew about a parent's right to request a reevaluation. However, the parent refused to grant consent because the parent disagreed with the type of assessment the District wanted to conduct. Therefore, the Department does not substantiate this allegation and orders no corrective action.</p> <p><b><u>4.c. Not Substantiated.</u></b> In this case, the District was not conducting a comprehensive evaluation for purposes of eligibility, but instead was honoring the parent's request to evaluate the student's cognitive and adaptive skills. There was no requirement to observe the student in any specific classroom or learning environment, and so the Department does not substantiate the allegation and orders no corrective action.</p>
5.	<p><b><u>When IEP's Are In Effect :</u></b></p> <p>a. Not writing an IEP that adequately described the general education teacher's responsibility relative to the implementation of the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP (OAR 581-015-2220(3)(a) &amp; (b) and 34 CFR 300.323(d)(2)).</p>	<p><b><u>5.a. Not Substantiated.</u></b> In fact, the Geometry teacher was quite knowledgeable and well informed about the student; and about the difference between accommodations and modifications, and was very thoughtful about providing them correctly. The Department does not substantiate this allegation and orders no corrective action.</p>
6.	<p><b><u>Placements and Least Restrictive Environment:</u></b></p> <p>a. Not considering a continuum of placement options at the September 29, 2011 IEP team meeting to</p>	<p><b><u>6.a. Not Substantiated.</u></b> There was no documentation to suggest that the team should consider a more restrictive</p>

	consider placemen. (OAR 581-015-2240 – 2250 and 34 CFR 300.114-116).	environment; therefore the Department does not substantiate the allegation and orders no corrective action.
7.	<p><b><u>Prior Written Notice:</u></b></p> <p>a. Not sending an accurate and complete Prior Written Notice after the February 23, 2012 IEP meeting (OAR 581-015-2310 and 34 CFR 300.503).</p>	<p><b><u>7.a. Not Substantiated.</u></b> The PWN meets state and federal requirements; therefore, the Department does not substantiate the allegation and orders no corrective action.</p>
8.	<p><b><u>Review and Revision of IEP's:</u></b></p> <p>a. Not sending a copy of the revised IEP to the parent after the February 23, 2012 IEP meeting (OAR 581-015-2225 and 34 CFR 300.322(f)).</p> <p>b. Not considering information the parent provided at the June 1, 2012 IEP meeting and refusing to revise the IEP based on this information (OAR 581-015-2225 and 34CFR 300.324(b)).</p>	<p><b><u>8.a. Not Contested.</u></b> The District does not contest this allegation as it does not have documentation that the parent received a copy of the IEP with the revision noted. See Corrective Action below.</p> <p><b><u>8.b Not Substantiated.</u></b> In this case, the information provided was considered by the team but no revision to the IEP was necessary for FAPE. Therefore, the Department does not substantiate the allegation and orders no corrective action.</p>
9.	<p><b><u>Free Appropriate Public Education:</u></b></p> <p>a. The Oregon Standard IEP requires the IEP team to record the anticipated date of graduation and the type of diploma or alternate document the IEP Team anticipates the student will receive. The parents allege the District did not award the appropriate type of diploma to the student and thus denied FAPE (OAR 581-015-2040 &amp; 2045 and 34 CFR 300.101-102)</p>	<p><b><u>9.a. Not Substantiated.</u></b> The Department does not substantiate this allegation and orders no corrective action because the District did not need to change the student's diploma type in order to continue providing FAPE to the student. See discussion for allegations 2b, 3a, and 8.b.</p>
	<p><b><u>Proposed Corrective Actions:</u></b> The parent requests.<sup>4</sup></p> <p>1. Appropriate transition plan services to be devised with appropriate</p>	See Corrective Action

<sup>4</sup> The parent amended the Proposed Corrective Actions after a conversation with the Department's legal specialist. These amendments are shown in italics and underlined.

transition specialists, the student's advocates and appropriate outside agencies to address the required areas of training, education, employment, and as needed, independent living skills for 990 hours per year to be completed through 18-21 year post-secondary transition services. This plan should be based on comprehensive information about the student's strengths/weaknesses, abilities, preferences, and interests as guaranteed by IDEA. Transition plan should be measureable outcomes or actionable goals that facilitate achievement of post-secondary outcomes.

2. Modifications to diploma type (from regular to modified) to reflect modified math curriculum and a diploma track that best aligns with the student's strength/weaknesses and needs. Implementation of supports and services to meet the student's specified and actionable post-secondary objectives in all required areas to be completed through 18-21 year post-secondary transition services. This would constitute a change in placement.

Option 2: Complainant learned during the complaint process that OAR 581-015-2045(3) allows that "if a school district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE," and would be eligible for supports and services to meet specified and actionable post-secondary goals and objectives in all required areas for 990 hours per year to be completed through 18-21 year post-secondary transition services. It would also be acceptable to the student to retain the regular diploma if access to appropriate Transition services can be assured under this statute.

	<p><u>Appropriate transition services include a coordinated set of activities designed to facilitate successful movement from school to post school activities.</u></p> <p><u>Educational transition activities include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. If the District is not willing to provide appropriate transition services, three years of compensatory transition services equivalent to the 990 hours per year shall be provided to the student by an accredited and mutually agreeable outside agency, to be funded in full by the district.</u></p> <p>3. The student's three year eligibility evaluation due on September 30, 2012 needs to include <u>comprehensive</u> components to assess all areas of suspected disability including, but not limited to, <u>Other Health Impairment</u>, Autism Spectrum Disorder and for a Specific Learning Disability in Math.</p> <p>4. District administrator <u>will be</u> present at all team meetings and <u>all decisions will be agreed upon in writing and confirmed by both parties.</u></p>	
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**III. FINDINGS OF FACT**

- 1) The student is 18 years old and resides in the Tigard Tualatin School District.
- 2) Procedural rights transferred to the student upon 18<sup>th</sup> Birthday, October 12, 2011.<sup>5</sup>
- 3) The student graduated from Tigard High School on June 6, 2012 with a standard high school diploma and a cumulative GPA of 3.22 and 31.00 total credits.
- 4) Prior to graduation, the student was eligible for special education as a student with an Other Health Impairment (OHI), due to Attention Deficit Hyperactivity Disorder (ADHD) and an epilepsy

<sup>5</sup> OAR 581-015-2325

seizure disorder. The student's eligibility for OHI was established on October 1, 2009.

- 5) On February 8, 2011, the parent asked the team to evaluate the student because the parent was concerned that the student lacked the ability to problem solve independently. The District team disagreed because the team believed that the student's current educational programming was appropriate for the student. However, the team did agree to evaluate the student by doing a file review, and administering a Behavior Rating Inventory of Executive Functioning (BRIEF)<sup>6</sup>; a Behavior Assessment Scale for Children (BASC)<sup>7</sup> and conducting two observations. The team asked the parent for permission to do this evaluation and the parent refused because it did not include intellectual and adaptive assessments.
- 6) On September 6, 2011, the parent sent an email to the student's case manager and expressed concern about the student's inability to learn the geometry concepts in order to receive credit for the second semester—after "multiple interventions and supports." The parent also expressed concern that the stakes for the geometry class were high (i.e., credit for graduation), without any additional support such as math lab. The parent also suggested that the team had data which could suggest the student might have a specific learning disability in math.
- 7) The case manager replied to the parent's email on September 6, 2011, and assured the parent that the Geometry Credit Recovery Class, paired with the Learning Strategies class would provide the student with the "opportunity to receive math instruction support needed."
- 8) On September 24, 2011, the District sent the parent an "IEP meeting parent questionnaire." The seven questions on the questionnaire ask the parent to address the student's strengths; the parent's current concerns; what the student can do independently; and, what are successful reinforcers that motivate the student. In addition, the questionnaire gives the parent an opportunity to ask for more information on any subject, and who will attend the IEP meeting for the student. The parent completed and returned the questionnaire and noted the following:
  - a) Strengths: thoughtful, creative, determined focus on favorite topics, positive about school, passed OAKS reading benchmark, and becoming more confident.
  - b) Concerns: new plan to meet math goals; did not meet last year's math goal—what will school do differently; application of communication goals in varied and vocationally applicable settings; and, transition—appropriate steps to establish post-high plan, establishing a better measure of independence in organizational skills, e.g., without parent reminders. Testing to help avail the student of a meaningful transition plan.
  - c) Independence: The student needs an extraordinary number of reminders to complete any tasks in the home including personal care tasks, chores, maintaining schedule/time awareness, homework, street safety, etc. Still needs support with many favored activities.
  - d) Reinforcers: Beatles music, YouTube, scrapbooking, food, American Girl Dolls, Barbies, Disneyland, Christmas/Santa (all holidays).
  - e) Information Needed: Diploma Criteria and Math OAKS necessary to graduate??

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<sup>6</sup> Published By Western Psychological Services, the Behavior Rating Inventory of Executive Function (BRIEF) is a set of "...parent and teacher questionnaires [to] assess children's executive function in home and school environments. The BRIEF is useful in evaluating 5- through 18-year-olds with developmental and acquired neurological conditions such as learning disabilities, ADHD, traumatic brain injury, low birth weight, Tourette's Disorder, and autism.

<sup>7</sup> Published by PsychCorp, the Behavior Assessment System for Children (BASC) is a comprehensive set of rating scales and forms for ages 2 – 21. Intended to be used to "...understand the behaviors and emotions of children and adolescents. BASC-2 applies a triangulation method for gathering information, analyzing the child's behavior from three perspectives - By analyzing the child's behavior from three perspectives—Self, Teacher, and Parent—to attempt to identify adaptive and maladaptive behavior.



- 9) The District and the parent met on September 29, 2011 to write the student's annual IEP. At this meeting, the District again asked for permission to evaluate in the same areas it had proposed on February 8, 2011. Again, the parent refused to give permission because the proposed evaluation did not include cognitive and intellectual assessments.
- 10) In the IEP Present Level of Academic Achievement and Functional Performance (PLAAFP) statement, the team noted that the student had communication needs; and that the student had had previous eligibility in the area of Communication Disorder (CD). That CD eligibility was discontinued on October 1, 2009.
- 11) The team also noted the adverse impact of the disabilities on the student in the general education setting in the areas of mathematics, organization and remembering facts/assignments; as well as difficulties with problem-solving skills and auditory memory/processing skills. The team described the student as being very organized, as working on ability to advocate for personal needs; and as a positive and hard-working student. The team noted the student enjoyed band and art classes and has maintained at least an overall 3.0 GPS each year in high school.
- 12) The parent expressed concerns in the PLAAFP as follows:
- a) "thoughtful, caring, creative and has a very determined focus on favorite topics";
  - b) "becoming a bit more confident";
  - c) "most concerned at this time with the student's ability to progress in math as well as making a realistic plan for the transition from high to post-high activities"; and
  - d) Concerned regarding the student's "ability to communicate appropriately in the transition from high school to post-high activities including ability to complete tasks and seek support."
- 13) General education teachers in the areas of English, and personal/family studies, noted the student is capable of progressing through classes and has good work completion skills. In math, the teacher noted the student tried hard to do well, asks questions and works well independently but is struggling to show proficiency in math.
- 14) The team described the student's communication skills as improving, with the expectation that the student would be able to meet the social communication goal with 80% accuracy. The student participated in a lunch social skills group and had demonstrated the ability to introduce, maintain, and appropriately change or close a topic, even with new peers in the group.
- 15) In the Math section of the PLAAFP the team wrote that the student's score on the state benchmark assessment in math had improved a total of seven points from the first to the second time the student was assessed during the 2010-2011<sup>8</sup> school year. In April 2011 the student received a grade of 100% for work in the math lab in the 3<sup>rd</sup> quarter. The student had recently scored 36% on a geometry test (64% was the class average score). On a 3 minute math prompt with single/multiple-digit math facts, the student answered with 100% accuracy. Finally, the team noted that the student was currently taking a Geometry credit recovery class, with no homework assignments and with grades based on class tasks and tests to assess proficiency. The student had taken the chapter 4 test twice and scored 31% and 44%.
- 16) On state and district assessments in the 11<sup>th</sup> grade, the student scored 238 on the grade level reading test (236 is the benchmark); 224 on the grade level math test (236 is the benchmark); and

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<sup>8</sup> This data is from a February 2011 progress report, as noted in the PLAAFP.

239 on the grade level science test (240 is the benchmark). The student met the benchmark in writing with a score of 40 (40 is the benchmark).

- 17) The Tigard Tualatin School District administers differing versions of the ACT<sup>9</sup> to students in grades 8—11. Students take the ACT Explore in the 8<sup>th</sup> grade; the ACT PLAN in the 9<sup>th</sup> and 10<sup>th</sup> grades; and the ACT in the 11<sup>th</sup> grade. As explained in the chart<sup>10</sup> below, the ACT test taken in the 11<sup>th</sup> grade tests the five skill areas of English, Mathematics, Reading, Science and offers an optional Writing Test. The District uses the ACT to help a student identify areas of strengths and weaknesses as the student moves through high school. Specifically, the District uses the test to help student's determine readiness for college.

Test			Content
<u>English</u>	75 questions	45 minutes	Measures standard written English and rhetorical skills.
<u>Mathematics</u>	60 questions	60 minutes	Measures mathematical skills students have typically acquired in courses taken up to the beginning of grade 12.
<u>Reading</u>	40 questions	35 minutes	Measures reading comprehension.
<u>Science</u>	40 questions	35 minutes	Measures the interpretation, analysis, evaluation, reasoning, and problem-solving skills required in the natural sciences.
<u>Optional Writing Test</u>	1 prompt	30 minutes	Measures writing skills emphasized in high school English classes and in entry-level college composition courses.

- 18) The student took the ACT in the spring of 2011 and these results were summarized in the PLAAFP. A booklet on the company's website entitled "Using Your ACT Results – 2011-2012"<sup>11</sup> explains the student's college readiness by using a benchmark system. "ACT has identified the minimum scores needed on each ACT test to indicate a 50% chance of obtaining a B or higher or about a 75% chance of obtaining a C or higher in the corresponding first-year college course."<sup>12</sup> The student's scores are compared to the benchmarks as identified by ACT in the chart below:

ACT Test	ACT Benchmark Score <sup>13</sup>	Student's Score <sup>14</sup>	College Course
English	18	13	English Composition
Math	22	15	Algebra
Reading	21	10	Social Sciences/Humanities
Science	24	13	Biology

- 19) In the final section of the PLAAFP, the team noted that the student required specially designed

<sup>9</sup> Originally known as American College Testing.

<sup>10</sup> <http://www.actstudent.org/testprep/descriptions/>

<sup>11</sup> <http://media.actstudent.org/documents/uyar.pdf>

<sup>12</sup> *Using Your ACT Results – 2011-2012, "Your ACT Scores, p.5".*

<sup>13</sup> Composite Score

<sup>14</sup> Composite Score

instruction in areas of math, study skills/organization, transition and self-advocacy. The team wrote that the parents' concerns would be addressed in the current IEP goals; and that the classroom expectations mimicked a work environment<sup>15</sup> and would address the student's goals for planning for life after high school.

20) The other components of the September 29, 2011 IEP are outlined in the table below:

Consideration of Special Factors	<ul style="list-style-type: none"> <li>• Has communication needs</li> </ul>
Transition	<ul style="list-style-type: none"> <li>• "The student is interested in exploring careers related to art...and in enrolling in either a community college or vocational college to further explore job and career interests";</li> <li>• Appropriate academic classes to meet requirements to graduate high school with a regular diploma to include Government and Economics;</li> <li>• Will participate in Transition and Self-Advocacy class;</li> <li>• Will participate in Personal and Family Studies class; and</li> <li>• Will participate in elective classes in subject area of art and music.</li> <li>• No other Agency representatives participated or sent information for consideration.</li> <li>• Anticipated graduation date: 6/10/12 with regular diploma.</li> </ul>
Assessment	<ul style="list-style-type: none"> <li>• Standard assessment with accommodations of:               <ul style="list-style-type: none"> <li>--Reading/Literature: Reading the test aloud to an adult if does not meet after initial testing;</li> <li>--Math: Taking test in small group or having someone read questions if does not meet after initial testing;</li> <li>--Writing: Reading the test aloud to an adult if does not meet after initial testing; and</li> <li>--Science: Reading the test aloud to an adult if does not meet after initial testing.</li> </ul> </li> </ul>
Goals	<ul style="list-style-type: none"> <li>• Math: Given instruction, the student will learn geometry concepts to complete 5 chapter test scores of 70% or higher;</li> <li>• Transition: Given instruction the student will analyze and explore personal characteristics related to personal, educational and careers to create a realistic plan of post-high activities;</li> <li>• Organization: Given instruction, the student will use appropriate strategies for learning to complete assigned tasks; and</li> <li>• Self-Advocacy: Given instruction, the student will demonstrate appropriate verbal response and will ask for support when speaking with adults and peers in order to express self in a variety of settings or situations on 4 of 5 occasions.</li> </ul>
Specially Designed Instruction	<ul style="list-style-type: none"> <li>• Math—90 minutes, two times per week in general education classroom;</li> <li>• Math—30 minutes, two times per week in resource classroom;</li> <li>• Study Skills &amp; Organization—90 minutes, two times per week in resource classroom;</li> <li>• Transition—45 minutes, two times per week in resource</li> </ul>

<sup>15</sup> In areas of "communication, task completion, requesting support, and identifying strengths and areas needing improvement in small and large group settings."

	<ul style="list-style-type: none"> <li>classroom; and</li> <li>• Self-Advocacy—45 minutes two times per week.</li> </ul>
Supplementary Aids and Services; Modifications and Accommodations; Supports for School Personnel	<ul style="list-style-type: none"> <li>• Check-in for organization—one time per week;</li> <li>• Copy or graphic organized notes—when requested by student, daily;</li> <li>• Adult clarification of directions—daily, all classes</li> <li>• Preferential seating chosen by teacher—daily all classes;</li> <li>• Criteria sheet for long-term assignments—given a long term assignment;</li> <li>• Teacher check in before test—before the student takes a test;</li> <li>• Access to formula chart/cue card—for all math problems;</li> <li>• Mainstream Learning Profile to teachers-- one time per schedule change; and</li> <li>• SLP consult with Learning Specialist—20 minutes one time per month.</li> </ul>
Non-participation justification	<ul style="list-style-type: none"> <li>• Student will participate in Learning Strategies class for math, self-advocacy and study skills and organization for 90 minutes every other day and Transition and Self-Advocacy class for 90 minutes, every other day.</li> </ul>

21) Based on the IEP, the IEP team separately completed the placement determination page in this manner:

Placement Determination	The team considered and selected only placement option: Regular education with small group support for math, study skills and organization and transition.
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22) Following this IEP meeting, the team sent the parent a Prior Written Notice stating that the team had met and had amended the IEP goals based on current academic/progress and need. The team also informed the parent that it had considered providing more or less support than described in the IEP, but had agreed the plan as written in the IEP was appropriate for the student at the time<sup>16</sup>. The parent told the investigator that the parent and advocate did not believe their concerns (as expressed in the September 6, 2011 email and the September 24, 2011 parent questionnaire) had been adequately addressed during the meeting.

23) On January 25, 2012, the case manager sent an email to the parent. The case manager forwarded information received from the Geometry Credit Recovery teacher. The Geometry teacher stated the student had taken a third test on one of the required chapters and had only achieved 56% accuracy on the test. Further, the geometry teacher expressed disappointment that the student was not “writing the work down” when doing the problems but was only using a calculator. In addition, the student was not taking on-line quizzes for practice. The case manager reported to the parent that the case manager had discussed the situation with the student and had alerted the student’s Learning Strategies teacher to prompt the student to use the resources and to write the work down when solving problems.

24) The parent replied on January 25, 2012 and asked the case manager to consider the parent’s concerns. In the email, the parent outlined the concerns as follows:

<sup>16</sup> At the time, the District’s practice was to take no formal notes during an IEP meeting.

- a) The student doesn't know what the student doesn't know and therefore can't identify what supports are needed;
- b) The District has never fully realized the extent of the student's disabilities;
- c) When the District asked the parent to stop helping the student with geometry homework at home, the student struggled more with the subject in school;
- d) The parent asked the Geometry teacher to send a copy of the most recent test the student had taken and not passed so that the parent could work with the student on the difficult areas; along with a list of the chapters the student needed to complete in order to gain the credit;
- e) The parent believed the District needed to do more testing with the student to identify the student's cognitive skills, how the student thinks, the student's adaptive skills and mathematical abilities;
- f) The parent asked the District to send home a consent for evaluation as outlined above (d) for immediate signature;
- g) The parent was willing to meet with the team, including the Geometry teacher, to discuss ways to support the student in geometry.

- 25) The Geometry teacher sent the parent an email on January 27, 2012. The teacher explained the math department policy on not sending copies of tests home. The teacher also wrote that the student had passed a chapter on Triangle Congruence and needed to complete the chapters on Polygons and Quadrilaterals and Extending Perimeter; Circumference and Area; as well as the chapter on Circles.
- 26) The case manager emailed the parent on January 31, 2012 and asked the parent for some dates when the parent could meet to discuss the concerns in the January 25, 2012 email.
- 27) Between February 3 and February 9, 2012, the parent and the case manager exchanged several emails to arrange a meeting date on February 23, 2012. In an email sent on February 6, 2012, the parent wrote: "Given the distance of these dates, I would like to refer to the request in my January 25<sup>th</sup> email to provide permission to assess via email/PDF in the noted areas of concern so that this process could begin without delay. In order for this information to be helpful in transition planning and guiding next steps for the student, waiting until we meet does not seem to be in best interest." The case manager replied on February 8, 2012 and stated that the team would discuss the parent's concerns and assessment request on February 23, 2012 when they all met.
- 28) The team met on February 23, 2012 to discuss the parent's concerns with the Geometry class. The team decided to add additional accommodations to the student's IEP. The accommodations were: the opportunity to test in an alternate location (daily, given a test); and the opportunity to use student created math notes for both math tests<sup>17</sup> and assignments. The parent questioned whether or not these accommodations were really modifications and thus, constituted specially designed instruction. The Geometry teacher told the investigator that the teacher believed the use of the annotated notes did not modify or change the curriculum in any substantial way. At the meeting, the case manager took some notes about the discussion in the meeting.
- 29) These meeting notes also include references to some discussion about testing: "Parent expressed concern about self-care,<sup>18</sup> when team asked for more information, no specifics were provided." During the interview, while the student was not present, the parent explained to the investigator

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<sup>17</sup> The Geometry teacher gave each student in the class a list of postulates, theorems, and formulas to which students were allowed to add notes for help in remembering. However, during the tests, the students were only allowed to use the sheet with only the postulates, theorems and formulas, and not the sheet with their personal notes. The accommodation allowed this student to use the list with personal notes.

the parent's concerns about self are. Parent stated student needs constant reminders to wash hair, brush teeth, put on clean clothes; as well as constant help to manage other personal self-care issues. In addition, the parent stated the student cannot travel independently on the bus, has difficulty with cooking, shopping and managing money. The parents do not believe the student will ever be able to drive, due to a high level of distractibility. In the meeting, the team discussed transition and the case manager noted that the student expressed a desire to go to art school. The case manager recorded that the team wondered how the transition plan would look different and whether or not the student had researched requirements to get into art school. The team sent the parent a Prior Written Notice (PWN) documenting the decisions made at the meeting. The PWN documents the decision on the accommodations and states that the team discussed changes to current goals regarding transition, but decided to make no changes at the time. The parent states that the PWN is incomplete because it did not include the parent's request to evaluate the student and the District's refusal to do so.

- 30) Also at the February 23, 2012 meeting, the Geometry teacher suggested the student might transfer to a Consumer Math class which might address more substantially the parent's concerns about the student's inability to do "real world" math. The family discussed the option that evening and the parent wrote to the case manager on February 24, 2012 and informed the District that they had chosen not to transfer the student into the Consumer Math class because it seemed too late in the year for the student to start a totally new class. In addition, the parent noted that the Geometry teacher and the student had worked out a good system of support for the student.
- 31) On March 4, 2012, the parent wrote to the case manager and asked the team to have the student sign An Authorization to Use or Disclose Information<sup>19</sup> so that the parent could speak to District administrative staff on the student's behalf. The student signed the form on March 5, 2012 giving permission to both parents and to the advocate.
- 32) On April 6, 2012, the parent wrote to the Associate Director (AD) for Special Education in the District and requested a meeting with the AD to discuss the parent's concerns for testing. In the email, the parent explained that the parent had been requesting adaptive and cognitive testing for a learning disability in math since an IEP meeting in October 2012. The parent stated that the team had refused testing at the most recent meeting. The AD replied on April 9, 2012, and offered to facilitate a meeting with the team. The AD also noted that the student had been allowed access to core programs to this point and had demonstrated essential skills. The AD asked what kind of transition program the parent was requesting.
- 33) The parent responded on April 16, 2012 and stated the opinion that further discussion with the team would not be effective. In this message, the parent stated that the student did not have a post-high plan ready to implement and could not envision how to be ready for a job. Finally, the parent stated the concern that the student was only able to complete the geometry credit recovery class with a significant amount of modifications rather than accommodations. The AD scheduled a meeting for April 24, 2012.
- 34) At the meeting, the District agreed to do cognitive and adaptive testing as the parent requested to help determine programming and possible transition services for the student. On April 30, 2012, the school psychologist sent a prior notice and consent for evaluation form to the parent for signature.<sup>20</sup> On the form, the District stated that the team had considered whether or not to

<sup>19</sup> This document does not give parents or others the authority to make educational decisions on behalf of an adult student.

<sup>20</sup> OAR 581-015-2325 permits an adult student to whom procedural rights have transferred to make a written request that the district appoint a surrogate to make special education decisions on the student's behalf. The student did provide authorization to use and disclose information, to the parent(s) and the advocate, but did not request the appointment of the

evaluate but decided to evaluate based on the parent's request. The District also noted that the student's 3 year eligibility "comes due during the 2012-2013 academic year" and that the student was on track to graduate with a regular diploma in June 2012. The District proposed to assess using a Wechsler Adult Intelligence Scale, Adaptive Behavior Assessment System, Observation and File Review.

- 35) The parent replied to the school psychologist on May 3, 2012 and stated refusal to sign the Consent for Evaluation as written because it did not include the BRIEF or the BASC. The parent also stated disagreement with the language on the form that noted the student was on track to graduate with a regular diploma. The parent edited the Consent for Evaluation form and sent it back to the school psychologist attached to the email.
- 36) The school psychologist accepted the suggested changes, added the BRIEF and the BASC, and sent it back to the parent for signature on May 3, 2012. The parent signed the Consent for Evaluation form and returned it to the District that same day.<sup>21</sup>
- 37) The school psychologist conducted the evaluation and prepared a Draft report dated May 20, 2012. The report is summarized in the table below:

Report Section	Data and Conclusions
Special Education History	<ul style="list-style-type: none"> <li>• Medical statement, 9/26/2006: Diagnoses of epilepsy/seizure disorders, oral-motor speech apraxia, central auditory processing deficit/LE, and ADHD;</li> <li>• Psychological evaluation, 5/2/2002: Cognitive assessment, using WISC-III, indicated full-scale IQ in average range—SS 96.</li> </ul>
BRIEF	<ul style="list-style-type: none"> <li>• Teacher <sup>22</sup> Ratings: Behavioral Regulation Index 47 and 46, Metacognition Index 53 and 44, Global Executive Composite, 51 and 44. A score of 65+ is considered to be significant.</li> <li>• Parent Ratings: Behavioral Regulation Index 77, Metacognition Index 80, Global Executive Composite, 80. A score of 65+ is considered to be significant.</li> <li>• This test was developed to provide a window into the everyday behavior associated with specific domains of self-regulated problem-solving and social function: specifically the student's ability to shift cognitive set and modulate emotions and behavior; to initiate, plan and organize, and sustain future oriented problem solving in working memory.</li> <li>• The school psychologist noted that "the teachers did not perceive the student as having more difficulty with executive function in the ability to initiate, plan, organize and sustain future oriented problem solving; nor did the student struggle in the ability to shift thinking and inhibit emotions and behavior." However, the parent perceived "the student as having additional difficulties in these areas than would be typically expected and that the student struggles to function commensurate</li> </ul>

parent, or anyone else, to make educational decisions on behalf of the student. There is no record that the adult student objected to the actions of the parent regarding consent for evaluation.

<sup>21</sup> The form includes a handwritten note that the information would be used for the purpose of "Determining appropriate transition services, assessments, and diploma options."

<sup>22</sup> Senior English teacher and Band/Economics teacher

	with same-aged peers in these areas.”
BASC, 2 <sup>nd</sup> Edition	<ul style="list-style-type: none"> <li>• Teacher Ratings: Both teachers rated the student as Non-Problematic in all areas except adaptive skills, social skills, leadership, study skills and functional communication in which the English teacher rated the student as being At-Risk.</li> <li>• Parent Ratings: The parent rated the student as being At-Risk in externalizing problems, conduct problems, and depression The parent rated the student as being in the Clinical range in hyperactivity, atypicality, withdrawal, adaptive skills, adaptability, social skills, leadership, activities of daily living, and functional communication.</li> <li>• The student rated self as being At-Risk in atypicality, sense of inadequacy, and hyperactivity; and as Clinical in inattention/hyperactivity, attention problems and self-reliance.</li> <li>• This test rates the student in three areas: Externalizing Problems (disruptive-behavior problems such as aggression and hyperactivity); Internalizing Problems (anxiety, depressed mood or having somatic complaints); and Adaptive Skills (appropriate emotional expression and control, daily living skills inside and outside the home and communication skills, as well as pro-social, organizational, study and other adaptive skills).</li> <li>• The school psychologist noted that the student exhibited greater difficulty in externalizing behaviors in the home environment than at school; that the student was not significantly different than same-age peers in the area of Internalizing Behaviors; and that the parent rated the student as in the Clinical range in Adaptive Behaviors while one of the teachers rated the student as At-Risk in the same area. The student endorsed a heightened level of concern in Self-Reliance than typical of same-age peers.</li> </ul>
Adaptive Behavior Assessment System 2 <sup>nd</sup> Edition	<ul style="list-style-type: none"> <li>• Teacher Rating: The English teacher rated the student as not significantly different from same-age peers in all areas (conceptual composite, social composite, and practical composite) with a General Adaptive Composite of 105.</li> <li>• In contrast, the parent rated the student as having significant difficulties in all three composite areas with a General Adaptive Composite of 55.</li> <li>• The mean of score on this test is 100 with a standard deviation of 15.</li> <li>• The General Adaptive Composite provides an overall estimate of an individual's level of “life skill” function.</li> <li>• The school psychologist noted that the parent perceived the student as well-below average with extremely under-developed adaptive skills and unable to engage successfully in daily living skills independently. In contrast, the teacher viewed the student as having average adaptive skills in the school setting.</li> </ul>
Intellectual Functioning  Wechsler Adult Intelligence Scale,	<ul style="list-style-type: none"> <li>• Verbal Comprehension Index: 83</li> <li>• Perceptual Reasoning Index: 79</li> <li>• Working Memory Index: 71</li> <li>• Processing Speed Index: 81</li> </ul>



4 <sup>th</sup> Edition	<ul style="list-style-type: none"> <li>• Full-Scale 75</li> <li>• Intellectual Range Classification: Borderline</li> <li>• The school psychologist noted that the test results “are considered a valid estimate of student’s current level of functioning because standard procedures were followed, test conditions were satisfactory, and the student’s attitude and effort were appropriate.”</li> </ul>
Observations:	The school psychologist observed the student in the Transition Self-Advocacy class for twenty minutes, and reported that the student was on-task 100% of the time.

38) The team met on June 1, 2012 to consider the results of the evaluation and to decide what type of diploma the student would receive at graduation on June 8, 2012. The District sent the parent a Prior Written Notice on the same date which summarized the decision made at the meeting. Because the student had met all the requirements, the team decided that the student would receive a regular diploma. The District noted on the PWN that the parent disagreed with the decision because the parent believed the student needed more vocational and self-advocacy instruction. In the discussion at this meeting the team did not consider whether or not the student should remain eligible for FAPE after graduating with the regular diploma.

39) The District sent the parent another PWN on June 8, 2012, in which it notified the parent that the student would no longer be eligible for special education after graduation. The team noted that the student’s transcript showed completion of the high school requirements for a regular diploma and the student had met the benchmark in reading. The team noted that it had not considered any other options or rejected any other options. A Summary of Performance document was attached to the PWN. The team summarized the student’s academic achievement and functional performance as “completed requirements to graduate with a standard diploma on June 8, 2012”. The student’s post-secondary goals from the IEP were listed as: “exploring careers related to art; enrolling in a community college or vocational college to further explore job/career interests”. Finally, the team recommended that the student further explore the college option, take the COMPASS test (community college placement test) and, if the student decided to go to college, the student should meet with the Office for Students with Disabilities at the college.

40) The student received a standard diploma on June 8, 2012.

**Background Information:**

41) As a senior, the student took the following courses and earned grades and credits as noted:

- a) World Literature and Composition; 2 semesters, 1.0 credit, grades of B and C;
- b) Learning Strategies; 2 semesters; 1.0 credit, grades of A and A;
- c) Symphonic Band; 2 semesters, 1.0 credit, grades of B and B;
- d) Personal Family Studies; 1 semester, 0.5 credit, grade of A;
- e) Transition and Self Advocacy; 2 semesters, 1.0 credit, grades of A and A;
- f) 3-D Design; 1 semester, 0.5 credit, grade of A;
- g) Government; 1 semester, 0.5 credit, grade of C;
- h) Geometry Credit Recovery; 1.5 semesters,<sup>23</sup> 0.5 credit, grade of B;
- i) Body Dynamics; 1 semester, 0.5 credit, grade of A;

<sup>23</sup> The student’s transcript shows this class was started in September, 2011 and completed in April, 2012.

- j) Economics; 1 semester, 0.5 credit, grade of A; and
  - k) Painting I; 1 semester, 0.5 credit, grade of A.
- 42) The high school special education case managers distribute a document entitled “Confidential Mainstreaming Learning Profile,” to all teachers who have student’s on IEP’s in their classes. This document explains the student’s disability and specifies the student’s skills and needs in reading, math, writing, study habits, language and behavior. It includes some general comments about the student’s skills, communication needs, and the modifications (accommodations) required by law.
- 43) In the Transition and Self-Advocacy class, the student completed such activities as the Oregon Career Information Center (OCIS) Exploration Packet, and the Transition Planning Inventory. The student also worked on learning self-advocacy skills, setting goals in the areas of personal skills, independent living skills and career and educational skills. The student also heard guest speakers talk about a variety of career options, including art jobs.
- 44) In the Learning Strategies class, the student worked on organizational and test-taking skills, learning styles, planning and managing academic tasks.
- 45) According to the Tigard Tualatin School District Diploma Decision and Consent Form, a modified diploma may be awarded to students who have demonstrated the inability to meet the full set of academic standards established by the State Board of Education for a standard diploma while receiving reasonable modifications and accommodations. The student must have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers (i.e., IEP) or a documented history of a medical condition that creates a barrier to achievement (i.e., 504). The student’s team shall decide before the end of Grade 10 whether or not the student should work toward a modified diploma after a review of student data. However, an IEP team may change the decision regarding the student’s diploma plan after the 10<sup>th</sup> grade.
- 46) The district offers support service classes such as Learning Strategies, Community Vocational Education, Work Skills, Transition/Self-Advocacy, Life Skills, and Community Training. The Learning Strategies class and the Transition/Self-Advocacy class require the student to have been referred and evaluated and to have an IEP. The prerequisite for the Community Vocational Education class is the Work Skills class. The Life Skills class is for students who need “direct instruction in life skills, social skills, relationships, health/nutrition and daily living skills.” The Community Training class is only offered to students who have an IEP and are on a Modified Diploma track. The District also offers a Structured Work Experience class to 11<sup>th</sup> and 12<sup>th</sup> graders who are employed for a minimum of 130 hours per semester.
- 47) District policy IGBAJ, Special Education—Free Appropriate Public Education (FAPE) — states that the “District may, but is not required to, provide special education and related services to a student who has graduated with a regular diploma.” This policy was originally adopted on March 10, 2008, and was revised on April 9, 2009. The District told the investigator that the consideration of and decision to implement this provision of the policy would be an IEP team responsibility.

**The Student’s Perspective:**

- 48) The student wrote a journal entry in the Transition/Self-Advocacy (TSA) class on February 15, 2012 entitled: Prepare and Purpose. The student wrote: “This year I am preparing for life after high school. I am taking TSA class to help me prepare my life after school. We’ve done a lot of worksheets on careers and other topics. I’m still undecided of what I want to do after high school. I

have a purpose in this class. I want to decide what I want to do in here, but I'm still undecided. My other purpose is that I want to graduate this year. I just have to get the rest of my math credit first."

49) During the interview, the student answered questions the investigator asked as follows:

- a) Q. What would you work on if you went back to high school in the fall? A. I want to learn more about getting a job. I want to do a job at school like my friend does. My friend<sup>24</sup> recycles all the newspapers and volunteers at the Tiger Library. I want to do that.
- b) Q. What are your plans for this summer? A. I am doing a video project with my Dad.
- c) Q. What else? A. My cousins are coming from Minnesota.
- d) Q. If you couldn't go back to the high school in the fall, do you have a Plan B? A. No.
- e) Q. What are some of the things you have trouble with? A. I can't keep my room clean, and I can't count money very well. I don't remember things very easily.
- f) Q. What did you learn from the speaker from the Art Institute? A. They don't have any drawing classes.
- g) Q. Would you like to do graphic design? A. No.
- h) Q. Do you have a checkbook or savings account? A. No.
- i) Q. Do you have a copy of your IEP? A. No, my Mom keeps all that stuff.
- j) Q. What would you have done differently in high school? A. I wish I had not said no to getting a job<sup>25</sup>.
- k) Q. What did you learn that helped you pass Geometry? A. I learned to show my work in writing and to ask more questions.
- l) Q. How would those skills help you in a job? A. I don't know.

#### IV. DISCUSSION

##### 1. Content of the IEP:

The parent alleged that the District violated IDEA when it:

- a. Did not include transition goals with measureable outcomes that facilitate achievement of post-secondary goals; and not including transition goals that accurately reflect the student's skill level (OAR 581-015-2200(2) and 34 CFR 300.320 (b)(1) & (2)).

Beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals.<sup>26</sup> Pursuant to guidance<sup>27</sup> from the U.S. Department of Education, "...IDEA requires a child's IEP to include measurable postsecondary goals in the areas of training, education, and employment and, where appropriate, independent living skills. Therefore, the only area in which postsecondary goals are not always required in the IEP per IDEA is in the area of independent living skills. It is up to the child's IEP team to determine whether IEP goals related to the development of independent living

<sup>24</sup> The parent reports that the friend is the student's only close friend and has an intellectual disability.

<sup>25</sup> In October 2010, the team met with the student at an IEP meeting, even though the parent could not attend. At the meeting, the case manager asked the student if the student was interested in getting a job through the school, and the student said no.

<sup>26</sup> OAR 581-015-2200

<sup>27</sup> <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C10%2C>; U.S. Department of Education, Questions and Answers On Secondary Transition Revised September 2011

skills are appropriate and necessary for a child to receive FAPE. This same guidance<sup>28</sup> also notes that, in some instances, it would be permissible for the IEP to combine the areas of training and education to address a student's postsecondary plans, if determined appropriate by the IEP team.

In this case, and pursuant to this guidance, the IEP team wrote a postsecondary goal for the student which addressed the student's assessed interests in attending college and exploring careers related to art. These goals, to explore careers related to art and [to explore] enrollment in community college or vocational school, combine two of the required postsecondary goal topics, training and education, into a single goal and also address future employment. The outcome is measurable by the criteria of "100% completion of each task."

Appropriate measurable postsecondary goals must be based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals. The Department has defined a wide variety of age-appropriate transition assessments in a document entitled "*Age-Appropriate Transition Assessment*," dated 11/18/2011. The Department identifies varying types of assessments, their uses, and gives examples and websites which further explain each assessment. One type of assessment which is described in this publication is the Adaptive Behavior and Independent Living assessment, which helps "determine whether a youth needs a post-secondary goal in the area of independent living." In its response the District also described its use of ACT Explore and related assessment results, as well as the results of the Oregon Assessment System, to define and support course of study decisions.

As described previously, the IEP team determines whether or not the student needs IEP goals related to the development of independent living skills. The parent felt the student also needed functional skills training and goals related to independent living skills, however, the IEP team had no evidence of such need. The parent reported she had "tried once" in a meeting to begin a discussion on the student's difficulty in caring for self, and maintaining personal hygiene at home, but did not continue this discussion "for fear of embarrassing the student in front of the team." School members of the IEP team, however, had no evidence of such needs or concerns...and had not witnessed any student issues with life skills or functional needs in the school setting. Instead, they noted that the student was always "clean and appropriately dressed." School members of the IEP Team did not probe further or request additional assessments in this area because of the student's observed proficiencies in school and the student's abilities to access regular class content and student expectations.

Additionally, in its response to this complaint, the District identified in the student's IEP many examples of the student's proficiency with functional skills and activities including: that student is able to make friends, participates in clubs and activities independently, asks good questions in class, has improved ability to communicate needs at school, has learned to be very organized, and continues to advocate individual needs.

The IEP created post secondary transition goals and services based on the student's observed skill levels as detailed by numerous assessments including the OAKS, ACT, multiple classroom observations, and student provided interest/vocational inventories.

Additionally, it is important to note that in this case the student was a legal adult pursuant to Oregon

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<sup>28</sup> <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C10%2C>; U.S. Department of Education, Questions and Answers On Secondary Transition Revised September 2011

law and the student's legal educational rights had transferred at the age of majority<sup>29</sup> pursuant to IDEA and State law.<sup>30</sup> The record notes that the adult student in this case did not request any assistance with functional skills or independent living skills in any of the IEP meetings in question.

Therefore for all of the reasons noted above the Department does not substantiate the allegations that the student's IEP did not include required content, i.e., transition goals with measureable outcomes that facilitate achievement of post-secondary goals.<sup>31</sup>

The parent alleged that the District violated IDEA when it:

- b. Did not provide specially designed instruction based on the student's skill level in math. Rather, the District placed the student in a geometry class that did not reflect the student's stated IEP goals and objectives (OAR 581-015-2200(1) and 34 CFR 300.320).

The District is responsible to write an IEP that contains: a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.<sup>32</sup>

The student's IEP contained a single goal in math, which was to learn geometry concepts in order to complete five chapter tests with scores of 70% or higher. The student had taken the first semester of Geometry the previous year and had passed the class with a grade of D. In the 10<sup>th</sup> grade year the student took a Transition Math class and in the freshman year the student was placed in the Math Lab for instruction. The Math Lab is required for students who scored less than 239 on the 8<sup>th</sup> grade OAKS math assessment. The student scored 225 on the 8<sup>th</sup> grade test. The team was focused on educating the student in the general education curriculum as much as possible and thus decided to schedule the student into the Geometry Credit Recovery class for the senior year. The math goal was measureable and designed specifically for the student. Therefore, the Department does not substantiate the allegation.

The parent alleged that the District violated IDEA when it:

- c. Did not write a Present Level of Academic Achievement and Functional Performance that accurately reflected the student's functional level of performance (OAR 581-015-2200(1)(a) and 34 CFR 300.320(a)(1)).

In order for the District to write an IEP that reflects the student's functional level of performance, the District must assess the student's functional level of performance. The IDEA has not defined the term "functional" instead saying that "functional is often used in the context of routine activities and everyday living"<sup>33</sup> this term is often used in the context of routine activities of everyday living. As noted above, this student demonstrated an ability to manage the skills needed to attend classes, do assignments, take tests and generally participate in the school environment with peers. The student dressed neatly and appropriately and was shy and quiet. The team did not see evidence to indicate that the student was struggling with everyday living skills such as personal hygiene, ability to access

<sup>29</sup> The student turned 18 on October 12, 2012.

<sup>30</sup> OAR 581-015-2330 and 34 CFR 300.520

<sup>31</sup> The Department understands this allegation to mean the requirements of OAR 581-015-2200 that the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living.

<sup>32</sup> OAR 581-015-2200(1)(b)

<sup>33</sup> Federal Register, Volume 71, No. 156, 46661(August 14, 2006)

public transportation independently, shop, cook or manage money. Nor was any such evidence offered during IEP meetings.

The purpose of including Functional Performance information in the IEP PLAAFP statement, and thus, writing goals to address the Functional Performance skills is to enable the student to transition as smoothly as possible into the post-high world. As noted above, the IEP team did not view independent living as a functional performance issue related to this student's transition needs. Instead, the student's IEP looks at communication and math for the present levels, based on the student's demonstrated needs. The IEP includes information on the student's social skills group and measured progress along with recent assessments related to each respective area.

Therefore, the Department does not substantiate the allegation.

The parent alleged that the District violated IDEA when it:

- d. Did not design transition services based on age appropriate transition assessments related to training, education, employment, and independent living skills (OAR 581-015-2200(2) and 34 CFR 300.320(b)).

For the purposes of transition, the District must include in the IEP: appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and, the transition services (including courses of study) needed to assist the child in reaching those goals.<sup>34</sup>

As noted in allegations 1.a and 1.c above and described above, the District wrote a complete PLAAFP for the student, and wrote appropriate transition goals for the student. Similarly, the District did design and implement transition services to assist the student in receiving educational benefit. The record shows adequate evidence that valid age appropriate assessments were used including the ACT, OAKS, and student interest inventories. Post-secondary goals: The student took a class in Transition/ Self-Advocacy Skills which was also noted on the IEP. The curriculum contained many valuable lessons related to transition.

The Department does not substantiate the allegation.

## **2. Parental Participation – General and Additional Parent Participation Requirements for IEP and Placement Meetings:**

The parent alleged that the District violated IDEA when it:

- a. Did not consider the information the parent presented at the IEP meetings held on September 29, 2011 and February 23, 2012 (OAR 581-015-2190 & 2195 and 34 CFR 300.501).

Typically, a District must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child. The District must make attempts to arrange the meeting at a time when a parent can attend, and must ensure that the parent's native language is used during the meeting or an interpreter is provided if necessary.<sup>35</sup> In this case, both the parent and the student's advocate participated in all the meetings held during the 2011-2012 school

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<sup>34</sup> OAR 581-015-2200(2)

<sup>35</sup> OAR 581-015-2190

year along with the adult student. The District does not take notes in IEP meetings, and therefore, there is no written documentation other than that required by the Oregon Standard IEP, to determine the extent of that participation.

The parent was consistent in asking the District to evaluate the student's adaptive skills and cognitive skills, and sent emails to follow up on these concerns after the meetings in question. The parent also frequently expressed concern about the student's progress in math, and asked for and participated in a meeting to discuss the student's difficulty with Geometry. The record shows the parent attended numerous meetings with the team to discuss perceived student needs. The District did make adjustments in the math class as a result of these meetings and communications, and the record indicates accommodations were successful in helping the student pass the class. The District knew the parent wanted further cognitive assessments of the student, but the school members of the IEP team felt there was no reason to assess the student in these areas and therefore refused to do so. Importantly, the adult student did not indicate an interest in these further assessments.

Given all of this, it is clear the District did consider the information the parent presented despite the fact that the parent had limited educational decision making ability over this adult student, and that the District allowed parent to participate pursuant to state and federal requirements.<sup>36</sup>

Therefore, the Department does not substantiate the allegation.

The parent alleged that the District violated IDEA when it:

- b. Did not involve the parent in the IDEA related decision-making process about the type of diploma the student was able to earn (OAR 581-015-2190 & 2195 and 34 CFR 300.501).

One factor that the IEP team must consider for students nearing graduation is the type of diploma to award. Pursuant to state law, the school district shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student's school team must include an adult student, parent/ guardian of the student.<sup>37</sup> If the student is 18 or older, consent for a modified diploma must come from the student.<sup>38</sup> Here, the adult student would have retained the rights to consent to a modified diploma, not the parent.

The IDEA does not have a related decision making process which would involve this parent regarding the type of diploma to award this student. However, the record shows that the parent did participate fully in the diploma discussion.

Therefore, the Department does not substantiate the allegation.

- c. Did not consider the specific concerns of the parent about the student's math goals and supports, transition concerns, functional application of speech goals related to vocational tasks, functional and adaptive deficits, and the need for current cognitive and adaptive assessments to assist in transition planning (OAR 581-015-2205(1)(b) and 34 CFR 300.324(a)(i) & (ii)).

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<sup>36</sup> As noted above, the student in this case is a legal adult whose IDEA rights transferred upon the student's 18<sup>th</sup> Birthday. Additionally, State law notes that the laws typically associated with parents under special education laws transfer to the adult student including the rights typically associated with a "parent" under the procedural safeguards after the transfer of rights noted above. There is written evidence that the student intended to share education records and information with the parents. There is no evidence that the student appointed the parent as an educational surrogate, nor is there any official legal documentation giving the parent educational decision making authority over the adult student.

<sup>37</sup> OAR 581-022-1134(4)

<sup>38</sup> OAR 581-022-1134(4)(b)(C)

In developing, reviewing and revising the child's IEP, the IEP team must consider the concerns of the parents for enhancing the education of their child among other factors.<sup>39</sup> If the team does not reach consensus, then the District will determine FAPE, at which point the parents may appeal the decision via IDEA's administrative remedies if needed. Here, the parent asked the IEP team to consider a number of issues over the course of the student's senior year. The record indicated that the District met with the parent on many occasions, returned all correspondence, and allowed the parent to attend IEP meetings and present information and concerns. The team did consider the parent's concerns about the math goals and supports and revised the IEP accordingly. The IEP team did not agree with the parent's position on cognitive assessments or life skills training, but the record is replete with instances of District allowing this parent to present numerous concerns. As described above, the Department does not substantiate the parent's allegations regarding these issues.

Therefore, the Department does not substantiate this allegation.

### **3. IEP Team:**

The parent alleged that the District violated IDEA when it:

- a. Did not invite an outside agency to participate in the 9/29/11 IEP meeting despite parent and advocate concerns about the student's ability to communicate in vocational settings (OAR 581-015-2210(2)(b) and 34 CFR 300.321(b)(3)).

According to OAR 581-015-2210(2)(b), if a purpose of the meeting will be consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals; the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. This must be done to the extent it is appropriate and with the consent of the parent or adult student. At the time of the student's IEP meeting on September 29, 2011, the student was not eligible for any community services such as those provided by Vocational Rehabilitation or Developmental Disabilities agencies. The student was on track to graduate with a standard diploma. The team did not see the need to invite a transition specialist and the parent did not request that one be invited. Therefore, the team was under no obligation to invite an outside agency to attend the IEP meeting. The meeting held in June of 2012 was not an IEP meeting. Rather, it was a meeting held to discuss the evaluation results from May of 2012. The full IEP team was not present at this meeting and it was held three days before the student graduated with a regular diploma. The purpose of this meeting was not to consider postsecondary goals or transition services so no outside agency was needed for this meeting either.

The Department does not substantiate this allegation.

### **4. General Evaluation and Reevaluation Procedures:**

The parent alleged that the District violated IDEA when it:

- a. Did not evaluate the student in all areas of suspected disability when data, information from the parent and advocate, curriculum-based measures, physician's medical statement, state-standardized assessments and ACT results were presented to the team; and repeatedly delayed additional evaluations (OAR 581-015-2110 and 34 CFR 300.304(c)).

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<sup>39</sup> OAR 581-015-2205(1)(b)



Oregon Administrative Rule 581-015-2110 (General Evaluation and Reevaluation Procedures) outlines the procedures districts must follow when conducting evaluations or reevaluations for students with disabilities. Specifically, the child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and the evaluation must include assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. However, it is important to note that a District must have informed written consent to complete evaluations on a student. This consent must come from a parent or an adult student to whom procedural rights have transferred.<sup>40</sup> Here, the adult student did not request, give written consent, or deny consent for the assessments in question, or document a request for the parent to make these decisions on behalf of the student. Similarly, the parent refused to give permission when the District again at the September 29, 2011 IEP meeting. Therefore, the District did not have consent needed to evaluation the student.

The District had evaluated the student in 2009, and found the student eligible at that time as a student with an Other Health Impairment (OHI). The District continued to assess student progress using the District-wide ACT tests, and the Oregon Assessments of Knowledge and Skills. Over the course of the student's senior year, the parent asked the District to also assess the student's cognitive and adaptive skills. The District refused to do so because it believed there were no data to indicate the necessity of such an evaluation. The District further evaluated the student's adaptive and cognitive skills on April 23, 2012. The parent also asked the District to evaluate the student for eligibility as a student with a specific learning disability in math in 2012, but this was technically unnecessary since the District was providing specially designed instruction in math.

Therefore, the Department does not substantiate this allegation

The parent alleged that the District violated IDEA when it:

- b. Did not inform the parent of the parent's right to request a reevaluation (OAR 581-015-2105(4)(b) and 34 CFR 300.303(a)(2)).

This information is provided in the Procedural Safeguards booklet which was given to the parent at the September 29, 2011 IEP meeting. This information is also part of the Procedural Safeguards notice for adult students ages 18-21. The parent requested a reevaluation for cognitive and adaptive testing in February 2011 which evidenced parent's knowledge of right to request reevaluation.

Therefore, the Department does not substantiate this allegation.

The parent alleged that the District violated IDEA when it:

- c. Did not observe the student in a general education setting during the reevaluation process (OAR 581-015-2110(4) and 34 CFR 300.310).

OAR 581-015-2170(1)(c) specifies that when a District is conducting an evaluation for a suspected learning disability, the District is required to conduct an observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance

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<sup>40</sup> OAR 581-015-2110(2)(b) and OAR 581-015-2090

and behavior in the areas of difficulty. In this case the District did not specify that it was conducting an evaluation to determine a suspected learning disability. However, the evaluation procedures<sup>41</sup> included observations and rating scales (BASC/BRIEF) from multiple raters. Therefore, the Department does not substantiate this allegation.

**5. When IEP's Are In Effect :**

The parent alleged that the District violated IDEA when it:

- a. Did not write an IEP that adequately described the general education teacher's responsibility relative to the implementation of the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP (OAR 581-015-2220(3)(a) & (b) and 34 CFR 300.323(d)(2)).

A District meets its responsibility to provide FAPE when it provides access to the student's IEP to all teachers who are accountable for implementing the IEP. The District must inform each teacher of his or her specific responsibilities for implementing the IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the student. The case managers at the high school here comply with this by providing each responsible teacher with a "Confidential Mainstreaming Learning Profile." This document goes to all teachers who have students on IEPs in their classes. The parent alleged that the Geometry teacher had not been adequately informed about the student's needs for accommodations. However, the Geometry teacher was quite knowledgeable and well informed about the student; and about the difference between accommodations and modifications, and was very thoughtful about providing them correctly. The Department does not substantiate this allegation.

**6. Placements and Least Restrictive Environment:**

The parent alleged that the District violated IDEA when it:

- a. Did not consider a continuum of placement options at the September 29, 2011 IEP team meeting to consider placement (OAR 581-015-2240 -- 2250 and 34 CFR 300.114-116).

A district can be considered to provide a Least Restrictive Environment for a student with a disability when it removes the student from the regular educational environment only when the student cannot satisfactorily reach his or her goals in the regular classes with the use of supplementary aids and services. The Department provides instruction to IEP teams about making placement decisions. One instruction states: "If the Placement Team is documenting that a regular classroom placement is appropriate to implement the services identified on the IEP, the Team may, but is not required to, consider more restrictive placement options." The student had functioned quite well in the regular education setting with small group support for math, study skills and organization and transition for the first three years of high school. There was no documentation to suggest that the team should consider a more restrictive environment; therefore the Department does not substantiate the allegation.

**7. Prior Written Notice:**

The parent alleged that the District violated IDEA when it:

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<sup>41</sup> BASC, BRIEF

- a. Did not send an accurate and complete Prior Written Notice after the February 23, 2012 IEP meeting (OAR 581-015-2310 and 34 CFR 300.503).

The February 23, 2012 Prior Notice of Special Education Action indicates that there was a proposal to change the IEP. The document notes that the team agreed to provide additional accommodations to the student. Under OAR 581-015-2310(3) the content of a prior written notice must include:

- (a) A description of the action proposed or refused by the school district;
- (b) An explanation of why the district proposes or refuses to take the action;
- (c) A description of any other options that the IEP team considered and reasons why those options were rejected; and
- (d) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action.

These items are all accounted for in the documentation provided by the District. The notice includes that the action is based on a math teacher report, student report, parent report, and progress data. The team noted that they also discussed changes regarding transition but they did not make those changes. The document further states that student was working toward regular diploma and only 1.5 credits away from meeting those graduation requirements.

The Department does not substantiate the allegation.

#### **8. Review and Revision of IEP's:**

The parent alleged that the District violated IDEA when it:

- a. Did not send a copy of the revised IEP to the parent after the February 23, 2012 IEP meeting (OAR 581-015-2225 and 34 CFR 300.322(f)).

##### **8.a. Not Contested:**

The District does not contest this allegation as it does not have documentation that the parent received a copy of the IEP with the revision noted. Note that providing parents (in particular parents of adult students who have received all transferred special education rights) with a copy of a revised IEP is not an express requirement of IDEA. However, the District has offered stipulated corrective action here. See Corrective Action below.

The parent alleged that the District violated IDEA when it:

- b. Did not consider information the parent provided at the June 1, 2012 IEP meeting and refused to revise the IEP based on this information (OAR 581-015-2225 and 34 CFR 300.324(b)).

As noted above, the record indicates that the parent was able to provide information which the District considered during this meeting. Furthermore the meeting in question was not an actual IEP meeting but was instead held to review evaluation with parent. Noteworthy is that the meeting in question was held less than a week before the student's graduation with a regular diploma, and at the time of the meeting the student had already met all graduation requirements. Additionally, a District is not required to revise an IEP during a meeting solely based on an adult student's parent's request.

The Department does not substantiate the allegation.

**9. Free Appropriate Public Education:**

The parent alleged that the District violated IDEA when it:

- a. Did not award the appropriate type of diploma to the student and thus denied the student of FAPE. The Oregon Standard IEP requires the IEP team to record the anticipated date of graduation and the type of diploma or alternate document the IEP Team anticipates the student will receive. (OAR 581-015-2040 & 2045, and 34 CFR 300.101-102.)

This student did not meet the specific state requirements for a Modified diploma as set forth in OAR 581-022-1134(3). This rule requires that modified diplomas may be awarded to students who have a documented history of an inability to maintain grade level achievement due to significant learning or instructional barriers or a documented history of a medical condition. This student does not have any of these histories. To the contrary, there is documented evidence that the student is capable of meeting requirements for a regular diploma and in fact met those requirements prior to the June 2012 meeting. The adult student also did not request nor give consent for a modified diploma.

The Department does not substantiate this allegation because the District did not need to change the student's diploma type in order to continue providing FAPE to the student.

**CORRECTIVE ACTION<sup>42</sup>**

*In the Matter of Tigard Tualatin School District 23J  
Case No. 12-054-019*


Actions	Submissions <sup>43</sup>	Due By
<p>Allegation 8.a. The District offers the following:</p> <p>The District will provide specific training to special education licensed staff no later than the end of the first week of the 2012-2013 school year specific to the requirement that when any revision is made to an IEP a parent must be provided with a copy of the revised IEP as well as a Prior Written Notice documenting the team's decision. The District will have all special education licensed</p>	<p>Verification that the District has completed its proposed additional training.</p>	<p><b>September 28, 2012</b></p>

<sup>42</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>43</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: [raeann.ray@state.or.us](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

<p>staff responsible for the development and implementation of IEP's sign a statement documenting receipt of this training.</p> <p>The Department accepts this corrective action, with the addition of the requirements of OAR 581-015-2225(3) regarding Amendments to the IEP and parental requests for copies.<sup>44</sup></p>		
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Dated: July 27, 2012



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

Mailing Date: July 27, 2012

**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.

Additionally, pursuant to OAR 581-015-2030(14)(b), the Department of Education will not reconsider complaints after a Final Order has been issued.

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<sup>44</sup> OAR 581-015-2225(3) Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.