BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF THE EDUCATION OF	)	**FINAL ORDER**
	)	
STUDENT and	)	
	)	
Forest Grove School District	)	Case No.: DP 13-104

PROCEDURAL HISTORY

On March 5, 2013, the Parents,[1] on behalf of Student, filed a request for due process hearing (due process complaint) with the State Superintendent of Public Instruction (ODE) on behalf of Student. The due process complaint alleged that Forest Grove School District (District) engaged in procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA) for the period of December 7, 2011 to November 27, 2012. On or about March 7, 2013, ODE referred this matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Alison Greene Webster to preside at hearing.

A prehearing telephone conference was held on April 10, 2013, with Senior ALJ Webster presiding. Parents appeared through counsel, Diane Wiscarson and Christopher Hamilton. The District appeared and was represented by attorneys Richard Cohen-Lee and Nancy Hungerford. At the prehearing conference, an in-person hearing was scheduled for September 23 through October 4, 2013. The ALJ also established a prehearing schedule, including timelines for filing prehearing motions. On April 23, 2013, the OAH issued a Notice of Hearing setting forth the issues for hearing as well as the prehearing schedule established by ALJ Webster.

In accordance with the established prehearing motion schedule, on May 10, 2013, the District filed a motion for summary determination. On May 31, 2013, Parents filed a response to the District's motion and a counter-motion for summary determination. On June 10, 2013, the District filed a reply and response to Parents' counter-motion. On June 24, 2013, Senior ALJ Webster issued a ruling on motions for summary determination.

On or about July 18, 2013, the OAH reassigned this matter to Senior ALJ Joe L. Allen. On August 9, 2013, Parents filed their First Amended Due Process Complaint (amended due process complaint or amended complaint) alleging continuing violations for the period December 7, 2012 through August 9, 2013 (the period in issue). On August 14, 2013, Senior ALJ Allen convened a second prehearing conference to address the amended complaint and

[1] The due process complaint was filed in the name of both parents. The transcript differentiates between mother and father as Parent 1 and Parent 2. However, at the hearing, only Parent 1 appeared and testified. Accordingly, all references in this order to Parent refer to Parent 1. This order uses the plural (Parents) only where factually significant.

certain scheduling conflicts raised by Parents' counsel. At the conference, the amended due process complaint was accepted without objection by the District. In addition, the hearing schedule was amended to remove one day from the schedule while compensating with additional hearing hours on other days for the first week of hearing. The OAH issued an Amended Notice of Hearing on August 15, 2013. A telephonic witness scheduling conference was held on September 6, 2013, establishing appearances for approximately 20 witnesses.

Senior ALJ Allen convened an in-person hearing on September 23, 2013, at the District's offices in Forest Grove, Oregon. The District was represented at the hearing by counsel, Nancy Hungerford. The following individual's testified on behalf of the District:

- Amanda Morris, Educational Psychologist;
- Judith Bartoo, Special Education and English teacher;*
- Jami Duyck, Agriculture and Horticulture teacher;*
- Dora Saidler, Transition Specialist;
- Toby O'Handley, Special Education Coordinator;*
- Kimberly Shearer, Coordinator of Special Education;*
- Kathryn Taplin, Case Manager and Special Education teacher;*
- Jill Hertel, Transition teacher;
- Jessica McRobert, Instructional Assistant;
- Teresa Mouw, Mental Health Specialist; and
- Bradley Bafaro, Director of Special Education.*

(* These District employees were also questioned as part of Student's case-in-chief.)

Ms. Wiscarson represented Student at the hearing. Parent testified on behalf of Student. The evidentiary record closed at the conclusion of the hearing on September 25, 2013. Naegeli Reporting Corporation delivered the certified written transcript to the parties and the OAH on October 16, 2013. The parties submitted written closing briefs on November 18, 2013. The official record closed on this date.

ISSUES

(1) Whether the District denied the Student educational opportunities and denied Parents a meaningful opportunity to participate in the Student's education from December 6, 2011 until the end of the school year, during the 2011-2012 academic year. 20 U.S.C § 1400 *et seq.*; 34 CFR 300 *et seq.*; ORS Chapter 343; and OAR 581-015-2195.

(2) Whether the District denied the Student educational opportunities and denied Parent a meaningful opportunity to participate in the Student's education during the 2012-2013 academic year. 20 U.S.C § 1400 *et seq.*; 34 CFR 300 *et seq.*; ORS Chapter 343; and OAR 581-015-2195.

(3) Whether the District failed to provide the Student a free appropriate public education during the 2011-2012 academic year. 20 U.S.C § 1400 *et seq.*; 34 CFR 300 *et seq.*; ORS Chapter 343; and OAR 581-015-0240.

(4) Whether the District failed to provide the Student free appropriate public education during the 2012-2013 academic year. 20 U.S.C § 1400 *et seq.*; 34 CFR 300 *et seq.*; ORS Chapter 343; and OAR 581-015-0240.

EVIDENTIARY RULINGS

The District offered Exhibits D1 through D27. Exs. D3 through D19 were admitted into the record without objection. Parent's objections to Exs. D1, D2, and D20 through D27 as irrelevant were overruled and these exhibits were also admitted into the record.

Parents offered Exhibits S1 through S104 and S110 through S120.[2] All exhibits offered by Parents were admitted into the record without objection.

FINDINGS OF FACT

1. Student was born January 31, 1995. Student has been a resident of the District since at least summer 2005. Student has a full scale IQ of approximately 60. Beginning in October 2005, the District determined Student was eligible for special education services under the categories of Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). (Exs. S1 at 2, D3 at 3, and D18 at 3.)

2. In May 2008, the District determined Student was also eligible for special education services under the categories of Autism Spectrum Disorder (ASD) and OHI. The District provided special education services through an Individualized Education Program (IEP) developed for student. (Exs. S5, S7, and S33 at 6.)

3. In March 2011, the District and Parents agreed that Student would begin pursuing a modified diploma through Forest Grove High School (FGHS). A modified diploma required Student to complete 24 units of credit and demonstrate proficiency in essential skills. (Ex. D21 at 4.)

4. Beginning on or about July 6, 2011, shortly after Student experienced a mental breakdown, he/she began seeing Ken Ensroth, M.D., a child psychiatrist. On October 28, 2011, Dr. Ensroth wrote a letter to the District stating he believed Student's "disabilities in language and communication, and struggles with social skills likely worsen [his/her] anxiety and interfere with [Student's] learning and intellectual and emotional growth." (Ex. D2 at 6.) Dr. Ensroth recommended daily counseling sessions and several other specific support services. (*Id.*) Parent provided this letter to the District on or about November 9, 2011. (Ex. D2 at 1.)

5. In November 2011, the District convened an IEP team meeting which Parents attended. The resulting IEP (November 2011 IEP) was designed to provide special education services to Student through November 2, 2012. The November 2011 IEP identified Student as eligible for services under the categories of OHI-ADHD, ASD, and Intellectual Disability (ID). (Exs. S8, S9, and S10.)

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[2] Exs. S105 through S109 were intentionally left blank.

6. The November 2011 IEP required the District to provide certain supplementary aids and services, as well as accommodations and modifications including: visual supports- for all homework/classwork assignments; modified tests and assignments- in all general education classes; and request copies of notes- following adult prompt. In addition, Student was to have all essay questions modified on all proficiency tests and test questions read aloud for all proficiency tests in general education courses. Each of these accommodations or modifications was intended to begin November 3, 2011 and continue until November 2, 2012. (Ex. S9 at 2 through 4.)

7. During the period in issue, Parent communicated frequently with Student's teachers in both general and special education programs, as well as his/her case manager and other District staff members. At one point, District staff determined Parent's email communications were becoming excessive. (Tr. at 286:24 through 287:16.)

8. On or about November 10, 2011, Ms. Shearer sent an email claiming that the recent volume of emails from Parent to Student's teachers, pertaining to Parent's concerns for Student's education, created "a negative impact on our school staff." (Ex. D27 at 1; Tr. at 284:8 through 10.) Ms. Shearer went on to restrict communication from Parent to a single staff member within the District, Kathryn Taplin. In addition, Ms. Shearer indicated Ms. Taplin would open only the most recent email received by Parent each Friday afternoon and respond only to that email. Therefore, Parent was instructed to "put all [] concerns in one email and summarize them briefly." (*Id.*; Tr. at 284:11 through 285:6.)

9. On December 6, 2011, Parents filed a due process complaint (DP 11-131) challenging the November 2011 IEP. (Ex. S33 at 1.) Parent is Student's educational surrogate. (Ex. S62.)

10. On or about January 24, 2012, the District denied Parent's earlier request for an instructional assistant for Student in all classes. In the denial, Ms. Shearer indicated, "Because we are in Due Process and 'stay put' applies, we will not be making any changes to [Student's] IEP and placement until after the due process is completed." (Ex. S11 at 1.) In this same email, the District also denied Parent's request to speak with Student's case manager about Student's class schedule for the second semester, because the District stated that issue was "outside the IEP process[.]" (*Id.*)

11. On or about January 26, 2012, Parent emailed District Superintendent Yvonne Curtis because Parent believed she was denied an opportunity to discuss her concerns regarding Student's educational program with school personnel. In response, Superintendent Curtis advised Parent that, "Because there is pending litigation, [District personnel] are to direct all communication from you regarding complaints or requests of this nature to our legal counsel." (Ex. S13 at 1 and 2.)

12. In February 2012, the District provided IEP Progress Notes for Student which covered the months of January and February 2012. These Progress Notes repeated the Annual Goals (AGs) and Short Term Objectives (STOs) on the November 2011 IEP and then provided information under the heading, "Student's Progress Toward Goal." The information provided showed no correlation to AGs or STOs on the November 2011 IEP. The Progress Notes failed to

provide any data related to Student's AGs in Language 1(c) and 4(a)-(c). In addition, Student's Progress Note for Transition Writing provided no data correlated to the writing AGs or STOs in the November 2011 IEP. For Transition Reading, the Progress Note provided the following:

> February 2012:
> On a second grade level reading passage, [Student] was able to read a second grade passage and answer open ended concrete comprehension questions with about 90% accuracy. On a third grade level passage, [Student] was able to answer open ended concrete questions with 38% accuracy. [Student] is currently unable to understand and answer inferential questions when asked.
>
> June 2012:
> Current progress on objectives:
>
> 1. On a reading sample at the second grade level, [Student] read the passage with 100% word recognition, 130 words per minute, 100% comprehension.
>
> 2-3. On a reading sample at grade level 3, [Student] read the passage with 100 % word recognition, 110 words per minute and 60% comprehension. [Student] was able to answer 2 inference questions correctly and 7 concrete comprehension correctly.

Student's STO's were identified in the November 2011 IEP as:

> Given specially designed instruction; teacher modeling; opportunity to practice; and tools needed to complete task; [Student] will:
> 1) Read a text written at the 2nd grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions with at least 80% accuracy on 3 consecutive trials.
> 2) Read a text written at the 3rd grade level, composed of at least 2 paragraphs and answer 10 open-ended concrete comprehension questions with at least 80% accuracy on 3 consecutive trials.
> 3) Read a text written at the 3rd grade level, composed of at least 2 paragraphs and answer 10 concrete and inferential comprehension questions with at least 60% accuracy on 3 consecutive trials.

(Exs. S32 at 2 through 7 and S9.)

13. During the 2011-2012 academic year, Student participated in the Future Farmers of America (FFA). (Ex S9 at 8.) On February 27, 2012, Parent advised the FGHS FFA Advisor, Jami Duyck, that Student would be attending the FFA State Convention. Parent also informed Ms. Duyck that she would be attending with Student. Parent did not request the District provide a chaperone or other support for Student to attend the convention. (Ex. S15; Tr. at 234:6 through 11.

14. On March 8, 2012, Parent sent an email to Student's case manager, Ms. Taplin, expressing concerns about the lack of notes being provided to Student. Parent informed Ms. Taplin that Student's instructional assistant, Jessica McRobert, was taking notes for him/her in class but had been keeping those notes in a folder in Tutorial class. Parent advised Ms. Taplin that Student needed these notes to study for tests and complete assignments. In addition, Parent expressed concerns about timeliness and consistency of other teacher's providing notes to Student as required in his/her IEP. (Ex. S18.) Thereafter, Student and Parent began to receive class notes from the instructional assistants and teachers. Nonetheless, Parent believed this was not happening "100 percent of the time." (Tr. at 891:21 through 892:5.)

15. Student was enrolled in Health during the 2011-2012 academic year. This was a general education course. In April 2012, Student's Health teacher refused to read Student's test questions to him/her as provided in the November 2011 IEP. No instructional assistant was available to read the test questions to Student. (Tr. at 975:5 through 976:5.)

16. In addition, Student was enrolled in Agricultural Occupations, a general education course, during the 2011-2012 academic year. Student was given an unmodified grade for this course both semesters of that year. (Exs. D15 and S104.) Ms. Duyck, the course instructor, gave Student a grade of "Pass" rather than modifying the semester grades to reflect Students was pursuing a modified diploma. (Tr. at 244:9 through 245:7.)

17. The Director of Special Education for the District believes if an IEP requires accommodations and/or modifications to tests or assignments, but a student is capable of completing the work without the IEP mandated accommodations or modifications, the District should not provide the IEP requirement to the student. (Tr. at 723:15 through 724:6 and 732:8 through 16.)

18. On April 16, 2012, ALJ Jill Messecar convened a due process hearing, which continued over the course of 12 days ending on June 29, 2012.[3] On September 12, 2012, ALJ Messecar issued a Final Order in DP 11-131 (Final Order) that found, *inter alia*, the District denied Parents a meaningful opportunity to participate in the decision making process regarding the provision of a free appropriate public education (FAPE) during the 2011-2012 academic year. ALJ Messecar also determined the District failed to provide Student a FAPE during the 2011-2012 academic year. (Ex. S33 at 44.)

19. In the Final Order, ALJ Messecar determined the November 2011 IEP was "fundamentally flawed and prevented Student from receiving educational opportunities, a denial of FAPE." (Ex. S33 at 62.) ALJ Messecar stated,

> The November IEP * * * failed to adequately describe Student's [Present Levels]. * * * The information in the [Present Levels] statement does not describe how Student's disability affects his/her involvement and progress in the general education curriculum. The [Present Levels] statement contains test scores and

3 Specifically, the hearing was held on April 16 through 20, 2012, May 31, 2012, June 1, 2012, June 18, 2012, and June 25, 26, 28 and 29, 2012.

> some data that appears to address the prior IEPs AGs/STOs. However, upon close examination, the data provided does not correspond. * * * The March 2011 IEP [Present Levels] for reading, written eight months earlier, states that Student is able to read a 6th grade passage at 129 words per minute with 96% accuracy and 45% accuracy on his/her comprehension. Despite that stated ability, the March 2011 IEP contained a reading AG that required Student to read a 5th grade text composed of at least one paragraph and answer concrete comprehension questions with at least 70% accuracy. * * *Because the information does not correspond closely enough to compare, the information that is provided is not sufficient to allow the IEP team to generate a proper IEP.

(*Id.*)

20. In addition, ALJ Messecar determined, as a result of the defective November 2011 IEP, the District failed to address Student's physical and emotional needs, failed to address his/her need for Specially Designed Instruction (SDI), failed to considered Student's troubling, anxious behavior, and failed to respond to information about his/her mental health issues. (Ex. S33 at 63.) Further, the ALJ determined that the District improperly failed to consider private evaluations provided by Parent. (*Id.* at 50.)

21. On or about May 16, 2012, Parent emailed Student's case manager, Ms. Taplin, requesting information pertaining to Student's class schedule for the following academic year and indicating Parent would like to be involved in developing the schedule. Ms. Shearer, rather than Taplin, responded to the email informing Parent:

> Because we are in "stay put" right now we would not normally be holding an IEP meeting. However, because the extensive delay in the Due Process we will need to hold an IEP to discuss ESY * * * before the end of the school year. Extended School Year will be the only agenda item. * * *.

The following day, Parent sent Ms. Taplin a follow-up email indicating she would like to add scheduling and transition services to the agenda at the upcoming IEP meeting, as Student would soon be turning 18. In addition, Parent requested regression and recoupment data that Taplin had accumulated. Parent indicated she was interested in reviewing this information prior to the upcoming IEP meeting. Finally, Parent stated that reading, writing, speech and math were her concerns for Student's extended school year services (ESY). (Ex. S20.)

22. On May 18, 2012, the District informed Parent that, because the annual IEP review was not due until November, it would not be scheduling a review of the IEP at that time. The District further reiterated that the stay put provision applied and the only exception would be if both parties agreed to a change in the IEP. The District indicated it was not interested in making any change at that time and preferred to wait for the ALJ's ruling before scheduling another IEP review. The District refused Parent's request to discuss Student's academic schedule at the upcoming IEP meeting and reiterated that the sole purpose of that IEP meeting would be the discussion of ESY services. (Ex. S21 at 2.)

23. Beginning on or about May 18, 2012, District staff notified Parent that all communication pertaining to Student would have to be directed to Kimberly Shearer, Coordinator of Special Education. (Ex. S21 at 2; Tr. at 286:10 through 23.)

24. The District believed the tone of Parent's emails were becoming more argumentative and aggressive in nature. Therefore, the District requested that all communication be filtered through its legal counsel. (Tr. at 452:11 through 24 and 712:3 through 9.) Thereafter, Parent continued to attempt communication with District personnel to obtain information or express concerns about Student's then-current educational program. The District determined it was necessary to block all email communications from Parent to District personnel. (Tr. at 452:25 through 453:14; *See*, Ex. S43.)

25. During the 2011-2012 academic year, Student was enrolled in American Studies a general education course. Pursuant to the modifications and accommodations in the November 2011 IEP, Student's multiple choice tests were modified to remove one of the options. Essay questions on the test would be modified through omission or rephrasing. Student was also permitted to provide a shorter answer than required by other students. (Tr. at 563:6 through 564:21, 654:1 through 8, and 656:8 through 657:7.) During this class, Student's instructional assistant failed to read tests to him/her as required by the November 2011 IEP. (Tr. at 976:8 through 15.)

26. Despite pursuing a modified diploma, Student received an unmodified grade for both semesters of American Studies during the 2011-12 academic year. (Ex. D15.)

27. On or about May 31, 2012, the the District scheduled an IEP team meeting for June 8, 2012. The only items on the agenda for this IEP meeting related to ESY. Specifically, the District's agenda allocated 10 minutes for each of three topics; Review ESY data, Review ESY criteria, and Make ESY determination. (Exs. S24 and S25.)

28. During the June 8, 2012 meeting, Parent attempted to raise other issues pertaining to Students educational program. Legal counsel for the District as well as IEP team members repeatedly refused to discuss these matters with Parent. (Ex S26; *See also*, Ex. S26 CD.) At the meeting, Ms. Shearer explained the District's policy that a student must show greater than 10 percent regression over a break to qualify for ESY. The District measured an identified skill or behavior, identified in the IEP, prior to and following a break in the school year to determine whether Student showed a significant loss of skills. (Ex. S26.)

29. After explaining the ESY criteria to Parent, the District presented summarized data it claimed demonstrated Student did not qualify for ESY. The break period utilized by the District to summarize Student's regression/recoupment was winter break 2011-2012. The District compared skills recoupment in January 2012 to baseline data from December 2011. Based on these data summaries, the District determined Student did not qualify for ESY because he/she did not show greater than 10 percent regression in loss of skills or behaviors identified in the November 2011 IEP. (Exs. S26 and 27.)

30. During the June 8, 2012 IEP meeting, Parent disagreed with several aspect of the District's ESY evaluation. Parent disputed the validity of the measurement period, pointing out that most children are not likely to show much regression over a one or two week break. Parent stated out that she was seeking ESY for Student over summer break, a period of approximately three months, and an equivalent period should be used for measurement of regression/recoupment. Parent reiterated an earlier request that the IEP team compare Student's skills and behaviors for the periods June 2011 and September 2011. The District refused. (Exs. S26 and S27.)

31. Parent also requested the raw data, in the form of coursework completed by Student, used by the IEP team members to summarize Student's regression/recoupment percentages. The District informed Parent that the raw data was discarded after summarizing and therefore it was unavailable. Parent disputed the District's data summaries by reference to the Present Level documented in the March 2011 and November 2011 IEPs. (Tr. at 497:18 through 499:1; Exs. S26 and S27; *See also*, Ex. S26 CD.)

32. Also at the June 8, 2012 IEP meeting, Parent presented evidence that the March 2011 IEP noted Student was then reading at the sixth grade level, at approximately 129 words per minute with 96 percent accuracy, and 45 percent comprehension. The November 2011 IEP indicated Student's then Present Level demonstrated he/she was reading at the fourth grade level, 146 words per minute with only 60 percent comprehension. The November 2011 IEP also contained an AG in Transition Reading that targeted reading at the third grade level, with STOs aimed at working with Student to progress through second grade reading level to reach the third grade AG. Parent pointed out the June 2012 IEP progress notes for this subject indicated Student was still working on reading goals at the second and third grade level. Parent pointed out that the November 2011 IEP contained similar inconsistencies for the goals of Transition Writing and Transition Math. Parent also asserted the June 2012 progress notes for these goals failed to correspond to any identifiable data or AGs/STOs in the November 2011 IEP. The District refused to discuss any of the discrepancies between the various IEPs and progress notes. Instead, the District limited its considerations to the data summaries presented for winter break and determined Student did not qualify for ESY services. (Exs. S26 and S27.)

33. Other than this June 8, 2012 IEP meeting, which strictly limited the subject matter to discussion of ESY services, the District did not convene another IEP meeting to address any of Parent's concerns until November 2012. (Tr. at 985:15 through 986:17.)

34. The Final Order in DP 11-131 required the District to compensate its failure to address Student's anxious behaviors by providing 60 minutes of counseling per week. Ex. S33 at 66.) In response, the District scheduled the one hour counseling session, beginning on or about September 19, 2012, between 8:45 and 9:45 each Tuesday. (Ex. S34 at 1.)

35. Student was scheduled for either Treble Choir or Tutorial during the time the District allocated for his/her counseling sessions. Therefore, Student has to miss either a general education or special education class to receive the compensatory counseling provided by the Final Order. (Ex. D14.) As a result, Student often asked to leave the counseling sessions early in order to return to class. (Ex. D10 at 4 through 10.)

36. On or about September 27, 2012, legal counsel for the District sent an email informing Parent's attorney that the District would not read or respond to any of Parent's emails. The District's counsel pointed out that Parent had been "repeatedly asked to stop contacting the District directly" and stated, "I fail to understand why your client cannot understand and comply with this simple direction.) (Ex. S37.) On or about October 3, 2012, legal counsel for the District informed Parent's attorney that she was advising all District personnel to place all email received by Parent in the "trash" unopened. (Ex. S39.) Thereafter, District staff blocked Parent's email address. (Exs. S40 and S42.)

37. On October 11, 2012, was again seen by Dr. Ensroth for psychiatric consultation and reevaluation after two incidents at school where Student began crying in class. Dr. Ensroth noted that, during the evaluation, Student frequently repeated questions, provided redundant information, and asked for a chair while sitting in a chair. (Ex. S44 at 1.) Dr. Ensroth diagnosed Student with anxiety disorder NOS (not otherwise specified). Dr. Ensroth also noted that further evaluation should be performed to rule out psychotic disorder NOS. Dr. Ensroth recommended medication and a psychological evaluation. (*Id.* at 2.)

38. On October 15, 2012, Dr. Ensroth wrote a letter indicating that there was some risk of Student's symptoms worsening, without close monitoring and intervention. However, Dr. Ensroth also noted that Student's recent episode did not appear as severe the ones he/she experienced the previous summer and fall. He recommended close monitoring by school staff; having a school counselor available to speak with Student; regular and open communication with Student's mother about how Student was doing at school, academically and emotionally; and further evaluation. Parent provided this letter to District. (Ex. S46; Tr. at 911:12 through13.)

39. The District changed the scheduled time of Student's counseling to 1:00 p.m. beginning in spring 2013. This schedule also conflicted with Student's class schedule. Parent objected to the District's scheduling of compensatory counseling during Students regular academic schedule and asked that the counseling be provided at a time when Student was not scheduled for class. The District refused. (Exs. D10 at 16, 17, 33, and 35; Tr. at 896:10 through 897:2.

40. On or about October 17, 2012, District scheduled an IEP team meeting for November 13, 2012 to review or develop an IEP and placement for Student and consider Student's transition needs or services for the 2012-2013 academic year. (Ex. S47.) District prepared a draft IEP and provided it to Parents. (Tr. at 302:13 through 18.) The District convened a follow up IEP meeting on November 27, 2012 to finalize the new IEP (November 2012 IEP). In the November 2012 IEP, the District removed two paragraphs of information, previously included in the November 2011 IEP, pertaining to how Student's disability affected his/her involvement and progress in the general education curriculum. (Ex. S57.)

41. During the November 2012 IEP team meeting Parent asked why Student did not have a stated writing goal in the new IEP. (Exs. S53 and S56 at 8.) In addition, Parent asked for Student to receive instruction in reading comprehension, decoding and related skills. (Tr. at 1012:13 through 15.) However, the IEP team determined appropriate AGs for the November

2012 IEP were functional math, language, functional reading, transition/life skills and transition/work experience. (Ex. S57 at 13 through 18.) The November 2012 IEP specified the transition goals would be implemented effective January 7, 2013. (Ex. S57; Tr. at 314:11 through 315:1.)

42. The November 2012 IEP required Student receive specially designed instruction (SDI) in "functional reading." (Ex. S57 at 16.) Student's case manager, Ms. Taplin, told Parent SDI was provided in Tutorial class. (Tr. at 977:7 through 25.) The Tutorial teacher, Ms. Cisneros, informed Parent she did not give Student SDI in functional reading. (Tr. 981:4 through 7.)

43. Subsequent to adoption of the November 2012 IEP, Parent's ability to communicate with District staff was restored. (Tr. at 453:15 through 24.)

44. On or about March 13, 2013, the District issued a notice of IEP team meeting scheduled for April 15, 2013. (Ex. S84 at 19.) Also on that date, the District invited input from Parent regarding issues she would like added to the agenda for the IEP meeting. (Ex. S69.)

45. On April 8, 2013, Parent responded with a list of twelve agenda items. On April 10, 2013, the District notified Parent that the agenda for the April 15, 2013, IEP meeting would be limited to "ESY, Functional Reading Goal, [and] consideration of new outside reports from Parent[.]" (Ex. S73 at 1.)

46. At the April 15, 2013, IEP meeting, Parent requested the IEP team revise the functional goals, add goals she believed to be missing, and revise transition goals to properly align with Student's Present Levels. (Ex. S79) The District refused and stated those items would have to be raised at the next annual IEP meeting, the following school year, in November 2013. (Ex. S80; Tr. at 936:13 through 940:204.)

47. During this meeting, Parent again provided information to the District demonstrating inconsistencies in Student's IEP information and the progress notes in the areas of Transitional Math, Transitional Reading, Transitional Writing, speech and language. Parent pointed out how this information demonstrated regression between the periods of IEP drafting and the progress notes. The District refused to address Parent's data pertaining to regression. (Exs. S81 through S83; Tr. at 946:3 thorough 950:2.)

48. The District refused Parent's request for ESY in the areas of Transition Math and Transition Writing. To support its decision to deny ESY for writing, the District pointed out that Student did not have a writing goal on the November 2012 IEP. Also at the April 15, IEP meeting, Parent requested the District add back language excised form the November 2012 IEP pertaining to how Student's disability affects her ability to learn and the ability of those around him/her. The District refused. (Tr. at 940:11 through 941:21.)

49. In or about April, 2013, through the time of hearing, the District again instructed Parent to communicate only through its legal counsel, rather than directly with Student's teachers

or other District personnel, regarding any concerns or issues related to Student's IEP. (Tr. at 454:4 through 15.)

50. On or about April 18, 2013, Student's case manager, Ms. Taplin, completed a questionnaire for Social Security Benefits for Student. In this questionnaire Taplin indicated that Student's disability negatively impacts his/her ability to learn, as well as the ability of those around him/her. In responding to the questionnaire, Taplin gave Student the highest negative rating possible for on the question of whether he/she is capable of "working without distracting self or others." (Ex. S72 at 9.)

CONCLUSIONS OF LAW

(1) The District denied the Student educational opportunities and denied Parents a meaningful opportunity to participate in the Student's education from December 6, 2011 until the end of the school year, during the 2011-2012 academic year.

(2) The District denied the Student educational opportunities and denied Parent a meaningful opportunity to participate in the Student's education during the 2012-2013 academic year.

(3) The District failed to provide the Student a free appropriate public education during the 2011-2012 academic year.

(4) The District failed to provide the Student free appropriate public education during the 2012-2013 academic year.

OPINION

Burden of Proof.

The burden of proof in an administrative hearing alleging violations of the Individuals with Disabilities Education Act (IDEA),[4] 20 U.S.C § 1400 *et seq.*, is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this matter, Parents filed a due process complaint seeking relief for alleged denials of FAPE and opportunities to meaningfully participate in Student's education. As such, the burden rests on Parents. In administrative hearings, a party who bears the burden must establish each fact or position by a preponderance of the evidence. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Division*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

[4] In 2004, IDEA of 1997 was reauthorized as the Individuals with Disabilities Improvement Act (IDEIA), 20 U.S.C. § 1400 *et seq*. The vernacular alternates between IDEA, IDEIA, and IDEA 2004. In this ruling, reference to the original acronym (IDEA) is maintained for the sake of clarity.

In this case, Parents allege the District denied them the opportunity to meaningfully participate in Student's education and denied Student educational opportunities as well as failing to implement Student's IEP which resulted in the denial of a FAPE to Student. As the proponent of such facts or positions, Parents bear the burden to prove their allegations by a preponderance of the evidence.

Citing to *Board of Educ. Of Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 198 (1982), the District asserts that the term "appropriate education" does not equate to a requirement that it provide services designed to maximize Student's potential. Instead, the District asserts the focus should remain on determining whether the IEP is reasonably calculated to provide *some* meaningful benefit. *See*, Dist. Prehearing Brief at 2, citing *A.I ex rel. Iapalucci v. District of Columbia*, 402 F Supp 2d 152, 163; emphasis original. From here, the District argues Parents' due process complaints seek to maximize Students potential at tax payer expense rather than recognizing that Student has obtained some educational benefit from the IEPs. While the District's position, regarding the focus of due process hearings evaluating an IEP, is not incorrect, its arguments pertaining to the educational benefit obtained by Student miss the mark.

The District's argument assumes the IEPs, from November 2011 through August 2013, were adequate to meet the standards set forth in the IDEA. As set out herein, the District's assertions ignore the findings in the Final Order in DP 11-131 as well as continuing violations thereafter.

Student's Individualized Education Programs.

Congress passed the IDEA in an effort "to ensure all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs * * *." 20 U.S.C. § 1400(d)(1)(A). Congress further stated the end goal of this special education should be to prepare disabled student for further education, employment, and independent living. *Ibid.* School districts accomplish these goals through evaluation of students and the creation and implementation of a unique Individualized Education Program (IEP) for each disabled student. 20 U.S.C. § 1414 (b) and (d). This IEP must include, at a minimum, a statement of the student's present levels of academic achievement and functional performance (Present Levels). Such statements should include how the student's disability affects his/her participation and progress in the general education curriculum and, for IEPs incorporating alternate achievement standards, a description of short-term objectives. In addition, the IEP must include a statement of measurable annual goals for the student, including academic as well as functional goals. Further, the IEP must describe how the district or educational institution will measure a student's progress toward those annual goals and when reports on such progress will be provided. 20 U.S.C § 1414(d)(1)(A)(I),(II), and (III). The opportunity for meaningful parent participation is key to provision of a free appropriate public education. The Ninth Circuit has observed that "those procedures which provide for meaningful parent participation are particularly important." *Amanda J. ex rel. Annette J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001).

In this case, Parents take issue with Student's IEPs during the relevant period for several reasons. First, Parents assert the District continued to utilize an IEP, drafted in November 2011,

which has been adjudicated inadequate in a prior due process hearing. Further, Parents assert IEPs drafted thereafter failed to accurately reflect Student's Present Levels because they were based on insufficient information. Parents argue the IEPs drafted during the relevant period lacked sufficient foundational data to permit accurate assessment of STOs and AGs. Finally, Parents contend the District failed repeatedly to implement Student's IEPs during the relevant period.

For the sake of clarity, this order addresses each issue within the academic year of occurrence. However, as a preliminary matter, the effects of the Final Order in DP 11-131 must be addressed.

Effects of Final Order dated September 12, 2012.

Parents filed a due process complaint on December 6, 2011, assigned case number DP 11-131. ALJ Jill Messecar held a due process hearing lasting 12 days spread out between April 16, 2012 and June 29, 2012, to address the issues raised in that complaint. On September 12, 2012, ALJ Messecar issued a Final Order which found, *inter alia*, the District denied Parents a meaningful opportunity to participate in developing the November 11, 2011 IEP by failing to consider numerous private evaluations provided by Parents.

In its prehearing brief, the District asserts that, because the ALJ's Final Order in DP 11-131 is presently being appealed, "[N]o part of the ALJ's decision-making furnishes authority for deciding the issues in the current case." *See*, District's Prehearing Brief at 3, fn. 1. I disagree. To the extent that ALJ Messecar found the District failed to provide FAPE to Student or denied Parents a meaningful opportunity to participate in Student's education, those decision were based on an extensive evidentiary record and supported by well-reasoned opinion. While that opinion may be overturned upon review, it has not been as of the date of this Final Order. As such, it is binding upon the parties. Accordingly, any deviation from or refusal to comply with the Final Order may support a finding adverse to the non-compliant party. Further, to the extent the District continued to implement a deficient IEP for Student, it has elected a continuing violation of IDEA and its implementing regulation and OARs.

The September 12, 2012 Final Order determined the November 2011 IEP deprived Student of FAPE and denied Parents the opportunity to meaningfully participate in his/her education. Thus, the District's failure to immediately convene an IEP meeting following the Final Order establishes that it continued to deny Student FAPE and to deny Parents a meaningful opportunity to participate in Student's education by implementing a deficient IEP. An exhaustive discussion of the salient facts and conclusions in the September 12, 2012 Final Order is unnecessary. Both parties are privileged to that order and know well the findings of ALJ Messecar.

At the hearing, Parents demonstrated the District continued to rely on the defective November 2011 IEP until at least January 2013 when the November 2012 IEP was implemented. To the extent the District did so, the unresolved the violations addressed by ALJ Messecar constitute continuing violations during the period in issue here.

2011-2012 Academic Year (December 6, 2011 forward.).

Continuing denial of Parent(s) the opportunity to meaningfully participate in IEP and educational opportunities for Student.

The September 12, 2012 Final Order determined the District denied Parents a meaningful opportunity to participate in developing the November 2011 IEP because the IEP team ignored private evaluations from Drs. Buckendorf and Ensroth. OAR 581-015-2205 identifies considerations and special factors for the IEP team and provides, in relevant part:

> (1) In developing, reviewing and revising the child's IEP, the IEP team must consider:
>
> (a) The strengths of the child;
>
> (b) The concerns of the parents for enhancing the education of their child;
>
> (c) The results of the initial or most recent evaluation of the child; and
>
> (d) The academic, developmental, and functional needs of the child.

As identified in the September 12, 2012 Final Order, Parent had Student evaluated by Dr. Buckendorf in February 2011 and by Dr. Ensroth in October 2011. Parent attempted to provide the resulting written evaluations to the District for consideration of the November 2011 IEP. In addition, the District failed to convene an IEP meeting during the remainder of the 2011-12 academic year to address those evaluations, despite several requests by Parent, resulting in a continuing deprivation of Parent's right to participate in the decision making process regarding the provision of FAPE to their child and an ongoing deprivation of educational benefits for Student. Instead, the District waited until November 2012 to convene an IEP meeting at which the IEP team reviewed the evaluations provided by Drs. Buckendorf and Ensroth.

While ALJ Messecar did not order the District to convene an IEP team meeting until two weeks after a remedial evaluation (also included in the September 12, 2012 Final Order) was complete, it must be remembered that such remedies only covered the period of the 2011-2012 academic year up to December 6, 2011. The current amended due process complaint seeks remedies for continuing violations from that date until the time of filing; in this instance, August 9, 2013. Accordingly, the District cannot rely on the Final Order to excuse its failure to convene an IEP meeting during the remainder of the 2011-2012 academic year to address the relevant evaluations. The District continued to implement the defective November 2011 IEP and, thus, continued to deprive Parent of the opportunity to meaningfully participate in Student's educational decisions.

At the hearing, the evidence revealed that the District's legal counsel instructed District personnel not to have any IEP meetings for Student after Parents filed the Due Process Complaint at issue in DP 11-131 (December 6, 2011). Nonetheless, the District cannot abdicate to legal counsel the responsibilities properly ascribed to the District by statute, in this instance,

the duty to determine when IEP team meetings shall be convened and to hold such meetings in a timely manner. Beginning on January 24, 2012, and continuing through the relevant period, the District refused several requests from Parents to convene IEP meetings to address Student's changing needs. To support this decision, the District cited the then-pending due process proceeding and the "stay put" requirement of IDEA. *See,* OAR 581-015-2360(5)(a) (during the pendency of a due process hearing the child must remain in the present educational placement unless the school district and the parent agree otherwise). However, stay put is limited in application, as demonstrated by the Ninth Circuit in *Anchorage School District v. M.P,* 689 F3d 1047 (9th Cir. 2012). In that case, the Court stated:

> We hold that updating an eligible student's present level of academic achievement and functional performance and establishing corresponding goals and objectives does not qualify as a change to a student's educational placement, so long as such revisions do not involve changes to the academic setting in which instruction is provided or constitute significant changes in the student's educational program.

689 F3d at 1057. In *Anchorage,* the Court identified the parents as "zealous advocates" for their son who had filed four administrative complaints in two months. Nonetheless, the Court stated, "Neither the IDEA nor its implementing regulations condition [the duty to review and revise IEPs] expressly imposed on a state or local education agency upon parental cooperation or acquiescence in the agency's preferred course of action." *Id.* at 1051. The Court also observed that "it would be antithetical to the IDEA's purposes to penalize parents - and consequently children with disabilities- for exercising the very rights afforded to them under the IDEA." *Id. at 1056.*

Further, the District's argument fails to significantly address the language in the stay put provision that permits the parties to amend a student's IEP if the parties agree on the changes. In its response to Parent, the District simply stated it was unwilling to agree to changes. However, the District made this decree before convening an IEP meeting to consider the information Parent wanted to present. In addition, the District fails to recognize that the stay put provision applies to educational programs. It does not place any restrictions on the parties' ability to convene an IEP team meeting to discuss possible amendments, even as a prophylactic measure. Theoretically, the District and Parent could have met to discuss relevant issues and even draft a new educational program without actually implementing the IEP until conclusion of the due process hearing. The District also could have taken the opportunity, if supported by the information provided to the IEP team, to deny Parent's requested amendments and provide explanation why such alterations to the IEP were inappropriate. The District did neither. Instead, the District relied on a provision of IDEA that does not address IEP team meetings to deny Parent's request for such meetings. Stay put is a procedural safeguard to prevent school districts from unilaterally implementing changes to a student's IEP during the pendency of a due process hearing. However, it cannot be used affirmatively by districts to avoid their legal obligations under the IDEA

The District's refusal to meet to consider the changing needs of Student, and to adjust the November 2011 IEP accordingly, excluded Parent from participating in the decision making

process regarding FAPE and deprived Student of the educational benefits of having his/her needs met during the 2011-12 academic year.

The District's unreasonable communication restrictions deprived Parent of opportunity to meaningfully participate in the IEP.

Additionally, during the relevant portions of the 2011-2012 academic year, the District imposed unreasonable communication restrictions upon Parent that initially prevented Parent from communicating with Student's general and special education teachers. Instead, Parent was instructed to direct all communication to Student's case manager, Ms. Taplin. Then, in response to Taplin's apparent inability to handle the volume of communication from Parent, the District again revised Parent's communication privileges to require all communication to go through the Special Education Coordinator, Ms. Shearer. Again, this individual determined she was unable to handle the communications from Parent and instructed Parent to direct all communications regarding Student to the District's legal counsel. Finally, the District blocked Parent's ability to send emails to Student's teachers, instructional assistants, or other District personnel. As a result, many of the concerns Parent attempted to communicate to the District regarding Student's education and health went unaddressed by the District.

At the hearing, Shearer testified these communication protocols were established to because the amount of email from Parent was excessive. During the hearing, Shearer initially testified that, by excessive, she meant communications from Parent totaled "hundreds of emails." (Tr. at 287:10 to 11.) However, upon cross-examination, Shearer admitted that was only an estimate and the total emails sent by Parent did not exceed 200. (Tr. at 272:18 through 273:11.) What the District did not demonstrate was that any such communication was unrelated to Student's education. Regardless of the reason, the District again abdicated a key component of its duties under the IDEA, namely communication with Parent, to its legal counsel. This is impermissible and the District engaged in such conduct at its own peril.

Parent established at hearing that the District prohibited communication between Parent and Student's teacher and case manager, as well as other District personnel. This policy was in effect, in one form or another, through the time of hearing. For the period between December 6, 2011 and the end of the academic year, the District again deprived Parent of the opportunity to meaningfully participate in Student's educational decisions.

As was the case in *Anchorage*, *supra*, Parent's zealous advocacy for her child has likely contributed to the strained relationship with the District. Nonetheless, as that Court pointed out:

> [T]he IDEA, its implementing regulations, and our case law all emphasize the importance of parental involvement and advocacy, even when the parents' preferences do not align with those of the educational agency. The statute is particularly protective of parents' right to participate in the formulation of their child's IEP because "[p]arents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know."

Anchorage, 689 F3d at 1055 (citing *Amanda J.*, 267 F 3d at 882.). The District's restrictions upon Parent's communication with District personnel deprived her of the right to participate in the formulation of Student's IEP because she was unable to communicate pertinent information to Parents regarding Student's education or health.

The District's limitations of ESY for the 2011-2012 academic year denied Student a FAPE.

Next, Parents assert the District denied Student education opportunities and failed to provide him/her a FAPE by unreasonably limiting extended school year services. The text of IDEA does not explicitly address ESY. However, ESY is addressed by both the implementing regulation and administrative rules. OAR 581-015-2065[5] provides guidance for school districts in Oregon evaluating students with disabilities for eligibility for extended school year services and provides:

> (1) School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to a child with a disability.
>
> (2) Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child.
>
> (3) A school district may not:
>
> (a) Limit extended school year services to particular categories of disability; or

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[5] In this instance, Oregon Administrative Rules provide more extensive requirements that the federal regulations. As such, the relevant OAR is cited here. The equivalent federal regulation can be found at 34 CFR 300.106 which provides:

> (a) *General.* (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
> (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
> (3) In implementing the requirements of this section, a public agency may not-
> (i) Limit extended school year services to particular categories of disability; or
> (ii) Unilaterally limit the type, amount, or duration of those services.
> (b) *Definition.* As used in this section, the term extended school year services means special education and related services that-
> (1) Are provided to a child with a disability-
> (i) Beyond the normal school year of the public agency;
> (ii) In accordance with the child's IEP; and
> (iii) At no cost to the parents of the child; and
> (2) Meet the standards of the SEA.

(b) Unilaterally limit the type, amount, or duration of those services.

(4) The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.

(5) School districts must develop criteria for determining the need for extended school year services. *Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.*

(6) For the purposes of section (5) of this rule:

(a) *"Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services*;

(b) *"Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.*

(7) For the purposes of this rule, "extended school year services" means special education and related services that:

(a) Are provided to a child with a disability:

(A) Beyond the normal school year of the school district;

(B) In accordance with the child's IEP; and

(C) At no cost to the parents of the child; and

(b) Meet the standards of the Department.

(Emphasis added.)

During the 2011-2012 academic year, the District scheduled an IEP team meeting for June 8, 2012. However, the only items on the agenda for this IEP meeting related to ESY. Specifically, the District's agenda allocated 10 minutes for each of three topics; Review ESY data, Review ESY criteria, and Make ESY determination. At different times during the meeting, District personnel or legal counsel refused to discuss other items pertaining to Student's education.

At the meeting, the District explained its policy that a student must show greater than 10 percent regression over a break to qualify for ESY. The District measured a particular skill, identified in the IEP, prior to and following a break in the school year to determine whether Student showed a significant loss of skills. The District used pre-break information as the baseline and post-break data as the measurement of skill loss. To determine whether a child has experienced significant regression, the District monitors that child over a two week period

following the break period to determine whether he/she is able to recoup skills or behaviors lost over the break. If the child demonstrates greater than 10 percent regression after that two week period, the District determines whether that child may benefit from ESY.

After explaining the ESY criteria to Parent, the District presented summarized data it claimed demonstrated Student did not qualify for ESY. The break period utilized by the District to summarize Student's regression/recoupment was winter break 2011-2012. The District compared skills recoupment in January 2012 to baseline data from December 2011. Based on these data summaries, the District determined Student did not qualify for ESY because he/she did not show greater than 10 percent regression in loss of skills or behaviors identified in the November 2011 IEP.

At the June 8, 2012 IEP meeting, Parent disagreed with several aspects of the District's ESY evaluation. First, Parent disputed the validity of the measurement period. Parent pointed out that most children are not likely to show much regression over a one or two week break. Specifically, Parent pointed out that she was seeking ESY for Student over summer break, a period of approximately three months, and an equivalent period should be used for measurement of regression/recoupment. Parent reiterated an earlier request that the IEP team compare Student's skills and behaviors for the periods June 2011 and September 2011. The District refused. Parent also requested the raw data, in the form of coursework completed by Student, used by the IEP team members to summarize Student's regression/recoupment percentages. The District indicated to Parent that, once the information was summarized, teachers regularly discarded the raw data and therefore it was unavailable. Parent disputed the District's data summaries by reference to the Present Level documented in the March 2011 and November 2011 IEPs.

The March 2011 IEP noted Student was then reading at the sixth grade level, at approximately 129 words per minute with 96 percent accuracy, and 45 percent comprehension. By contrast, the November 2011 IEP, written approximately eight months later including an intervening summer break, indicated Student's then Present Level demonstrated he/she was reading at the fourth grade level, 146 words per minute with only 60 percent comprehension. In addition, the November 2011 IEP contained an AG in Transition Reading that targeted reading at the third grade level, with STOs aimed at working with Student to progress through second grade reading level to reach the third grade AG. The June 2012 IEP progress notes for this subject indicated Student was still working on reading goals at the second and third grade level. In addition, Student's November 2011 IEP contained similar inconsistencies for the goals of Transition Writing and Transition Math. The June 2012 progress notes for these goals failed to correspond to any identifiable data or AGs/STOs in the November 2011. In addition, Student's progress notes from January and June 2012 demonstrate he/she declined in nearly every measured area for the skill of Language. The District refused to discuss any of the discrepancies between the various IEPs and progress notes. Instead, the District limited its considerations to the data summaries presented for winter break and determined Student did not qualify for ESY services.

The District's failure to consider relevant data demonstrating a decline in Student's Present Levels between IEPs spanning summer 2011 ignores the language of OAR 581-015-

2065(5), which requires district's to include regression and recoupment time based on documented evidence. Parent presented documented evidence in the form of Present Levels recorded in IEPs before and after summer break. Nothing in the statutes or rules permits the District to ignore Parent's documented evidence in favor of more limited data that supports the District's desired outcome. The District denied Parent a meaningful opportunity to participate by refusing to consider this data and denied Student educational opportunities in the form of ESY for summer 2011 in the areas of Transition Reading, Transition Writing, and Transition Math.

The District was not required to provide a chaperone for Student to participate in the FFA State Convention.

Parent also asserts the District failed to provide the support necessary for Student to participate in the FFA State Convention in February 2012. IDEA requires school districts or local education agencies must provide the necessary supports to enable disable students to participate in both education and extra-curricular activities.

IDEA requires that a child's IEP include a statement of the special education and related services and supplementary aids and services to be provided to the child to allow participation in the general education curriculum, including extracurricular activities. See, 20 USC § 1414(d)(1)(A)(i)(IV). Supplementary aids and services are defined in 34 CFR §300.42 which provides:

> *Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

(Emphasis original.)

At the hearing, the District did not dispute that Student was not offered a chaperone for the FFA convention. However, Parent failed to establish that she made the District aware, during the November 2011, IEP team meeting that Student intended to participate in the FFA State Convention or that a chaperone would be a necessary supplementary aid or service necessary for him/her to participate in this extracurricular activity. The record establishes Parent was not reluctant to contact the District any time she became aware of needed alterations to Student's educational program. Nonetheless, with the exception of one email notifying the FFA advisor that Parent would be attending the convention with Student, Parent offered no evidence to demonstrate that Parent put the District on notice, either before or after the November 2011 IEP, that Student required aid or support to attend the convention. The issue of the FFA convention does not appear in the records of the November 2011 IEP team meeting.

Nothing in this order should be construed to imply that the obligation to raise the issue of necessary aids and supports lies with a parent. Nonetheless, in the case of extracurricular activities not raised at the annual IEP team meeting, a greater responsibility for raising such concerns logically lies with the parents. Here, Parent was in the best position to know whether

Student would attend the state convention. Parent was also in the best position to determine if that is something she was willing to allow Student to participate in without family support close at hand.

While Parent did notify the FFA advisor that she would be accompanying Student on the trip, I do not find this notification sufficient to put the District on notice that Student required an adult chaperone provided by the District. Parent failed to establish the District's failure to infer this need violated IDEA.[6]

The District's reliance on the November 2011 IEP resulted in a denial of FAPE to Student.

The Final Order in DP 11-131 held that the November 2011 IEP denied Student a FAPE because, in essence, the information pertaining to Present Levels, AGs, and STOs was insufficient to allow the IEP team to generate a proper. 20 USC § 1414(d)(1)(A) sets forth the required content of an IEP and provides, in relevant part:

> (i) In general The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes-
>
> (I) a statement of the child's present levels of academic achievement and functional performance, including-
>
> (aa) how the child's disability affects the child's involvement and progress in the general education curriculum;
>
> (bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
>
> (cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
>
> (II) a statement of measurable annual goals, including academic and functional goals, designed to-
>
> (aa) 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; and
>
> (bb) meet each of the child's other educational needs that result from the child's disability;

[6] This analysis also applies to Parent's assertion that the District engaged in the same violation during the 2012-2013 academic year. Because there is no material difference in the facts or analysis, this discussion is not repeated in the section pertaining to that year below.

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child-

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI) (aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why-

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter-

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction Nothing in this section shall be construed to require-

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.[7]

Again, the District's reliance upon an IEP which deprived Student of FAPE results in a continuing violation for the period the District refuses to cure the deficiencies in the IEP. Here, the District refused to convene an IEP team meeting during the remainder of the 2011-2012 academic year. Accordingly, the District continued to deny Student a FAPE from December 7, 2011 through the end of the school year.

The District failed to implement Student's IEP resulting in a denial of FAPE.

The IDEA defines FAPE at 20 U.S.C. § 1401(9) which provides, in relevant part:

The term "free appropriate public education" means special education and related services that-

(A) have been provided at public expense, under public supervision and direction, and without charge;

* * * * *

(D) *are provided in conformity with the individualized education program required under section 1414 (d) of this title.*

(Emphasis added.) The Ninth Circuit has provided guidance for determining when a school district's failure to implement results in a denial of FAPE. In *Van Duyn v. Baker School Dist.*, 502 F.3d 811, (9th Cir. 2007), the court pointed out that at district does not violate IDEA with

[7] This language is mirrored in OAR 581-015-2200.

every time it fails to perform exactly as called for by an IEP. Instead, the court held the district's failure must amount to a material failure to implement the child's IEP. 502 F.3d at 815; emphasis added. The court went on to clarify that a material failure "occurs when there is more than a minor discrepancy between the services provided * * *and those required by the IEP." *Ibid.*

Parents allege the District denied Student a FAPE because it failed to implement material provisions of the November 2011 IEP. To prevail, Parents must demonstrate that there was more than a minor discrepancy between what the District provided and what the IEP required. At hearing, the evidence demonstrated the November 2011 IEP provided Student would receive modified tests and assignments in all general education classes. In addition, Student was to receive class notes, for at least general education classes, from the class teacher or Student's instructional assistant. Further, the IEP contained a provision that Student was to receive adult prompting if he/she failed to ask for notes. Student required these notes to prepare for tests and Parent needed the notes to assist Student complete assignments and prepare for tests.

The evidence further showed that many of Student's tests and assignments during the 2011-2012 academic year were not modified. In addition, the evidence at hearing indicated Student received notes sporadically at best and, in some classes, not at all for the entire period in issue. Additionally, the evidence indicated Student received no adult prompting pertaining to the request for class notes. The District' failure to modify Student's tests and assignment were not minor discrepancies. Neither was the sporadic provision of class notes. At the hearing, the Director of Special Education for the District testified that if a student's IEP required modifications or accommodations, but the student was able to do the work without the modification or accommodation, the District should not provide it. No such exercise of discretion is permitted by the statute. This amounts to a unilateral change in the IEP which is likewise not permitted by the IDEA or its implementing regulations.

The District's failure to comply with the modifications and accommodations in Student's IEP amounted to material failures to implement the November 2011 IEP.

2012-2013 Academic Year.

Continued unreasonable communication restrictions by the District deprived Parent of opportunity to meaningfully participate in IEP.

As discussed in detail above, the District impermissibly restricted and then prohibited Parent's ability to communicate with District personnel regarding Student's education and health. Those restrictions continued to the time of hearing. Accordingly, the deprivation of Parent's opportunity to meaningfully participate in Student's education and specifically IEP formulation continued through that time.

The District impermissibly removed important learning strategies for Student from November 2012 IEP.

Parents also argue the District impermissibly removed important information, pertaining to how Student's disability affects his/her involvement and participation in the general education curriculum as well as strategies for helping Student access his/her education. More specifically, Parents assert the District unilaterally removed two paragraphs of pertinent information, present in the November 2011 IEP, from the November 2012 IEP without notification or input from Parents.

IDEA requires that each IEP contain a statement indicating how the child's disability affects the child's involvement and progress in the general education curriculum. 20 USC § 1414(d)(1)(A)(i)(I)(aa). As such, this information becomes an integral part of the individual child's education program. The November 2011 IEP contained the following heading and information:

> How the student's disability affects involvement and progress in the general education curriculum:
>
> Due to [Student's] need for specially designed instruction in reading, writing, and math, as well as support to complete work and study for other classes, [Student] is enrolled in the special education classes: Basic English; Functional Math 2; and Tutorial.
>
> Due to challenges that [Student] has processing auditory information; it is very helpful for information presented in all classes [to] be as visual as possible. Breaking down large assignments into smaller steps with due dates for each step written on a calendar is also helpful.
>
> To help [Student] better understand reading materials in all classes, it is best to check for understanding often through a sequence of simple comprehension questions. Waiting until the end of a section of reading to check for understanding is too long.

(Ex. S9 at 8; Emphasis added.)

In the November 2012 IEP, drafted by the District in advance of the IEP team meeting, the District changed this information to the following:

> How the student's disability affects involvement and progress in the general education curriculum:
>
> [Student's] disability affects his/her ability to read, write, understand math concepts, and social communication skills to an extent that requires specially designed instruction, and significant modifications to the general education curriculum.

(Ex. S57 at 6; Emphasis added.)

The District failed to notify Parents of this removal prior to drafting the IEP. Further, upon delivering the draft at the November 2012 IEP meetings, no member of the IEP team notified Parents of the removal of this integral information. Upon learning of the removal of the language in the November 2011 IEP, Parent requested the District reinsert the prior language, asserting that such language is important to successful learning strategies of Student. The District refused but did not issue a PWN. Parents assert they were entitled to PWN of this change to Student's educational program as well as the Districts refusal to include this language in the November 2012 IEP.

OAR 581-015-2310 governs prior written notice and provides, in relevant part:

> (2) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district.
>
> (a) Proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or
>
> (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
>
> (3) The content of the 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[.]

At hearing, the District provided vague and ambiguous testimony regarding why the disputed language was not necessary in the IEP. For example, during the hearing, counsel for the District and Ms. Shearer engaged in the following exchange on the subject:

> What is your reaction to adding those two paragraphs back?
>
> My initial reaction in terms of making sure that a student is getting -- that [he/she is] getting what [he/she] needs based on this information here is that the accommodation section in the IEP really addressed that. So, for instance, visual – making information visual, one of the -- I believe one of [his/her] accommodations is visual supports. And assistive technology, we did have a discussion at the 4/15/13 meeting about [Student] using [his/her] – I think it's [his/her] iPhone or iPod of something to – and that was a request to the parent, and we all agreed that would be assistive technology for [him/her] to use. It would be good for [him/her].

(Tr. at 1044:7 through 22.)

The District's witness failed to address why the information was removed and why the District refused to add pertinent information pertaining to Student's learning strategies back to the November 2012 IEP. Instead, the witness engaged in a discussion of assistive technology that is unrelated to the teaching strategies identified in the disputed paragraphs. In addition, the District provided no response to why it failed to issue a PWN for either the removal of these strategies or its refusal to include them in the November 2012 IEP.

The District's unilateral removal of key information pertaining to how Student's disability affects his/her participation in the general education curriculum and strategies for increasing his/her access to his/her education denied Parents a meaningful opportunity to participate in the IEP and denied Student a FAPE.

District's refusal to indicate how Student's behavior impacts his/her learning or the learning of others.

In addition, at the November 2012 IEP meeting, Parent requested the District include information indicating that Student's disabilities impacted his/her ability to learn as well as the ability of others around him/her. The District refused, indicating Student's disabilities did not have such impact.

OAR 581-015-2205 identifies IEP team considerations and special factors and provides, in relevant part:

> (3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:
>
> (a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;
>
> * * * * *
>
> (4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.
>
> (5) Nothing in OAR 581-015-2200 or this rule may be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Evidence at hearing indicated that Student's case manager, Ms. Taplin, a District employee, indicated Student's disability did in fact negatively impact his/her ability to learn, as well as the ability of those around him/her. Specifically, Taplin, in completing a questionnaire for Social Security Benefits for Student, indicated the highest negative rating possible for

Student on the question of whether he/she is capable of "working without distracting self or others." (Ex. S72 at 9.) For the District to deny such for the purposes of IEP development or hearing is disingenuous and harmful to the District's credibility on the whole. An IEP that does not appropriately address behavior that impedes a child's learning denies that student a FAPE. *See, Park v. Anaheim Union High School Dist.* 444 F.3d 1149 (9th Cir. 2006); *See also, Neosho R-V School Dist. v. Clark* 315 F.3d 1022, 1028, (8th Cir. 2003).

Accordingly, the District's omission of this information, over Parent's objection, deprived Parent of a meaningful opportunity to participate in the IEP and denied Student a FAPE.

Failure to consider issues other than ESY for work experience at IEP meeting held April 15, 2013 denied Parent the opportunity for meaningful participation.

On or about March 13, 2013, the District issued a notice of IEP team meeting scheduled for April 15, 2013. Also on that date, the District invited input from Parent regarding issue she would like added to the agenda for this meeting. On April 8, 2013, Parent responded with a list of twelve agenda items, all of which were relevant to Student's education. On April 10, 2013, the District notified Parent that the agenda for the April 15, 2013, IEP meeting would be limited to "ESY, Functional Reading Goal, [and] consideration of new outside reports from Parent[.]" (Ex. S73 at 1.) The District justified this limitation by claiming the April 15, 2013 meeting was not an annual IEP meeting.

Nothing in IDEA or its implementing regulation or OARs permits the District to act as master of the agenda. So long as Parent's agenda items were relevant to Student's educational program, the District's refusal to discuss such agenda items constitutes a violation of the procedural rights guaranteed by IDEA. The fact that the April 15, 2013 IEP meeting was scheduled earlier than Student's annual IEP review is irrelevant. The IDEA does not limit Parent's right to meaningful participation to only the initial IEP and subsequent annual IEP team meetings. Parent's rights extend to all IEP team meetings convened by the District. Further, the District's inconsistent practice, of soliciting issues from Parent to be included on the meeting agenda and then summarily dismissing same, is antithetical to the sprit of cooperation Congress sought to foster through the IDEA and its implementing regulations.

At the April 15, 2013, IEP meeting, Parent again requested that the IEP team revise the functional goals, add goals she believed to be missing, and revise transition goals to properly align with Student's Present Levels. The District refused and advised Parent those items would have to be raised at the next annual IEP meeting, the following school year, in November 2013. During this meeting, Parent again provided information to the District demonstrating inconsistencies in Student's IEP information and the progress notes in the areas of Transitional Math, Transitional Reading, Transitional Writing, speech and language. As at the June 8, 2012 IEP meeting discussing ESY, Parent pointed out how this information demonstrated regression between the periods of IEP drafting and the progress notes. The District refused to address Parent's data pertaining to regression.

The District refused Parent's request for ESY in the areas of Transition Math and Transition Writing. Interestingly, as support for its decision to deny ESY for writing, the District pointed out that Student did not have a writing goal on the November 2012 IEP. While technically correct, this assertion ignores Parent's repeated requests to have a writing goal added back to Student's IEP. Parent's regression data showing Student regressed more than 10 percent over the relevant period without recoupment demonstrates that the lack of a writing goal on the November 2012 IEP denied Student a FAPE.

As discussed more fully above, the District's failure to consider relevant data demonstrating a decline in Student's Present Levels between IEPs, this time spanning summer 2012, continues to ignore the language of OAR 581-015-2065(5). As stated above, that language requires the District to include regression and recoupment time based on documented evidence. Parent again presented documented evidence in the form of Present Levels recorded in IEPs before and after summer break. The District continued to ignore Parent's data and determined Student was eligible for ESY only in the area of Work Experience.

The District denied Parent a meaningful opportunity to participate by refusing to consider this data and denied Student educational opportunities in the form of ESY for summer 2012 in the areas of Transition Reading, Transition Writing, and Transition Math.

The District's provision of compensatory education in place of general or special education classes denied Student a FAPE.

In the September 12, 2012 Final Order, ALJ Messecar ordered the District to provide Student 60 minutes of counseling per week as compensatory education. At hearing, the evidence demonstrated that the District provided such counseling sessions at times when Student was scheduled for other courses in either the general education curriculum or as part of his/her SDI. Parent objected to the provision of compensatory education in place of Student's regularly scheduled academics or electives. IDEA requires the District structure Student's educational program in a manner that meets his/her needs and enables Student be involved in and make progress in the general education curriculum as well as other educational needs related to his/her disability (SDI). 20 USC § 1414(d)(1)(A)(i)(II)(aa) and (bb).

Compensatory education is a remedy generally provided outside a student's regularly scheduled academic day. By providing compensatory education during Student's regularly scheduled academic day, the District interfered in his/her ability to be involved in and make progress in those courses. Accordingly, the District's unorthodox provision of compensatory education denied Student a FAPE with regard to the course hours missed.

In addition, Parents assert that, because the District scheduled counseling during classes Student enjoyed, he/she was inattentive during the sessions and frequently asked to return to class early. The District acquiesced to this request and, consequently, failed to provide the full extent of compensatory education required by the Final Order.

In the Amended Due Process Complaint, Parents raise a number of additional factual allegations. This order addresses those allegations integral to Parents' claims of procedural and

substantive violations of IDEA. At hearing, Parents put forth sufficient evidence to establish violations, both procedural and substantive. The factual assertions not expressly addressed herein are those which Parents failed to prove by a preponderance of the evidence and which did not present close factual determinations. Each such assertion claimed either procedural or substantive violations Parents were able to establish through other means. Accordingly, it is unnecessary to engage in an exhaustive analysis of precisely how Parents' evidence was insufficient. It is sufficient, for purposes of this order, to state that any assertion in the Amended Due Process Complaint not expressly addressed in this order is omitted because Parents failed to carry their burden.

The only issue that remains to be addressed in this order is the remedies requested by Parents for the procedural and substantive violations proved.

Remedies.

Through the Amended Due Process Complaint and closing brief, Parents have requested the following remedies be awarded:

- Convene a facilitated IEP meeting to discuss all Parents' concerns.

Violations of IDEA by the District by failing to provide Parent a meaningful opportunity to participate and denying Student a FAPE through adequate IEPs warrant such a remedy. Considering the difficulties Parents have experienced in convincing the District to consider certain agenda items or concerns, an IEP team meeting facilitated by a neutral third party is likely to provide the proper environment for meaningful parental participation. Therefore, the District is hereby ordered to convene an IEP team meeting facilitated by a neutral facilitator mutually selected by the parties within 21 calendar days of this issuance of this order. The District must provide sufficient time to address the concerns presented by Parent so long as those requirements pertain to Student's educational program. The District should also ensure that Present Levels provide sufficient detailed information so that the IEP team, including Parent(s), can determine appropriate AGs/STOs.

- Provide compensatory [education] services * * * via certified special education teacher with an endorsement for high school students, including transportation to and from the site of such services, to Student for denial of FAPE during the 2011-2012 and 2012-2013 academic years.

The case law in the area of compensatory education is fairly well settled. A District may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education. *Student W. v. Puyallup School District*, 31 F.3d 1489, 1496 (9th Cir. 1994.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. *Id.* These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. *Reid ex rel. Reid v. District of Columbia* 401 F.3d 516, 524 (D.D.C. Cir. 2005.) The award must

also be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Id.*)

Parents request two specific awards of compensatory education. First, Parents compensatory education consistent with that ordered by ALJ Messecar in the previous due process hearing. Specifically, Parents' request two hours of compensatory education in reading comprehension and math for every week of instruction Student should have received between December 7, 2011 and August 14, 2013.

In the Final Order, ALJ Messecar provided an exhaustive analysis of the compensatory education award to Parents. ALJ Messecar the order the District to provide two hours of direct transitional reading and two hours of direct transitional math instruction for every week of instruction Student should have received up to the filing of the first due process complaint, December 6, 2011. As discussed above, the violations for the 2011-2012 academic year share a common nucleus of operative facts as those found determined by ALJ Messecar. The current due process claim simply picks up where at the filing date of that due process complaint. Accordingly, an award of continuing compensatory education for the relevant period is appropriate. As such, the District is hereby order to provide two hours each of direct transitional math and transitional reading instruction for every week of instruction Student should have received between December 7, 2011 and August 14, 2013.

- Continuation of the requirement imposed by ALJ Messecar that the District deliver SDI by employing learning techniques effective for Student.

The Final Order issued by ALJ Messecar in DP 11-131 is sufficiently clear to establish how the District is expected to comply. The District complies or fails to do so at its own peril. The September 12, 2012 Final Order continues to be binding upon the parties. Accordingly, it is unnecessary to reiterate the mandates of that order here.

- Provision of training to all District staff who may be involved in any way in the IEP process for Student regarding IEP development when a due process hearing is pending.

Again, ALJ Messecar ordered similar training of District staff as that requested here. To do so again in this order would be redundant and inefficient. The District will either elect to comply with ALJ Messecar's Final Order or it will not. This order carries no more weight than that issued by ALJ Messecar.

- Provision of training to all District staff who may be involved in any way in evaluating Student, regarding how to evaluate.

Failure by the District to properly evaluate Student was proven in DP 11-131. It was also adequately addressed in the Final Order. Parents did not demonstrate a new or independent failure to properly evaluate Student. Because such failure was not established in this case, it would be in appropriate to order such training of District personnel.

ORDER

The Parents have established by a preponderance of the evidence that the District failed to provide Student with a FAPE as required under IDEA. Accordingly, The District is hereby ordered as follows:

- The District shall convene an IEP team meeting facilitated by a neutral third-party facilitator mutually selected by the parties within 21 calendar days of this issuance of this order. The District must provide sufficient time to address the concerns presented by Parent so long as those requirements pertain to Student's educational program.

- The District shall provide compensatory education, outside of Student's regular academic schedule, in the amount of two hours each of direct transitional math and transitional reading instruction for every week of instruction Student should have received between December 7, 2011 and August 14, 2013.

Joe L. Allen
Senior Administrative Law Judge
Office of Administrative Hearings

Date: December 18, 2013

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

ENTERED at Salem, Oregon this 18th day of December, 2013 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.