



8. Observation Summary 11/3/14
9. Seaside School District Autism Evaluation Summary 11/19/14
10. Summary Report: Autism Diagnostic Observation Schedule II 11/24/14
11. Autism Spectrum Disorder Statement of Eligibility 12/9/14
12. Meeting Minutes of eligibility and IEP meeting, Parent was not able to attend as scheduled 12/9/14
13. IEP 12/9/14
14. Meeting Minutes, meeting held to review with Parent the eligibility and IEP established in December, 2014 1/12/15
15. Record of Augmentative Communication provided to Student in previous district on this date 2/13/15
16. Letter from previous district with information about homeschooling and notice that the district stands ready to serve the Student if the Parent wishes to re-enroll 2/24/15
17. Fax transmittal Cover letter from previous district 3/10/16
18. Emails between IEP team members, and Emails between school staff and Parent 3/10/16 – 5/20/16
19. Meeting Minutes from 3/11/16 IEP meeting 3/11/16
20. Meeting Notice for 3/11/16 IEP meeting 3/11/16
21. Meeting Minutes from 3/11/16 IEP 3/11/16
22. IEP 3/11/16
23. Home-School Communication Notebook<sup>2</sup> 3/14/16 – 5/25/16
24. PWN 3/28/16
25. Service Request to LBL ESD 4/5/16
26. Behavioral Data Sheets 5/9/16 – 6/15/16
27. Reading Instruction Data Sheet 5/12/16 – 5/31/16
28. Report from family physician 5/19/16
29. Meeting Notice for IEP meeting on 6/14/16 6/2/16
30. Signed copy of Notice of Team Meeting for 6/14/16 IEP meeting 6/2/16
31. Amended IEP 6/14/16
32. PWN 6/14/16
33. Copy of District complaint procedure policy KL and procedure KL-AR 6/14/16
34. District Response Letter 8/1/16
35. List of Staff Knowledgeable about the complaint 8/1/16
36. Attendance Records 8/10/16
37. Copies of health, registration and other materials from the cumulative file various dates
38. Copies of parent records release forms to/from other agencies undated
39. Social Story undated
40. Note from parent to previous school district about food issues undated
41. Teacher Report Form undated
42. Staff Working Notes undated
43. Parent signed records release undated
44. Request from OHSU for information undated

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<sup>2</sup> District staff had copied the first 55 pages of the Home-School Communication book, dated 3/14/16 to 5/25/16. At Parent's request, after the end of the school year, the District gave the original Home-School Communication book to the Parent, but did not keep a copy of the last 14 pages of the book, dated 5/25/16 to 6/15/16. The Parent provided copies of those pages to the complaint investigator during the interview. The investigator sent copies of all the Parent materials via email to the District.

On August 17, 2016, at the interview, the Parent the following provided the following materials;

1. Handwritten note from Parent to previous school district informing the district that the Parent had withdrawn the Student from school 3/10/15
2. Home-School Communication Book 5/25/16 – 6/15/16
3. Letter from family friend to Complaint Investigator 8/10/16
4. Letter from second family friend to Complaint Investigator (undated, but the Parent told the Investigator that it was written specifically to be given to the Investigator)
5. Handwritten note from Parent to previous school district about the Student’s food undated
6. Parent Response letter to District *Response* packet

The Complaint Investigator determined that on-site interviews were needed. On August 10, 2016, the Complaint Investigator interviewed the Director of Student Services, the Director of Special Education, the Case Manager and a School Psychologist. On August 12, 2016, the Complaint Investigator conducted phone interviews with the former Principal, an Autism Team Support Staff Member, and a Speech/Language Therapist. On August 15, the Complaint Investigator conducted phone interviews with the new Principal and an Autism Specialist. On August 16, 2016, the Complaint Investigator interviewed the Parent in person.

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

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint.<sup>3</sup> This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS:

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151 – 153 and OAR 581-015-2030. The Parent’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from June 16, 2015 through June 15, 2016.<sup>4</sup>

	Allegations	Conclusions
1.	<p><b><u>Parent Participation – General:</u></b></p> <p>The Parent alleges that the District violated the IDEA when it did not provide the Parent with notice of an IEP Meeting to be held on June 14, 2016.</p> <p>(OAR 581-015-2190 (1) &amp; (2) and (34 CFR 300.501(b))</p>	<p><b><u>Substantiated.</u></b></p> <p>There was no evidence provided by the District that notice of an IEP Meeting was received by the Parent. The District maintains that the Student’s Teacher placed the notice in the Student’s backpack. The Student’s Teacher did make reference to a meeting on that date in the Student’s Home-School Communication Book,</p>

<sup>3</sup> 34 CFR §300.1510(2010)

<sup>4</sup> See OAR 581-015-2030(5)(2008); 34 CFR §300.153(c)

		which was seen by the Parent, but the reference did not specify that this was an IEP Meeting.
2.	<p><b><u>When IEP's Must Be in Effect:</u></b></p> <p>The Parent alleges that the District violated the IDEA when it only provided the Student with 1.5 hours of school daily. The Parent also alleges that the District failed to provide transportation to and from school which was required by the Student's IEP.</p> <p>(OAR 581-015-2220 and 34 CFR 300.323)</p>	<p><b><u>Substantiated in Part.</u></b></p> <p>The IEP Team, including the Parent, met and determined that a reduced schedule best met the Student's needs at that time. However, despite the Parent's request for an IEP Meeting, the District failed to hold an IEP Meeting to reexamine the shortened school day issue two weeks after spring break, when the IEP stated that this issue would be revisited.</p> <p>There is no evidence that the District failed to transport the Student as required by the Student's IEP. This portion of the allegation is not substantiated.</p>

**Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA):**

The Parent alleges that District staff may have perceived the Student in a racially negative manner. To pursue an allegation of perceived racial discrimination, the Parent may file a complaint with the school district or with the U.S. Office of Civil Rights. For more information about these complaint procedures, contact Winston Cornwall, ODE Civil Rights Specialist at 503-947-5675 or [winston.cornwall@ode.state.or.us](mailto:winston.cornwall@ode.state.or.us). The Parent also alleges that the District inappropriately used a seat belt harness to restrain the Student in the school and to help the Student get off of the school bus. This issue may be addressed by filing a complaint with the District and utilizing the District's complaint procedures.<sup>5</sup>

**Requested Corrective Action:**

The Parent requests the following actions be implemented as resolutions to the Complaint:

1. Notify parent/family of IEP so that Parent may have someone on the Parent's side;
2. Student needs to be in school for a half-day;
3. Do not use the trike as a reward for the Student;
4. "I had them take off the harness (twice complained) from the bus, I called the state – resolved—but they blamed my child."

<sup>5</sup> OAR 581-015-2030(4)

### III. FINDINGS OF FACT:

1. The Student is seven years old, and is eligible for Special Education services as a student with Autism.<sup>6</sup> This eligibility was established on December 9, 2014, while the Student was attending school in a different Oregon school district.
2. The Student lives with a step-grandparent (Parent) and step great-grandparent, and was adopted into this family as an infant. The Parent home-schooled the Student until the Student's kindergarten year (2014-2015). The Student did not receive any Early Intervention or Early Childhood Special Education.

The Parent enrolled the Student in the previous district in September 2014, in order for the Student to start kindergarten. After the Student was found eligible for Special Education in December, 2014, and the IEP was finalized on January 12, 2015, the Student started school on January 26, 2015.

3. The Parent withdrew the Student from school on March 10, 2015, and sometime later the family moved into the District's attendance area.
4. On March 8, 2016, the Parent gave the District a six-page letter with information about the Student. The Parent listed foods the Student preferred and asked the staff not to mix any foods together. The Parent explained the process the family used for toileting, noted that the Student did not like others in his/her personal space, and explained why the Student used the wash cloth as a "chew towel" (to distract the Student from biting or chewing on self). The Parent provided key words and phrases the family used with the Student, and outlined the Student's daily schedule at home.
5. The Parent enrolled the Student in the District on March 10, 2016. The Parent provided copies of the previous IEP and some other materials to the District and met with the IEP Team on March 11, 2016.

<u>IEP Element</u>	<u>3/11/16 IEP</u>
<u>Procedural Safeguards Notification</u>	Yes, given to Parent
<u>Consideration of Special Factors</u>	Exhibits behavior that impedes learning Has communication needs
<u>Present Level of Academic Achievement and Functional Performance</u>	The Student is a first grade student, who, prior to enrolling in the District attended three weeks of Kindergarten in another district. Parent asked that the school does not give the Student Cheerios, and will provide washcloths on which the Student can chew <sup>7</sup> . The Student needs to learn school readiness skills such as joint attention, compliance to direction, safe behavior and communication of thoughts and needs, and will attend school for an hour per day to start. The Parent reports that the Student can recite the alphabet, but the Student did not demonstrate this when assessed in the previous District. The Student did not

<sup>6</sup> A report from the Student's family physician dated May 19, 2016, also notes the Student has an eating disorder, Pica, and Fetal Alcohol Syndrome.

<sup>7</sup> In lieu of chewing on arms or other non-food items.

	identify any letters, numbers or shapes. The Student appears to become overstimulated easily, especially after exiting the school bus and during the walk to the classroom. The Student is prone to leaving the classroom, running around, and throwing objects. The Student seeks adult attention and physical proximity, and responds orally less than 10% of the time. The Student has significant sensory processing difficulties.
<u>Statewide Assessment</u>	Not Applicable
<u>Districtwide Assessment</u>	Not Applicable
<b><u>IEP Element</u></b>	<b>3/11/16 IEP</b>
<u>Annual Academic and Functional Goals and Objectives</u>	Communication, Given instruction in PECS <sup>8</sup> phase 1, the Student will exchange a picture item to request an item; Academic Readiness, The Student will requires/match/point to an item/person during STAR <sup>9</sup> activities on three out of four presented opportunities; Behavior, the Student will walk with teacher and stop when prompted no more than two times by the teacher; and, the Student will copy [ ] name from a model with no more than 3 verbal cues.
<u>Service Summary -- Specially Designed Instruction (SDI)</u>	Readiness Skills, 30 minutes daily in self-contained class; Behavior – social/emotional, 15 minutes daily in self-contained class; Communication, 20 minutes weekly in self-contained class; and, Written Language, minutes weekly in self-contained class.
<u>Service Summary -- Related Services</u>	Transportation, 2 trips daily to and from school; Augmentative Communication, 300 minutes yearly at the school site; and, Occupational Therapy, 40 minutes monthly in self-contained class.
<b><u>IEP Element</u></b>	<b>3/11/16 IEP</b>
<u>Service Summary -- Supplementary Aids/Services; Modifications and Accommodations</u>	Adult Assistance Available, Hand over hand assistance on tasks, Adult support to and from classroom in all school sites; Sensory Breaks, When Student becomes over-stimulated, in self-contained classroom; STAR autism curriculum, self-contained class.
<u>Service Summary -- Program Modifications &amp; Supports for School Personnel</u>	Consultation to teaching staff from Adaptive Physical Education Specialist, 15 minutes monthly at school site; and, Autism Consultation, 30 minutes monthly in the self-contained class.
<u>Non-Participation Justification</u>	Student will be in the Structured Learning Center for 100% of the school day. The Student will begin the year with one hour per day

<sup>8</sup> PECS<sup>8</sup> was developed in 1985 as a unique augmentative/alternative communication intervention package for individuals with autism spectrum disorder and related developmental disabilities. <http://www.pecsusa.com/>

<sup>9</sup> The STAR Program (Strategies for Teaching based on Autism Research, Arick, Loos, Falco, Krug, 2004) teaches children with autism the critical skills identified by the 2001 National Research Council. <http://starautismsupport.com/curriculum/star-program>

	and add one hour per day as the Student is ready. The Student needs a quiet structured classroom to help [ ]. The Student needs visual supports and reminders, as well as adult assistance to assist in transitions, toileting, and instruction.
<u>Extended School Year</u>	Will be determined by June 16, 2016.
<u>Placement Determination</u>	Special or separate class (e.g. life skills class, behavioral support class), more than 60% resource room or other special class (Less than 40% of day in regular class)

6. The Student attended school from March 14, 2016 to June 15, 2016, a total of fifty-nine days. From March 14, 2016 through April 10, 2016 the Student attended school one hour per day, and from April 11, 2016 to June 15, 2016 the Student attended school one-and-a-half hours per day. The Student missed two days of school.
7. The Parent and the school staff (usually the Case Manager) communicated daily via a Home-School Communication Book. The Case Manager wrote short descriptions of the Student's daily activities at school and the Parent provided additional information from home.
8. On March 16, 2016, the Parent wrote in the Home-School Communication Book that the Student really "Likes school, if you want to do two hours, we can try". The Case Manager replied that since spring break was only a week away, the IEP Team should stick with the current plan included in the IEP, which stated that extending the Student's school day would be considered two weeks after spring break. On March 19, 2016, the Parent requested another meeting, noting that the Parent had not yet received a completed copy of the IEP. The Case Manager replied to this request on March 28, 2016 and wrote that the Student's records had finally been entered into the District's computer record system, and so now the Case Manager could write the Student's IEP.
9. On March 31, 2016, the Parent asked in the Home-School Communication Book if the two hours of school daily would start on the following Monday. The Parent also asked if the District had Summer School. The Case Manager replied that the IEP Team had agreed to wait two weeks after spring break (March 27-31, 2016) before adding additional time daily. The Case Manager also noted the team could talk about summer programs at the next meeting.
10. On April 5, 2016, the Case Manager noted in the Home-School Communication Book that the IEP was in the Student's backpack. The Parent replied, telling the Case Manager that the Parent had had a conversation with the Principal about adding thirty minutes a day to the Student's schedule. On April 11, 2016, the Student began attending school for one-and-a-half hours per day. There was no IEP Meeting held at that time to discuss increasing time in school and to document the decision to increase by 30 minutes.
11. On Monday, May 2, 2016, the Parent received a phone call from the school Principal regarding an incident that happened on the school bus the previous Friday. The Parent believes that she was informed that she needed to transport the Student to school that day due to the Student biting a substitute bus driver the previous school day. The District maintains that the Parent was not told to transport the Student to school. Emails provided by

the District support the District's contention. The District continued to transport the Student to and from school.

12. On May 11, 2016, the Parent wrote again asking about summer programs, and the Case Manager noted the IEP Team was gathering information about summer for the Parent.
13. On May 19, 2016, the Parent emailed the Principal and asked that school staff give the Student only water at school. The Parent told the Complaint Investigator that the Parent was concerned the Student would have another episode with food that was similar to the one in the previous district, and was very disruptive for the Student.<sup>10</sup>
14. On June 3, 2016, the Case Manager wrote in the Home-School Communication Book, "The District does not have summer school, but we have Extended School Year Services. I have been working on scheduling a meeting so we can make a plan. I just got confirmation from the other team members that the day works—so I have us down for June 14 at 12:15 (then the Student will be in class). Please let me know if that does not work." The Parent replied the next day that June 14 would be good for a meeting. The District stated that a copy of the Meeting Notice, identifying the meeting as an IEP Meeting, was attached to the Home-School Communication Book. The District provided a copy of this IEP Meeting Notice in the District *Response* packet. However, the Parent states the notice was not received.
15. On June 8, 2016, the Parent wrote a note in the Home-School Communication Book asking for the District to respond in writing as to why the Student was only attending school for one-and-a-half hours per day.
16. The IEP Team met on June 14, 2016. At the IEP Meeting, the IEP Team reviewed the IEP goals, placement, and the Student's progress to date. The IEP Team also discussed a plan for an Extended School Year program that would be a month long, late in the summer before the start of the school year. The Special Education Teacher who would work with the Student attended and participated in the meeting.
17. On the amended IEP written at this meeting, the Case Manager noted the following: "We need to have the Student in school for a longer period of time to see if there is a regression of IEP goals and objectives. We have not had the Student over a long break to see if there is a prolonged recoupment. The Student is learning routines and Mondays have been challenging for the Student. The Student is still learning about what school is all about. The Student is still learning how to be safe at school, (keep hands to self). The team feels that we do not have enough information to see a regression or a prolonged recoupment period. The team feels that the Student is doing well with repeated exposure to school and that the Student would benefit from ESY services."
18. The IEP Team suggested that the Student receive ESY services from August 1, 2016 through September 2, 2016 for an hour and a half per day. The IEP Team proposed that the teacher and an educational assistant would work directly with the Student on the current IEP goals. Further, the IEP Team suggested that the Student continue that schedule for the first month of the school year, and that the IEP Team meet at the end of September to evaluate

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<sup>10</sup> In addition, the Student had been physically ill at school, and was sent home pursuant to a school rule that if a child vomits in the school setting, the child must stay out of school for at least 48 hours.



the Student's progress over the summer break and with the month of ESY and the first month of school.

19. During the discussion about how much time the Student should attend school, District staff mentioned concern about the fact they were not allowed to give the Student any food at school. The Parent stated this could be worked out.
20. The Parent wrote in the Home-School Communication Book on June 15, 2016 that the Parent was not informed that the previous day's meeting was an IEP Meeting.
21. The District Elementary and Special Education Director called the Parent on June 15, 2016, to suggest that the IEP Team meet after the end of ESY on September 2, 2016. The Parent filed this Complaint that same day.

#### IV. DISCUSSION

##### **Parent Participation – General:**

The Parent alleges that the District violated the IDEA when it did not provide the Parent with notice of an IEP Meeting to be held on June 14, 2016.

As per OAR 581-015-2190, a school district must provide a parent of a child with a disability with written meeting notice sufficiently in advance so that the parent has an opportunity to attend the meeting. The notice must state the purpose, time and place of the meeting, along with a list of those invited. The Department provides a template of a meeting notice for districts to use, and this template clearly outlines all information that must be included so that the meeting notice meets the provisions of OAR 581-015-2190.

In this case, the District was using a Home-School Communication Book to provide information to the Parent on a daily basis. On June 3, 2016, when the Case Manager wrote to the Parent about the meeting in the book, the Case Manager did not write specifically that the meeting was for the purpose of reviewing the IEP. The District states that the Case Manager included a formal meeting notice in the book; the Parent says there was no meeting notice when the Parent opened the book after school. There was nothing in the record to prove that the notice was received by the Parent. The day after the meeting, the Parent wrote in the book that the Parent did not understand the previous day's meeting was to be an IEP Meeting.

Providing complete notice to a parent of an upcoming IEP meeting is a foundational element of giving the parent full participation in the IEP process. In this case, there is no proof that an IEP Meeting Notice was sent to or received by the Parent, and the Parent was persuasive about not understanding the purpose of the meeting. The Parent told the Complaint Investigator that the Parent would have invited some other professionals to attend the meeting if it had clearly been designated as such.

The Department substantiates this allegation.

### **When IEP's Must Be in Effect:**

The Parent alleges that the District violated the IDEA when it only provided the Student with one-and-a-half hours of school daily. The Parent also alleges that the District failed to provide transportation services to the Student in accordance with the Student's IEP.

Under OAR 581-015-2220(1), a district meets its responsibility to a child with a disability when the district has an IEP in effect for the child at the beginning of the school year and provides special education and related services to the child in accordance with the IEP.

The Student transferred into the District in mid-March 2016. Previously, the Student had attended public school for only three weeks in another district, and had no other experience in an educational setting. The District reviewed the IEP written in January 2015, accepted it, and began providing services consistent with that IEP. At the first IEP Meeting held in the District for this Student, the IEP Team proposed that the Student start at the school on a shortened day schedule of one hour per day. The IEP states that two weeks from the end of spring break, the IEP Team would decide whether or not to add an additional hour to the Student's day. The Parent was in attendance at this IEP Meeting and in agreement with this plan. Although additional time was added a month later as per the plan, the District did not hold an IEP Meeting to address this issue, despite the Parent's request for such a meeting and despite the fact that the IEP required the IEP Team to revisit this matter. Instead, per the Parent's request to increase the Student's school day, the school Principal decided to add thirty minutes to the Student's daily schedule. The Student did begin attending an additional thirty minutes for a total of 1.5 hours per day on April 11, 2016. The District's *Response* says, "Between 04/05/2016 and the end of school 06/16/2016, the school team did not recommend increasing (the Student's) daily schedule due to increasing safety concerns and parent request that (the Student) not eat at school and have only water."

During the IEP Meeting on June 14, 2016, members of the IEP Team suggested one hour and a half of instruction per day for the month of ESY, and a similar schedule for the first month of the 2016-2017 school year. The Parent did not agree with this proposal. A Prior Written Notice (PWN) was issued after the IEP Meeting confirming the IEP Team's decisions regarding ESY and the Student's schedule for the 2016-2017 school year. The IEP Team agreed to meet at the end of September 2016 to review the IEP and consider adding more time to the Student's day. However, when the Director of Elementary Education and Special Education called the Parent the next day to suggest an IEP Meeting at the end of August, the Parent disagreed and filed this Complaint.

The Parent also alleged that the District failed to provide transportation services to the Student as provided in the Student's IEP. While there was one incident that resulted in the Parent being contacted by the District about the Student's behavior on the bus, emails between District staff members indicate that the District did not refuse to transport the Student at any time in accordance with the IEP.

The Department substantiates this allegation in part.

## V. CORRECTIVE ACTION<sup>11</sup>

*In the Matter of Lincoln County School District*  
Case No. 16-054-020

No.	Action Required	Submissions <sup>12</sup>	Due Date
	<p><b>Professional Development</b></p> <p>Provide information to all district Special Education Staff and building Principals regarding:</p> <ul style="list-style-type: none"> <li>· IEP development, review, revision and implementation</li> <li>· Ensuring that changes affecting a child's special education, related services, and placement are made according to OAR 581-015-2225 Review and Revision of IEPs.</li> <li>· Parent participation requirements, including the use of Notice of IEP Team Meeting, Prior Written Notice, and the Written Agreement to Review and Revise the IEP.</li> </ul>	<p>Following ODE review and approval of professional development materials, submit evidence of completed training, including Agenda and Sign-in sheet including names and positions.</p>	<p>October 19, 2016</p>

Dated: this 6th Day of September 2016




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

Mailing Date: September 6, 2016

<sup>11</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030 (17) & (18)).

<sup>12</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeannray@state.or.us](mailto:raeannray@state.or.us); fax number (503) 378-5156.